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Wednesday
October 29, 1980

Highlights

Seminar on Principles of Regulations Writing—For details on seminar in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

71565 **Education-Scholarships** HHS/PHS publishes criteria for determining allowable increases in tuition and other educational costs which the Secretary of HHS will be responsible for payment under scholarship programs; effective 10–29–80

71714 **Recreation** Interior/HCRS finalizes the administration of grant-in-aid program under the Urban Park and Recreation Recovery Program; effective 11–28–80 (Part II of this issue)

71746 **Energy** Energy/Solar proposes providing price support loans to assist municipal waste energy projects; comments by 1–5–81 (Part IV of this issue)

71569 **Nuclear Power Plants** NRC amends regulations temporarily suspending completion schedules for certain fire protection features in operating nuclear plants; effective 10–29–80

71728 **Water Resources** WRC publishes notice regarding synthetic fuel development for the Upper Missouri River Basin Water assessment; comments by 1–27–80 (Part III of this issue)

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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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71690 **Criminal Justice** Justice/BJS announces priorities for funding programs in criminal justice statistics

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71640 **Import** CITA announces additional import controls on certain cotton and man-made fiber textile products from the Republic of Korea; effective 11–3–80

71699 **Sunshine Act Meetings**

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 204 and 282

[Docket No. RM79-14]

Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978; Errata Notice; Technical Amendments to Order No. 49-A

October 17, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Errata notice to final rule.

SUMMARY: This notice contains corrections to technical amendments to Order No. 49-A issued January 18, 1980, (45 FR 5677, January 24, 1980). The technical amendments implemented modifications to the accounting regulations previously adopted in the regulations implementing the incremental pricing provisions of the Natural Gas Policy Act of 1978. The amendments added below were omitted in error.

EFFECTIVE DATE: January 18, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

SUPPLEMENTARY INFORMATION: The following amendments to 18 CFR Parts 204 and 282 were omitted from the January 18th order.

PART 204—[AMENDED]

3. Part 204, account 191 is amended in paragraph A to read as follows:

191. Unrecovered Purchased Gas Costs

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

* * * * *

§ 282.602 [Amended]

4. Section 282.602 is amended in paragraph (d)(2)(ii)(c) by deleting the words "account 191" and inserting in lieu thereof "account 805.2".

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33579 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

18 CFR Part 271

[Docket No. RM79-76; Order No. 99-A]

High-Cost Natural Gas Produced for Tight Formations; Order Denying Rehearing and Clarifying Order No. 99

Issued October 21, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: On August 15, 1980, the Federal Energy Regulatory Commission issued Order No. 99 in Docket No. RM79-76 (45 FR 56034, August 22, 1980). In Order No. 99, the Commission established an incentive price under section 107 of the Natural Gas Policy Act of 1978 for gas produced from designated tight formations and set forth the procedure for designation of tight formations and for well category determinations.

This order denies applications for rehearing of Order No. 99 and amends the applicability section and the definition of tight formation gas to clarify that a producer is not required to have a negotiated contract in order to apply for or receive a well category determination. In addition, technical amendments have been made to the definition of negotiated contract price.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT:

Colette Bohatch, Federal Energy Regulatory Commission, Room 8100-B, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033

or

June Perin, Federal Energy Regulatory Commission, Room 8000, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8473.

On August 15, 1980, the Federal Energy Regulatory Commission (Commission) issued Order No. 99 in Docket No. RM79-76 (45 FR 56034, August 22, 1980). Applications for rehearing of Order No. 99 were filed by Pennzoil Company, *et al.*[1] (Pennzoil Group) and Kentucky West Virginia Gas Company (Kentucky-West Virginia).

In Order No. 99, the Commission established an incentive price under section 107 of the Natural Gas Policy Act of 1978 (NGPA) for gas produced from designated tight formations and set forth the procedure for designation of tight formations and for well category determinations.

I. Application of the Pennzoil Group

The Pennzoil Group argues that Order No. 99 will delay producers' efforts to bring increased supplies of gas into the domestic market. The following reasons given by the Pennzoil Group to support its application do not warrant a rehearing. All of the issues presented by the Pennzoil Group and discussed below have been fully considered by the Commission during this rulemaking process.

A. *Designation of tight formations.*—The Pennzoil Group argues that the Order No. 99 procedures for nominating and approving tight formations could be streamlined by substituting the procedures of section 503 of the NGPA.

The Commission has the discretion to qualify tight formations under either section 503 or by rulemaking. For the reasons enunciated in the preamble to

[1] This application for rehearing was filed jointly by Pennzoil Company, Pennzoil Producing Company, Pennzoil Oil and Gas, Inc., Pogo Producing Company, Great American Oil Company of Texas, Texas Gulf, Inc., and Ashland Exploration, Inc.

the final rule, the Commission will continue to designate tight formations by rule in accordance with the provisions of § 271.703.

B. *Order No. 99 pricing provision.*—The Pennzoil Group also raises a question regarding the pricing provision of Order No. 99. In Order No. 99, the Commission established a ceiling price for gas produced from designated tight formations. That ceiling price as set forth in § 271.703(a) is 200 percent of the maximum lawful price under section 103 of the NGPA or the negotiated contract price, whichever is less. The term "negotiated contract price" as defined in § 270.702(a)(1) means:

> Any price established by a contract which either specifically references the incentive pricing authority of the Commission under section 107 of the NGPA or contains a fixed rate or a fixed escalator clause.[2]

On this point, the Pennzoil Group argues in its rehearing application that:

> Section 101(b)(9) of the NGPA and the *Mobile-Sierra* doctrine provide a rule of construction that the private contractual rights of producers and pipelines are preserved inviolate *as long as their exercise of those rights does not result in the collection of a price which is in excess of the maximum lawful price.* As such, the Commission has no jurisdiction to abrogate or interfere with the exercise of private contractual rights by producers and pipelines. By requiring certain words to be used in a contract, and especially by imposing this requirement retroactively, the Commission has violated section 101(b)(9) of the NGPA and the *Mobile-Sierra* doctrine. [Emphasis added.]

This argument begs the question. Under Order No. 99, no incentive maximum lawful price is applicable unless the contract covering the sale of the tight formation gas contains a clause which specifically references the Commission's section 107(c) incentive pricing authority or which is a fixed rate or a fixed escalator clause. The Commission adopted this pricing provision to assure that a price collected under a contract is necessary to increase gas production.[3] The Commission emphasizes that parties are not barred from renegotiating their contracts to qualify for the Order No. 99 ceiling price.[4]

The Pennzoil Group also argues that section 105(b)(3)(D)[5] and section 313(a)[6] mandate that "broadly drafted indefinite price escalator clauses" provide contractual authority for collection of a section 107(c) price.

We disagree. Both sections are couched in the negative. Sections 105(b)(3) and 313(a) impose limitations on the operation of indefinite price escalator clauses. They do not mandate collection of a section 107(c) price where such clauses exist.

C. *Other issues.*—The Pennzoil Group raises other issues regarding the sufficiency of the price and certain requirements for well category determinations and for designation of tight formations. The Commission rejects the arguments raised by the Pennzoil Group on the respective provisions of Order No. 99 for the reasons stated in Order No. 99.

II. Application of Kentucky-West Virgina

Kentucky-West Virginia submits that the Commission unlawfully excluded certain sales of pipeline production from the final rule by failing to include, explicitly, sales of such production within the definition of first sale.

Incentive prices established by the Commission under section 107 like all other maximum lawful prices under Title I of the NGPA are applicable to first sales of natural gas. In Order No. 58, the Commission addressed the issue of first sale treatment of sales made by pipelines, distributors, and their affiliates.[7] All issues raised by Kentucky-West Virginia regarding Order No. 99 relate to the Commission's definition of a first sale in Order No. 58. Therefore, they are outside the scope of this rulemaking and the application for rehearing must be denied.

III. Clarification of Order No. 99

Three clarifying amendments have been made to the final rule. The applicability provision of § 271.701 has been amended to delete the reference to a jurisdictional agency determination. The purpose of this amendment is to clarify that a producer is not required to have a negotiated contract price in order to apply for or receive a well category determination from a jurisdictional agency. A corresponding clarifying amendment has been made to the definition of tight formation gas in § 271.703(b)(1). Finally, certain clarifying amendments have been made to the definition of negotiated contract price in § 271.702(a)(1).

Because these amendments effect no substantive change in the rule but are necessary for proper implementation of the rule, the Commission finds that public notice and comment is unnecessary. For the same reasons, the amendments are being made effective immediately. (5 U.S.C. 553)

The Commission orders:

(1) The applications for rehearing of Order No. 99 filed jointly by the Pennzoil Company, Pennzoil Producing Company, Pennzoil Oil and Gas, Inc., Pogo Producing Company, Great American Oil Company of Texas, TexasGulf, Inc., and Ashland Exploration, Inc. and Kentucky-West Virginia Gas Company are denied.

(2) Order No. 99 is clarified by amending §§ 271.701, 271.702(a)(1) and 271.703(b)(1) of the Commission's regulations as set forth above, effective October 21, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.;* Department of Energy Organization Act, 42 U.S.C. § 7107, *et seq.;* Executive Order No. 12009, 42 FR 46267, Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below, effective October 21, 1980.

By the Commission.

Kenneth F. Plumb,

Secretary.

§ 271.701 [Amended]

1. Section 271.701 is amended in the first sentence by deleting the words "a jurisdictional agency determines" following "which".

2. Subparagraph (1) of § 271.702(a) is amended to read as follows:

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[2] Certain clarifying amendments to this definition are now being adopted by the Commission.

[3] As stated in the preamble to Order No. 99:

> The Commission reaffirms the position taken in the interim rule that it must limit the availability of the incentive price ceiling to those contracts which specifically refer to it (or to the extent permitted under a fixed rate or fixed escalator clause) because its pricing authority is limited to setting incentive prices "necessary" to encourage additional production. (Mimeo. at p. 37.)

[4] The negotiated contract price requirement appears in the production enhancement rulemaking as a qualification for gas. Similar arguments questioning the Commission's role have been raised in the production enhancement rulemaking and will be addressed there.

[5] Section 105(b)(3) imposes certain limitations on the effect of indefinite price escalator clauses. Section 105(b)(3)(D) establishes an exclusion for certain categories of gas from such limitations.

[6] Section 313(a) provides:

> *High-Cost Natural Gas.*—No price paid in any first sale of high-cost natural gas (as defined in section 107(c)) may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 107(c)).

[7] Section 270.203 promulgated in Order No. 58, provides that a sale by a pipeline or distributor is not a first sale unless the sale is comprised exclusively of production by the pipelines or distributors or the sale is a mixed volume sale the price of which is not regulated pursuant to the Natural Gas Act (15 U.S.C. §§ 717–717w) or by a state agency empowered by statute to establish, modify, or set aside the rate for such sale.

§ 271.702 **General rules.**

(a) *Definitions.* * * *

(1) "Negotiated contract price" means any price established by a contract provision that specifically references the incentive pricing authority of the Commission under section 107 of the NGPA, by a contract provision that prescribes a specific fixed rate, or by the operation of a fixed escalator clause.

* * * * *

§ 271.703 **[Amended]**

3. Subparagraph (1) of § 271.703(b) is amended by inserting the words "natural gas that a jurisdictional agency has determined in accordance with Parts 274 and 275 to be" following the word "means".

[FR Doc. 80-33578 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 1645-8]

Approval and Promulgation of Implementation Plans; Tennessee: 1979 Plan Revisions; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction in final rule.

SUMMARY: In FR Doc. 80-24425 appearing at pages 53809-53818 in the Federal Register of August 13, 1980, make the following correction. Under the Nashville (CO), discussion on page 53812, replace the last sentence of the first full paragraph of the third column with the following sentence: This schedule indicates that a centralized operated I/M program will be instituted, and calls for the mandatory I/M program to begin in September 1982.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Gregory, Air Programs Branch, EPA Region IV, Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

(Secs. 110, 172, Clean Air Act (42 U.S.C. 7410, 7502))

Dated: October 8, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 80-33679 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-38-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Amendment E-243]

Procurement Sources and Programs; FEDSTRIP Activity Address Codes

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation specifies that an activity address code is required to requisition items through the FEDSTRIP system, provides that each civilian executive agency should establish a central contact point for matters involving activity address codes, and updates the address of the GSA contact for assistance in ordering through the FEDSTRIP system. The inquiries received from agencies regarding the FEDSTRIP system indicate that FPMR 101-26.2 should include guidance to agencies on obtaining and exercising controls over FEDSTRIP activity address codes. This regulation provides for implementation of the necessary controls over the assignment and use of activity address codes.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. James Jeremiah, Director, Office of Requisition Processing and Control (703-557-1823).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

1. The table of contents for Part 101-26 is amended by adding the following entry:

* * * * *

101-26.203 Activity address codes.

* * * * *

Subpart 101-26.2—Federal Requisitioning System

2. Section 101-26.203 is added to read as follows:

§ 101-26.203 **Activity address codes.**

To obtain items through the FEDSTRIP system, each ordering activity is required to have an activity address code. The FEDSTRIP Operating Guide (FPMR 101-26.2) contains instructions to civilian agencies on requesting activity address codes. Once assigned, an activity address code allows an activity to order supplies under the FEDSTRIP system. Because there is a potential for abuse in the use of these codes, agencies shall establish stringent internal controls to ensure that the codes are used only by authorized personnel. It is imperative that all requests for activity address codes or deletions or address changes flow through a central contact point in the agency headquarters or regions where the need, purpose, and validity of the request can be verified. Agencies should send GSA the addresses of the contact points (mailing address: General Services Administration (FSR), Washington, DC 20406). GSA will only honor requests from the established points within the agency. GSA will periodically send a listing of current activity address codes and addresses to contact points for review.

3. Section 101-26.206 is revised to read as follows:

§ 101-26.206 **GSA assistance.**

Agency field activities should direct their questions regarding FEDSTRIP to the Federal Supply Service at each GSA regional office. The addresses of GSA regional offices are listed in each of the volumes of the GSA Supply Catalog. Agency headquarters activities requiring assistance may contact General Services Administration (FSR), Washington, DC 20406.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: October 20, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80-33639 Filed 10-28-80; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Payment for Tuition and Other Educational Costs

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These regulations set forth criteria for determining allowable increases in tuition and other educational costs for which the Secretary of Health and Human Services will be responsible for payment under the scholarship programs authorized by Title VII of the Public Health Service Act.

EFFECTIVE DATE: These regulations are effective upon publication, October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Donald C. Parks, Deputy Director, Office of Program Support, Bureau of Health

Professions, Health Resources Administration, Center Building, Room 4–22, 3700 East-West Highway, Hyattsville, Maryland 20782 (Telephone: 301–436–6560).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 27, 1978, the Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, proposed to add a new Subpart GG, "Payment for Tuition and Other Educational Costs," to Part 57 of Title 42 of the Code of Federal Regulations. The new Subpart GG was proposed under section 711 of the PHS Act (the Act), which requires the Secretary to establish criteria for determining allowable increases in tuition and other educational costs for which the Secretary will be responsible for payment under Title VII of the Public Health Service Act. The regulations were proposed to apply to three programs in Title VII in which the Secretary commits the Federal Government to pay the costs of the tuition and other educational expenses of participating students and only to institutions having students participating in these programs. The programs are section 751 of the Act, establishing the National Health Service Corps Scholarship Program; section 757 of the Act, establishing an Indian Health Scholarship Program; and section 758 of the Act, establishing a program for Scholarships for First Year Students of Exceptional Financial Need.

Interested persons were invited to submit written comments on the proposed regulations not later than 45 days after publication in the **Federal Register.** Following the close of the comment period, the regulations were to be revised as warranted by the public comments received. Twenty persons responded within the period. The comments, the Department's response to the comments, and the revisions made in the regulations are indicated below. For clarity, the comments and responses have been arranged, whenever appropriate, according to the section numbers and titles of the proposed regulations to which they pertain.

§ 57.3201 To which programs do these regulations apply?

Section 57.3201 stipulates that the regulations apply to increases in tuition and other educational costs occurring after the school year immediately before October 1, 1978.

Several respondents were concerned with this proposed effective date. They suggested that the regulations be effective for all changes in tuition and other educational costs which occur on or after the date of publication of the final regulations, or that the effective date be altered "to the school year beginning immediately after October 1, 1979." The respondents argued that tuition increases are planned one year in advance and that the proposed rules should not apply to tuition increases which have already been planned.

The Secretary is cognizant of the fact that tuitions are planned one year in advance and that tuition levels for the school year corresponding to the effective date of the regulation have already been established. Furthermore, the Secretary has determined that one full year of monitoring tuition charges across schools will be required to establish a baseline set of data from which subsequent tuition increases can be evaluated. Therefore, tuition increases for the purposes of determining allowable increases will be based upon the increase that occurs between those established for the school year beginning immediately before October 1, 1981, and those which were charged to students in the previous baseline year. No decisions regarding the appropriateness of increases in tuition and other educational costs will be forthcoming until the Secretary has cost analysis data comparing the 1981 school year costs to the 1980 school year baseline data.

§ 57.3202 How will allowable increases be determined?

§ 57.3202 (a)—Paragraph (a) of this section delineates certain categories of allowable cost increases that are either uncontrollable or are attributable to maintaining and improving the quality of the health professions education provided by the institution.

Several respondents expressed concern over these categories of allowable costs and the specific examples used to exemplify these categories. The comments not only stated a concern with the comprehensiveness of the list but also a concern with the vagueness of the criteria listed. They recommended the expenses associated with implementation of new or recent federal programs such as section 504 of the Rehabilitation Act of 1973, the Occupational Safety and Health Act, the Age Discrimination in Employment Act, Title IX of the Civil Rights Act, the Family Education Rights and Privacy Act of 1974, and the proposed regulations pertaining to the activities of institutional review boards in the protection of human subjects (43 FR 56174, November 30, 1978), be added as allowable cost categories. Costs related to additional patient care conducted solely as a learning experience for students, components of research programs which involve students as assistants or observers in a learning role, and wages, salaries, and benefits required as a result of new union contract agreements were also suggested as categories of allowable costs.

Another major area of concern regarding the examples of allowable costs cited in the regulations was that the examples should, but did not, address the need to increase tuition and other educational costs in response to the loss of revenues incurred when income from other sources, such as States, private philanthropies, or other federal programs, is reduced or discontinued. The primary example cited by the respondents was revenue provided by the Health Professions Capitation Grant Program. It was generally recommended that a third category of allowable costs be included to define the types of revenue losses that would constitute acceptable justification for tuition increases.

The Secretary agrees that the examples given under clauses (1) and (2) of § 57.3202(a) of the proposed regulations are not all inclusive. The final regulations indicate that the examples within each category are merely illustrative.

The Secretary also agrees that increases in tuition and other educational costs directly attributable to loss of revenues from other sources which were used for the maintenance and improvement of the educational system should be allowed.

The final regulations have been amended to include this category under § 57.3202(c)(3). However, tuition increases due to loss of other sources of revenue are justified only if those sources of revenue were previously used to maintain and improve the educational system and not used to provide patient care or conduct research unrelated to educational purposes.

Two comments reflected concern that the regulations do not explicitly state that the Secretary *will* assume responsibility for that portion of tutition and other educational costs charged to students in the scholarship programs that is determined to be appropriate and that the Secretary is *not* authorized to establish tuition or other educational costs for an institution. Two respondents held the opposite view, that the Secretary should establish a standardized national tutition and education costs limitation for determining federal scholarship awards.

With respect to the comments noting a lack of an explicit statement of the

Secretary's responsibility in regard to payment of tuition and other educational costs, the Department has revised the regulations to state that the Secretary *will* be responsible for that portion of increases in tuition and other educational costs determined to be allowable.

With respect to the Secretary being involved in the establishment of tuitions, either directly or indirectly, the Secretary has no authority to set tuition levels. The Secretary concludes this area is strictly the domain of the institution. The law does provide the Secretary with the authority to determine, of those increases in tuition and other educational costs imposed by the institution, the amount of such increases for which he or she will be responsible for payment under those Title VII programs in which the Secretary commits the Federal Government to pay such costs.

Some respondents asserted that the Consumer Price Index is not an appropriate instrument to be applied as benchmark for acceptable increases in tuition. The basis for this position is that tuition is not a "price" (because it is less than cost), and in fact represents only a portion of educational financing. Tuition remains, for many schools, the most viable means of responding to increases in uncontrollable costs or decreases in other sources of funding and should not be tied to any fixed standard based on average increases in consumer products and services.

The Secretary agrees that tuition is usually based on the costs of operation that remain after other sources of revenue are applied to defray these costs and, therefore, does not represent a "price" for an equivalent product from year to year. However, since the Consumer Price Index is linked directly to fluctuations in the economy and since it is only to be used as an indicator and not as a price-fixing mechanism, the Secretary believes that this index is an appropriate device to identify unusual changes in tuition and other educational costs. Therefore, the Secretary has made no substantive change in this regulation in this regard.

Several respondents expressed concern that the burden that would be placed upon the institutions if another reporting system were required by the regulations would be excessive. Two respondents suggested using the data furnished to the American Association of Medical Colleges, which currently conducts an annual tuition survey.

The Secretary agrees that additional reporting requirements on the part of the institutions should be avoided. Therefore, the Secretary has decided that all data for the baseline year and subsequent years will be drawn and compiled from records now being sent to the Department in response to requirements of the scholarship programs mentioned in § 57.3201. Institutions must submit a justification for an increase only if the Secretary requests this information. Accordingly, § 57.3202 has been modified to reflect this change.

§ 57.3202(c)—Paragraph (c) of § 57.3202 states that the Secretary is responsible for increases in tuition and other educational costs for students under Title VII only if the same increase is charged to all students without regard to whether they are receiving support under the scholarship programs.

Several respondents stated that this criterion requiring equal charges to all categories of students be the only criterion used by the Department to determine allowable increases in tuition and other educational costs. The argument is advanced that further assessment of allowable tuition and educational costs is not necessary since schools are bound by circumstances to keep tuition and other expenses down to minimal levels. Repondents assert that non-scholarship students cannot bear the entire burden of the costs of a health professions education and, at most institutions, their share is currently near the maximum they can be expected to pay. Other respondents concluded that the criterion of equal charges to all similar students be accepted as the sole criterion for determining allowable charges since there would be too many inequities inherent in a system that looks at the way revenue from tuition and other student fees are expended. Since tuition income is a non-directed source of funds, institutions can apply these funds to costs more easily than funds from many other sources. The respondents contended that while student tuition and fee income might be expended in a category the Secretary denies as being unallowable, funds from sources other than the Federal Government expended in support of these students more than make up for such unallowable expenditures.

The Secretary agrees that the criterion of equal charges, equal rebates, and equal discounts to scholarship and non-scholarship students should be the absolute requirement to effect the intent of the law in those schools that do not enroll sufficient scholarship students so as to be influenced to increase tuition costs to obtain readily available federal funds. On the other hand, if scholarship student enrollment is of such a significant size that a school might increase tuition and educational costs for all students in order to obtain greater federal funding, the Secretary feels obligated to determine, on the basis of the criteria contained in § 57.3202(c), whether such costs are allowable increases in tuition and other educational costs for which he or she will be responsible.

Therefore, paragraph (a) of § 57.3202 will apply to all institutions that enroll scholarship students for which the Secretary is responsible for tuition and other educational costs, or a portion thereof. Paragraphs (b), (c), and (d) apply only to those schools where 25 percent or more of the students enrolled participate in Title VII scholarship programs. This level was selected because it applies only to those schools in which the significant amount of federal support may influence tuition levels, while exempting the majority of schools from additional reporting requirements. Only in those instances where the Secretary finds that increases in tuition and other educational costs exceed the current year's increases in the Consumer Price Index must the institutions that enroll greater than 25 percent scholarship students provide justification for such increases.

Section 57.3202 has been rewritten and reconstructed to reflect the above changes.

§ 57.3202(d)—There was a major concern that the Department did not institute a mechanism to allow the institutions to appeal an adverse decision of the Secretary. Any appeal mechanism would be inappropriate, since Congress gave the responsibility for making determinations under section 711 to the Secretary.

General and specific comments not directly addressed to the content of the regulations.—Several respondents felt that any disallowance in tuition or other educational costs would place an undue burden on the students. The students would be placed into a situation of either paying the costs differential between actual and allowable tuition and other educational costs or to discontinue their studies. The respondents contend that disagreements between the institutions and the Government regarding such matters should not directly affect the student.

To establish a disincentive for participation by the scholarship students is a grave concern of the Secretary. The previously mentioned changes and modifications of the existing regulations are largely a result of this concern. While these changes substantially reduce the number of students possibly involved to only those in institutions with more than 25 percent

scholarship student enrollment, the Secretary cannot deny these institutions their right to assess the student directly for those costs deemed by the Secretary to be inappropriate for payment. In regard to this specific point, one respondent contended that the "inevitable 'time lag' that will exist between a statement of the tuition increase by a particular institution and the ruling by the Secretary as to the reasonableness of such an increase will result in the inability of the student to determine if the educational expenses for a particular year will be met in sufficient time (for the student) to try to arrange alternative financial support * * *" In response to this concern, the Secretary will make every effort to work with those few schools that will enroll 25 percent or more of scholarship students far enough in advance of registration to insure that any differences of opinion between the Government and an affected institution will be resolved in time for the student to arrange for alternative financial support, if necessary.

Several respondents suggested the regulations be entirely withdrawn. This suggestion cannot be accepted, since the Secretary is required by section 711 to "* * * by regulation establish criteria for determining allowable increases in tuition and other educational costs for which he shall be responsible for payment. . . ."

Finally, in addition to changes made as a result of the comments received, several changes of an editorial or technical nature have been made to further clarify the regulations.

Accordingly, the new Subpart GG of 42 CFR Part 57 is added as set forth below.

Dated: July 8, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary.

Subpart GG—Payment for Tuition and Other Educational Costs

Sec.

57.3201 To which program do these regulations apply?
57.3202 How will allowable increases be determined?

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 711, Public Health Service Act, 90 Stat. 2253 (42 U.S.C. 292k).

Subpart GG—Payment for Tuition and Other Educational Costs

§ 57.3201 To which programs do these regulations apply?

The regulations in this subpart establish the criteria to be used in determining allowable increases in tuition and other educational costs for which the Secretary is responsible for payment under the following sections of the Public Health Service Act: The National Health Service Corps Scholarship Program (sec. 751) (42 U.S.C. 294t), the Indian Health Scholarship Program (sec. 757) (42 U.S.C. 294y–1), and Scholarships for First-Year Students of Exceptional Financial Need (sec. 758) (42 U.S.C. 294z). These programs are referred to herein as the "scholarship programs." The regulations apply to increases in tuition and other educational costs occurring after the school year beginning immediately before October 1, 1981.

§ 57.3202 How will allowable increases be determined?

(a) The Secretary is responsible for increases in tuition and other educational costs only if the same increase is charged to all students in the same category (for example, the same class year or place of residence) and without regard to whether the student is receiving support under the scholarship programs. A student participating in the scholarship programs may not be denied eligibility because of this participation for any discounts or rebates in tuition or other educational costs given to all other students in the same category at the institution.

(b) Institutions whose enrollment contains 25 percent or more students participating in the scholarship programs, and whose percentage increase in tuition and other educational costs in any school year exceeds the previous calendar year's average inflation rate as indicated by the *Consumer Price Index for All Urban Areas,* may be requested to provide the Secretary with detailed cost breakdowns justifying the increase.

(c) In the case of a school which is requested to provide the Secretary with cost increase justification under paragraph (b) of this section, the Secretary will be responsible for increases in tuition and other educational costs charged to students participating in the scholarship programs over the amount charged for the school year immediately preceding the increase only to the extent that they are: (1) attributable to uncontrollable costs, such as fuel costs, mandated cost-of-living increases in wages, salaries and fringe benefits, (2) attributable to costs of maintaining and improving the quality of the health professions education provided by the institution, such as hiring additional faculty to improve the faculty-student ratio, costs incurred in off-site training of students, and necessary improvements in teaching equipment. Increases in patient care and research costs are allowable as part of an increase in tuition and other educational costs only to the extent that they can be documented as clearly necessary to maintain and improve the quality of the education being supported; or (3) attributable to loss of revenue from other sources which was used solely for the maintenance and improvement of the educational system. These three categories of valid escalators of tuition and other educational costs are exclusive. However, the examples *within* each category are merely illustrative and not meant to be inclusive.

(d) If the Secretary, after reviewing all available data, information, and justifications submitted by an institution, determines that an increase in tuition and other educational costs is not allowable under the criteria described in paragraph (a) or (c) of this section, the Secretary will provide the affected institution a detailed written explanation of the basis of that determination. The Secretary will be responsible for that portion of tuition and other educational costs the Secretary determines to be allowable.

[FR Doc. 80–33546 Filed 10–28–80; 8:45 am]
BILLING CODE 4110–83–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Transferring Authority for Common Carrier Matters Involving Public Coast Stations to the Private Radio Bureau; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: In the rule concerning the transfer of authority for common carrier matters involving public coast radio stations to the Private Radio Bureau, published in the **Federal Register** on April 15, 1980, at 45 FR 25398 there is an error in the amendment to 47 CFR 0.91. The error failed to include text adopted in the immediately preceding amendment to this section published on March 13, 1980, 45 FR 16191. This correction supersedes the correction

published on October 1, 1980, 45 FR 64949. The corrected § 0.91 is published below.

EFFECTIVE DATE: April 18, 1980.

FOR FURTHER INFORMATION CONTACT: Robert P. De Young, Private Radio Bureau, (202) 632–7175.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION:

In the Matter of amendment of Part 0 to transfer authority for common carrier matters involving public coast stations to the Private Radio Bureau.

Released: August 19, 1980.

1. In the Order in the above-captioned matter, FCC 80–179 released April 7, 1980, Section 0.91 of the rules was amended to reflect a transfer of function from the Common Carrier Bureau to the Private Radio Bureau (45 FR 25399, April 15, 1980).

2. Section 0.91 of the rules was also amended by Order, FCC 79–882, released March 7, 1980, to reflect the reorganization of the Common Carrier Bureau. Through inadvertence, our Order of April 7, amended the language of the rule prior to its having been amended by our Order of March 7, 1980 (45 FR 16191, March 13, 1980).

3. To correct this situation, Section 0.91 is amended as set forth in the attached appendix, to amend the currently effective language of the rule.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

William J. Tricarico,

Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

In § 0.91 the introductory text is revised to read as follows:

§ 0.91 Functions of the Bureau.

The Common Carrier Bureau develops, recommends and administers policies and programs for the regulation of services, facilities, rates and practices of entities (excluding public coast stations in the maritime mobile service) which furnish interstate or foreign communications service for hire—whether by wire, radio, cable or satellite facilities—and of ancillary operations related to the provisions or use of such services. The Bureau also regulates the rates, terms, and conditions for cable television and pole attachments, where such attachments are not regulated by a state and not provided by railroads or governmentally—or cooperatively owned utilities. The Bureau also performs the following specific functions:

* * * * *

[FR Doc. 80–33778 Filed 10–28–80; 8:45 am]

BILLING CODE 6712–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Fire Protection Schedules for Operating Nuclear Power Plants

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to temporarily suspend completion schedules for certain fire protection features in operating nuclear plants pending completion of its ongoing comprehensive fire protection rulemaking. This suspension is necessary because some NRC licensees are unable to meet fire protection implementation deadlines contained in licensed conditions. The Commission has found that fire protection measures already implemented give reasonable assurance of safety, and that no health and safety interest would be served by forcing certain licensees to shut down during the brief period between the license condition deadlines and the effectiveness of the final fire protection rule.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: William Shields, Office of Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301–492–8696.

SUPPLEMENTARY INFORMATION: On May 29, 1980, the Commission published in the **Federal Register** (45 FR 36082) a Notice of Proposed Rulemaking entitled "Fire Protection Program for Nuclear Plants Operating Prior to January 1, 1979." The proposed rule provided that all fire protection modifications except alternate or dedicated shutdown capability would be required to be implemented by November 1, 1980, unless the Commission approve an extension for good cause. This deadline was also stated in the Commission's May 27, 1980 Memorandum and Order on the Union of Concerned Scientists Petition for Emergency and Remedial Action. 11 NRC 707, 719.

Many of the commenters on the proposed rule contended that the November 1 deadline was unachievable. Moreover, much more time than was earlier anticipated has been required to prepare a final rule on fire protection. Although the final rule is near completion, and will incorporate an implementation schedule different from that in the proposed rule, it has not yet been published and in any event would not be effective until 90 days after publication.

Certain NRC licensees, however, are at present operating under license conditions or technical specifications thereto which include the November 1 deadline or other dates which will precede the effective date of the final rule. To the extent that these licensees have been unable to complete all of the fire protection measures to which these deadlines apply, continued operation would violate the license conditions. The violation would extend only until the final rule becomes effective, since the implementation schedule contained in the final rule will supersede inconsistent license conditions.

The Commission has determined, based upon a review of the entire record in this rulemaking, that relief from these license conditions is appropriate pending promulgation of the final rule on fire protection applicable to all NRC licensees. Extensive fire protection measures have already been implemented at all operating plants. The implementation schedule of the final rule will be uniform and comprehensive, and will apply to all operating plants including those with different schedules contained in license conditions. No public health and safety interest would be served by forcing only those licensees unable to meet deadlines preceding the effectiveness of the final rule to shut down for the brief interim. To the contrary, the fire protection measures already implemented give reasonable assurance that all operating nuclear plants may continue to operate safely even though the final rule will require additional fire protection measures at many plants.

The Administrative Procedure Act provides that a rule may be effective upon publication when that rule "grants or recognizes an exception or relieves a restriction." 5 U.S.C. 553(d)(1). This rule relieves certain NRC licensees from license conditions or technical specifications thereto in regard to fire protection implementation deadlines, and will therefore be effective upon the date of publication in the **Federal Register.** Furthermore, as noted above, the proposed rule stated that extensions from the November 1, deadline would be considered for good cause. Extensive public comment was received to the effect that the deadline was unrealistic

and should be revised. Under these circumstances the Commission believes that there is good cause for an extension of the license condition schedules pending effectiveness of the final rule on fire protection.

The rule provides that all compliance dates contained in license conditions or technical specifications for required fire protection measures are suspended pending further action by the Commission. As is clear from the above discussion, that further action will be promulgation of the final rule on fire protection. The Commission intends that licensees affected by this rule should use best efforts to complete all required measures as soon as possible despite the suspension of the deadlines for this brief period.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 50, is published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. A new Section 50.48 is added to read as follows:

§ 50.48 Fire protection schedules.

To the extent that any facility's license conditions or technical specifications incorporate compliance dates for modifications necessary to provide fire protection features proposed by a licensee and accepted by the NRC staff as satisfying the provisions of Appendix A to Branch Technical Position BTP/APCSB 9.5–1 and reflected in NRC staff Fire Protection Safety Evaluation Reports issued prior to the effective date of this rule, those dates are hereby suspended pending further action by the Commission.

(Sec. 161b, Pub. Law 83–703, 68 Stat. 948; Sec. 201, Pub. Law 93–438, 88 Stat. 1242 (42 U.S.C. 2201(b), 5841))

Dated at Washington, D.C. this 27th day of October 1980

For the Nuclear Regulatory Commission.

Samuel C. Chilk,

Secretary of the Commission.

[FR Doc. 80–33844 Filed 10–28–80; 10:14 am]

BILLING CODE 7590–01–M

Proposed Rules

Federal Register
Vol. 45, No. 211
Wednesday, October 29, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Proposed Revision of Interest Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposal that would change the interest rate charged on delinquent assessments from one percent to one and one-half percent per month. The proposed action is designed to bring the interest rate more into line with current comparable rates.

DATES: Comments must be received not later than November 13, 1980.

ADDRESSES: Send two copies of comments to: Hearing Clerk, United States Department of Agriculture, Room 1077–South Building, Washington, D.C. 20250, where they will be made available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Draft Impact Analysis relative to this proposed action is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and is classified "not significant." The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act.

This proposal was unanimously recommended by the Cherry Administrative Board under § 930.41(b) of marketing Order No. 930 (7 CFR Part 930). The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Board is the agency established under the order to administer its terms and conditions. Under the marketing order, the Board may charge interest on assessments not paid by handlers within a prescribed time after billing. The current interest charge of one percent per month on the unpaid balance has been in effect since 1972. This proposal would revise the charge to one and one-half percent per month to reflect a rate more in line with current comparable rates.

The proposal is to revise § 930.107(b) to read as follows:

§ 930.107 [Amended]

* * * * *

(b) Each handler shall pay interest of one and one-half percent per month on any unpaid balance beginning 30 days after date of billing.

Dated: October 24, 1980.

D. S. Kuryloski,

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

[FR Doc. 80–33697 Filed 10–28–80; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket No. 80–16]

Fiduciary Powers of National Banks and Collective Investment Funds

AGENCY: Office of the Comptroller of the Currency, U.S. Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is proposing the amendment of its regulation covering the exercise of fiduciary powers and the management of collective investment funds by national banks (12 CFR Part 9) in order to clarify and modify certain provisions. Specifically, the Office proposes to amend provisions relating to the retention of fiduciary records, temporary investment of funds awaiting investment or distribution, collective investment of funds held by national banks as fiduciaries, brokerage placement practices, and revocations of trust powers. Comment is also requested on any unnecessary regulatory burdens created by the provisions of Part 9, and ways in which that regulation might otherwise be improved. The Office proposes to set specific 4-year retention periods for records required by this regulation, except in cases where Federal or state law establish longer periods.

As they relate to collective investment funds, the proposed amendments are intended to accomplish three goals. First, they will clarify the basis on which assets of such funds are to be valued. Second, by lowering the common trust funds' marketability requirements to a level determined to be more reasonable, they will remove an artifical impediment to the creation of real estate common trust funds and other special purpose funds for the investment of personal trust accounts, without significantly affecting the safety of the funds. Finally, the amendments would incorporate into the regulation current formal interpretations authorizing the valuation of assets of certain short-term investment funds on a cost basis, rather than market value, and lowering the liquidity requirements of these funds.

The remaining proposals would further amend Part 9 to (1) implement the new statutory authority of the Office to revoke national banks' fiduciary powers in instances of improper use or non-use of such powers; (2) require national banks to disclose their policies and practices concerning commissions paid for effecting securities transactions; (3) establish express time frames for the designation of and investment in time or savings deposits in the fiduciary bank of funds awaiting investment or distribution, and (4) eliminate the definition of "equity security" and clarify that of "trust department".

DATES: Written comments must be received on or before December 31, 1980.

ADDRESS: Comments should be sent to Docket No. 80–16, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, Attention: Marie Giblin. Telephone: (202) 447–1800. Comments will be available for inspection and photocopying.

FOR FURTHER INFORMATION CONTACT: Dean E. Miller, Deputy Comptroller for Specialized Examinations, Office of the Comptroller of the Currency, 490 L'Enfant Plaza SW., Washington, D.C. Telephone: (202) 447–1731.

SUPPLEMENTARY INFORMATION: The principal author of this document is Dean E. Miller, Deputy Comptroller for Specialized Examinations, Office of the Comptroller of the Currency. [12 U.S.C. 92a; 15 U.S.C. 78bb(e)(2).]

Part 9 of the Comptroller's regulations (12 CFR Part 9) establishes the mechanism for acquisition and exercise of trust powers by national banks. In addition, Part 9 provides rules for the management of collective investment funds held by national banks. The following outlines the specifics of the proposed amendments:

Revocation of National Bank Fiduciary Powers

Under Title VII of the recently enacted Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96–221) the Comptroller is authorized to revoke the fiduciary powers of a national bank in instances of their unlawful or unsound exercise or failure of the bank to exercise such powers for five consecutive years. The Office proposes to amend 12 CFR 9.17 to reflect this new authority.

Retention of Fiduciary Records

This Office proposes to amend 12 CFR 9.8 to require that the records required by that section be retained by the bank for a period of 4 years following the closing of an account, or as to records of pending litigation, the termination of that litigation, unless a longer period is established by applicable Federal or State law. The regulation presently does not specify the maximum period of time records must be kept.

Valuation of Collective Investment Funds Assets

The Office proposes to amend 12 CFR 9.18(b)(1) to designate market value as the basis on which all assets of national bank collective investment funds are to be valued. Since all assets of a collective investment fund currently must be valued at market value or fair value as determined in good faith by the fund trustee, this amendment merely would recognize existing practice. A further amendment to Section 9.18, discussed below, would create an exception to this valuation method for certain short-term investment funds.

Marketability Requirements of Common Trust Funds

In order to remove unnecessary impediments to the creation of real estate common trust funds and other special funds for the investment of personal trust accounts, the Office proposes to amend 12 CFR 9.18(b)(9)(iii). Under the existing regulation 40 percent of common trust fund assets must consist of cash or readily marketable investments after any admissions to, or withdrawals from, the funds are made. Since real estate is not a readily marketable investment, the current 40 percent requirement effectively precludes the establishment of a common trust fund consisting principally of real estate investment. The reduction of the requirement to 20 percent, as proposed by the Office, is expected to result in greater flexibility and responsiveness to the needs of national banks for innovative concepts in trust account collective funding while maintaining adequate fund liquidity.

Valuation of Short-term Investment Funds

In proposing an additional amendment to 12 CFR 9.18, the Office would permit a national bank to create short-term investment funds whose assets would be valued on the basis of cost, rather than market value. The amendment would codify a current opinion of the Office which confers this power under the discretionary authority of 12 CFR 9.18(c)(5).

In response to numberous requests from bankers and other interested parties, the Office also proposes to lower the liquidity requirement of short-term investment funds from 40 percent to 20 percent and, thus, to increase their yield. Experience indicates that a 20 percent liquidity factor would both produce a higher fund yield and adequately provide for fund withdrawals without necessitating the sale of fund assets before they mature.

The proposed amendment contains four basic requirements for establishing and maintaining a short-term investment fund valuing assets on a cost basis. First, except for 20% of the fund's value, investments must be limited to evidence of indebtedness payable on demand or which mature not more than 91 days from the date of purchase. Second, the difference between cost and anticipated principal receipt on maturity must be accrued on a straight-line basis. Third, assets of the fund must be held until maturity under usual circumstances. Finally, no entries or withdrawals from the fund can be made if they will reduce below 20 percent the value of the fund consisting of cash, demand obligations, and assets maturing on the fund's next business day.

Disclosure of Policies and Practices for Commissions Paid for Effecting Securities Transactions

Section 28(e) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. 78bb(e), was enacted as part of the Securities Acts Amendments of 1975, Pub. L. 94–29. Section 28(e)(1) relieves persons having investment discretion of liabilities they might otherwise incur if they cause an account they manage to pay brokerage commissions in excess of the commission another broker would have charged, if such persons determine in good faith that the amount of commission paid was reasonable in relation to the value of the brokerage or research services provided by the broker. Section (e)(2) empowers the Office to prescribe rules for national banks exercising investment discretion in customer accounts, requiring them to make such disclosure of their policies and practices for commissions paid to effect securities transactions as may be deemed necessary or appropriate in the public interest or for the protection of investors.

The Office proposes to add a new Section 9.5 to 12 CFR Part 9 to require a national bank to prepare and make available a disclosure statement for each account in which it excercises "investment discretion", as that term is defined in Section 3(a)(35) of the 1934 Act, 15 U.S.C. 78c(a)(35). The proposed format of the disclosure statement closely parallels requirements being considered by the Board of Governors of the Federal Reserve System for State-chartered banks which are members of the Federal Reserve System.

Specifically, the disclosure statement, as proposed, would (1) identify the general types of products and services, other than execution, for which a higher commission rate was paid than that which a competing broker may have charged for a similar transaction; (2) indicate the aggregate commission dollars allocated in payment of these services (including execution) during the previous calendar year stated both in dollars and as a percentage of total commission dollars paid during the previous calendar year; (3) indicate the extent to which any such soft dollar arrangements permit the trust institution to recapture commissions paid on a transaction basis in lieu of purchasing certain goods and services; and (4) describe the use to which these services are put and indicate generally how they benefit the managment of customers' accounts.

This Office believes that the brokerage placement services of national banks could influence the decision of many persons in selecting a particular bank to act in their behalf or their designated beneficiaries in effecting securities transactions. Accordingly, it appears that the public interest might be better served by requiring national banks which exercise investment discretion for the accounts of customers to prepare and make available to customers and other interested parties a disclosure statement setting forth the above information. To insure that interested persons are aware of the existence of the disclosure statement, the proposed amendment would require a notice of the right to receive the statement to be furnished to each prospective customer prior to the creation of an account relationship, and to existing customers and other interested parties on an annual basis. In order to minimize the cost burden associated with furnishing the notice for existing accounts, a national bank could provide the notice as part of or appended to the periodic statement of account transactions which it regularly furnishes to customers and other interested parties.

As an alternative to the proposed notice of availability, the regulation could require a disclosure statement to be furnished automatically to a person creating an account relationship and to other interested parties. However, any public benefit to be derived from a mass dissemination of the statement would have to be weighed against the associated cost burden. Moreover, because the types of accounts administered by banks vary widely in terms of customer objectives and the degree of investment management orientation, the office believes it would be inappropriate to assume that all customers would have an interest in this type of information.

Funds Awaiting Investment or Distribution

12 CFR 9.10(a) requires that funds held in a fiduciary capacity by a national bank shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. 12 CFR 9.10(b) provides that funds held in trust which are awaiting investment or distribution may, unless prohibited by the instrument creating the trust or local law, be deposited in the commercial or savings or other department of the bank, provided certain securities are pledged by the bank as collateral.

It is proposed to amend those provisions so as to permit such self deposits in excess of 60 days only if (1) specifically authorized in advance by the instrument creating the relationship, or by prior court order or local law; (2) prior consent is obtained from the party having power to terminate the account or if there is no such party, all parties holding vested beneficial interests in the account after full disclosure of all relevant facts, including the availability and rate of return of alternative investments outside the bank; or (3) the bank includes in the file of each account so invested a written justification, updated at least once every 30 days, specifying in detail why the subject funds are properly designated as awaiting investment or distribution and are not invested in alternative investments outside the bank.

In addition, the proposed amendment would require that after 365 days, fiduciary funds could only remain deposited in the bank pursuant to qualification (1) or (2), above.

It is recognized that this proposal touches upon subjects which are involved in a case pending in the Superior Court of the State of California for the County of Los Angeles, styled *Van de Kamp* v. *Bank of America.* By publishing this proposal for comment the Comptroller should not be viewed as expressing any opinion as to the facts of that case or the merits of the legal arguments being advanced. Rather, this proposal constitutes no more than a request for comment as to whether it involves a desirable rule for national banks.

Amendments to Definitional Section of 12 CFR Part 9

The definition of "equity security" in 12 CFR 9.1(b) is being deleted because that term no longer appears in Part 9. The proposal also would amend the definition of "trust department" in 12 CFR 9.1(k) to make clear that a national bank will be subject to the provisions of Part 9 even if it assigns the performance of its fiduciary responsibilities to persons or organizations that are not otherwise affiliated with the bank.

Requests for Comments on Additional Amendments to Part 9

The Office requests comments on all proposals discussed, as well as other provisions of 12 CFR Part 9 generally. Comments are particularly solicited as to cost of matters proposed.

Comments are particularly invited on two additional amendments. The first relates to real estate funds for Employees Benefit Accounts currently authorized by Office opinion under 12 CFR 9.18(c)(5). At present, if the real estate fund requires over 90 days prior notice for withdrawals, not more than 10 percent of the assets of the Employee Benefit Plan may be invested in the fund. The Office is considering the formal codification of this opinion and is exploring whether the 10 percent limitation should be increased in any such regulation.

The second relates to the notice of availability of the disclosures made in accordance with proposed Section 9.5. In proposing the requirement that a notice be furnished to prospective customers before creation of an account relationship, the office recognizes that, in the case of estates and testimentary trusts, the account relationship does not come into existence until after death of the customer and that often the bank may not be aware, prior to the death of the custmer, that it has been named to serve in a fiduciary capacity. Accordingly, an exemption for such accounts is being considered. By the same token, there is some question whether any useful purpose is served by requiring such notice where the account is created by court order, such as in the case of guardianship accounts for minors or incompetents.

Proposed Amendments

It is proposed to amend 12 CFR Part 9 as follows:

1. The authority citation for Part 9 reads as follows:

Authority: 12 U.S.C. 92a; 15 U.S.C. 78bb(e)(2).

2. 12 CFR 9.1 would be amended by revoking and reserving paragraph (b) and revising paragraph (k), and would read as follows:

§ 9.1 Definitions.

* * * * *

(b) (Reserved)

* * * * *

(k) "Trust department" means the person or persons to whom are assigned the performance of fiduciary undertaking of the bank, regardless of whether such person or persons are officers or employees of the bank, affiliates of the bank, or organizations which are not affiliated with the bank.

3. 12 CFR 9.5 would be added, to read as follows:

§ 9.5 Disclosure statement of policies and practices with respect to commissions paid for effecting securities transactions.

(a) Each national bank exercising investment discretion, as defined in 12 CFR 12.2(c), for the accounts of customers, shall prepare a written disclosure statement setting forth the information contained in paragraph (c) below and shall revise such statement at any time that there is a material change

in the information required to be contained therein.

(b) Notice of the right to obtain the disclosure statement upon request and without charge, indicating the date on which the disclosure statement was prepared or last revised, shall be furnished with respect to any account as to which the bank exercises investment discretion:

(1) To each person creating the account relationship not later than the time of the creation of the account relationship; and

(2) At least annually, to any person to whom a statement of transactions in the account is required to be furnished by terms of the account contract or by local law.

(c) The disclosure statement shall contain the following information: (1) The general types of products and services, other than execution, for which a higher commission rate was paid than that which a competing broker may have charged for a similar transaction;

(2) The aggregate commission dollars allocated in payment of these services or products (including execution) during the previous calendar year stated both in dollars and as a percentage of total commission dollars paid during the previous calendar year;

(3) The extent to which any such soft dollar arrangements permit the trust institution to recapture commissions paid on a transaction basis in lieu of purchasing certain goods and services; and

(4) The use to which these services are put and generally how they benefit the management of customers' accounts.

4. It is proposed to amend 12 CFR 9.8 by adding a new paragraph (c), which would read as follows:

§ 9.8 Books and accounts.

* * * * *

(c) A national bank is not required to retain the records prescribed by this section for a period in excess of 4 years from the termination of the account relationship or litigation, respectively, unless applicable Federal or state law specifically prescribes a longer period.

5. It is proposed to amend 12 CFR 9.10 by adding new paragraphs (c), (d) and (e), which would read as follows:

§ 9.10 Funds deposited or invested in fiduciary bank.

* * * * *

(c) Funds held as fiduciary which a national bank designates as "awaiting investment or distribution" may, unless prohibited by local law, court order or the instrument creating the relationship, be deposited in the bank at a rate of return comparable to that available through investment in other trust quality short-term investment media in accordance with 9.10(b) for 60 days without regard to subsection (d) of this section.

(d) After 60 days, funds held as fiduciary may remain deposited in the bank only if:

(1) specifically authorized in advance by the instrument creating the relationship, or by prior court order or local law; or

(2) prior consent is obtained from the party having the power to terminate the account, or if there is no such party, the holders of all vested beneficial interests in the account after full disclosure of all relevant facts, including the availability and approximate rate of return of investments outside the bank; or

(3) the bank includes in the file of each such account a written justification, updated at least once every 30 days, specifying in detail why the subject funds are properly designated as "awaiting investment or distribution."

(e) After 365 days, funds held as fiduciary may remain deposited in the bank only if conditions (1) or (2) of the previous subsection are met.

6. 12 CFR 9.17 would be amended to read as follows:

§ 9.17 Surrender or revocation of fiduciary powers.

(a) Any national bank which has been granted the right to exercise fiduciary powers and which desires to surrender such rights shall file with the Comptroller of the Currency a certified copy of the resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Comptroller shall make an investigation and if satisfied that the bank has been discharged from all fiduciary duties which it has undertaken, shall issue a certificate to such bank certifying that it is no longer authorized to exercise fiduciary powers.

(b) If, in the opinion of the Comptroller, a national bank is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise its fiduciary powers, or otherwise fails or has failed to comply with the requirements set forth in 12 U.S.C. § 92a, the Comptroller may, in accordance with the provisions of that section, revoke the fiduciary powers granted to the bank.

7. In 12 CFR § 9.18, paragraph (b)(1) would be amended by inserting the phrase "at market value" between the words "valuing" and "assets" and would read as follows:

§ 9.18 Collective investment.

* * * * *

(b) * * *

(1) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the Plan) which shall be approved by a resolution of the bank's board of directors and filed with the Comptroller of the Currency. The Plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the bank with respect to the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participations in the fund; the auditing of accounts of the bank with respect to the fund; the basis and method of valuing at market value assets in the fund, setting forth specific criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days); the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. A copy of the Plan shall be available at the principal office of the bank for inspection during all banking hours, and upon request a copy of the Plan shall be furnished to any person.

8. In 12 CFR § 9.18, paragraph (b)(9)(iii) would be amended by changing the number "40" to "20", and would read as follows:

§ 9.18 Collective investment.

* * * * *

(b) * * *

(9) * * *

(iii) Any bank administering a collective investment fund shall have the responsiblity of maintaining in cash and readily marketable investments such part of the assets of the fund as shall be deemed to be necessary to provide adequately for the needs of participants and to prevent inequities between such participants, and if prior to any admissions to or withdrawals from a fund the bank shall determine that, after effecting the admissions and withdrawals which are to be made, less than 20 percent of the value of the remaining assets of the collective fund would be composed of cash and readily marketable investments, no admissions to or withdrawals from the fund shall be

permitted as of the valuation date upon which such determination is made: *Provided,* that ratable distribution upon all participations shall not be so prohibited in any case.

9. 12 CFR § 9.18(b) would be amended by adding a new subparagraph (15), reading as follows:

§ 9.18 Collective investment.

* * * * *

(b) * * *

(15) Short-term investment funds established under paragraph (a) of this section may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation provides:

(i) Investments must be limited to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding 91 days from date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations;

(ii) The difference between the cost and anticipated principal receipt on maturity must be accrued on a straight-line basis;

(iii) Assets of the fund must be held until maturity under usual circumstances; and

(iv) After effecting the admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund must be composed of cash, demand obligations and assets that will mature on the fund's next business day.

Dated: October 22, 1980.

John G. Heimann,

Comptroller of the Currency.

Marie T. Giblin,

Office of The Comptroller of the Currency, Communications Division.

[FR Doc. 80-33640 Filed 10-28-80; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 206

[Reg. F; Docket No. R-0327]

Securities of Member State Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: Pursuant to its authority under section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78(i)) ("Act"), the Board proposes to amend its Regulation F (12 CFR Part 206) in order that it will be substantially similar to comparable rules and regulations issued by the Securities and Exchange Commission. This proposal is intended to comply with section 12(i) of the Act, which requires that the Board either conform its Regulation F to any changes made by the Commission in its relevant rules and regulations, or publish reasons why the Board has determined that such changes are not necessary or appropriate. The proposed changes, which in all major respects are consistent with recent amendments to the rules of the Commission, concern: (A) Safe Harbor from Liability for Projections, (B) Corporate Governance, (C) Dividend Reinvestment Plans, (D) Tender Offers, (E) Issuer Tender Offers, and (F) Going Private Transactions.

DATES: Comments must be received by December 10, 1980.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed regulation to the Office of the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should include the docket number R-0327. All written comments will be made available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Richard M. Whiting, Senior Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3779).

SUPPLEMENTARY INFORMATION: The Federal Reserve Board would make the following changes:

A. Safe Harbor From Liability for Projections

On June 25, 1979, the Commission adopted a safe harbor rule for projections. SEC Releases No. 33-6084 and 34-15944, 44 FR (July 2, 1979). The rule provides a safe harbor from applicable liability of the Federal securities laws for statements that contain or relate to projections made in filings with the Commission or in annual reports to shareholders. The rule was adopted to further the Commission's goal of encouraging the voluntary disclosure of projections and forward-looking information both in Commission filings and in general. The Commission's adoption of the rule is reflected in additions and deletions to Parts 230, 240, 250 and 260 of Title 17 of the Code of Federal Regulations.

The Commission's rule applies to forward-looking statements that are made in a document filed with the Commission or in an annual report to shareholders and to certain statements relating to such forward-looking statements that are made prior to or subsequent to the date that the document was filed or the annual report was made publicly available.

The Commission's definition of forward-looking statement is limited to the following four types of statements: (1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items; (2) a statement of management's plans and objectives for future operations; (3) a statement of future economic performance contained in management's discussion and analysis of the summary of earnings; and (4) disclosed statements of the assumptions underlying or relating to any of the statements described in (1), (2), or (3) above.

Under the Commission's rule, any such forward-looking statements made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be false or misleading under the Federal securities laws unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith. The burden of proof in establishing that such a forward-looking statement is false or misleading falls upon the party making such a claim; unless proven otherwise, it is presumed that such statements are not false or misleading. However, the Commission has indicated that, depending upon the circumstances, there is a duty to make full and prompt disclosure of material facts, both favorable and unfavorable, where management knows or has reason to know that its earlier statements no longer have a reasonable basis. This duty to correct exists whether the incorrect facts or assumptions are found to be false or misleading from the outset or become so by reason of events occurring subsequent to the statement.

The protection afforded by the Commission's safe harbor rule is available only to reporting companies, with the exception of nonreporting companies including forward-looking statements in registration statements filed under the Securities Act, such as first-time registrants. Only reporting companies that have filed their most recent annual reports (Form 10-K) with the Commission are eligible for safe harbor protection. The Commission's rule does not apply to statements made by or on behalf of investment companies registered under the Investment Company Act of 1940.

Finally, in a related action, the Commission withdrew from its rules the reference to prediction of dividends as a

possible example of a false or misleading statement.

The Board believes it appropriate to adopt a similar rule for the reasons set out in SEC Releases No. 33–6084 and 34–15944 and, therefore, proposes to amend §§ 206.3 and 206.5 of Regulation F as set forth below.

B. Corporate Governance

On November 21, 1979, the Commission adopted rule and schedule amendments to its Regulation 14A (17 CFR 240.14e–1 *et seq.*) and Schedule 14A (17 CFR 240.14a–101) which concern shareholder communications, shareholder participation in the corporate electoral process, and corporate governance generally. The amendments are intended to provide greater opportunities for shareholders to exercise their right of suffrage and to obtain information and advice with respect to matters on which they vote. SEC Release 34–16356, 44 FR 68764, (November 21, 1979).

These amendments require that shareholders be provided with a form of proxy that (a) indicates whether the proxy is solicited on behalf of the issuer's board of directors, (b) permits shareholders to withhold authority to vote for each nominee for election as a director, and (c) provides a means by which shareholders are afforded an opportunity to abstain from matters referred to in the proxy card as to which shareholders have an opportunity to vote, other than elections to office. The Commission also adopted a rule requiring that shareholders be provided, under certain circumstances, with information concerning the votes cast for and withheld from incumbent directors. Additionally, the Commission adopted a rule that requires disclosure of the date by which shareholder proposals must be received in order to be included in the issuer's proxy statement. Finally, the Commission adopted rule amendments that exempt from the informational and filing requirements of the proxy rules the furnishing of proxy voting advice by financial advisors.

The Board proposes to adopt these changes in substantially the same form and to incorporate them in § 206.5 of its Regulation F (12 CFR 206.5) and in its Form F–5 (12 CFR 206.51).

C. Dividend Reinvestment Plans

On May 14, 1980 the Commission adopted a new rule that exempts from the reporting and liability provisions of Section 16 of the Securities Exchange Act of 1934 the acquisition pursuant to dividend reinvestment plans by officers, directors and ten per cent beneficial shareholders of equity securities registered under the Act. SEC Release No. 34–16806, 45 FR 33957 (May 21, 1980). The purpose of this rule is to enable officers, directors and ten per cent beneficial shareholders to participate in such dividend reinvestment plans on the same basis as other shareholders. Without this rule, such officers, directors and shareholders participating in most dividend reinvestment plans would be unable to sell any equity securities of their bank without incurring liability for imputed trading profits under section 16(b) of the Act. Accordingly, the Board has determined to alleviate this encumbrance by adding a substantially similar exemption as paragraph (j) to § 206.6 and renumbering the subsequent paragraphs of § 206.6 of Regulation F.

D. Tender Offers

The Commission adopted rules and regulations pertaining to tender offers. SEC Release No. 34–16806, 44 FR 70326 (December 6, 1979). Certain of the rules regarding specific filing, delivery and disclosure requirements, optional dissemination provisions and substantive provisions relate ot tender offers subject to section 14(d)(1) of the Securities Exchange Act of 1934. Other of the rules concerning certain anti-fraud provisions are applicable to all tender offers. The Commission stated that these amendments were necessary to insure a balance between the interests of the person making a tender offer (the "bidder") and the management of the companies whose securities are sought (the "issuer") while providing protection to shareholders making investment decisions.

The rules concerning the bidder relate to filing requirements, dissemination requirements, disclosure requirements and substantial provisions. The operation of these rules is triggered by the date of commencement of the tender offer, which is a defined term. The bidder will hand deliver its initial filing and any amendments to the issuer and any competing bidder and a competing bidder is similarly required to hand deliver its enclosed filing to any previous bidder whose tender offer has not expired. The rules authorize an alternative means of dissemination, long-form or summary publication on the use of shareholder lists. The tender offer must remain open for a minimum of 20 business days and 10 business days after an increase in the consideration offered. The time for exercising withdrawal rights were increased to an initial period of 15 business days, with an additional period of 10 business days, to run concurrently in the case of a competing tender offer.

The issue must disclose its position with respect to a tender offer within 10 days of its commencement and file a schedule with the Commission. Additionally, if the bidder has determined to use the company's stockholder list, the issuer must mail the materials or provide a copy of the list to the bidder.

The Board has determined to adopt regulations subsequently similar to those of the Commission. Accordingly, a new section 206.8 would be added and §§ 206.4 and 206.53 of Regulation F would be amended.

E. Issuer Tender Offers

On August 16, 1979, the Commission adopted a new rule and schedule (17 CFR 240.13e–4 and 240.13e–101) relating to tender and exchange offers by certain publicly held issuers (and affiliates) for their own securities ("issuer tender offers"). The rule defines certain fraudulent, deceptive and manipulative acts or practices in connection with such offers, and prescribes filing, disclosure, dissemination and other requirements as means reasonably designed to prevent such acts and practices. SEC Re. No. 34–16112, 44 FR 49406 (August 22, 1979.)

The Board is not proposing to amend Regulation F to conform it to the Commission's "issuer tender offer" regulation at this time. The Board must approve any reduction in the amount, or the retirement of any part of a member bank's common or preferred capital stock pursuant to section 9 of the Federal Reserve Board Act. 12 U.S.C. 324(i) (1970). The Board also notes that issuer tender offers are very rare among member banks. Therefore, instead of adopting substantially similar regulations to Rule 13e–4 and Schedule 13E–101, the Board will withhold its approval to the reduction in the amount or the retirement of any part of a member bank's equity securities registered under Section 12 of the Act unless the requirements of rules 13e–4 and 13e–101 are met in all material respects.

While this policy is effective immediately, the Board specifically invites comments on whether this approach is preferable to adopting a new regulation and scheduled as a means of protecting investors from fraudulent, deceptive, or manipulative acts or practices in connection with "issuer tender offers."

F. Going Private Transactions

On August 2, 1979, the SEC adopted a new rule and schedule (17 CFR 240.13e–3 and 240.13e–100) relating to "going

private" transactions by public companies and their affiliates. The rule and schedule prohibit fraudulent, deceptive and manipulative acts or practices in connection with "going private" transactions and prescribe new filing, disclosure and dissemination requirements as a means reasonably designed to prevent such acts and practices. SEC Rel. No. 34–16075, 44 FR 46736 (August 8, 1979). A "going private" transaction is defined by Rule 13e–3.

The Board is not proposing to amend Regulation F to conform it to the Commission's "going private" regulations at this time. The Board notes that its supervisory powers under the Federal Reserve Act make those member bank issuers with classes of equity securities registered pursuant to Section 12 subject to more extensive regulatory oversight than most issuers subject to Commission's jurisdiction. Pursuant to Section 9 of the Federal Reserve Act, the Board must approve substantially all of the corporate transactions involving member banks subject to Rule 13e–3. Instead of adopting the Commission's "going private" regulations the Board will withhold its approval to any Rule 13e–3 type corporate transaction unless the requirements of rules 13e–3 and 13e–100 are met in all material respects.

Although this policy is effective immediately, the Board specifically invites comments on whether this approach is preferable to adopting a new regulation and schedule as a means of protecting investors from fraudulent, deceptive or manipulative acts or practices in connection with "going private" transactions.

Proposed Amendments

(1) Section 206.3 of Regulation F would be amended by revising the title of the section and by adding paragraph (d) to read as follows:

§ 206.3 Inspection and publication of information filed under the act and safe harbor from liability for forward-looking statements.

* * * * *

(d) *Safe Harbor from Liability for Forward-Looking Statements.* (1) A statement within the coverage of paragraph (d)(2) of this section which is made by or on behalf of a bank filing any statement, report, or document under the Act or by an outside reviewer retained by the bank shall be deemed not to be a fraudulent statement (as defined in paragraph (d)(4) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(2) Paragraph (d)(1) of this section applies to (i) a forward-looking statement (as defined in paragraph (d)(3) of this section) made in a document filed with the Board or in an annual report to shareholders meeting the requirements of § 206.5(c) of Regulation F (12 CFR 206.5(c)); (ii) a statement reaffirming the forward-looking statement referred to in paragraph (d)(2)(i) of this section subsequent to the date the document was filed or the annual report was made publicly available; or (iii) a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such forward-looking statement is affirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement.

(3) For the purpose of this subsection, the term "forward-looking statement" shall mean and shall be limited to:

(i) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(ii) A statement of management's plans and objectives for future operations;

(iii) A statement of future economic performance contained in management's discussion and analysis of the summary of earnings as called for by general instructions (g) and (h) to the Quarterly Report on Form F–4; and

(iv) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (d)(3) (i), (ii), or (iii) of this section.

(4) For the purpose of this regulation the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1934 or the regulations promulgated thereunder.

(5) Notwithstanding any of the provisions of paragraphs (d)(1) through (4) of this section, this rule shall apply only to forward-looking statements made by or on behalf of a bank, if, at the time such statements are made or reaffirmed, the bank is subject to the reporting requirements of the Securities Exchange Act of 1934 and has filed its most recent annual report with the Board on Form F–2.

(2) In § 206.5, paragraph (b)(5) and (e)(6) are added, and paragraph (d)(1) and (2) are revised to read as follows:

§ 206.5 Proxy statements and other solicitations under Section 14 of the Act.

* * * * *

(b) *Exceptions.* The requirements of this § 206.5 shall not apply to the following:

* * * * *

(5) The furnishing of proxy voting advice by any person (the "advisor") to any other person with whom the advisor has a business relationship, if:

(i) The advisor renders financial advice in the ordinary course of his business;

(ii) The advisor discloses to the recipient of the advice any significant relationship with the bank or any of its affiliates, or a shareholder proponent of the matter on which advice is given, as well as any material interest of the advisor in such matter;

(iii) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of § 206.5(i).

Note.—The solicitations excepted by paragraphs (b)(1) and (b)(5) remain subject to the prohibitions against false and misleading statements in § 206.5(h).

* * * * *

(d) *Requirements as to proxy.* (1) the form of proxy (i) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the bank's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold-face type the identity of the persons on whose behalf the solicitation is made, (ii) shall provide a specifically designated blank space for dating the proxy, and (iii) shall identify clearly and impartially each matter or group of related matters intended to be acted upon whether proposed by the bank or by security holders. No reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (d)(3) of this section.

(2)(i) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or

abstention with respect to, each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by the security holder if the form of proxy states in bold-faced type how the shares represented by the proxy are intended to be voted in each such case.

(ii) A form of proxy which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such form of proxy shall clearly provide any of the following means for secruity holders to withhold authority to vote for each nominee:

(A) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(B) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(C) Designated blank spaces in which the shareholder may enter the names of nominees with respect to whom the shareholder chooses to withhold authority to vote; or

(D) Any other similar means, provided that clear instructions are furnished indicating how the shareholder may withhold authority to vote for any nominee.

(iii) Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group: *Provided,* That there is a similar means for the security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority: *Provided,* That the form of proxy so states in bold-face type.

Instructions. 1. Paragraph (ii) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

2. If applicable State law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders or withhold authority to vote, the bank should provide a similar means for security holders to vote against each nominee.

(e) * * *

(6) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the bank for inclusion in the bank's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of § 206.5(k)(iii)(A). If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the bank shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

* * * * *

(3) Section 206.5(h)(1) of Regulation F would be amended by deleting the reference to predictions of future earnings and dividends as possible examples of false and misleading statements.

(4) In § 206.5 paragraphs (l) and (m) would be deleted and those paragraph designations would be reserved.

(5) In § 206.6, a new paragraph (j) would be added as follows and present paragraphs (j) through (u) are redesignated as paragraphs (k) through (v).

§ 206.6 "Insiders" securities transaction and reports under section 16 of the Act.

* * * * *

(j) *Exemption for acquisitions under dividend reinvestment plans.* Any acquisition of securities resulting from reinvestment of dividends or interest shall be exempt from section 16 if it is made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or of dividends or interest payable on other securities of the same bank: *Provided,* That the plan is made available on the same terms to all holders of securities of the class on which the reinvested dividends or interest are being paid.

(l)–(m) [Reserved]

(6) A new section, §206.8, would be added to Part 206 to read as follows:

§ 206.8 Tender Offers.

(a) *Scope of and definitions applicable to this section.*—(1) *Scope.* (i) No person, directly or indirectly by use of the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of equity security which is registered pursuant to Section 12 of the Act, of a State member bank if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per cent of such class, unless on the date of the commencement of the tender offer such person has complied with the requirements of paragraph (c)(1) of this section. The definition of beneficial owner set forth in § 206.4(h)(5)(i) for the purposes of Section 13(d)(1) of the Act shall apply also for purposes of Section 14(d)(1) of the Act.

(2) *Definitions.* Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act and in § 206.2 promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and this section the following definitions apply:

(i) The term "bidder" means any person who makes a tender offer or on whose behalf a tender offer is made;

(ii) The term "subject bank" means any State member bank which is the issuer of securities which are sought by a bidder pursuant to a tender offer;

(iii) The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer;

(iv) The term "beneficial owner" shall have the same meaning as that set forth in § 206.4(h)(5)(i): *Provided, however,* That, except with respect to paragraphs (c) and (i)(4) of this section and Item 6 of Form F–13, the term shall not include a person who does not have or share investment power or who may be deemed to be a beneficial owner by virtue of his right to acquire beneficial ownership as set forth in § 206.4(h)(5)(i).

(v) The term "tender offer material" means:

(A) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(B) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) and all amendments thereto; and

(C) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit,invite or request tenders of the securities being sought in the tender offer;

(vi) The term "business day" means any day, other than Saturday, Sunday or a Federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under 12 CFR Part 206 the date of the event which begins the running of such time period shall be included *except that* if such event occurs in other than a

business day such period shall begin to run on an shall include the first business day thereafter; and

(vii) The term "security position listing" means, with respect to securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the bank's securities and of the participants' respective positions in such securities as of a specified date.

(b) *Date of commencement of a tender offer.—(1) Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(i) The long-form publication of the tender offer is first published by the bidder pursuant to paragraph (d)(1)(i) of this section.

(ii) The summary advertisement of the tender offer is first published by the bidder pursuant to paragraph (d)(1)(i) of this section.

(iii) The summary advertisement or the long-form publication of the tender offer is first published by the bidder pursuant to paragraph (d)(1)(i) of this section.

(iv) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered pursuant to the Securities Act of 1933, are first published or sent or given by the bidder to security holders; or

(v) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in subparagraphs (1)(i) through (1)(iv) of this paragraph.

(2) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information at subparagraph (3) of this paragraph with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed to constitute the commencement of a tender offer under subparagraph (1)(v) of this paragraph *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under subparagraph (1)(v) or this paragraph on the date of such public announcement if within five business days of such public announcement, the bidder *either:*

(i) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event subparagraph (1)(v) of this paragraph shall not apply to the initial public announcement; or

(ii) Complies with paragraph (c)(1) of this section and contemporaneously disseminates the disclosure required by paragraph (f) of this section to secruity holders pursuant to paragraph (d) of this section or otherwise in which event:

(A) The date of commencement of such tender offer under subparagraph (1) of this paragraph will be determined by the date the information required by paragraph (f) of this section is first published or sent or given to security holders pursuant to paragraph (d) of this section or otherwise; and

(B) Notwithstanding subparagraph (2)(ii)(A) of this paragraph, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(3) *Information.* The information referred to in subparagraph (2) of this paragraph is as follows:

(i) The identity of the bidder;

(ii) The identity of the subject company; and

(iii) The amount and class of securities being sought and the price or range of prices being offered therefor.

(4) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in subparagraphs (4)(i) through (4)(iii) of this paragraph concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under subparagraph (1)(v) of this paragraph.

(i) The identity of the bidder;

(ii) The identity of the subject company; and

(iii) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject bank which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(5) *Public Announcement.* A public announcement concerning a tender offer by a bidder through a press release, newspaper advertisement or public statement which states that the offering will be made only by means of a prospectus and discloses the name of the bank and the title of the securities to be surrendered in exchange for the securities to be offered and the basis upon which the exchange may be made where the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under subparagraph (1)(v) of this paragraph: *Provided,* That such bidder files a registration statement with respect to such securities promptly after such public annoncement.

(c) *Filing and transmission of tender offer statement.*—(1) *Filing and transmittal.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject bank securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(i) Files with the Board six copies of a Tender Offer Statement on Form F–13 (12 CFR 206.82) including all exhibits thereto;

(ii) Hand delivers a copy of such Form F–13, including all exhibits thereto:

(A) To the subject bank at its principal executive office; and

(B) To any other bidder, which has filed a Form F–13 with the Board relating to a tender offer that has not yet terminated for the same class of securities of the subject bank, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Form F–13);

(iii) Gives telephonic notice of the information required by paragraphs (f)(5)(ii) (A) and (B) of this section and mails by means of first class mail a copy of such Form F–13, including all exhibits thereto:

(A) To each national securities exchange where such class of the subject bank's securities is registered and listed for trading (which may be based upon information contained in the subject bank's most recent Annual Report on Form F–2 (12 CFR 206.42) filed with the Board unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

(B) To the National Association of Securities Dealers, Inc. ("NASD") if such class of the subject bank's securities are authorized for quotation in the NASDAQ interdealer quotation system.

(2) *Additional materials.* The bidder shall file with the Board six copies of any additional tender offer materials as an exhibit to the Form F–13 required by this section, and if a material change occurs in the information set forth in such Form F–13, six copies of an amendment to Form F–13 each of which shall include all exhibits other than

those required by Item 11(a) of form F–13 disclosing such change and shall send a copy of such additional tender offer material or such amendment to the subject bank and to any exchange and/or the NASD, as required by subparagraph (1) of this paragraph, promptly but not later than the date such additional tender offer material or such change is first published, sent or given to security holders.

(3) *Certain announcements.* Notwithstanding the provisions of subparagraph (2) of this paragraph, if the additional tender offer material or an amendment to Form F–13 discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject bank, any exchange and/or the NASD, as required by subparagraph (1) of this paragraph, promptly after the date such tender offer material is first published or sent or given to security holders.

(d) *Dissemination of certain tender offers—(1) Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed "published or sent or given to security holders" within the meaning of section 14(d)(1) of the Act if the bidder complies with all of the requirements of any one of the following subparagraphs: *Provided, however,* That any such tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication, and the use of stockholder lists and security position listings pursuant to paragraph (e), paragraphs (d)(1)(ii) and (iii) are exclusive.

(i) *Long-form publication.* The bidder makes adequate publication in a newspaper of long-form publication of the tender offer.

(ii) *Summary publication.* (A) The bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(B) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(iii) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings pursuant to paragraph (e) of this section shall comply with subparagraphs (1)(i) or (1)(ii) of this paragraph on or prior to the date of the bidder's request for such lists or listing pursuant to paragraph (e)(1) of this section.

(2) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(3) *Publication of changes.* If a tender offer had been published or sent or given to security holders by one or more of the methods enumerated in subparagraph (1) of this paragraph a material change in the information published, sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change: *Provided, however,* That if the bidder has elected pursuant to paragraph (e)(6)(i) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to paragraph (e) of this section the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to paragraph (e) of this section.

(e) *Dissemination of certain tender offers by the use of stockholder lists.—(1) Obligations of the subject bank.* Upon receipt by a subject bank at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (e)(5) of this section, the subject shall comply with the following:

(i) The subject bank shall notify promptly transfer agents and any other person who will assist the subject in complying with the requirements of this paragraph of the receipt by the subject bank of a request by a bidder pursuant to this paragraph.

(ii) The subject bank shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject bank was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject bank shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(iii) The subject bank shall make an election to comply and shall comply with all of the provisions of either subparagraph (2) or subparagraph (3) of this paragraph. The subject's bank's election, once made, shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(iv) No later than the second business day after the date of the bidder's request, the subject bank shall orally notify the bidder, which notification shall be confirmed in writing, of the subject bank's election made pursuant to subparagraph (1)(iii) of this paragraph. Such notification shall indicate (A) the approximate number of security holders of the class of securities being sought by the bidder and, (B) if the subject bank elects to comply with subparagraph (2) of this paragraph, appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with subparagraph (7)(ii) of this paragraph.

(2) *Mailing of tender offer materials by the subject bank.* A subject bank which elects pursuant to subparagraph (1)(iii) of this paragraph to comply with the provisions of this paragraph shall perform the acts prescribed by the following subparagraphs.

(i) The subject bank shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject bank and make inquiry of each such participant as to the approximate number of beneficial owners of the subject bank securities being sought in the tender offer held by each such participant.

(ii) No later than the third business day after delivery of the bidder's tender offer materials pursuant to subparagraph (7)(i) of this paragraph, the subject bank shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in subparagraph (1)(ii) of this paragraph. The subject bank shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailings be completed in a substantially greater period of time than the subject bank would complete a mailing to security holders of its own materials relating to the tender offer.

(iii) No later than the third business day after the delivery of the bidder's tender offer materials pursuant to

subparagraph (7)(i) of this paragraph, the subject bank shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in subparagraph (2)(i) of this paragraph. The subject bank shall use its best efforts to complete the transmittal in a timely manner but in no event shall such transmittal be completed in a substantially greater period of time than the subject bank would complete a transmittal to such participants pursuant to security position listings or clearing agencies of its own material relating to the tender offer.

(iv) The subject bank shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing pursuant to subparagraph (2)(ii) of this paragraph and of the transmittal pursuant to subparagraph (2)(iii) of this paragraph.

(v) During the tender offer and any extension thereof the subject bank shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been furnished by the bidder) to each person who has become a record holder since the later of (A) the date of preparation of the most recent stockholder list referred to in subparagraph (e)(1)(ii) of this section or (B) the last preceding update.

(vi) If the bidder has elected pursuant to subparagraph (6)(i) of this paragraph to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, the subject bank, promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in subparagraphs (1)(ii) and (2)(v) of this paragraph and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials pursuant to subparagraph (2)(iii) of this paragraph.

(vii) The subject bank shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(viii) Promptly following the termination of the tender offer, the subject bank shall reimburse the bidder the excess, if any, of the amounts advanced pursuant to subparagraph (6)(iii)(C) over the direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this paragraph computed in accordance with subparagraph (7)(ii) of this paragraph.

(3) *Delivery of stockholder lists and security position listings.* A subject bank which elects pursuant to subparagraph (1)(iii) of this paragraph to comply with the provisions of this paragraph shall perform the acts prescribed by the following:

(i) No later than the third business day after the date of the bidder's request, the subject bank shall furnish to the bidder at the subject bank's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in subparagraph (1)(ii) of this paragraph and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject bank.

(ii) If the bidder has elected pursuant to subparagraph (6)(i) of this paragraph to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials, the subject bank shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject bank during the tender offer and any extensions thereof.

(4) *Liability of subject bank and others.* Neither the subject bank nor any affiliate or agent of the subject bank nor any clearing agency shall be:

(i) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more requirements of this section;

(ii) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or security position listing, unless such inaccuracy results from a lack of reasonable care on the part of the subject bank or any affiliate or agent of the subject bank.

(iii) Deemed to be an "underwriter" within the meaning of section (2)(11) of the Securities Act of 1933 for any purpose of that Act or any rule or regulation promulgated thereunder based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph;

(iv) Liable under any provision of the federal securities laws for the disclosure in the bidder's tender offer materials, including any amendment thereto, based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph.

(5) *Content of the bidder's request.* The bidder's written request referred to in subparagraph (1) of this paragraph shall include the following:

(i) The identity of the bidder;

(ii) The title of the class of securities which is the subject of the bidder's tender offer;

(iii) A statement that the bidder is making a request to the subject bank pursuant to subparagraph (1) of this paragraph for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(iv) A statement that the bidder is aware of and will comply with the provisions of subparagraph (6) of this paragraph;

(v) A statement as to whether or not it has elected pursuant to subparagraph (6)(i) of this paragraph to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph; and

(vi) The name, address and telephone number of the person whom the subject bank shall contact pursuant to subparagraph (1)(iv) of this paragraph.

(6) *Obligations of the bidder.* Any bidder who requires that a subject bank comply with the provisions of subparagraph (1) of this paragraph, shall comply with the following:

(i) The bidder shall make an election whether or not to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, which election shall be included in the request referred to in subparagraph (1) of this paragraph and shall not be revocable by the bidder during the tender offer and extensions thereof.

(ii) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933, the bidder shall comply with the requirements of paragraph (d)(1)(iii) of this section.

(iii) If the subject bank elects to comply with subparagraph (2) of this paragraph,

(A) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject bank, as provided in subparagraph (1)(iv) of this paragraph;

(B) The bidder shall promptly notify the subject bank of any amendment to the bidder's tender offer materials requiring compliance by the subject bank with subparagraph (2)(vi) of this paragraph and shall promptly deliver such amendment to the subject bank pursuant to subparagraph (7)(i) of this paragraph;

(C) The bidder shall advance to the subject bank an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with subparagraph (7)(ii) of this paragraph;

(D) The bidder shall promptly reimburse the subject bank for the direct costs incidental to compliance by the subject bank and its agents in performing the act required by this section computed in accordance with subparagraph (7)(ii) of this paragraph which are in excess of the amount advanced pursuant to subparagraph (6)(iii)(C) of this paragraph, and

(E) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(iv) If the subject bank elects to comply with subparagraph (3) of this paragraph:

(A) The subject bank shall use the stockholder and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(B) The bidder shall return the stockholder lists and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph promptly after the termination of the bidder's tender offer;

(C) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph to the subject bank on a confidential basis;

(D) The bidder shall not retain any stockholder list or security position listing furnished by the subject bank pursuant to subparagraph (3) of this paragraph, or any copy thereof, nor retain any information derived from any such list or listing or copy thereof after the termination of the bidder's tender offer;

(E) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each person whose identity appears on the stockholder list as furnished and updated by the subject bank pursuant to subparagraphs (3)(i) and (3)(ii) of this paragraph;

(F) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the appropriate number of sets of tender offer materials required by each such participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each such participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(G) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(H) The bidder shall promptly reimburse the subject bank for direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this section computed in accordance with subparagraph (7)(ii) of this paragraph.

(7) *Delivery of materials, computation of direct costs.* (i) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject bank at the location specified by the subject bank in its notice given pursuant to subparagraph (1)(iv) of this paragraph a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject bank in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That such delivery shall be deemed not to have been made unless the bidder has complied with subparagraph (6)(iii)(C) of this paragraph at the time the materials or amendments, as the case may be, are delivered.

(ii) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding (A) the direct cost incidental to the mailing of the subject bank's last annual report to shareholders (excluding employee time), less the costs of preparation and printing of the report, and postage, plus (B) the amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding (C) the estimated direct costs of preparing mailing labels, or updating shareholder lists and of third party handling charges plus (D) the amount of first class postage required to mail the bidder's amendment. Direct costs incidental to the mailing of the bidder's tender offer materials thereto when finally computed may include all reasonable charges paid by the subject bank to third parties for supplies or services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject bank. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

(f) *Disclosure requirements with respect to tender offers*—(1) *Information required on date of commencement*—(i) *Long-form publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means or long-form publication pursuant to paragraph (d)(1)(i) of this section such long-form publication shall include the information required by subparagraph (5)(i) of this paragraph.

(ii) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication pursuant to paragraph (d)(1)(ii) of this section:

(A) The summary advertisement shall contain and shall be limited to, the information required by subparagraph (5)(ii) of this paragraph; and

(B) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by subparagraph (5)(i) of this paragraph.

(iii) *Use of stockholder lists and security position listings.* If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings pursuant to paragraph (d)(1)(iii).

(A) Either (*1*) the summary advertisement shall contain, and shall be limited to the information required by subparagraph (5)(ii) of this paragraph, or (*2*) if long-form publication of the tender offer is made, such long-form publication shall include the information required by subparagraph (5)(i) of this paragraph, and

(B) The tender offer materials transmitted to security holders pursuant

to such lists and security position listings and furnished by the bidder upon the request of any security holder shall include the information required by subparagraph (5)(i) of this paragraph.

(iv) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to paragraph (d)(1) of this section the tender offer materials that are published or sent or given to security holders on the date of commencement of such offer shall include the information required by subparagraph (5)(i) of this paragraph.

(2) *Information required in summary advertisement made after commencement.* A summary advertisement published subsequent to the date of commencement of the tender offer shall include at least the information specified in subparagraphs (5)(i)(A)–(D) and (5)(ii)(D) of this paragraph.

(3) *Information required in other tender offer materials published after commencement.* Except for summary advertisements described in subparagraph (2) of this paragraph and tender offer materials described in subparagraphs (1)(ii)(B) and (1)(iii)(B) of this paragraph, additional tender offer materials published, sent or given to security holders subsequent to the date of commencement shall include the information required by subparagraphs (5)(i) of this paragraph and may omit any of the information required by subparagraphs (5)(i)(E–H) of this paragraph which has been previously furnished by the bidder in connection with the tender offer.

(4) *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

(5) *Information to be included*—(i) *Long-form publication and tender offer materials.* The information required to be disclosed by subparagraphs (1)(i), (1)(ii)(B), (1)(iii)(A)(b) and (1)(iv) of this paragraph shall include the following:

(A) The identity of the holder;

(B) The identity of the subject bank;

(C) The amount of class of securities being sought and the type and amount of consideration being offered therefor;

(D) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;

(E) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act and paragraph (g) of this section and the manner in which shares will be accepted for payment and in which withdrawal may be effected;

(F) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period or periods, and in the case of the period from the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata pursuant to Section 14(d)(6) of the Act or paragraph (h) and the present intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

(G) The disclosure required by Items 1(c); 2 (with respect to persons other than the bidder, excluding sub-items (b) and (d)); 3; 4; 5; 6; 7; 8; and 10 of Form F–13 (12 CFR 206.82) or a fair and adequate summary thereof; *Provided, however,* That negative responses to any such item or sub-item of Form F–13 need not be included; and

(H) The disclosure required by Item 9 of Form F–13 or a fair and adequate summary thereof. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained.

(ii) *Summary publication.* The information required to be disclosed by subparagraphs (1)(ii)(A) and (1)(iii)(A)(a) of this paragraph in a summary advertisement is as follows:

(A) The information required by subparagraph (5)(i)(A) through (F) of this paragraph;

(B) If the tender offer is for less than all the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject bank;

(C) A statement that the information required by subparagraph (5)(i)(G) of this paragraph is incorporated by reference into the summary advertisement;

(D) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(E) In a tender offer published or sent or given to security holders by the use of stockholder lists and security position listings pursuant to paragraph (d)(1)(iii) of this section a statement that a request is being made for such lists and listings and that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of stockholders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities.

(iii) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement shall include a transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) or any amendment thereto.

(g) *Additional withdrawal rights*—(1) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following periods:

(i) At any time until the expiration of fifteen business days from the date of commencement of such tender offer; and

(ii) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to paragraph (b)(2) of this section for securities of the same class: *Provided,* That the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer: *And, provided further,* That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

(2) *Computation of time periods.* The time periods for withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive, basis.

(3) *Knowledge of competing offer.* For the purposes of this section, a bidder shall be presumed to have knowledge of another tender offer, as described in subparagraph (1)(ii) of this paragraph, on the date such bidder receives a copy of the Form F–13 (12 CFR 206.82) pursuant to paragraph (c) of this section from such other bidder.

(4) *Notice of withdrawal.* Notice of withdrawal pursuant to this paragraph shall be deemed to be timely upon the receipt by the bidder's depository of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompanied by a signature guarantee, as conditions precedent to

the physical release of withdrawn securities.

(h) *Exemption from statutory pro rata requirements.* The limited pro rata provisions of section 14(d)(6) of the Act shall not apply to any tender offer for less than all the outstanding securities of the class for which the tender offer is made to the extent that the bidder provides in the tender offer materials disseminated to security holders on the date of commencement of the tender offer that in the event more securities are deposited during the period(s) described in subparagraphs (1) and/or (2) of this paragraph than the bidder is bound or willing to accept for payment, all securities deposited during such period(s) will be accepted for payment as nearly as practicable on a pro rata basis, disregarding fractions, according to the number of securities deposited by each depositor.

(1) Any period which exceeds ten days from the date of commencement of the tender offer.

(2) Any period which exceeds ten days from the date that notice of an increase in the consideration offered is first published, sent or given to security holders.

(i) *Solicitation/recommendations statements with respect to certain tender offers*—(1) *Filing and transmittal of recommendation statement.* No solicitation or recommendation to security holders shall be made by recommendation to security holders shall be made by any person described in subparagraph (4) of this paragraph with respect to a tender offer for such securities unless as soon as practicable on the earliest date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following subparagraphs.

(i) Such person shall file with the Board six copies of a Tender Offer Solicitation/Recommendation Statement on Form F–12 (12 CFR 206.81) including all exhibits thereto; and

(ii) If such person is either the subject bank or an affiliate of the subject bank,

(A) Such person shall deliver a copy of the Form F–12 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F–13 (12 CFR 206.82) filed with the Commission; and

(B) Such person shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by Items 2 and 4(a) of Form F–12 and shall mail a copy of the Form to each national securities exchange where the class of securities is registered and listed for trading and, if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. ("NASD").

(iii) If such person is neither the subject bank nor an affiliate of the subject bank,

(A) Such person shall mail a copy of the schedule to the bidder at its principal office or at the address of the person authorized to recieve notices and communications (which is set forth on the cover sheet of the bidder's Form F–13 filed with the Board), and

(B) Such person shall mail a copy of the Form to the subject bank at its principal office.

(2) *Amendments.* If any material change occurs in the information set forth in the Form F–12 required by this section, the person who filed such Form F–12 shall:

(i) File with the Board six copies of an amendment on Form F–12 disclosing such change promptly, but not later than the date such material is first published, sent or given to security holders; and

(ii) Promptly deliver copies and give notice of the amendment in the same manner as that specified in subparagraph (1)(ii) or subparagraph (1)(iii) of this paragraph, whichever is applicable; and

(iii) Promptly disclose and disseminate such change in a manner reasonably designed to inform security holders of such change.

(3) *Information required in solicitation or recommendation.* Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1, 2, 3(b), 4, 6, 7 and 8 of Form F–12 or a fair and adequate summary thereof: *Provided, however,* That such solicitation or recommendation may omit any such information previously furnished to security holders of such class of securities by such person with respect to such tender offer.

(4) *Applicability.* (i) Except as is provided in subparagraphs (4)(ii) and (5) of this paragraph, paragraph (i) shall only apply to the following persons:

(A) The subject bank, any director, officer, employee, affiliate or subsidiary of the subject bank;

(B) Any record holder or beneficial owner of any security issued by the subject bank, by the bidder, or by any affiliate of either the subject bank or the bidder; and

(C) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the board pursuant to this paragraph or paragraph (c) of this section.

(ii) Notwithstanding paragraph (4)(i) of this paragraph, paragraph (i) shall not apply to the following persons:

(A) A bidder who has filed a Form F–13 pursuant to paragraph (c) of this section;

(B) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice regarding such tender offer to their customers or clients on the unsolicited request and such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(5) *Stop-look-and-listen communication.* Paragraph (i) shall not apply to the subject bank with respect to a communication by the subject bank to its security holders which only;

(i) Identifies the tender offer by the bidder;

(ii) States that such tender offer is under consideration by the subject bank's board of directors and/or management;

(iii) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of such tender offer) the subject bank will advise such security holders of (A) whether the subject bank recommends acceptance or rejection of such tender offer; expresses no opinion and remains neutral toward such tender offer; or is unable to take a position with respect to such tender offer and (B) the reason(s) for the position taken by the subject bank with respect to the tender offer (including the inability to take a position); and

(iv) Requests such security holders to deter making a determination whether to accept or reject such tender offer until they have been advised of the subject bank's position with respect thereto pursuant to subparagraph (5)(iii) of this paragraph.

(6) *Statement of management's position.* A statement by the subject bank of its position with respect to a tender offer which is required to be

published or sent or given to security holders pursuant to paragraph (m) of this section shall be deemed to constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

(j)–(l) [Reserved

(m) *Unlawful tender offer practices.* No person who makes a tender offer shall:

(1) Hold such tender offer open for less than twenty business days from the date such offer is first published or sent or given to security holders.

(2) Increase the offered consideration or the dealer's soliciting fee to be given in tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase is first published, sent or given ot security holders.

(3) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer.

(4) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

(5) *Position of subject bank.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, the subject bank, no later than 10 business days from the date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the subject bank:

(i) Recommends acceptance or rejection of the bidder's tender offer;

(ii) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or

(iii) Is unable to take a position with respect to the bidder's tender offer. Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(6) *Material change.* If any material change occurs in the disclosure required by this section, the subject bank shall promptly publish, send or give a statement disclosing such material change to security holders.

(n) *Material Change.* If any material change occurs in the facts set forth in the statement required by paragraph (c)(1) of this section, the person who filed such statement shall promptly file with the Board an amendment disclosing such change.

(o) *Restrictions on Control Persons:* when a person makes a tender offer for, or a request or invitation for tenders of, any class of equity securities of a bank registered pursuant to section 12 of the Act, and such person has filed a statement with the Board pursuant to this section, any other person controlling, or controlled by or under common control with ("control person"), the issuing bank shall not thereafter, during the period such tender offer, request or invitation continues, purchase any class of equity securities of the issuing bank unless:

(1) The control person has filed with the Board a statement containing the information specified below with respect to any proposed purchases:

(i) The title and amount of equity securities to be purchased, the names of the persons or classes or persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(ii) The purpose for which the purchase is to be made and any plan or proposal for the disposition of such securities; and

(iii) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

(2) The control person has at any time within the past 6 months sent or given to the equity security holders of the issuing bank the substance of the information contained in the statement required by paragraph (o)(1) of this section and a copy has been filed with the Board.

(7) Section 206.51 would be amended by revising the title of the section and the Form F–5; paragraph (C) of item 5 and paragraph (i) of item 6 is redesignated as paragraph (j) and a new paragraph (i) of item 6 is added, all to read as follows:

§ 2106.51 Form for proxy statement or statement where the bank does not solicit proxies (Form F–5).

Board of Governors of the Federal Reserve System

Form F–5.—Proxy Statement or Statement Where Management Does Not Solicit Proxies

* * * * *

Item 5. * * *

(C) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights, (1) make a statement that they have such rights, (2) briefly describe such rights, (3) state briefly the conditions precedent to the exercise thereof, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

* * * * *

Item 6. Directors and Principal Officers.

* * * * *

(i) *Shares voted at last meeting.* With respect to those classes of voting stock which participated in the election of directors at the most recent meeting at which directors were elected:

(1) State in an introductory paragraph the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and (2) disclose in tabular format, following such introductory paragraph, the percentage of total shares cast for and withold from the vote for or, where applicable, cast against, each nominee, which respectively, were voted for and withheld from the vote for, or voted against, such nominee. When groups of classes or series of classes vote together in the election of a director of directors, they shall be treated as a single class for the purpose of the preceding sentence.

Instructions. 1. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in paragraph g(1), by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director in respect of whom the highest aggregate number of shares was cast by the total number of shares outstanding which were eligible to vote as of the record date for the meeting.

(2) No information need be given in response to Item 6(g) unless, with respect to any class of voting stock (or group of classes which voted together), 5 percent or more of the total shares cast for and withheld from the vote for or, where applicable, cast against any nominee were withheld from the vote for or case against such nominee.

(3) If a bank elects less than the entire board of directors annually, disclosure is required as to all directors if 5 percent or more of the total shares cast for and withheld from, the vote for, or where applicable, cast against any incumbent director were withheld from, or cast against the vote for such director at the meeting at which he was most recently elected.

(4) No information need be given in response to Item 6(g) if the bank has previously furnished to its security holders a report of the results of the most recent

meeting of security holders at which directors were elected which includes: (1) A description of each matter voted upon at the meeting and a statement of the percentage of the shares voting which were voted for and against each such matter; and (2) the information which would be called for by this Item 6(g). If a bank has previously furnished such results to its security holders, this fact should be set forth in the bank's cover letter accompanying the filing of preliminary proxy materials with the Board.

* * * * *

§ 206.53 [Redesignated as § 206.81 and Revised]

(8) Section 206.53 (Form F–12) would be redesignated as § 206.81 (Form F–12) and would be revised as follows:

§ 206.81 Form for statement to be filed pursuant to Section 13(d)(4) of the Securities and Exchange Act of 1934 (Form F–12)

Board of Governors of the Federal Reserve System

Form F–12.—Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No.)

(Name of Subject Bank)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

Instructions: Six copies of this statement, including all exhibits, should be filed with the Board.

General Instructions: A. The items numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

(B) Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Board for all purposes of the Act.

Item 1. Security and Subject Company

State the title of the class of equity securities to which this statement relates and the name and the address of the principal executive offices of the subject bank.

Item 2. Tender Offer of the Bidder

Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Form F–13 (12 CFR 206.82) filed with the Board).

Item 3. Identity and Background

(a) State the name and business address of the person filing this statement.

(b) If material, describe any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) The subject bank, its executive officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

Instruction: If the person filing this statement is the subject bank and if the materiality requirement of Item 3(b) if applicable to any contract, agreement, arrangement or understanding between the subject bank or any affiliate of the subject bank and any executive officer or director of the subject bank, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published, sent or given to security holders if such information, or information which does not differ materially from such information, has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject bank to the then holders of the securities and has been filed with the Board: *Provided,* That this statement and the solicitation or recommendation published, sent or given to security holders shall contain specific reference to such proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

Item 4. The Solicitation or Recommendation

(a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject bank and a recommendation is not being made, state whether the subject bank is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this Item.

Instruction: Conclusory statements such as "The tender offer is in the best interest of shareholders," will not be considered sufficient disclosure in response to Item 4(b).

Item 5. Persons Retained, Employed or To Be Compensated

Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 6. Recent Transactions and Intent With Respect To Securities

(a) Describe any transaction in the securities referred to in Item 1 which was affected during the past 60 days by the person(s) named in response to Item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in Item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such person.

Item 7. Certain Negotiations and Transactions by the Subject Bank

(a) If the person filing this statement is the subject bank, state whether or not any negotiation is being undertaken or is underway by the subject bank in response to the tender offer which relates to or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the subject bank, or any subsidiary of the subject bank;

(2) A purchase, sale or transfer of a material amount of assets by the subject bank or any subsidiary of the subject bank;

(3) A tender offer for or other acquisition of securities by or of the subject bank; or

(4) Any material change in the present capitalization or dividend policy of the subject bank.

Instruction. If no agreement in principle has yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject bank such disclosure would jeopardize continuation of such negotiations. In such event, disclosure that negotiations are being undertaken or are underway and are in the preliminary stages will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described pursuant to Item 3(b) of this statement, which relates to or would result in one or more of the matters referred to in Item 7(a) (1), (2), (3) or (4).

Item 8. Additional Information To Be Furnished

Furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 9. Material To Be Filed as Exhibits

Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent

or given to security holders in connection with the solicitation or recommendation referred to in Item 4.

(b) If any oral solicitation or recommendation to security holders is to be made by or on behalf of the person filing this statement, any written instruction, or other material which is furnished to the persons making the actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in Item 3(b) or the pertinent portion(s) of any proxy statement, report or other communication referred to in Item 3(b).

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date)

(Signature)

(Name and Title)

Instruction. The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or bank or a general partner of a partnership), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

§ 206.54 [Redesignated as § 206.82 and Amended]

(9) Section 206.54 (Form F–13) would be redesignated § 206.82 and the title, General Instructions B and C and Instruction No. 2 of Item 6 would be revised as follows:

§ 206.82 Statement to be filed pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934 (Form F–13).

* * * * *

General Instructions. A.

* * * * *

B. Information in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Comptroller for all purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2–7, inclusive, shall be given with respect to: (i) Each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a bank or corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a bank or corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each executive officer and director of such bank or corporation; (b) each person controlling such bank or corporation; and (c) each executive officer and director of any bank or corporation ultimately in control of such bank or corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

* * * * *

Item 6. Interest in securities of the subject bank.

* * * * *

Instructions. 1. * * *

2. If the information required by Item 6(b) of this Form is available to the bidder at the time this statement is initially filed with the Board pursuant to paragraph (d)(1)(i) of this section, such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it shall be filed with the Board promptly but in no event later than two business days after the date of such filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to aviod possible misuse of inside information.

* * * * *

Board of Governors of the Federal Reserve System, October 9, 1980.

Theodore E. Allison,

Secretary of the Board.

FR Doc. 80–33713 Filed 10–28–80; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM 79–76 (Texas–3)]

Ceiling Prices; High-Cost Gas Produced From Tight Formations

October 24, 1980.

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Texas Railroad Commission that the Cisco Sandstone formation be designated as a tight formation under § 271.703(d).

DATES: Comment date: Comments on the proposed rule are due on November 24, 1980.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 10, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or William Bushey, (202) 357–8590.

I. Background

On October 14, 1980, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Cisco Sandstone Formation located in the western part of the state of Texas be designated as a tight formation in the Commission's regulations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Cisco Sandstone Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Cisco Sandstone Formation encountered in Section 72 in Reagan County, T. & P. R. Co. Block 2 Survey, Abstract 146, be designated as a tight formation. Reagan County is a part of Railroad Commission District No. 7C. The boundaries of Section 72 are as follows. The northern boundary of Section 72 is approximately 1.5 miles south of the Glasscock County line and the southern boundary is

approximately 35.42 miles north of the Crockett County line. To the east, the boundary of Section 72 lies approximately 1.29 miles west of the Sterling County line and to the west, the boundary is approximately 27.8 miles east of the Upton County line. The Cisco Sandstone is located below the Wichita Formation and above the Canyon Formation. Currently, only one well is producing within the recommended formation. The well log shows the top of the Cisco Sandstone at an approximate depth of 8,260 feet and the base located at approximately 8,288 feet, giving the formation a thickness of 28 feet.

III. Discussion of the Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980 in docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Cisco Sandstone Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426, on or before November 24, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Texas–3), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise praticipate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than Novermber 10, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (xiii) [Reserved]

(xiv) *Cisco Sandstone Formation.*

(A) *Delineation of formation.* The Cisco Sandstone Formation is found in Reagan County, Texas.

(B) *Depth.* The top of the Cisco Sandstone Formation is located at an approximate depth of 8,260 feet with an approximate thickness of 28 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80–33721 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

18 CFR Part 271

[Docket No. RM 79–76 (Texas–4)]

Ceiling Prices; High-Cost Gas Produced From Tight Formations

October 24, 1980.

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Texas Railroad Commission that the Vicksburg U–V Formation be designated as a tight formation under § 271.703(d).

DATES: Comment date: Comments on the proposed rule are due on November 24, 1980.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 10, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or William Bushey, (202) 357–8590.

I. Background

On October 14, 1980, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980) that the Vicksburg U-V Formation located in the southern part of the state of Texas be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Vicksburg U-V Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of the Recommendation

Texas recommends that the Vicksburg U-V Formation encountered in Hidalgo County, Santa Anita Survey, Abstract 63, McAllen Ranch (Vicksburg U-V, SE) Field, be designated as a tight formation. Hidalgo County is a part of Railroad District No. 4. The northern boundary line of the formation is approximately 10.42 miles south of the Brooks County line and the southern boundary lies approximately 14.92 miles south of the Brooks County line. The western and eastern boundaries of the recommended area are approximately 6.135 and 10.575 miles respectively, east of the Starr County line.

The Vicksburg U-V Formation is located below all other Vicksburg Sands except the Vicksburg Y, and the Vicksburg Group is located below the Frio Formation and above the Jackson Shale Formation. A typical induction log of the area shows the top of the Vicksburg U-V at an approximate depth of 12,305 feet, and extends to the Vicksburg Y. The base of the U-V Formation is at an approximate depth of 13,460 feet, resulting in an approximate thickness of 1,155 feet.

III. Discussion of the Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Vicksburg U-V Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 24, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Texas—4), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed.

An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 10, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (xiv) [Reserved]

(xv) *Vicksburg U–V Formation in Texas.*

(A) *Delineation of formation.* The Vicksburg Y Formation is found in Hidalgo County, Texas.

(B) *Depth.* The top of the Vicksburg U–V Formation in the McAllen Ranch Field is located at an approximate depth of 12,305 feet with an approximate thickness of 1,155 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisidictional agency which submitted the recommendation.

[FR Doc. 80–33722 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

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18 CFR Part 271

[Docket RM 79–76 (Texas–5)]

Ceiling Prices; High-Cost Gas Produced From Tight Formations

October 24, 1980.

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Texas Railroad Commission that the Vicksburg Y Formation be designated as a tight formation under § 271.703(d).

DATES: Comment date: Comments on the proposed rule are due on November 24, 1980.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 10, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or William Bushey, (202) 357–8590.

I. Background

On October 14, 1980, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980) that the Vicksburg Y Formation located in the southern part of the state of Texas be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Vicksburg Y Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Vicksburg Y Formation encountered in Hidalgo County, Santa Anita Survey, Abstract 63, McAllen Ranch (Vicksburg Y) Field, be designated as a tight formation. Hidalgo County is a part of Railrad District No. 4. The northern boundary line of the recommended formation is approximately 10.42 miles south of the Brooks County line and the southern boundary is approximately 14.92 miles south of the Brooks County line. The western and eastern boundaries of the recommended area are approximately 6.135 and 10.575 miles respectively, east of the Starr County line.

The Vicksburg Y Formation is located below all other Vicksburg Sands and the Vicksburg Group is located below the Frio Formation and above the Jackson Shale. A typical induction log of the area shows the top of the Vicksburg Y at an approximate depth of 13,595 feet in the north to 13,244 feet in the south, and the base is located at approximately 15,550 feet in the north to 14,961 feet in the south, giving the formation a thickness of 1,955 feet in the north and 1,717 feet in the south.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further assets that existing state and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Vicksburg Y Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 24, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Texas—5), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed.

An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 10, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (xv) [Reserved]

(xvi) *Vicksburg Y Formation in Texas.*

(A) *Delineation of formation.* The Vicksburg Y Formation is found in Hidalgo County, Texas.

(B) *Depth.* The top of the Vicksburg Y Formation in the McAllen Ranch Field is located at an approximate depth of 13,595 feet with an approximate thickness of 13,244 feet in the south and ranges in thickness from approximately 1,955 feet in the north to 1,717 feet in the south.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80–33723 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Comments Submitted on Kentucky's Permanent Surface Mining Program

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

ACTION: Discussion of comments.

SUMMARY: This notice summarizes significant issues raised in comments submitted to OSM and the Secretary of the Interior on Kentucky's permanent program submission, and explains the Secretary's resolution of those issues. These comments were all considered by the Secretary in his decision to approve, in part, the Kentucky program submission. That decision was published October 22, 1980 at 45 FR 69964.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, 1951 Constitution

Avenue NW., Washington, DC 20240, (202) 343–4225.

SUPPLEMENTARY INFORMATION: On October 22, 1980, the Secretary of the Interior published his decision to approve, in part, and disapprove, in part, the Kentucky State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). An explanation of that decision is found in 45 FR 69964 (the decision announcement notice). The decision announcement notice contains information necessary for a full understanding of this notice. A copy of the manuscript of the decision announcement notice was released to officials of Kentucky and to the public on October 13, 1980, as soon as it was completed and shortly before it was delivered to the Office of the Federal Register for publication.

As explained in the decision announcement notice, the Secretary considered all comments submitted to him in making his determination on Kentucky's program. However, when the manuscript of the decision announcement notice was released October 13, 1980, the resolution of the issues in the comments was in the final stages of proof-reading, typing, and minor editorial revision, and the Secretary was unable to include it in the manuscript.

As he did with the decision announcement notice, the Secretary released the manuscript of this notice as soon as it was completed. Copies were delivered to officials of the Kentucky Department of Natural Resources and Environmental Protection for use in preparation of Kentucky's resubmission.

Accordingly, set forth below is a summary of significant issues raised by public commenters and governmental agencies in their comments delivered to the Secretary and OSM, as well as a discussion of the Secretary's resolution of those issues. The discussions below often refer the reader to discussions in the October 22, 1980, notice, including discussions in the sections entitled "General Background on the State Program Approval Process," "Secretary's Decision," and "Secretary's Findings."

Disposition of Public and Federal Agency Comments

Comments have been accepted and considered on Kentucky's initial program submission of February 29, 1980 (Administrative Record No. KY–61A), the State's revised submission of June 12, 1980 (Administrative Record No. KY–163) and information provided by Kentucky in connection with a reopened comment period. (See 45 FR 41977–41979.) The periods during which comments were accepted are described in the decision announcement under "Background on the Kentucky Program Submission." All comments received were considered in evaluating the Kentucky program for the Secretary's initial decision. The Secretary's responses to the comments are included immediately below the summary of each issue raised by a commenter. The comments are organized into three groups as follows: Public, Federal Agencies Outside Interior, and Federal Agencies Within Interior.

Public Comment

A. Messrs. Mark Morgan and Tom Fitzgerald, representing the Appalachian Research and Defense Fund of Kentucky (ARDFK), provided the following comments:

1. Comment: The February 29, 1980, Kentucky submission does not include the required public participation procedures set forth in 43 CFR Part 4. Specifically, Kentucky's program lacks regulations which set forth discovery rights in administrative proceedings, intervention rights which are nondiscretionary for persons who have a statutory right to initiate an action or whose interest is or may be adversely affected, eligibility to practice before administrative tribunals and opportunity for award of costs and expenses.

Response: The Secretary agrees. See Findings 27.6, 27.10, 27.11, 27.12 and 27.14.

2. Comment: Kentucky's February 29, 1980, proposed rules do not include the extraction of coal from coal refuse piles in the definition of surface coal mining operations.

Response: Kentucky has subsequently revised its definition of "surface coal mining activities" to include the extraction of coal from refuse piles (Administrative Record No. KY–163). The term "surface coal mining activities" is included within the meaning of "surface coal mining operations," as now defined in 405 KAR 7:020E Section 1 (129). Therefore, Kentucky's definition is as stringent as the Federal counterpart.

3. Comment: Kentucky's February 29, 1980, proposed regulation 405 KAR 12:020 Section 7(1) is less stringent than the Federal counterpart. The Federal regulation requires that cessation orders be issued immediately upon finding an imminent hazard. Kentucky's proposed regulations, on the other hand, would only require issuance of cessation orders "after investigation" and when it appears that it will be prejudicial to the interest of the people of the State to delay cessation of operations until an opportunity for a hearing can be provided. Thus, under Kentucky's proposed rules, operations causing imminent damage or danger could continue until the case is heard and a decision rendered.

Response: The Secretary agrees that Kentucky's regulation is inconsistent with the Federal requirement. See Finding 20.1.

4. Comment: Kentucky's February 29, 1980, regulation 405 KAR 12:020 Section 2(2)(b) allows for the discretionary issuance of remedial action steps. Such discretion is inconsistent with the Federal law, where mandatory issuance of remedial steps is set forth.

Response: The Federal regulation, 30 CFR 843.12(b)(2), specifies that the remedial action "may" include interim steps. Use of the word "may" in the Federal requirement permits the responsible authority to use remedial action steps where needed; therefore, Kentucky's proposed regulation is consistent with the Federal counterpart.

5. Comment: The State's February 29, 1980, submission does not provide a mandatory minimum suspension period. This is inconsistent with the Federal requirement of 43 CFR 4.1194(b), which mandates a minimum three working days suspension, unless the suspension would result in manifest injustice and not further the purposes of SMCRA.

Response: A mandatory suspension period is not required of the State. State programs must only comply with 43 CFR Part 4 in the area of public participation as specified in 30 CFR 840.13 and 840.15. The Secretary does not consider the minimum suspension period to be a public participation requirement.

6. Comment: Kentucky's February 29, 1980, regulation 405 KAR 12:010 Section 3(2) does not specify that inspections will be made without prior notice. Instead, the Kentucky regulation merely indicates that "the department shall have no obligation to give prior notice." This language provides discretionary authority not envisioned by the Federal counterpart.

Response: The commenter's concern is valid and its disposition is included in Finding 17.2.

7. Comment: Kentucky's implementing legislation is deficient in several areas. First, Kentucky's law, KRS 350.250(1), requires persons bringing an action to take an oath; Federal law 30 U.S.C. 1270(a)(2), does not contain an oath requirement. Second, KRS 350.250 allows only "any citizen of this Commonwealth" to initiate an action; there is no Federal limitation in this regard and non-citizens must be given the right to institute these suits. Third,

KRS 350.250 requires that a person bringing an action have knowledge of non-enforcement; Federal standards permit "any person having an interest which is or may be adversely affected" to initiate action. Fourth, KRS 350.250(3) attempts to afford citizens rights to commence a civil action against a government instrumentality to compel compliance with the Act; Kentucky's definition of "person," however, does not include the Kentucky DNREP. Therefore, it places the DNREP in a position of trying to define "person" as being broad enough to include the DNREP. Such right to create new causes is reserved for the General Assembly and cannot be delegated to the DNREP. Fifth, KRS 350.250 does not contain a counterpart to 30 U.S.C. 1270(e) which preserves the rights of any person to seek enforcement of the Act and regulations or to seek any other relief. This "savings clause" cannot be created by the DNREP by regulation or otherwise. Finally, 30 U.S.C. 1270(f) creates an action for damages which is not paralleled in KRS 350.250.

Response: With regard to the comment on the oath requirement, the Secretary does not believe that an oath imposes a significant burden on a citizen bringing a civil action. Therefore, this provision of Kentucky's legislation is not inconsistent with Section 520 of SMCRA. The comments relative to KRS 350.250 have merit and similar concerns are expressed in Finding 1.2.

8. Comment: The definition of "cemetery" at 405 KAR 7:020 of the February 29, 1980, submission should be revised to include "any area where human bodies are interred."

Response: The June 12, 1980, revised program submission includes the revision suggested by the commenter which can be found in 405 KAR 7:020E Section 1(17).

9. Comment: Kentucky's February 29, 1980 definition of "person having an interest which is or may be adversely affected or person having a valid legal interest" would exclude persons who may be adversely affected by a "related action of the department." This is inconsistent with 30 CFR 700.5 and restricts the ability of the public to protect themselves from decisions that will affect their rights and interests in the future.

Response: The definition now found in 405 KAR 7:020E Section 1(90)(a) and (b) is found deficient by the Secretary and the State program must be revised so that "persons with an interest" will include those affected by any related action of the department. See Finding 12.2.

10. Comment: The department's proposal in 7:090E Section 3(1)(e) to issue a show cause notice to remind an operator of his right to contest (after expiration of the thirty day period the operator in violation has to contest the violation) is inconsistent with 30 CFR 843.16 and 845.19. This is thought to clog the administrative process and allow for an indefinite delay in finalizing violation notice related actions.

Response: Kentucky's June 12, 1980, revised program does not include the "show cause" provision, thus eliminating the basis for the commenter's concern.

11. Comment: The February 29, 1980, Kentucky program (405 KAR 7:090 Section 11(2)(b)) is inconsistent with Federal requirements, because it provides that an operator can get temporary relief from his abatement responsibility from a hearing officer by showing irreparable loss. In a related matter, Kentucky's proposed program does not provide procedures comparable to 30 CFR 787.11 under which a citizen or a permit applicant can apply for temporary relief from a departmental decision granting or denying a permit, a revewal, a transfer, or a coal exploration permit. This omission would result in less stringent State requirements.

Response: With regard to the question of temporary relief from an operator's abatement responsibility, 30 CFR 845.15(b) provides for temporary relief under similar circumstances. Kentucky's regulations are, therefore, consistent with the Federal requirement in this regard. However, the Secretary agrees that the Kentucky regulation does not provide administrative review procedures comparable to those in 30 CFR 787.11 as discussed in Findings 27.1 and 27.2.

12. Comment: Kentucky's February 29, 1980, submission is too restrictive regarding public participation in inspection and enforcement; 405 KAR 12:030 limits citizens' requests to any person having an interest which is or may be adversely affected. Such language is inconsistent with the phrase "any person" used in 30 CFR 842.12 and referenced by 30 CFR 842.15. Kentucky's February 29, 1980, submission lacks provisions parallel to 30 CFR 842.14, which provides that "any person who is or may be adversely affected" may notify the Regional Director when the Office fails in its obligations to make Federal inspections. Finally, 405 KAR 12:030 Section 2 is deficient in that it omits the term "appropriate" preceding the words "enforcement action." This omission is crucial to the effective regulation of surface mining.

Response: The first two points (citizen participation and administrative review) of this comment have merit and are addressed in Findings 17.5 and 17.6. In regard to the third point, the omission of the term "appropriate" preceding the words "enforcement action" in 405 KAR 12:030E Section 2 is not critical. Kentucky's regulation would not prohibit a citizen from filing an objection for lack of appropriate enforcement, nor would it restrict the reviewing authority's responsibility to judge the appropriateness of the enforcement action taken.

13. Comment: The commenter notes several problems with 405 KAR 12:030 Section 1 of the February 29, 1980, submission. In particular, this section does not provide a counterpart to 30 CFR 842.12, which requires, in part, that the inspector notify a citizen as far in advance as practicable of when a citizen-requested inspection will occur and of the citizen's right to accompany the inspector. Also, the Kentucky regulation contains a disclaimer of any duty of care on the part of the inspector for the citizen accompanying the inspector. This is unduly restrictive and inconsistent with Federal language. Finally, the State language is also too restrictive in its statement that "any person desiring to participate in an inspection as provided in this section shall provide his own transportation and other necessaries." This language needs clarification so that the requirements of transportation and necessaries are not defined to restrict citizen access to the mine site.

Response: Kentucky's regulations satisfy Federal requirements for notifying citizens of mine inspections and citizen access to the mine site. 405 KAR 12:030E Section 3(3) authorizes reasonable discretion by the department in establishing the time and manner for mine site access. The Secretary feels that this language assures reasonable advance notice to the citizen of the inspection trip. Further, the Federal regulation does not require the State to assume liability for citizens accompanying inspectors, provided reasonable care and precaution are exercised by the inspector while carrying out his responsibilities on the permit area. The responsibility for reasonable care does not need to be specified in regulations since it is subject to ordinary principles of tort law. With regard to citizens providing their own transportation and necessaries, Kentucky has clarified the requirements of 405 KAR 12:030E Section 3(4) in the June 12, 1980, revised program. The revised language deletes

reference to "other necessaries" and limits citizen responsibility for providing transportation to the mine site only, which the Secretary believes is reasonable.

14. Comment: 30 CFR 843.15 requires that notice of a hearing regarding a cessation order be sent to a person who reports information which leads to the issuance of a cessation order. 405 KAR 12:020 Section 7 and 7:090 Section 5 lack this provision.

Response: The Secretary agrees that the provision for notice of hearings under 405 KAR 7:090E is unclear, and this concern is included in Finding 27.15.

15. Comment: The citizen task force suggested that information submitted to the department be made available on request as soon as it becomes available to the department or the secretary. DNREP has revised the language to read "readily available," a change which reflects the concern that citizen access to information is not considered a priority.

Response: Although the commenter did not specify the previse section of the program where the presence of the above language causes concern, the Secretary agrees that there are several places in the Kentucky program which indicate that citizens may not have immediate access to information or adequate notice of upcoming actions. See Finding 22.2.

B. The following comments were provided by (1) Council of the Southern Mountains, Inc., Appalachian Coalition and Environmental Policy Institute and (2) Citizens of the Commonwealth of Kentucky:

1. Comment: Kentucky's definition of "best technology currently available," as provided in 405 KAR 7:020E Section 1(14) of the June 12, 1980, program submission, contains an unrestrictive discretionary clause which could potentially subvert the "technology forcing" intent of the Act. The last sentence of the definition should, therefore, be deleted.

Response: The language provided in Kentucky's proposed program is consistent with the definition in 30 CFR 701.5 because it restricts discretion to the same extent as provided for in the Federal regulation.

2. Comment: Kentucky's June 12, 1980, proposed program fails to include "areas where mining may cause flooding" in its definition of "fragile lands" (405 KAR 7:020E Section 1(47)).

Response: In the Federal regulation, "area where mining may cause flooding" is cited as an example of fragile lands and is not a necessary part of the definition. The Kentucky definition itself is consistent with the Federal definition since the absence of the quoted phrase does not mean such lands are not "fragile." Therefore, no revision is required.

3. Comment: The definition of "hydrologic balance" should be revised to include "It encompasses the dynamic relationship among precipitation, runoff, evaporation and changes in ground and surface water storage."

Response: The suggested change is included in the June 12, 1980, revised submission on 405 KAR 7:020E Section 1(59).

4. Comment: The definition of "natural hazard lands" should be revised to include "frequent flooding."

Response: The June 12, 1980, revised submission includes the suggested language in 405 KAR 7:020E Section 1(71).

5. Comment: Kentucky's proposed program of June 12, 1980, (405 KAR 7:020E Section 1(90)) should be revised. The definition of "person having an interest which is or may be adversely affected" is too narrow. It should also include persons affected by related actions of the department.

Response: See response to comment A.9 above from Appalachian Research and Defense Fund of Kentucky.

6. Comment: Kentucky's June 12, 1980, definition of "public road" (405 KAR 7:020E Section 1(101) should be revised to assure that surface mining would be conducted in a fashion which would not deny a person ingress or egress to his or her residence. The commenter, therefore, suggests adding the language "including prescriptive easements or where a throroughfare is the only means of vehicular ingress and egress to a dwelling house," following the word "vehicle in the definition.

Response: The definition of "public road," as provided in 30 CFR 761.5, was suspended (44 FR 67942). The Office will publish a revised definition through the rulemaking process. When final, Kentucky will be required to develop and publish a definition of "public road" to be consistent with Federal counterpart. In the meantime, there is nothing in the Kentucky definition which is inconsistent with SMCRA or which would enable a coal operator to deny a resident access to his or her property without consent.

7. Comment: The definition of "recurrence interval," 405 KAR 7:020E Section 1(106), should be revised to read "means the interval of time, *usually in years,* in which *a precipitation or flood* event *of some specific duration and intensity can be* expected to occur once, on the average." (emphasized language added) The revised language is self-explanatory.

Response: The Secretary finds Kentucky's definition of "recurrence interval" consistent with 30 CFR 701.5. See Finding 12.2(j).

8. Comment: The June 12, 1980. definition of "reference area," as provided by kentucky, should be revised to include "aspect" because some plant species are sensitive to the aspect of an area.

Response: The "aspect" of an area is an important factor affecting species composition, growth, and diversity. Adding the suggested language, however, is not necessary because Kentucky's definition (which is identical to the Federal counterpart) specifies that the "Reference areas must be representative of . . . vegetation in the permit area." The inclusion of "vegetation" in this requirement necessarily reflects aspect, particularly for those plant species which are sensitive to exposure.

9. Comment: Kentucky's June 12, 1980, definition of "surface coal mining operations," 405 KAR 7:020 Section 1(129), should include the extraction of coal from coal refuse piles.

Response: Kentucky's revised definition of "surface coal mining activities," which is included within Kentucky's definition of "surface coal mining operations," is as stringent as the Federal requirements and includes extraction from refuse piles. See Finding 12.2 and comment A.2, above, from Appalachian Research and Defense Fund of Kentucky, for further discussion.

10. Comment: 45 KAR 8:010E Section 8(8) of Kentucky's June 12, 1980, revised program should be rewritten to clarify (1) where in the county courthouse the permit is to be filed and (2) when the operator must file the copy of the permit. The commenter proposes that the permit application be filed in the county clerk's office of the county courthouse rather than the court clerk's office and that the operator file a copy of the permit no later than the first publication of the notice of intent to mine.

Response: Federal regulation 30 CFR 786.11(d) requires filing a copy of the permit application "with the recorder at the courthouse . . . or if approved by the regulatory authority, at another equivalent public office, if it is determined . . . more accessible to local residents. . . ." The Kentucky program, however, does not require filing in the courthouse. The program states that the filing will be made in the "appropriate regional office of the department where the mining is proposed to occur." Filing the application at the regional office of the department, as proposed, has several advantages over filing at a courthouse. For example, regional office

personnel would be readily available to answer questions concerning the application and better control of the documents would provide greater assurance that all applications and parts of applications are in order and up-to-date. Further, the regional offices are in the coal mining area. For these reasons, the Secretary finds Kentucky's filing location to be an acceptable alternative which is consistent with Federal requirements. Kentucky's regulations are deficient, however, with regard to when the operator must file a copy of the permit. Federal regulation 30 CFR 786.11(d)(2) requires the filing by the first date of a newspaper advertisement of the application so that the public and other government agencies will have a reasonable time to review it. See Finding 14.27.

11. Comment: The commenter proposes that the State change the word "propose" in 405 KAR 10:010E Section 2(2)(b) to "identify" in relation to the initial and successive incremental areas for bonding.

Response: Kentucky has substituted the word "propose" for "identify" as used in 30 CFR 800.11(b)(2). This change does not materially alter the intent of the Federal section and therefore is acceptable.

12. Comment: The commenter proposes that 405 KAR 10:010E Section 2(2)(b) be amended to require that the periods for incremental bonds be limited to one year and that mining without bond coverage on an increment shall be the equivalent of mining without a permit.

Response: The Secretary believes that the one-year limitation would unduly restrict the ability of the State to approve an incremental bonding plan which would meet all the minimum requirements of the Federal regulations. The State regulations are consistent with the Federal regulations and an operator would be deemed to be mining without a permit when he or she mines on an area not included in a bonded increment.

13. Comment: The State does not include the provision of 30 CFR 805.11(a) for considering the factors of cost changes during the preceding 5 years in the bond determination.

Response: The omission of this requirement is discussed in Finding 18.2.

14. Comment: The use of the word "substantially" in front of "augmented seeding" in 405 KAR 10:020E Section 3 should be narrowly defined and controlled to allow good husbandry practices, without preempting the intent of the liability period.

Response: The Secretary agrees that use of the word "substantially" makes Kentucky's rule less stringent than 30 CFR 805.13 when used without the clarification similar to 30 CFR 805.13(b) as revised August 6, 1980 (45 FR 52306–52324). This is discussed in Finding 18.5.

15. Comment: In 405 KAR 10:020E Section 4 the word "substantially" should be deleted as it is inconsistent with 30 CFR 805.14(a).

Response: The Secretary agrees with the commenter's concern and requires an amendment to the program or other information to assure that the Kentucky rule is implemented in a manner which is consistent with 30 CFR 805.14(a). See Finding 18.6.

16. Comment: 405 10:050 Section 3 is inconsistent with 30 CFR 808.13 in that it provides no mandatory criteria for bond forfeiture.

Response: Kentucky's regulation is deficient as noted. Consequently, program revision is required before the Secretary can approve this provision. See Finding 18.17.

17. Comment: The use of 1.5 inspections per day in determining inspector needs is unrealistically high as is the assumption of 22 working days per month. Using a figure of 8,126 inspectable units, 1.5 days for a complete inspection, 1.5 partial inspections per day and 210 working days per annum, the commenter estimated that 436 inspectors would be required, which is 252 more than Kentucky predicts.

Response: As discussed in Finding 30, the Secretary finds that the Kentucky program does not contain sufficient information to demonstrate that the State will have adequate staffing. The Director, Office of Surface Mining (OSM), will advise the State by letter of the specific areas where the program did not demonstrate adequate staffing which will include inspector staffing. The commenter should note, however, that the number of estimated inspectable units in the revised State program is 6,264, not 8,126.

18. Comment: The program does not contain sufficient information regarding hearings, e.g., number of cases, projected time required per hearing, etc. The commenter recommends that OSM request more information regarding the interplay between the enforcement and adjudicatory branches within the department and ensure a strict adherence to the concept of an independent hearing officer.

Response: In his letter on staffing, the Director will request Kentucky to submit clarification of hearing officers' responsibilities to enable the Secretary to evaluate the adequacy of the program's staffing. See comment B.17, above.

19. Comment: OSM should closely scrutinize the Office of the General Counsel because the number of available attorneys may be limited.

Response: See response to comment B.17, above.

20. Comment: The language of 30 CFR 840.11(d)(2) mandates that the State program include a provision requiring prohibition of prior notice to a permittee of an inspection. The State provision, 405 KAR 12:010 Section 3(2), does not explicitly provide for such prohibition.

Response: The Secretary agrees. See Finding 17.2.

21. Comment: Kentucky regulation, 405 KAR 12:010 Section 3(4), has omitted the requirement regarding collection of evidence found in 30 CFR 830.11 (a), (b), and (c) (*Sic:* It is clear that the commenter meant to cite 30 CFR 840.11 (a), (b), and (c)) regarding the collection of evidence.

Response: The comment is valid and the issue is discussed in Finding 17.1.

22. Comment: Kentucky's June 12, 1980, regulation 405 KAR 12:020E Section 2(2)(b), concerning remedial action steps, is drafted in unnecessarily discretionary language. The terms "if any" and "if appropriate" should be deleted.

Response: The Secretary finds the Kentucky regulation consistent with the Federal requirements. The reader is referred to the response to comment No. A.4. of the Appalachian Research and Defense Fund of Kentucky for further explanation.

23. Comment: Section 405 KAR 12:020E Section 3(3) of Kentucky's June 12, 1980, revised program is vague. The phrase "or until other appropriate relief is granted by the department" is confusing and seemingly implies that actions other than complying with the regulation and order will relieve affirmative obligations imposed by a cessation order. This language should be revised to read "or until vacated, modified or terminated in writing by an authorized representative of the department."

Response: The Secretary agrees that Kentucky's regulation regarding "affirmative obligation to comply" needs to be revised. See Finding 20.3.

24. Comment: Kentucky's regulation 405 KAR 12:020 Section 7(1) allows for cessation orders to be issued "after investigation." This language is confusing and allows for delay in issuance of cessation orders that could prove prejudicial to all parties involved and contrary to the best interests of the Commonwealth.

Response: The Secretary agrees. See Finding 20.1.

25. Comment: The title of 405 KAR 12:020 Section 7 should be changed to "Cessation Orders" to avoid any confusion over nomenclature in Federal/State enforcement activities.

Response: The use of uniform nomenclature would be desirable; however, the suggested change is not necessary to assure the effective implementation and administration of the surface mining program, provided that Kentucky includes a definition of the term "order to abate and alleviate" in its program. See Finding 27.13.

26. Comment: Kentucky's June 12, 1980, regulation 405 KAR 12:020E Section 7(l) should be revised. As written, this section could mean that either the secretary of DNREP or an authorized representative, but not both, has the authority to issue cessation orders. This is inconsistent with 30 CFR 843.11(a) which provides for delegation of such authority by the Secretary to an authorized representative or the secretary. Additionally, this section utilizes a standard for issuance of a cessation order which differs from Federal law through omission of the key terms "imminent" and "significant" from the phrases "danger to the health or safety of the public" and "imminent environmental harm to land, air, or water resources."

Response: The Secretary does not believe that Kentucky's regulation relating to delegation of authority is confusing or inconsistent with the Federal requirements. Kentucky has, however, omitted key terms, as noted by the commenter. Therefore, 405 KAR 12:020E Section 7(1) must be revised accordingly. See Finding 20.1.

27. Comment: Kentucky should delete the final statement of 405 KAR 12:020 Section 7(1) which reads "the secretary or his authorized representative should act pursuant to this section only when it appears that it will be prejudicial to the state to delay action until an opportunity for a hearing can be provided."

Response: The Secretary agrees that the referenced statement could limit the inspector's ability to issue cessation orders in imminent danger or harmful situations and that the State regulation is inconsistent with Federal requirements. See Finding 20.1.

28. Comment: 405 KAR 12:020E Section 7(8)(b) of Kentucky's June 12, 1980, proposed program should include provisions for notifying the person who filed a report or registered a complaint which led to the issuance of a cessation order of any hearings scheduled as a result of a request by a permittee or operator.

Response: The complainant and the public must be notified of such hearings and Kentucky must assure this will occur before its program can be unconditionally approved. See Finding 27.15.

29. Comment: 405 KAR 12:030 Section 2(2) of Kentucky's proposed program provides for review of an inspector's decision not to inspect or enforce. This section should more clearly designate the official responsible for reviewing an inspector's decision not to inspect or enforce. There should also be provisions to guarantee confidentiality of the complainant.

Response: The Secretary believes Kentucky has adequately defined the review process and that the confidentiality of the complainant is adequately guaranteed under 405 KAR 12:030E Section 1(2). Although the Federal regulations specify that the Regional Director will conduct the review, this duty can be assigned to his designee(s) for convenience. It is reasonable to expect the State procedure to be similar, and it is not necessary that the identity of the reviewer be specified in a regulation.

30. Comment: 405 KAR 12:030 Section 3(3) includes a disclaimer regarding any "duty of care" on the department for persons accompanying inspectors on the minesite. This is not consistent with the requirement that citizens remain "under the control, direction, and supervision of the inspector" and is contrary to Federal law.

Response: The reader is referred to the response to Appalachian Research and Defense Fund of Kentucky, comment No. A.13, for discussion of this issue.

31. Comment: Kentucky's revised 405 KAR 12:030E Section 1 is too restrictive because it provides that "any person having an interest which is or may be adversely affected . . . may request that the department conduct an inspection." This language is consistent with Federal requirements at 30 CFR 842.12 which permits "any person" to request an inspection.

Response: The Secretary agrees. See Finding 17.5.

32. Comment: 405 KAR 12:030E Section 3 of Kentucky's revised program does not require that the inspector notify the citizen as far in advance as practicable when the inspection is to occur and that the citizen shall be allowed to accompany the inspector.

Response: The reader is referred to the response to Appalachian Research and Defense Fund of Kentucky, comment No. A.13.

33. Comment: A State counterpart to 30 CFR 840.15, public participation, is not included in the revised program submission. While the department has included the right of review of a decision not to inspect or enforce, it has not included this provision for reviewing the adequacy and completeness of inspections in 405 KAR 12:030.

Response: States need not contain a counterpart to 30 CFR 840.15. The Secretary has found, however, that the State lacks a provision comparable to 30 CFR 842.14, giving citizens the right to an informal review of decisions not to inspect. See Finding 17.6.

34. Comment: 30 CFR 842.15(a) allows for review of the decision not to inspect or to take appropriate enforcement action. The word "appropriate" is not included in Kentucky's regulation 405 KAR 12:030E Section 2. This omission is crucial to effective regulation.

Response: The reader is referred to the response to Appalachian Research and Defense Fund of Kentucky, comment No. A.10.

35. Comment: The commenter suggests adding language to 405 KAR 16:120 Section 2(3) which would ensure, in the absence of any safeguards regarding the qualifications of those responsible for pre-blasting surveys or otherwise, that serious deficiencies in the reports of surveys will be corrected before blasting begins, where the survey was requested beforehand and where the disagreement was promptly communicated.

Response: Such additional language is not expressly required by the Federal regulations and the Secretary does not require Kentucky to adopt it. The comment, however, has merit and may be considered by the State at its discretion.

36. Comment: After the word "resident" in the last sentence of 405 KAR 16:120 Section 3(1)(b), the sentence should read "of his or her rights under the previous section and how to request a pre-blasting or blasting survey, and of the citizens rights under 405 KAR 12:030 to write letters of complaint and obtain an inspection of the site."

Response: Kentucky's regulation is identical to 30 CFR 816.64(a)(2). Therefore, the suggested revision is not needed to satisfy Federal requirements.

37. Comment: The concept of "pacing" recognizes that certain watersheds do not qualify for designation as absolutely unsuitable for mining, even though these watersheds can sustain only a limited number of mines at any one time. Therefore, the department should provide persons with the right to designate pacing within a watershed, i.e., only a limited number of acres to be mined may be permitted at any one time in the watershed.

Response: The suggested language is not required by the Federal regulations. 30 CFR 762.12(a) provides that the State may establish additional criteria for determining unsuitability. Kentucky did not elect to exercise this option. The suggested procedure, however, has merit and may be considered by the State at is discretion.

38. Comment: The language "and is aggrieved" should be deleted from the criteria for a person having a right to petition under 405 KAR 24:020 Section 2.

Response: The State's June 12, 1980, revised submission make this deletion.

39. Comment: The language in 405 KAR 24:030 Section 2(a) and (b) concerning "substantial financial and legal commitments" parallels the Federal requirement. It is, however, very vague and should be defined more precisely in the regulations.

Response: 405 KAR 24:030E Section 2 is substantially the same as 30 CFR 762.13 and the definition of "substantial legal and financial commitments in a surface coal mining operation" in 30 CFR 762.5. The Federal regulations do not require any additional elaboration of these requirements in State regulations. Kentucky's method of determining "substantial legal and financial commitments" is consistent with the Federal requirements. Therefore, the suggested revision is not necessary.

40. Comment: Kentucky's revised program of June 12, 1980, 405 KAR 24:030E Section 6(2) requires the department to make petition-related information available to the public pursuant to KRS 61.870 *et seq.* The commenter suggests revising this section to ensure that such data is available for public inspection and copying at a central location of the county or multi-county area in which the petitioned land is located.

Response: 405 KAR 24:030E Section 6(2) is inconsistent with the Federal counterpart in that KRS 61.870 *et seq.* does not require public availability of the petition and related documents as required by 30 CFR 764.15(d). Kentucky will be required to revise its program accordingly. See Finding 21.6.

41. Comment: 405 KAR 24:040E Section 4(a) of Kentucky's revised program conflicts with 30 CFR 761.5(d); Kentucky's regulation contains, in the context of determining valid existing rights, the language "or has made a good faith effort" (to obtain permits) while the Federal counterpart does not.

Response: The district court opinion in *In re: Permanent Surface Mining Regulation Litigation* of Febraury 26, 1980, (p. 20) remanded the Federal regulation. Kentucky's revised requirement is consistent with SMCRA and the court opinion, which explicitly approved the language Kentucky has added. For additional discussion of remanded regulations, the reader is referred to the "General Background on the State Program Approval Process."

42. Comment: The language "the Wild and Scenic Rivers Systems" and "or any place on or eligible for listing" should be included in Kentucky's revised regulation 405 KAR 24:040E Section 2(1) and (4).

Response: Kentucky will be required to include the Wild and Scenic Rivers System as an area designated unsuitable for mining under SMCRA Section 522(e) before its program can be approved. See Finding 21.1. The Federal requirement (30 CFR 761.11(c)) relating to "places eligible for listing on the National Register" was suspended (44 FR 67942). Kentucky's proposed program of June 12, 1980, is consistent with the Federal rules currently in effect. For additional discussion of suspended Federal regulations, the reader is referred to "General Background on the State Program Approval Process."

43. Comment: Kentucky's revised program 405 KAR 24:030E Section 8(2)(c) uses the language "mining operations *would* result" while the Federal requirement in 30 CFR 762.11(b)(3) specifies "mining operations *could* result." This inconsistency should be resolved in favor of the Federal requirement.

Response: The Secretary agrees. See Finding 21.7.

44. Comment: Kentucky's June 12, 1980, regulation 405 KAR 24:040E Section 2(6)(b) is inconsistent with the Federal requirement because it does not include the required notice of a public hearing at least two weeks before the public hearing.

Response: The Secretary agrees. The State will be required to revise the proposed program to include a provision consistent with the time requirement noted by the commenter. See Finding 21.2.

45. Comment: 405 KAR 24:040E Section 3 of Kentucky's June 12, 1980, proposed program, concerning requests to other agencies for determinations of whether proposed operations are located in areas where mining is prohibited under 405 KAR 24:040E Section 2, provides that, if an agency does not respond within 30 days, the department will presume that mining operations will not affect other agency lands in question. This regulation creates a presumption in favor of mining on lands the Federal regulations seek to protect, simply on the basis of a bureaucratic oversight in not responding within 30 days.

Response: The language added by Kentucky is consistent with the Federal requirement and merely reinforces the 30-day response period required by 30 CFR 761.12(b)(2). The Secretary assumes that, if information were submitted or became available after the 30-day period, the State would be required to use such information in the processing of a permit application. Otherwise, permit issuance by the State could result in violation of Section 522(e) of SMCRA which prohibits mining in certain areas and which is incorporated in 30 CFR Chapter VII, KRS 350.085, and 405 KAR Chapter 24.

46. Comment: 405 KAR 24:020 Section 3 fails to set forth that no party shall bear any burden of proof once the petition content requirements are met. This in inconsistent with 30 CFR 764.15(3).

Response: Kentucky's regulation 405 KAR 24:030E Section 3(4) is consistent with 30 CFR 764.15(3). Omission of the language "once the requirements . . . are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the regulatory authority pursuant to the procedures . . ." is not significant. Kentucky's procedures, as described in 405 KAR Chapter 24 and the narrative in State Program Section 731.14(g)(11) do not impose any burden of proof on the petitioner because 405 KAR 24:030E Section 7 provides that the hearing shall be legislative in nature which by definition means that it will not be adjudicatory in nature and no burden of proof shall apply.

C. Mr. Jai P. Prasad of Prasad Engineering, Inc., provided the following comments:

1. Comment: The term "complete reduction of highwall" should be revised to permit greater flexibility in accommodating local conditions and needs. The commenter did not make reference to a specific section of Kentucky's rules.

Response: The Federal law and regulations require complete elimination of the highwall. See 30 U.S.C. 1265(b)(3) and 1291(2). To conserve soil moisture, ensure stability, and control erosion, however, cut and fill terraces may be allowed on the reconstructed slope.

2. Comment: Kentucky's implementing legislation, KRS 350.070 Section 7, needs to be revised to specifically exempt permit revision requests which do not involve increasing permit acreage from the full array of application requirements.

Response: Kentucky's language is explicit in limiting reapplication to those permits which would increase the permit acreage. A negative declaration is,

therefore, not necessary to achieve the commenter's goal.

3. Comment: Kentucky should revise KRS 350.080 Section 5(7) to extend the deadline for filing the permit application until such time as hydrologic information on the general area is available. Filing within two months of State primacy, contends Mr. Prasad, may be unreasonable.

Response: Section 502(d) of SMCRA requires each operator who expects to be mining eight months after the State achieves primacy to have filed an application within two months after State program approval. See 30 CFR 771.21. In this regard, Kentucky cannot revise its legislation, as recommended, because it would provide requirements inconsistent with the Federal counterpart. Section 507(b)(11) of SMCRA shows that Congress explicitly addressed the problem of applications covering areas for which hydrologic data might not be available and prohibited permit issuance until such time as it is available. Operators should be making advance plans to fulfill the requirements for hydrologic information, to the extent possible, so that complete permit applications can be filed within the prescribed time limits. Small operators, in particular, are encouraged to request assistance from the State for acquiring and evaluating hydrologic data for their permit applications.

D. Mr. Charles Barnhart, representing a committee of scientists at the Kentucky Agricultural Experiment Station, Provided the following comments:

1. Comment: Kentucky's February 29, 1980, program (405 KAR 16:070 Section 2) should include a "catastrophic event" exemption to match the Federal interim exemption until a new provision for 30 CFR 816.42(b) is promulgated.

Response: Kentucky's resubmission of June 12, 1980, includes provisions for the "catastrophic event" exemption in 405 KAR 16:070E Section 2. Nevertheless, Kentucky's provision is inadequate. See Finding 13.3.

2. Comment: The Kentucky Cooperative Extension Service (Regulatory Services) should be the certifying agency for laboratories which will be designated to conduct soil testing, water testing, and overburden analysis. Further, the Kentucky DNREP should develop a memorandum of agreement (MOA) with the University of Kentucky, Colleges of Agriculture and Engineering, to participate in the development of experimental practices.

Response: Kentucky's approach to approving laboratories involves a review of laboratory personnel, facilities, financial status and equipment. This meets the Federal requirements in 30 CFR 795.17. That Federal requirement specifies that the laboratory demonstrate that it has the financial status, space, and staff capable of collecting necessary field data and making appropriate engineering determinations through the use of standard methods while meeting appropriate standards of the Occupational Safety and Health Administration. Although a MOA between DNREP and the Colleges of Agriculture and Engineering may benefit the effective implementation of surface mining laws and regulations in Kentucky, such a MOA is discretionary with the interested parties.

3. Comment: The U.S. Geological Survey should designate, in 405 KAR 8:040 Seciton 14 of Kentucky's February 29, 1980, submission, those areas where ground water is not a significant source of water supply and is, therefore, exempt from Section 14.

Response: The proposal suggested by the commenter exceeds the Federal requirements. The State may, at its discretion, use information from the U.S. Geological Survey in making determinations relating to water supply.

4. Comment: The review committee suggests that the requirements specified in 405 KAR 8:040 Section 15 of Kentucky's February 29, 1980, submission cannot be performed.

Response: This comment is too general for the Secretary to be responsive to the statement "the requirements cannot be performed." No alternatives or recommendations were provided. In reviewing the provisions of the section in question, the Secretary finds that the data required can be used to quantitatively and qualitatively evaluate the potential effects of surface coal mining activities on the surface and subsurface hydrologic regimes. Kentucky's regulation is consistent with the Federal requirements. Therefore, no changes are warranted for Kentucky's provision to be eligible for program approval.

5. Comment: The ground water recharge, as specified in 405 KAR 16:060 Section 4 of Kentucky's February 29, 1980, submission, cannot be determined.

Response: The Secretary assumes the commenter intended to address 405 KAR 16:060E Section 6 which concerns protection of ground water recharge capacity instead of Section 4 which concerns acid-forming and toxic-forming spoil. Section 6 is identical to 30 CFR 816.51 which does not require additional language in a State regulation to satisfy the Federal requirement; therefore, no change in Section 6 is required for program approval. The commenter appears to be saying that it is not possible to determine the ground water recharge capacity, but does not present any supporting evidence or explanation. Restoration of recharge capacity is specifically required by Section 515(b)(10)(D) of SMCRA. Further discussion of this regulation can be found in the preamble to the Federal rules at 44 FR 15171–15172 (1979).

6. Comment: The commenter suggests adding the language " unless such practice is commonly used on unmined land" at the end of the first sentence in 405 KAR 16:200 Section 6(2)(b) which states that the period of extended bond liability begins the last year of ". . . augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation . . . ." Such language is justified to determined the productivity of the revegetated land. Otherwise, there would be no real standard for comparison.

Response: The Secretary has asked that Kentucky clarify the husbandry practices which will be allowed without affecting the performance bond liability period. See Finding 18.5.

7. Comment: The review committee suggests that the Federal and State laws and the regulations should provide increased flexibility in the bonding requirements. Such flexibility is particularly necessary to encourage and promote research.

Response: The reader is referred to the response to a similar comment provided by the Soil Conservation Service (comment No. D.1 below, under comments from "Federal Agencies Outside Interior").

8. Comment: The duties of the Reclamation Materials Section under the narrative descriptions in State Program Section 731.14(e) are not well defined, and it is hoped that this office will do more than maintain a library.

Response: It is assumed that the commenter is referring to the technical services branch of the Division of Standards and Specifications. The Secretary finds that the duties of that branch, when considered with the remainder of the information on the Division of Standards and Specifications, are adequately defined.

E. IMC Coal Development Corporation raised the following six issues which are answered below in one response:

Comments

1. In narrow, steep-sided, steep gradient valleys where it is impossible to obtain the storage volume for both sediment and runoff adequate for the 10-year 24-hour precipitation event without building a dam so large that it will cut off and inundate roads, stockpile areas

and mine portals, can a variance be granted? If so, what criteria will be used in assessing the variance and what additional conditions will be imposed on the use of smaller dams.

2. Will an existing railroad coal loading siding located almost entirely on the railroad company's property and four miles by public road from the nearest mine operation have to be permitted? If so, how can details such as sediment control structures be handled when such a siding is a small part of a complex of six or seven other sidings owned by different companies plus a large amount of track owned by the railroad? Will a common permit have to be taken out by all companies concerned if a permit is required?

3. The regulations imply that huge amounts of information pertaining to ground water in the mine plan area must be obtained. In a typical area that we wish to permit, there are no houses, no wells, and all mines that are or have been in operation are either dry or have a natural water flow no greater than a few tens or hundreds of gallons per day. In such a case, are we really expected to drill and test numerous holes in a search of aquifers that do not exist?

4. In a case where a permit is taken out for a strip and auger mine, and an area of this is designated as the portal site for an underground mine that may not start operation for a period of several years after the strip mine passes by, can this individual area be the subject of an underground mining permit and be left unbackfilled and ready for mining operations? The future operator of the underground mine would bond and permit the area to be used for this mine at the time the strip miner completed all but the backfilling work.

5. How detailed must this information be in the case of underground mine surface disturbance permits? If possible, give some examples.

6. Is the permittee expected to return existing highwalls to the original contour at mine portal sites where the spoil from the original excavation has long since been lost?

Combined Response: IMC's questions do not specifically address the Kentucky proposed program. To the extent that these questions address basic requirements of SMCRA and the implementing Federal regulations, review of the proposed Kentucky program is not the appropriate forum for discussing these issues. Therefore, a response was sent directly to IMC Coal Development Corporation by the OSM Regional Office in Knoxville. (See Administrative Record No. KY–306.)

F. The University of Kentucky, Cooperative Extension Service, commented as follows:

1. Comment: Why has the requirement to have topsoil variances certified by a soil scientist been deleted from 405 KAR 16:210 and other pertinent regulations? This is divergent from OSM regulation 816.113 (*sic*). Why should such decisions be left only to engineers in the Kentucky regulations?

Response: The Secretary believes the commenter intended to cite 30 CFR 816.133 instead of 816.113. Neither Kentucky's February 29, 1980, submission nor the revised submission of June 12, 1980, require "certification of topsoil variances by a soils scientist." Likewise, the comparable Federal regulation, 30 CFR 816.133, does not require such certification. It should also be noted that 30 CFR 816.22(e) and its counterpart 405 KAR 16:050E Section 2(5) authorize the use of topsoil substitutes and supplements. Such "variances" are based on the results of independent laboratory analyses.

2. Comment: Why have only registered professional engineers been designated responsibility for vegetative cover in 405 KAR 16:210 and other related sections? This specification diverges from OSM regulations 816.113 (*sic*) and other regulations in that they at least specify "other appropriate professionals."

Response: The Secretary believes the commenter intended to cite 30 CFR 816.133 instead of 816.113. Kentucky's June 12, 1980, revised program relating to the design of postmining land use (405 KAR 16:210E Section 4(5)) is consistent with 30 CFR 816.133(c)(5). Kentucky's regulation would restrict design of the plan to the general supervision of a registered professional engineer. Federal requirements, on the other hand, would also permit design under the general direction of an "appropriate professional."

Further, both the Federal and State regulations require only design of the plan under the general supervision of the specified professionals. This does not prohibit or restrict the development and approval of individual plan components (e.g., soil replacement, revegetation, wildlife program, etc.) by experts in those disciplines. Overall responsibility for the plan would, however, be the responsibility of the registered engineer.

3. Comment: Another problem that appears to exist concerns experimental practices. It seems that the regulations will require a research agency to advertise any experimental practice the same as it would a permit application or land use change and have hearings for anyone who wished to discuss such practices. This would seem to be a deterrent to furthering research efforts in the future.

Reponse: 30 CFR 785.13 does not authorize procedures which "shortcut" the public participation requirements intended under SMCRA. Therefore, the Secretary believes that Kentucky's June 12, 1980, revised program, as it relates to experimental mining practices, is consistent with Federal requirements, to the extent the Kentucky proposal parallels the public participation provisions of 30 CFR 786.11. The Secretary does not believe that public participation is a deterrent to viable, well-planned experimental research efforts.

G. The following comments were provided on July 23, 1980, by Mr. Bill Caylor representing the Kentucky Coal Association:

1. Comment: Mr. Caylor commented that relative to an OSM meeting in Knoxville, Tennessee, on July 18, 1980, involving representatives of several environmental and/or anti-coal groups to discuss proposed State programs, it seemed special ground rules had been made for favored groups. The commenter also alleged there was no proper notice of this meeting.

Response: The July 18, 1980, meeting involved participants from a diversity of interests including coal industry, State regulatory authority, a State legislator, environmental groups and a public information organization. A complete list of attendees is available from minutes of the meeting contained in Kentucky Administrative Record No. KY–237. OSM Guidelines for Post-submission Contacts between the Department of the Interior, the State, and the public fully provide that "upon request, the Department will meet with any public representatives—citizens, environmental groups, industry—through the end of the public comment period. Notice of scheduled meetings shall be posted in a public place. The meetings will be open." Notice of the meeting was posted in the administrative record room. The Secretary believes that the Knoxville July 18, 1980, meeting was conducted in full compliance with the aforementioned guidelines

2. Comment: The commenter stated that relative to Kentucky's revised program submission of June 12, 1980, the DNREP fails to follow the directives of the December 21, 1979, February 26, 1980, and May 16, 1980, U.S. District Court decisions which ordered the Secretary of the Interior to affirmatively disapprove those sections of a State program that incorporate suspended or

remanded regulations. The commenter also notes that the July 10, 1980, U.S. Court of Appeals decision concluding that the Secretary lacks power to demand that States require more permit application information than Sections 507 and 508 of P.L. 95–87 should necessitate DNREP to withdraw and repromulgate all 40 KAR Chapter 8 permit related regulations.

Response: Kentucky's program revision of June 12, 1980, contains several sections which have been interpreted to incorporate inconsistencies with the aforementioned court decisions. Accordingly, the Secretary has affirmatively disapproved the portions of Kentucky's regulations identified in the Secretary's decision. The July 10, 1980, U.S. Court of Appeals decision was vacated, when the full court voted to rehear the case, by order entered August 25, 1980.

3. Comment: The commenter states that the Kentucky DNREP had acted responsibility in enacting primacy legislation and that the enacted legislation has all the statutory authority required to implement a permanent program.

Response: The Secretary concurs that the Kentucky DNREP has acted responsibly in assisting the State legislature in enacting primacy legislation. However, as reflected in Findings 1, 2 and 4, statutory authority in some key areas is still lacking to fully implement the provisions of SMCRA.

Mr. Bill Caylor submitted into the record a 260-page set of comments from the Kentucky Coal Production Industry Advisory Group (Administrative Record No. 261). This document represented the testimony of one of three advisory groups to DNREP during formulation of the initial State program proposal. The references to the Kentucky rules in these comments are not to the June 12, 1980, rules but to earlier versions. Accordingly, the citations are not always current. These comments are addressed by the following numbers 4 through 39.

4. Comment: It is recommended that the Department suspend all of those regulations from the permanent program which were suspended in the Tuesday, November 27, 1979, **Federal Register** Vol. 44, No. 229, p. 67942, *et seq.;* and the Monday, December 31, 1979 **Federal Register** Vol. 44, No. 251, p. 77448, *et seq.*

Response: The Kentucky revised submission of June 12, 1980, does not contain the suspended requirements. Also see comment No. G.2 above to Mr. Caylor.

5. Comment: The advisory group recommends that the Chapter 7:020 definitions be changed to read identical to those definitions in the Federal permanent regulations. Even though many of these definitions are similar in intent, a very serious problem could arise if certain Federal definitions were overturned by the courts or suspended by OSM. A Federal change might require litigation on the State level initially just to determine that Kentucky's definitions were in fact similar in intent before the regulations could be revised reflect the Federal changes.

Response: Finding 12.2 addresses State regulations that are inconsistent with definitions in 30 CFR Chapter VII. It should be noted, however, that OSM will promulgate new definitions for those suspended and remanded. After final promulgation, the State will be provided a reasonable time to amend its program to include definitions consistent with the new Federal definitions. As to Kentucky's other definitions, the Secretary does not require a State to copy the Federal rules and believes that Kentucky has fully complied with the intent of SMCRA and the Federal regulations in using its own language, where it deemed appropriate, except for certain of the definitions discussed in Finding 12.2.

6. Comment: In 405 KAR 7:020 the definition of "affected area" should be changed as follows: "Affected area" means any land or water upon which surface coal mining and reclamation operations are conducted or located, and land or water which is located *within the surface disturbed areas of* underground mines.

Response: The suggested revision would be inconsistent with 30 CFR Chapter VII which specifically includes all areas overlying underground mines. The definition found in 405 KAR 7:020E Section 1(5) in the June 12, 1980, submission is consistent with the definition of 30 CFR 701.5.

7. Comment: In 405 KAR 7:020 the definition of "fragile lands" is more stringent than the minimum Federal requirements. The advisory group recommends deleting the reference to "wetlands" in this definition and substituting the words "areas where mining may cause flooding."

Response: The State definition (405 KAR 7:020E Section 1(47) of the June 12, 1980, submission) is acceptable and is not more stringent than Federal regulations. "Wetlands" is an example of the type of land which would be covered by both the Federal and State definition. The suggested change would make the Kentucky language mirror exactly the phrase in the Federal definition of "fragile lands" found in 30 CFR 762.5; however, the secretary does not find this necessary for program approval.

8. Comment: The definition of "unwarranted failure to comply" does not conform to P.L. 95–87 Section 701(29). The commenter recommends deleting subsection (b) in its entirety and substituting the following: "the failure to abate any violation of the permit or of KRS 350."

Response: The Secretary believes the suggested revision is not necessary because the Kentucky definition in 405 KAR 7:020E Section 1(141) is not inconsistent with SMCRA. Kentucky's standard of complying with any notices or orders is essentially the same as and subsumes the language and intent of SMCRA, i.e., "failure to abate any violation."

9. Comment: The advisory group recommends deleting the words "or any notice or order of the department" from the definition of "willful violation." This change would bring this definition into conformity with the definition of "willful violation" contained in the 30 CFR 786.5. There are circumstances which might result in the DNREP issuing a notice or order which is "directory" in nature and not a result of a violation of a permit condition or a violation of KRS 350. In such a case, the refusal of an operator to comply with such notice or order should not be classified as a "willful violation."

Response: The Secretary disagrees. As used throughout the Kentucky program, "notice" and "order" have been associated with formal written documents based on specific violations of KRS 350, 405 KAR Chapters 7 through 24, or permit conditions. The Secretary believes this is also the intent of the terms as they are used in the definition of "willful violation."

10. Comment: The definition of "best technology currently available" should be changed to substitute "practicable" for "possible" in the third line and the phrase "but in no event . . . Kentucky or Federal laws" should be deleted.

Response: The Secretary believes that there is no substantive difference between "practicable" and "possible" in this context, and will require no change. The second recommended change would make the State definition inconsistent with 30 CFR Chapter VII and with the explicit language of Section 515(b)(10)(B)(i) of SMCRA which says that in no case should contributions of suspended solids "be in excess of requirements set by applicable State or Federal law." The Secretary finds the Kentucky definition in 405 KAR 7:020E Section 1(14) consistent with the Federal requirements.

11. Comment: Under 405 KAR 7:020(19), "coal exploration," subsection (14)(b) should be deleted in its entirety.

Response: Kentucky defines "coal exploration" in 405 KAR 7:020E Section 1(19) of its June 12, 1980, submission. The recommended change would eliminate field gathering of environmental data from the definition and would therefore be inconsistent with 30 CFR 701.5 which includes this type of field activity as coal exploration.

12. Comment: 405 KAR 7:020(15), "coal processing plant," should be changed by substituting "and" for "or" to read as follows: "Coal processing plant means a collection of facilities where run-of-the-mine coal is subjected to chemical *and* physical processing and separated from its impurities."

Response: The suggested change would make the State definition, now found in 405 KAR 7:020E Section 1(20), inconsistent with the Federal definition in 30 CFR 701.5 since plants which only physically process coal (by crushing, for example) would be excluded from the special regulations applicable to preparation plants.

13. Comment: 405 KAR 7:020(16), "coal processing waste," should be deleted in its entirety and the following definition should be substituted: "Coal processing waste means those high volume, low hazard earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal."

Response: The Kentucky definition, now found in 405 KAR 7:020E Section 1(21), is consistent with the Federal definition. The proposed change could lead to too narrow of an interpretation because of the phrase "those high volume, low hazard," which does not appear in the Federal definition, and which might exempt highly toxic materials or those produced in moderate volume during processing.

14. Comment: Under 405 KAR 7:020(18), "combustible material," the advisory group recommends adding "organic" before the word "material" and deleting the words "either by fire or" from this definition.

Response: The addition of the word "organic" would not make the definition inconsistent with the Federal rule nor would deletion of the words "either by fire or" so long as the criterion that burning be accompanied by evolution of heat remains in the State definition. The Secretary finds the State's definition in 405 KAR 7:020E Section 1(23) acceptable, and the suggested change would be at the State's discretion.

15. Comment: 405 KAR 7:020, "downslope," should be changed to read as follows: "Downslope means the land surface below the projected outcrop of the lowest coal bed *to be mined."*

Response: The State definition (405 KAR 7:020E Section 1(37)), which says "being mined" instead of "to be mined," uses the same words as 30 CFR 701.5 and no change is required.

16. Comment: Under 405 KAR 7:020 (405 KAR 7:020E Section 1(38) of the June 12, 1980, submission), "embankment," the advisory group recommends changing the words "artificial deposit of material" to "man-made deposit of material."

Response: The recommended change would have no substantive effect on the definition and is not required.

17. Comment: Under 405 KAR 7:020(36), "fragile lands," the advisory group recommends deleting the words "ground water discharge areas" and "and important unique or highly productive soils or mineral resources." Ground water discharge areas" would include any piece of land and "highly productive mineral resources" could include coal. The Kentucky Coal Association also recommends this change in 405 KAR 24:010 Section 1(2).

Response: "Ground water discharge areas" was deleted in the June 12, 1980, revised submission. The second suggestion has merit, but since the language is in the category of items that "may" be determined as fragile lands (405 KAR 7:020E Section 1(47)), the Secretary does not consider a change necessary.

18. Comment: Under 405 KAR 7:020, "historic lands," the commenter recommends deleting the words "or eligible for listing on" from this definition to be consistent with the suspension of the Federal language in the Tuesday, November 27, 1979, **Federal Register.** The Kentucky Coal Association also suggests this deletion from 405 KAR Kentucky Coal Association also suggests this deletion from 405 KAR 24:010 Section 1(3).

Response: The suggested change would make the State definition (which now appears in 405 KAR 7:020E Section 1(57)) inconsistent with 30 CFR 762.5. The language "or eligible for listing on" was suspended only from 30 CFR 761.11(c) and 12(f)(1) because these sections related to the designation of lands unsuitable under Section 522(e) of SMCRA. The term "eligible for listing on" is still relevant in defining historic lands for purposes of considering petitions under Section 522(a) and (c) of SMCRA.

19. Comment: Under 405 KAR 7:020(47), "historically used for cropland," the commenter recommends deleting this definition in its entirety or using the Federal definition of "cropland" as contained in 30 CFR 701.5.

Response: The recommended deletion would be inconsistent with 30 CFR 701.5 where the term is defined in order to specify which prime farmlands are subject to special performance standards, through the definition of prime farmland in SMCRA Section 701(20). (The Kentucky definition is now found in 405 KAR 7:020E Section 1(58).)

20. Comment: Under 405 KAR 7:020(63), "notice of violation," the advisory group recommends changing this definition to read as follows: "Notice of violation means any written notification from a *duly authorized representative of the department* of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication." This change would clarify the intent of this definition and avoid any possible abuse, such as a "speeding ticket" being considered a notice of violation.

Response: The State definition in 405 KAR 7:020E Section 1(75) uses the words "governmental entity," instead of those italicized above, which are the same words as those of the corresponding Federal definition in 30 CFR 770.5. The suggested change would make the State rule less stringent than the Federal requirements, since operators would not have to reveal, on their permit applications, notices issued in other States or by other agencies, such as the Environmental Protection Agency, as required under 30 CFR 778.14(c).

21. Comment: The advisory group recommends deleting the definition of "prime farmland" from 405 KAR 7:020 and substituting the definition of "prime farmland" contained in P.L. 95–87 Section 701(20). The commenter feels that the Federal regulations have exceeded the intent of the Federal law and that the Kentucky DNREP should not reflect this same ineptitude.

Response: The Kentucky program is consistent with 30 CFR 701.5 and no change is required by the Secretary.

22. Comment: The advisory group recommends deleting "probable hydrologic consequence" from the definitions in 405 KAR 7:020. This is a new definition and the commenter feels that the State has no justification for defining it.

Response: 30 CFR 795.5, small operator assistance program, includes this definition and the State regulations contain a definition consistent with this

requirement in 405 KAR 7:020 Section 1(96).

23. Comment: The advisory group recommends changing the definition of "public road" in 405 KAR 7:020 to reflect the suspension of the Federal definition in the November 27, 1979, **Federal Register**, p. 67942.

Response: This State definition reflects the intent of the suspension and is consistent with Section 522(e)(4) of SMCRA. Therefore, no change is required by the Secretary.

24. Comment: In 405 KAR 7:040 Section 3, disposal of materials, the commenter recommends adding the word, "a" before the word "permit" so that offsite spoil disposal in another permitted area would be allowed.

Response: This change is not required by 30 CFR Chapter VII. Adoption of this revision is left to the State's discretion. Either version would be consistent with the Federal rules.

25. Comment: 405 KAR 7:040 Section 5(2)(c)(1) should be considered acceptable as it provides for a variance from the 6 month time period for modifying an existing structure. There are certain operations which could not comply with the absolute 6 month deadline. An example might be the effort to bring a coal waste pile into compliance by the addition of extra coal waste for support, when such extra coal waste is available only over, say, a one year period.

Response: The variance allowed by the State section is inconsistent with 30 CFR 786.21. See Finding 14.30.

26. Comment: 405 KAR 7:040 Section 6, hazard classifications for impoundments, should be deleted in its entirety. This language is not contained in the Federal law or regulations; therefore, it should be deleted in order that it be no more stringent than the Federal requirements. The commenter recognizes that this language comes from the Water Resources Division but deletion will not affect the proper application by that division. Section 9 requires compliance with these regulations regardless.

Response: The Secretary does not believe that incorporation of other State regulations affecting coal operations affects the stringency of the State program so long as they are consistent with the requirements found in SMCRA and 30 CFR Chapter VII. Accordingly, the Secretary will not require modification of Kentucky's program based on this comment.

27. Comment: Under 405 KAR 7:040, general obligations of operators and permittees, Section 10 should be revised to add exemptions for preexisiting face-up areas for underground mines where such material does not exist.

Response: The suggested exemption may be found in 405 KAR Section 18:090E Section 2.

.28. Comment: The advisory group recommends establishing a new section under 7:090, hearings, to provide for an informal settlement conference which would be an informal review hearing process whereby the parties would know, in advance of the informal settlement conference, the penalty amount and can possibly settle any violation short of following formal hearing procedures.

Response: The June 12, 1980, program revision includes provisions for an informal conference.

29. Comment: In 405 KAR 7:090 Section 3(3)(d), "seven (7) days" should be changed to "thirty (30) days."

Response: The June 12, 1980, revised submission includes this change.

30. Comment: In order to expedite review of a closure situation, the commenter recommends changing 405 KAR 7:090 Section 6 to read as follows: "Orders to abate and alleviate. Whenever . . . the department shall conduct a hearing *immediately but in no event later than five (5) days* after such an order and give . . . ."

Response: The existing State language is not inconsistent with Federal requirements, and no change is necessary for the Secretary to approve this provision. The State regulation provides that a hearing may be conducted at any time prior to the expiration of 10 days, upon request, and is thus consistent with Section 525(c) of SMCRA and 43 CFR Section 4.1260 *et seq.* Moreover, 405 KAR 7:090E Section 6(4)(b) provides for the granting of temporary relief within 5 days of such request.

31. Comment: 405 KAR 7:090 Section 6(2)(*sic*), which specifies who may request a mine site hearing, should be changed to include "or operator" immediately after "party."

Response: The June 12, 1980, revision includes the suggested revision in 405 KAR 7:090E Section 7(2).

32. Coment: The advisory group recommends deleting the last sentence of 405 KAR 7:090 Section 9(1) relating to the assessment of a civil penalty for each day of violation.

Response: The Secretary disagrees with this suggestion. SMCRA Section 518(a) permits each day of a continuing violation to be deemed a separate violation for purposes of penalty assessments. 405 KAR 7:090 Section 9(1) is consistent with that requirement.

33. Comment: 405 KAR 7:090 Section 8(2) should be revised to include a new sentence as follows: "The hearing officer shall include justification for the penalty assessed in his final written report."

Response: The revised program submission of June 12, 1980, includes similar language, which is consistent with the Federal requirements.

34. Comment: The State regulation provides that hearing officers may "require in an order, agreed settlement order, consent order, or stipulation" a person or permittee to "abate, repair, alleviate and prevent" violations of KRS Chapter 350, Title 405 Chapters 7 through 24, and any permit condition found to exist. The commenter asserts that the language "and prevent" places an arbitrary and undue burden on the operation by subjecting the operator to two different penalties for the same occurrence.

Response: The Secretary disagrees. Prevention of violations of KRS Chapter 350, regulations promulgated thereunder and permit conditions can hardly be an arbitrary and undue burden on an operator particularly where, for example, adherence to the admonition avoids the issuance of notices of violation and/or cessation orders to the operator. Moreover, the Secretary disagrees that the operator is subjected to two different penalties. A violation of the hearing officer's admonition to "prevent" violations of KRS Chapter 350, the regulations thereunder or permit conditions could only result in appropriate enforcement action by DNREP field inspectors under KRS 350.130 and 405 KAR 12:020E in any event. All appropriate penalties, for all violations, must be assessed pursuant to KRS 350.990 and 405 KAR 7:090E. Further, the Secretary disagrees that there are "two different penalties for the same occurrence" because hearing officers do not have authority to impose penalties independent of, or in addition to, KRS 350.990 and 405 KAR 7:090E.

35. Comment: The commenter makes several suggestions relative to the penalty point system under 405 KAR 7:090 Sections 9 and 10 as presented in the February 29, 1980, submission.

Response: Since the June 12, 1980, revised submission does not include a penalty point system, these comments are no longer relevant.

36. Comment: 405 KAR 7:090 Section 11(1) and 11(2)(a) should be changed as follows: "(1) Any person . . . shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than five thousand ($5000) for said violation" and "(2)(a) Whenever a violation . . . an additional civil penalty of not less than *$100* nor more than $1000 shall be assessed."

Response: The recommended changes would not be consistent with SMCRA Section 518 which allows each day of violation to be considered separately for the purposes of penalty assessment and established $750 as the minimum penalty for each day that a failure to abate exceeds the ordered abatement period.

37. Comment: 405 KAR 7:090 Section 11(2)(b), penalties, the advisory group recommends adding the Federal language contained in 30 CFR 845.15(b)(2) stating that a daily penalty shall not be assessed before entry of a final order by the court when the obligations to abate are suspended by the court.

Response: The Secretary believes that the omission of this language does not render the State regulation inconsistent with SMCRA or the Federal rules. Adoption of such a change is left to the State's discretion.

38. Comment: The advisory group recommends adding a new section to expedite review of non-compliance orders upon the operator's request. This new section would read similar to 405 KAR 7:090E Section 5 and be for the purposes of challenging unreasonable abatement periods and remedial actions issued by the department.

Response: The recommended change is not inconsistent with the Federal requirements nor is the Kentucky program, without such provisions, and the State will not be required by the Secretary to make the change.

39. Comment: The Kentucky Coal Association (KCA) states that Sections 8:030 and 8:040 should be withdrawn. These sections are based on 30 CFR Parts, 778, 779, 780, 782, 783 and 784 which have been remanded by the court. Regulations adjudicated by the court as being invalid should, therefore, not be given approval.

Response: The Secretary assumes that commenter is referring to the July 10, 1980, U.S. Court of Appeals decision. That decision was vacated on August 25, 1980, and the Court of Appeals for the District of Columbia is rehearing the case. Unitl such time as the court renders a decision, the Secretary will require State programs to include all Federal permit requirements in effect.

40. Comment: The KCA recommends that 405 KAR Chapter 8 reflect the U.S. District Court order of February 26, 1980, in regard to "mine plan area."

Response: The Secretary believes the Kentucky revised program correctly reflects the court decision by eliminating use of this term.

41. Comment: All references to engineers in 405 KAR 8:010 should be made consistent throughout. This would eliminate the discrepancies caused by alluding to the engineer as "qualified registered professional engineer," "a professional engineer," etc.

Response: Consistency in terminology is desirable; however, the Secretary believes that the suggested change is not necessary to the effective implementation and administration of surface mining laws and regulations in Kentucky.

42. Comment: The KCA believes that the second sentence of 405 KAR 8:010 Section 3(2)(c) should be changed to read "The department shall . . . in the process of the review, *but not to exceed 60 days.*" This change will shorten the process and keep it reasonable.

Response: The Secretary believes the time limits set by Kentucky's proposed program are reasonable. As noted in 405 KAR 8:010 Section 20(3)(a), minor revisions must be processed within 15 working days. Major revisions, under most circumstances, will have to be processed within 65 working days (405 KAR 8:010 Section 16(1)(b)).

43. Comment: The KCA recommends either deleting the words "U.S. Geological Survey 7½ minute" *or* adding "or equivalent" after these words in 405 KAR 8:010 Section 8(5)(b)(3), which relates to the name of maps required in newspaper notices of permit application filings. In most cases an enlarged map will be more appropriate. Additionally, many Geological Survey topographical maps are inaccurate. P.L. 95–87 does not require *only* a 7½ minute topographical map.

Response: Increased flexibility in determining the type and scale of maps to be submitted with the permit application has merit and should be considered by the State. However, Kentucky's provision is not inconsistent with the Federal requirement found in 30 CFR 786.11(a)(2)(iii) and thus change is not required for approval of the provision.

44. Comment: The KCA recommends shortening the 21-day waiting period for an on-site investigation of the proposed permit area to a 10-day period. The 21-day time period, currently specified in 405 KAR 8:010 Section 4, is only an additional delay between the initiation of a permit and its final approval. Since, in this situation, the State needs to do little to prepare to "walk a permit," the KCA feels that 21 days are not justified.

Response: There are no Federal requirements relative to a time period before an on-site investigation. Therefore, the 21-day provision may be retained at the State's discretion.

45. Comment: 405 KAR 8:010 Sections 5(3)(a), (b), (c) should be revised to indicate that "All technical date submitted in the application shall be supported by records maintained by the operator which includes." This change is justified, asserts the KCA, because it is not required under Federal law or regulations. Also, as a practical matter, this is excessive, needless, and unreasonable.

Response: Kentucky's regulation is identical to and consistent with 30 CFR 771.23(c)(1), (2), and (3). The suggested change would make the regulation less stringent than the Federal counterpart because it would not require information that is relevant to the validity of information in the permit application to be submitted as part of the application and consideration by the DNREP and the public.

46. Comment: 405 KAR 8:010 Section 5(4) should be deleted in its entirety. This provision relates to the identity of outside experts consulted by the permit applicant. This requirement is excessive and has no legitimate bearing on the proper evaluation of a permit application.

Response: This section of Kentucky's regulations is required by 30 CFR 771.32(d). The suggested deletion from the Kentucky program would result in less stringent requirements than the Act and Federal regulations.

47. Comment: The KCA recommends deleting the 15-day requirement for submitting the affidavit from the newpaper, as stated in 405 KAR 8:010 Section 8(3). There are many instances where a 15-day period might not be sufficient.

Response: Kentucky's regulation, as it relates to the 15-day period, is not inconsistent with the Federal counterpart, 30 CFR 778.21. The suggested change may be adopted at the State's discretion.

48. Comment: 405 KAR 8:010 Section 8(6) should be revised to require the department to issue written notification of an applicant's intent to surface mine within 5 days. This change would ensure timely written notification.

Response: Kentucky's regulation is consistent with 30 CFR 786.11(b) which, like the Kentucky rule, stipulates no specific time limit. The use of a specified period for written notification is not required for program approval but would not be inconsistent with the Federal requirement.

49. Comment: The KCA recommends deleting the requirement for an "affidavit from the publishing newspaper" that the notice of application filing was published and substituting "copy" in 405 KAR 8:010 Section 8(3).

Response: This provision of Kentucky's regulations is not

inconsistent with the Federal requirement that a copy of the notice and a proof of publication be submitted. Therefore, use of the suggested language is left to the discretion of the State.

50. Comment: 405 KAR 8:010 Section 8(5) should be deleted in its entirety due to the specificity of Pub. L. 95–87 Section 507(b)(6) as to the contents of the advertisement regarding the filing of permit applications. Kentucky's requirement exceeds the intent of the law.

Response: The proposed deletion would result in an inconsistency with SMCRA Section 507(b)(6) and with 30 CFR 786.11(a) since the State program would not specify any requirements for information to be placed in the advertisement. 30 CFR 786.11(a) specifies the minimum data the State must ensure is in the advertisement. Any further requirements are at the option of the DNREP.

51. Comment: 405 KAR 8:010 Section 8(8)(a) should be revised to include language which would protect the confidentiality of certain materials submitted with the complete permit application.

Response: Confidentiality of information contained in the permit application is protected under Kentucky's regulation 405 KAR 8:010E Section 12. Therefore, the suggested revision is not necessary.

52. Comment: To clarify the intent of 405 KAR 8:010 Section 9(2) concerning comments on a permit application, the KCA recommends adding a sentence which reads: "Comments received after this 30-day period will not be reviewed by the department."

Response: The suggested language would not be inconsistent with 30 CFR 786.12(b). Whether or not to make such revision is left to the State's discretion because Kentucky's regulation is as stringent as the Federal requirement.

53. Comment: The KCA indicates that 405 KAR 8:010 Section 11(2) should be revised to include a 30-day time limit for scheduling an informal conference, unless additional time is justified. Additionally, language should be added to the effect that "the objector shall have the burden of proof." These changes would avoid unjustified delays brought about by frivolous complaints. As with all proceedings before an administrative body, definite time constraints should be applied to eliminate abuse of discretion and to add as many explicit constraints to procedural matters as possible. As such, the 30-day period sets a reasonable procedural time frame, and the language "unless additional time can be justified by the applicant" provides any needed flexibility under unusual circumstances. The KCA further feels that the burden of proof must be placed on a complainant so that the hearing officer may know which party must go forward at the hearing to establish a basis for his decision.

Response: The Secretary finds that Kentucky's regulation is consistent with Federal requirements found in 30 CFR 786.14. Inclusion of a specified time period, as suggested by the commenter, is, therefore, left to the discretion of the State. However, placing the burden of proof on the complainant would be inconsistent with the public involvement requirements of SMCRA and the Federal regulations. SMCRA requires that permittees establish their eligibility for a permit. This burden of proof cannot be shifted merely because an interested citizen requests an informal conference on the operator's application.

54. Comment: The KCA recommends deleting the words "and copying" from 405 KAR 8:010 Section 12(1).

Response: Kentucky's regulation is consistent with 30 CFR 786.15(a), which requires that applications be available "for public inspection *and copying*." Therefore, the suggested change is unnecessary.

55. Comment: 405 KAR 8:010 Section 13(1)(a) should be revised to limit the period for the initial completeness determination to "ten (10) days" in lieu of "twenty-one (21) days." This change should provide adequate time for the DNREP.

Response: The separate, initial completeness determination is not a Federal requirement but is not inconsistent with SMCRA and the Federal regulations. Under 30 CFR 786.19(a), the determination of completeness may be made any time before the permit is issued. Therefore, the suggested change can be made at the discretion of the State.

56. Comment: 405 KAR 8:010 Section 13(1)(b)(2) should be revised by inserting the word "immediately" preceding the word "notify" in the first sentence. This provision relates to DNREP notifying applicants of deficiencies in permit applications. Past experience, asserts the KC, has shown excessive delays in this notification.

Response: The suggested change is not required. Kentucky's regulation is consistent with Federal requirements. Furthermore, Kentucky's regulation explicitly states that DNREP will "notify the applicant . . . promptly upon discovery." This would indicate that Kentucky is required to provide expeditious notification of any deficiencies in the permit application.

57. Comment: The KCA believes that 405 8:010 Section 13(3) should be deleted in its entiretly because this information will already have been furnished under 405 KAR 8:030 Section 3(3) and constitutes duplication of effort.

Response: Kentucky's regulation is consistent with the Federal counterpart, 30 CFR 786.17(c)(1). 405 KAR 8:010E Section 13(3) itself references 405 KAR 8:030E Section 3(3) and states what *further* information must be submitted by the applicant if the list submitted under 405 KAR 8:030E Section 3(3) shows that there are current violations outstanding.

58. Comment: 405 KAR 8:010 Section 14(3) should be amended by deleting the word "general" and inserting in its place "applicant's mine plan." This provision relates to DNREP's assessment of the cumulative impacts of all mining in the general area, prior to issuing a permit. This change would make the determination easier on the State and clarify intent. Additionally, any operator cannot be reasonably expected to forecast what other mining companies in the area can be expected to do.

Response: Kentucky's regulation is consistent with 30 CFR 786.19(c). Further, the intent of this regulation is to provide for an evaluation of cumulative impacts of all anticipated mining operations in the area. The language proposed by the commenter would focus on the applicant's mine plan area which would provide only a very narrow assessment of probable impacts. This would be in direct conflict with the requirements for a broader assessment found in Sections 507(b)(11) and 510(b)(3) of SMCRA.

59. Comment: The KCA recommends adding the language "Provided such required information or assessment by the department is not available to the department, then such lack of information shall not be grounds for denying the permit" to the end of 405 KAR 8:010 Section 14(3). This clarifies the intent of this section and of H.B. 566 Section 5(8). The change would result in not delaying issuance of permits where hydrologic data was not available for the general area.

Response: The suggested language would contradict SMCRA and the Federal regulations. The lack of information should not automatically be considered a justifiable reason or grounds for issuing a permit. One of the principal purposes of SMCRA is to protect the hydrologic balance. Therefore, the regulatory authority must be reasonably sure that the information on hydrologic resources is adequate before a permit is issued. Section 507(b)(11) of SMCRA explicitly provides

that "the permit shall not be approved until such information is available and is incorporated into the application."

60. Comment: The KCA recommends deleting the words "and this need is confirmed, in writing, by the applicant's proposed source for the financing" from the end of 405 KAR 8:010 Section 17(1)(b). This is not required by P.L. 95–87 Section 506(a).

Response: This provision relates to evidence to be presented to DNREP to support the applicant's contention that a permit term longer than five years is necessary to finance the mine. Kentucky's regulation is consistent with 30 CFR 786.25(a)(2), which explicitly requires this written confirmation. The Secretary believes that confirmation in writing is appropriate to demonstrate that a longer, fixed term is needed, as required by Section 506(b) of SMCRA.

61. Comment: The KCA requests clarification of who constitutes the "department" as used in 405 KAR 8:010 Section 19, Department Review of Outstanding Permits.

Response: 405 KAR 7:020E Section 1(33) defines the term "department" as the Department of Natural Resources and Environmental Protection.

62. Comment: 405 KAR 8:010 Section 20(3) should be revised by adding the language "as set forth in section 13" to the end of the sentence. This change would clarify any vagueness.

Response: Kentucky's proposed program of June 12, 1980, revised this section. The revision is consistent with Federal requirements.

63. Comment: The KCA recommends that major revisions be reviewed within 30 working days instead of 65 working days, as specified in 405 KAR 8:010 Section 20(3)(b). Permit revisions are normally requested during the course of operations and may be mandated by an inspector as a remedy for a violation. As such, the need for reviewing is greater for revisions than for original permits. It only follows that a shorter review time (30 working days) should be allowed for a major revision.

Response: Kentucky's regulation is consistent with 30 CFR 778.12, which requires decisions on revisions to be made "within a reasonable time." Therefore, any change in the time for review of a permit revision is left to the State's discretion.

64. Comment: 405 KAR 8:010 Section 20(4) needs to include a new section on incidental boundary changes. Many surface disturbances of underground mines are insignificant, such as ventilation shafts, boreholes, etc. That being the case, if the operator wants to add a small haul road or sink a new ventilation shaft, does this "extension of his permit area" qualify as incidental? The commenter also states that H.B. 566 Section 5(15), page 24, requires that the department only permit those areas overlaying the underground workings affected by the operation. The underground miner should be allowed to add a haul road or other "extension" when this extension is proportionally quite large in respect to his permitted area.

Response: The Federal regulations do not define the term "incidental boundary revisions." Thus, the State could, at its discretion and subject to the Secretary's approval, include a definition of the term or provide other regulatory guidance, as suggested, for determining the limits of "incidental boundary revisions" in guidelines. However, the Secretary is inclined to believe that most new haul roads, in previously unpermitted areas, would not be merely "incidental," especially if they were proportionally quite large in respect to the permitted area. The Secretary believes all surface disturbances must be permitted and bounded. See Findings 14.5 and 12.1.

65. Comment: 405 KAR 8:010 Section 20(4) should be revised by inserting the language "not to exceed 10 percent" following the word "extension." This change would expedite field changes without going through the permit application process. Some land acquisitions may be made during the five years, or more, following issuance of the permit. This change would also allow for the maximum utilization of coal reserves, without burdening the operator with excessive "red tape." Further, the type of field changes contemplated by the operator may not necessarily be considered "incidental" by the department. Even though this might represent a small change to a total permit, if the department considers this to be major, then it could quite possibly not be economically justified if one has to go through the entire permitting process. A percentage of the total area would be compatible with the relative permit size while restraining unlimited extensions. Finally, if the term "incidental boundary revisions" is retained, then a definition should be added indicating that it is intended to be "incidental" to the overall permit area and operations on that permit, and not to the limited area of the permit to which it is adjacent.

Response: Kentucky's regulation is consistent with 30 CFR 788.12(d) and Section 511(a)(3) of SMCRA. Inserting the language suggested by the commenter would render Kentucky's rule less stringent than the Federal requirement since a significant environmental or safety effect could result from the addition of less than 10 percent to the permit area. For example, if a significantly enlarged waste dam is to be constructed, utilizing mostly areas in the existing full permit area, but adding a few more acres, the full permit application procedures might be appropriate. In the end, DNREP and not the operator must determine what is "incidental." Further, the term "incidental boundary revisions," is not explicitly defined in the Federal rule, and Kentucky will not be required to define it to obtain approval of its program.

66. Comment: A new section, 405 KAR 8:010 Section 20(5), notes the KCA, should be added to read: "(5) When insignificant alterations are made in the operations, the operator may amend the permit by submitting supplemental information to the department describing the changes in operation." This change is designed to allow the operator to make any insignificant change a part of his original permit application.

Response: Section 511 of SMCRA would prohibit a permittee from revising his or her original permit merely by submitting information to the regulatory authority, regardless of the significance of the alteration. Therefore, the suggested revision to Kentucky's program would not be in accordance with SMCRA.

67. Comment: The KCA believes that 405 KAR 8:010 Section 21 should specify the fees, if any, involved in a permit renewal.

Response: Inclusion of the fees for permit renewals under 405 KAR 8:010E Section 21 is not required. Kentucky has, however, described the process and amounts of fees under State Section 731.14(g)(2) of its program narrative.

68. Comment: A new section, 405 KAR 8:010 Section 21(2)(b)(3), should be added to read: "(3) Within 10 days of receipt of the application the department shall provide written notification to the applicant as to the completeness of the application." The change would make this section compatible with section 13 and would be fair to the operator by speeding the processing of such applications.

Response: The June 12, 1980, revised program submission includes a 10-day period for the completeness determination in 405 KAR 8:010E Section 21(2)(b)(1) which is similar to that suggested by the commenter. There are no Federal requirements regarding a completeness determination.

69. Comment: The KCA recommends deleting the word "prior" from the

language of 405 KAR 8:010 Section 22(1) which says that no transfer, assignment, or sale of rights granted under any permit should be made without "the prior written approval of the department." P.L. 95–87 Section 511(3)(b) does not contain the word "prior." This insertion could affect the private negotiations for the sale of a particular operation.

Response: The language used by Kentucky is identical to 30 CFR 788.17 and the intent of SMCRA Section 511(b). Although SMCRA does not use the word "prior," it is clear that SMCRA Section 511(b) which states "No transfer assignment or sale of the rights granted under any permit issued pursuant to this Act shall be made without written approval of the regulatory authority" does not intend that this decision by the regulatory authority come after the sale.

70. Comment: The KCA suggests that 405 KAR 8:030, General Requirements for Underground Mining, should incorporate changes similar to those it recommended to be made to 405 KAR 8:010, General Requirements for Surface Mining.

Response: The reader is referred to the responses to KCA comments 40 through 69 above.

71. Comment: 405 KAR 8:030 Section 2(3)(c) should be revised to delete the term "United States" and add "Kentucky" in its place. this change is necessary to clarify intent and eliminate needless "red tape" information.

Response: Kentucky's regulation is consistent with 30 CFR 778.13(b)(4) and Section 507(b)(3) of SMCRA which expressly require that the applicant identify operations "within the United States" not just the State in which the application is filed. Substituting terminology would, therefore, make Kentucky's regulation less stringent than the Federal requirement.

72. Comment: The KCA recommends revising 405 KAR 8:030 Section 2(4) by numbering paragraph (4) as (4)(a) and substituting "Kentucky" for "United States." A new paragraph (b) would be added to read: "Each application shall contain a statement of each State in which the applicant has any current or previous coal mining permits and the corporate name or company name under which such operation has operated or is operating." As written, the requirement for a company to amass data on permits for every State would place an excessive burden on both the operator and on the reviewers of the permit application. If the operator lists the State that he has or had worked in, this information should suffice. Further, the suggested revisions to Sections 3 (1) and (2) will provide adequate information to the department concerning serious violations throughout the United States.

Response: Kentucky's regulation is consistent with 30 CFR 778.13(d) and SMCRA Section 507(b)(3) which expressly require that the applicant list current or previous mining permits in the United States not just the State in which the application was filed. Adoption of the suggested revision would result in a less stringent State regulation and is, therefore, inappropriate.

73. Comment: The KCA recommends deleting 405 KAR 8:030 Section 2(6) in its entirety. Many times the operator will not have this Mine Safety and Health Administration (MSHA) number; MSHA usually asigns this number after the permit has been approved. Further, this requirement is not contained in the Act.

Response: The permit applicant will have to request and receive an MSHA identification number for a proposed mine to file a complete permit application. This information is needed for coordinating the permit review with MSHA. Kentucky's regulation is consistent with 30 CFR 78.13(f) and no change is necessary.

74. Comment: 405 KAR 8:030 Section 3(3) should be changed by deleting "the application date" and inserting the language "submittal of the original permit application" in the sentence requiring submission of information on all violations for which the operator was cited during the three years preceding the application date. It is unreasonable to require an operator to update his permit after it has been submitted. There needs to be a cut-off date to eliminate confusion to both the operator and the department. This change should also clarify the intent of this subsection.

Response: Kentucky's regulation is consistent with the Federal counterpart which use the same language. Further, neither the Federal nor the State regulation would require an "update" of violations occurring after submission of the permit application. Permit revisions or renewals, however, would require that the permittee update information on violations which occurred between permit issuance and the request for renewal or revision.

75. Comment: 405 KAR 8:030 Section 8 should be deleted. This section requires information on other permits the operator will need to conduct mining. This is excessive and not pertinent to the approval of the permit application. The department has no jurisdiction over these other agencies, but both sets of rules required coordination of the review of permits with other agencies. This requested information should have no bearing on whether a permit is granted or denied.

Response: Requirements similar to those of 405 KAR 8:010E Section 8 are established in 30 CFR 778.19. Kentucky's regulation is consistent with the Federal requirement. Neither the Kentucky rule nor the Federal rule grant the regulatory authority any jurisdiction over other agencies, but both sets of rules require coordination of the review of permits with other agencies. Therefore, changes are not necessary.

76. Comment: The KCA recommends deleting the 15-day requirement under 405 KAR 8:030 Section 10 for submitting proof of publication in a newspaper. This 15-day limit might not be sufficient in some cases.

Response: Kentucky's requirement is consistent with 30 CFR 778.21 which allows 4 weeks for proof of publication. The suggested change can be made at the State's discretion.

77. Comment: The KCA supports the department's inclusion of the term "probably" in 405 KAR 8:030 Section 14(1)(a) regarding the determination of the horizontal extent of the water table and aquifers.

Response: Although the Federal analog, 30 CFR 779.15, to 405 KAR 8:030 Section 14 does not specifically use the term "probable," the Secretary finds that its use does not change the intent of the Federal requirements. It would be impossible to determine the parameters of the water table and aquifers exactly without extensive test borings. Extrapolation of data is to determine probable horizontal extent of the water table and aquifer.

78. Comment: 405 KAR 8:030 Section 15(1) should be revised to require only "the location of all significant surface water." This section identifies the information to be shown in a permit application on surface water.

Response: Kentucky's requirement is consistent with 30 CFR 779.16(a) which does not use the word "signficant." As noted by the commenter, however, the preamble to the permanent regulations (44 FR 15034) uses the term "significant." Therefore, adoption of the suggested revision would not make Kentucky's regulation inconsistent with the Federal regulation, so long as "significance" is interpreted broadly, but would be at the State's discretion.

79. Comment: 405 KAR 8:030 Section 24(2)(a) should be revised to require operators to provide "A narrative description of the *anticipated* type and method of coal mining and the *anticipated* major equipment to be used." This information, asserts the commenter, *cannot* be predicted.

Response: Kentucky's regulation is consistent with 30 CFR 780.11(a) which does not include the words suggested by

the KCA. The Secretary believes that the provision, as written and reasonably interpreted, implies that the required descriptions are based on the best information currently available. Therefore, inclusion of the terms suggested by the commenter is not necessary.

80. Comment: The term "detailed" should be deleted from 405 KAR 8:030 Section 24(4)(b) because the KCA questions the ability to make an accurate "detailed" estimate of the cost of reclamation.

Response: Kentucky's regulation is consistent with the Federal requirement which uses the same words. Additionally, the "detailed" estimate would indicate that the department is requiring an itemized, estimated cost of reclamation in lieu of a single-line entry.

81. Comment: The KCA recommends deleting 405 KAR 8:030 Section 24(4)(i) which requires information on steps to comply with the Clean Air Act, the Clean Water Act, and other applicable environmental and health and safety laws. The information required is properly contained in the permits issued under the Clean Air and Clean Water Acts and should not be reiterated here. The information required by this subsection is an attempt to administer separate statutes under the strip mining law. Each law should stand on its own and any attempt to incorporate other laws and their requirements by such a reference is not within the intended purpose and scope of the surface mining law and should not be attempted by regulation.

Response: The Kentucky regulation is consistent with the requirements of 30 CFR 780.18(b)(9) which contains the same language. The suggested change is, therefore, not appropriate. SMCRA Section 702 provides that other applicable laws are not to be superseded or modified by SMCRA's requirements, and it is important that DNREP assure that the requirements of the other laws will be met.

82. Comment: 405 KAR 8:030 Section 26(2)(b) should be revised by substituting the word "examples" for the word "description" in the requirement that the applicant's blasting plan include a description of procedures and plans for recording and retention of blasting information. This change clarifies intent.

Response: The terminology used in Kentucky's rule is the same as that in 30 CFR 780.13(b). Further, the suggested change would change the rule in a manner inconsistent with the Federal rule because the intent is to describe all procedures and plans for recording and retaining blasting information.

83. Comment: The KCA believes that 405 KAR 8:040 should provide clarification of, or a definition of, the permit area for an underground mine. This clarification should reflect the distinct differences between surface and underground mining in determining the need for most environmental resource information, such as soil resources, vegetation, fish and wildlife, etc. Also, the KCA believes that such information should be limited to surface areas actually affected by underground mining.

Response: Kentucky's definition of "permit area" is the same as the definition in 30 CFR 701.5. Further, the requirements for information on specific resources do not include unnecessary data. The permit application must include information to enable the regulatory authority to determine the potential effects of mining on the environment and health and safety, including possible effects of mine subsidence and acid drainage.

84. Comment: The KCA recommends that reference areas not be required for underground surface facilities of 50 acres or less. An underground mine site may consist of 70 acres of small sites such as boreholes, vent shafts, etc., which should not be subject to the requirements for reference areas for practicable purposes.

Response: Neither 30 CFR 817.116 nor 405 KAR 8:200 Section 6(1) mandates the use of reference areas. Other methods for determining revegetation success may be used when approved by the regulatory authority.

85. Comment: The KCA recommends deleting 405 KAR 8:040 Section 3(3)(a), (b), (c) and (e) because the provisions have no basis in law and put undue burden on large operators.

Response: This provision requires operators to inform DNREP of the current status of all recent notices of violations. Kentucy's requirements for compliance information are consistent with 30 CFR 782.14 and are required by Section 510(c) of the SMCRA.

86. Comment: The KCA believes that 405 KAR 8:040 Section 11 should include a new subsection (3) to read, "The detail of the environmental resources information required by 405 KAR 8:040 shall be consistent with the postmining land use." Environmental resource information on climate, vegetation, fish and wildlife resources, and soil resources should not be required when the disturbed area will be utilized for residential or for industrial/commercial areas. Further, detailed groundwater information required should be consistent with existing or potential land users. For example, a residential user could not bear the cost to drill wells into many aquifers that could be impacted by underground mining. Further, they may not be economically used by public, commercial or industrial users. Therefore, why provide detailed information for academic purposes?

Response: 30 CFR 783.11 requires environmental resource information on the area. The purpose of such information is to permit the regulatory authority to determine the impacts that a proposed mining operation would have on the pre-mining environmental resources of the entire area and to help evaluate the feasibility and desirability of the proposed postmining land use.

87. Comment: The KCA recommends changing the first sentence of 405 KAR 8:040 Section 11(1) to read "resources within the proposed permit area and adjacent areas *of surface land* which may be affected." This change eliminates ambiguity so that it is clearly understood that where the surface is not affected the regulation does not apply.

Response: The Secretary believes that the suggested revision would change the meaning in a manner which would make the Kentucky rule inconsistent with the Federal rule. As written, the rule limits the information requirements to the permit area and adjacement areas which may be affected. Use of the phrase "which may be affected" imparts discretion and would exclude information requirements for surface or subsurface resources where they would not be affected by mining operations. However, effects on adjacent subsurface resources, such as aquifers, must be included, since they relate to the mining's impact on the hydrologic balance or other resources to be protected under SMCRA.

88. Comment: 405 KAR 8:040 Section 12(1) should be revised to reflect the changes OSM made in the **Federal Register** on Monday, December 31, 1979 (44 FR 77448 *et seq*).

Response: Kentucky's revision of June 12, 1980, reflects the changes.

89. Comment: 405 KAR 8:040 Sections 22 and 37 should be changed to comply with changes OSM made in the **Federal Register** on Monday, December 31, 1979 (44 FR 77448 *et seq.*). Underground permit and mine plan data on postmining land use will be amended to allow data submission toward the end of life of an underground mine either by permit revision or renewal.

Response: Following the December 31, 1979, notice that an interpretive rule would be forthcoming, OSM published the interpretive rule on October 1, 1980 (45 FR 64908). Kentucky will not be required to revise its program to reflect the Federal requirement since the

interpretation applies equally to Kentucky's language as it does to the Federal rules, and there is no reason to believe Kentucky will interpret its rules differently.

90. Comment: The KCA recommends that the extensive reporting requirements of 404 KAR 8:040 Sections 18 through 22 be applicable to the surface area to be disturbed rather than the entire mine plan area, with the exception of waterways, highways, and powerlines. Otherwise, they are burdensome, arbitrary and not justified.

Response: The sections commented upon relate to soil resource information, fish and wildlife data, vegetation information, prime farmlands, and land use information for underground mine operations. In light of the district court's ruling discussed under "General Background on the State Program Approval Process," Kentucky need not require some of this information at all and the rest of it need not be collected on the entire mine plan area, only for the permit area. Kentucky's requirements are virtually identical to 30 CFR Part 783, which contains the minimum information requirements the Secretary will approve. The Secretary believes these requirements do not require gathering and submitting irrelevant data.

91. Comment: The KCA recommends confining to surface disturbed areas only the requirements of 405 KAR 8:040 Section 23(1) (e) and (k), which relate to ownership and location of improvements. These items are of importance only where the surface is disturbed. To require this submittal would be burdensome, unnecessary and arbitrary for underground mining.

Response: The Secretary believes that a comprehensive description and mapping of information is necessary to permit the regulatory authority to adequately identify and assess the impacts to all features in the permit and adjacent areas. The fact that no surface disturbance will occur does not necessarily mean that other resources in the area would not be adversely affected by mining operations. In any event, the possibility of mine subsidence means that areas overlying the mine may be significantly affected by the operation, even in areas of no intentional disturbance.

92. Comment: 405 KAR 8:040 Section 23(1)(i) should be revised by inserting the word "occupied" immediately preceding the word "buildings." This change clarifies intent.

Response: The suggested change would be inconsistent with 30 CFR 783.24(d). The intent of the regulation is to identify all buildings, occupied or otherwise, which, because they are within 1,000 feet of the mine, could be affected by mining operations. The revision suggested by the commenter would limit consideration to a portion of the buildings in the permit and adjacent area. The Secretary notes that the regulation also requires a statement of the current use of each building so that DNREP will know which vacant buildings are abandoned, which have seasonal use, and the like.

93. Comment: The KCA recommends revising 405 KAR 8:040 Sections 23(2) (a) and (i) to require identification of "Elevations and locations of test borings and core sampling *within the surface disturbed area,*" and "Sufficient slope measurements . . . measured and recorded *within the surface disturbed area*" respectively. These items are of importance only where the surface is disturbed. To require this submittal for the entire permit area would be burdensome, unnecessary and arbitrary.

Response: Kentucky's regulation is the same as 30 CFR 783.25 (a) and (k). The required information must come from the entire permit area, since borings and samplings for deep mines are often taken from points overlying the mine workings, and since slope measurements from such areas may be useful in analyzing potential subsidence.

94. Comment: The KCA recommends adding the word "surface" before the word "land" in 405 KAR 8:040 Section 24 (3)(a), (3)(b) (2) and (3).

Response: The Secretary does not believe the suggested language is consistent with 30 CFR 784.23. For Section 24(3)(a) and 3(b)(2), the required information is for a description of all lands to be affected, and a description of subsurface areas is necessary to evaluate potential subsidence and effects on hydrologic values. For Section 24(b)(3), the information relates to land to be bonded, and it may be that a bond's liability will run to an aquifer located underground.

95. Comment: 405 KAR 8:040 Section 24(3)(b)(12) should be revised to state: "Location of each water and any *required* subsidence monitoring point." Not every deep mine operation leads to subsidence.

Response: Kentucky's regulation is consistent with 30 CFR 784.23(b)(12). Further, subsidence monitoring points are not always necessary or required under 405 KAR 8:040E Section 26. If subsidence monitoring points were not planned, none would have to be shown on the maps or plans. However, if the operator intends to use monitoring points beyond those required by DNREP, the plan should show them to facilitate analysis of compliance with permit terms, and to enable the DNREP to determine if any of the monitoring plans pose a threat of harm to the environment or safety.

96. Comment: The KCA recommends deleting 405 KAR 8:040 Section 26(2) because it duplicates Section 26(3).

Response: Kentucky's regulation is the same as 30 CFR 784.20. 405 KAR 8:040E Section 26(2), which excuses the applicant from further requirements on subsidence information if the surety shown no possibility of damage, does not duplicate Section 26(3) which requires detailed information if agreed to by the regulatory authority.

97. Comment: The KCA recommends deleting the words "and if the department agrees with such conclusion" from 405 KAR 8:040 Section 26(2) which excuses the operator from further requirements on collecting subsidence information if the department agrees with the operator that there is no possibility of subsidence.

Response: Deletion of the suggested language would make Kentucky's regulation less stringent than 30 CFR 784.20 which requires regulatory authority agreement. The DNREP must make the final determination of whether or not subsidence will cause impacts, based on review of the permit application by DNREP and the public.

98. Comment: The KCA recommends deleting the word "determines" and substituting the words "can show" in 405 KAR 8:040 Section 26(3), which requires additional permit information if DNREP "determines" subsidence could cause material damage or diminution of value of resources. The department's decision needs to be based on standard engineering principles rather than on opinion.

Response: The Secretary finds the Kentucky rule and the use of the term "determines" consistent with 30 CFR 784.20 which also uses the term. Further, the Secretary has no reason to believe that the "determination" will be mere opinion, rather than a decision properly supported by an analysis of the pertinent facts. If the operator feels the determination is arbitrary, the decision can be challenged through the Kentucky appeals procedures.

99. Comment: 405 KAR 8:040 Section 27 should be revised by renumbering the subsections, with a new subsection (1) to read: "If and when an operator decides to use an underground disposal method in abandoned underground workings, a plan must be submitted to the department." This change will clarify the intent of the OSM permanent regulations at 30 CFR 784.25.

Response: The Secretary does not believe the additional paragraph

suggested by the commenter is necessary because 405 KAR 8:040E Section 27 (Federal analog 30 CFR 784.25(a)) would be applicable only when disposal is proposed.

100. Comment: The KCA believes that 405 KAR 8:040 Section 35 should be revised to read, "Mining and reclamation plan: air pollution control. The applicant shall provide a Department of Natural Resources Air Resources Permit Number or application number," or delete all references to air quality standards except to the extent they are attendant to erosion (May 16, 1980, order by Judge Flannery). This change will avoid duplicate enforcement by State agencies.

Response: The Secretary believes that Kentucky's regulation is consistent with 30 CFR 784.26 and that the suggested revision is unnecessary. Kentucky has described a system for coordinating the issuance of permits with other State, Federal and local agencies in State Section 731.14(g)(9). This coordination should avoid the duplication suggested by the commenter.

101. Comment: 405 KAR 8:040 Section 37(3) needs to be revised to read that approval of one postmining land use will not preclude later approval of a "revised postmining land use plan *or permit renewal* in accordance with the applicable requirements of this Title." This language will meet the provision of the December 31, 1979, revision to OSM regulations, as published at 30 CFR 784.15, 44 FR 77448, *et seq.*

Response: The Secretary believes Kentucky's wording is consistent with the Federal requirements and no change is necessary. The suggested change, however, would emphasize the authorization in Kentucky's rule to approve renewal permits based on new postmining land uses and may be made at the discretion of the State.

102. Comment: The KCA suggests that a new regulation be drafted which would give the operator an informal review by the district or regional office within 24 hours of a field inspector's action which the operator feels is unwarranted, unduly expensive, or harassing.

Response: The suggested change is not required under Sections 518, 525, and 526 of SMCRA or the Federal rules, which provide for administrative and judicial review including hearings and conferences. Without further information, the Secretary cannot determine that KCA's suggestion would be consistent with the Federal requirements, because it might reduce the independence of the inspectors and exclude citizen participation in administrative review.

103. Comment: Inspectors should be required to present credentials before any inspection is conducted. While warrantless inspections have been consistently upheld in the mining industry, presentation of credentials should be required for several reasons: (a) warrantless inspections should not mean secret inspections, (b) inspectors should not be mistaken for trespassers, and (c) operators should be given the opportunity to accompany inspectors in order to gather comparison evidence.

Response: The Secretary agrees that an inspector should carry and present credentials when necessary (see 30 CFR 842.13(a)), but inspectors need not be precluded from making an inspection because the operator is not available at the time, nor can the inspector be required to notify the operator in advance of the inspection. The Secretary will not require a change in 405 KAR 12:010 in response to this comment, since the Kentucky rules allow inspectors to show their credentials whenever possible prior to inspection. Section 517(b)(3) of SMCRA requires that, upon presentation of credentials, inspectors have right of entry to the operation.

104. Comment: The KCA recommends placing some type of qualified maximum limitation upon the number of inspections allowed during a specific time period to prevent harrassment.

Response: The Secretary believes that the recommendation is inconsistent with Sections 517(c) and 521(a)(1), (a)(2) and (a)(7) of SMCRA and 30 CFR 840.11, which require a minimum number of regular inspections as well as such additional inspections as may be justified by citizen complaints or follow-up visits after violation notices have been served.

105. Comment: 405 KAR 12:010 Section 8 (review of discretionary authority) which allows a permittee the right to an expedited review by a supervisor of an inspector's decision not related to a notice of violation should be considered acceptable. Such review would help resolve some problems informally at an early stage.

Response: The Secretary finds the intent of 405 KAR 12:010E Section 8 unclear and has requested further information. See Finding 17.13.

106. Comment: The last sentence of 405 KAR 12:020 Section 2(4) should be changed to read as follows: "The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice, *except when delays are the result of inclement weather, strikes, lockouts, acts of God or other forces outside the control of the permittee.*"

Response: The Secretary believes that the recommended change is inconsistent with Section 521(a)(3) of SMCRA, which sets an absolute maximum period of ninety days initially, including all extensions for remedial action.

107. Comment: In 405 KAR 12:020 Section 3, subsequent order for cessation and immediate compliance, the KCA recommends providing a legal mechanism whereby the accumulation of a per day penalty could be stayed pending formal administrative review.

Response: The Secretary believes the recommended mechanism is inconsistent with the requirements of Section 518 of SMCRA and the Federal regulations, which require that penalties continue to accrue, with any reduction to occur only when the results of the administrative review are announced.

108. Comment: In order to eliminate redundant language, 405 KAR 12:020 Section 3(5)(a) should be changed to read as follows: "The person to whom a subsequent order for cessation and immediate compliance is issued, may request, or the department may on its own motion provide, a minesite review pursuant to Section 6 for the purpose of reviewing the subsequent order for cessation and immediate compliance."

Response: This comment would limit minesite review to those circumstances where the operator or the DNREP requests it. KCA makes the incorrect assumption that there are no other persons who might have an interest which could be adversely affected by a DNREP decision on the order. The Kentucky language gives any interested party, including surety companies and nearby residents, the right to request minesite review, and the Secretary believes that Kentucky's rule is consistent with Federal requirements for broad public involvement in regulatory authority actions.

109. Comment: The KCA recommends adding a new subsection (d) to 405 KAR 12:020 Section 3(5), Informal Public Hearing, to read as follows: "Such minesite review shall be held within twenty-four (24) hours of the request."

Response: The June 12, 1980, revised program submission includes a provision to expedite the hearing upon request. However, the time limit of 24 hours suggested by the commenter would, in most cases, not allow sufficient time for public notice required by 30 CFR 843.15.

110. Comment: 405 KAR 12:020 Section 4(1) should be changed to read as follows: "Notices of noncompliance and orders for remedial measures, subsequent orders for cessation and

immediate compliance, notices of compliance, and other orders of the department shall be served to the person to whom it is issued, in person or by certified mail, return receipt requested, or by registered mail, and by hand to the designated agent *or the certified foreman of the permittee.* If no such individual can be located at the site, *service shall be made by certified mail, return receipt requested only."* Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. Service by mail shall be addressed to the permanent address shown on the permit application; or if no address is shown on the application, to such other address known to the department. If no person is present at the site of the operation, service by mail shall by itself be sufficient notice.

Response: The Secretary finds that the recommended change would be inconsistent with 30 CFR 843.14 which authorizes service upon the person who, based upon reasonable inquiry, appears to be in charge of the operation. Enforcement actions might be unnecessarily delayed, or overtuned on a technicality, if an inspector had to either send all notices by certified mail or ascertain beyond a doubt that the person being personally served the notice was the designated agent or certified foreman.

111. Comment: The KCA suggests that 405 KAR 12:020 Section 5(3) be changed, by adding the emphasized words, to read as follows: "The department may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area *within any twelve (12) month period,* after considering the circumstances."

Response: The recommended change is found in the June 12, 1980, revised submission and is consistent with 30 CFR 843.13.

112. Comment: 405 KAR 12:020 Section 5(4) should be deleted or at least revised to limit the period for determining a pattern of violations to 12 months.

Response: The June 12, 1980, revised submission includes a 12 month limitation consistent with 30 CFR 843.13.

113. Comment: 405 KAR 12:020 Section 7(4), which would allow DNREP to revoke a permit with an order to abate and alleviate, should be deleted as there must be a hearing before revocation.

Response: The June 12, 1980, revised submission has been reworded to allow for "show cause" proceedings.

114. Comment: 405 KAR 12:020 Section 7(8)(a) should be changed to read as follows: "Within twenty-four (24) hours after the issuance of an order pursuant to this section, the secretary shall provide the person to whom the order was issued an opportunity to be heard and present proof of any issue of fact or law relevant to the order or conditions or activities giving rise to the order."

Response: The June 12, 1980, revised submission includes new language requiring that the opportunity to be heard be provided within 10 days after issuance of an order to abate and alleviate, but as soon as practicable after a request for such opportunity. The regulation is considered consistent with Federal requirements.

115. Comment: Under 405 KAR 12:030, Public Participation in Inspection and Enforcement, Section 1, Citizen requests for inspection, the KCA recommends that information on a potential violation which is provided by a citizen be subject to perjury penalties when such a citizen knowingly provides false information.

Response: The Secretary believes the suggested change is unnecessary. Kentucky law (KRS 350.990) does provide that any person who knowingly makes any false statement in any report filed with DNREP is subject to a one year prison term or $10,000 fine, or both.

116. Comment: 405 KAR 12:030 Section 1(2), should be revised to include provisions for a copy of a written citizen's complaint to be given to the permittee.

Response: The Secretary believes that this additional administrative burden is not required by the Federal laws or rules and therefore will not require Kentucky to adopt it.

117. Comment: Under 405 KAR 12:030 Section 3 (1) and (2), citizen requests for mine site access, the KCA recommends that a citizen not be allowed to accompany an inspector or inspectors other than on those inspections where the citizen has made a specific complaint about a specific violation and is accompanying the inspector relative to that specific violation only.

Response: While the general principle suggested in the comment would be consistent with SMCRA and the Federal rules, the precise language of the suggested change cannot be deemed consistent with 30 CFR 842.12, because it adds a requirement for specificity in the citizen complaint which goes beyond the requirements and intent of the Federal Act and rules, which do not discourage citizens from making complaints based on general information.

118. Comment: 405 KAR 16:000 and 405 KAR 18:000 should incorporate a new definition for "transported" which would allow a bulldozer to move spoil, etc. The department should specify results instead of methods.

Response: The use of the term "transported" by Kentucky is consistent with the Federal requirements and was specifically selected to prevent poorly engineered fills. The intent of transporting materials to fill areas is to provide for layering of deposited materials in a horizontal manner to increase fill stability. Although the same results could be achieved using bulldozers, it also becomes more likely that fill materials will be "drifted" onto a slope thus creating layering along the slope. Such fills are more susceptible to seepage and mass movement when the planes between the layers become lubricated with water.

119. Comment: Any signs and markers destroyed by vandalism should not lead to violations of 405 KAR 16:030.

Response: Although not specifically addressed in Federal or State requirements, the Secretary believes that sufficient flexibility exists for recognizing and resolving "violations" which are not entirely under the control of the permittee. It should also be noted that such violations could be abated quickly through replacement of the sign or marker. Operators, not inspectors, are responsible for assuring that all required signs remain in place.

120. Comment: 405 KAR 16:060 Section 4(1) and 405 KAR 18:060 Section 4(1) should be revised by deleting the phrase "or other appropriate information" and inserting the language "or on chemical test." This change would prohibit arbitrary actions of a field inspector to request the "burying" or "treating" of spoil which, in fact, was not detrimental to vegetation, etc.

Response: This section of Kentucky's revised program is consistent with 30 CFR 816.48 because the Federal regulation does not require a chemical test to determine whether to bury or treat spoil. Rather, the judgment of the regulatory authority based on review of the permit application is all that is required to make such a determination.

121. Comment: The commenter recommends that 405 KAR 16:070 and 405 KAR 18:070, concerning water quality standards and effluent limits, be held in abeyance until such time as Environmental Protection Agency (EPA) and OSM standards have been finally adopted and approved. This recommendation is consistent with recent court decisions (U.S. Court of Appeals, May 2, 1980: Flannery, May 16, 1980: U.S. Court of Appeals, July 10, 1980).

Response: The Secretary believes that the Kentucky regulations are based on a

misinterpretation of the court order. This is discussed in Finding 13.3.

122. Comment: The word "and" should read "or" in 405 KAR 16:070 Section 1(1)(c)(1) because only paragraphs (1) and (2) should be controlling, instead of both. Paragraph (1) exempts small areas from the requirements for sedimentations ponds and paragraph (2) exempts areas where the effluent limitations can be met without sedimentation ponds. The primary concern should be prevention instead of treatment.

Response: The Secretary agrees that the primary concern should be preventative. However, the suggested language change would not meet that intent. The Secretary believes it is necessary that the area be described as "small" before serious consideration could be given to a demonstration that the effluent limits would be met without sedimentation ponds.

123. Comment: 405 KAR 16:070 Section 1(1)(f) and 405 KAR 18:070 Section 1(1)(f) should be changed so that when drainage from undisturbed areas is comingled with that from the disturbed area, the operator could be allowed "credits" for background water quality reflective of conditions prior to mining. (See U.S. Circuit Court of Appeals decision of May 2, 1980, on the "net/gross" discussion.) The operator should not be held responsible for pre-existing conditions. Further, the operator should not be required to improve nature.

Response: Kentucky's regulation is consistent with 30 CFR 816.42(a)(6) because both the State and Federal rules require sedimentation ponds which receive drainage both from disturbed and undisturbed areas to meet the same effluent limitations. (See also 44 FR 15149–15150 for discussion of effluent standards as they relate to "mixed" drainages.)

124. Comment: The KCA recommends changing 405 KAR 16:070 Section 1(1)(h) and 405 KAR 18:070 Section 1(1)(h) to read: "The effluent limitations of Appendix A of this regulation shall not apply to discharge of water which occurs as a result of the 10 year 24 hour precipitation event." The five day limitation, as specified, would not always allow the operator sufficient time to repair and restore facilities to meet the effluent limitations.

Response: The Federal analog to the State regulations, 30 CFR 816.42(b)(1) and (2), has been suspended. For additional discussion of this issue, see "General Background on the State Program Approval Process."

125. Comment: The KCA recommends deleting 405 KAR 16:070 Section 1(2) and 405 KAR 18:070 Section 1(2) and delaying implementing regulations addressing this part pending the revision of the catastrophic rainfall exemption language now under consideration by EPA for the coal mining point source category. (See 44 FR 76788, December 28, 1979, and the U.S. Court of Appeals decision of May 2, 1980, which states that OSM cannot supersede EPA's authority under the Clean Water Act.) Or, in lieu of present language, the KCA would recommend adopting EPA's present catastrophic rainfall exemption language as provided in the coal mining point source category (42 FR 21380, April 26, 1977).

Response: The Secretary agrees that the Kentucky regulations must provide for the rainfall exemption. However, the Secretary has requested additional information on 405 KAR 16:070E Section 1(1)(h) and 18:070E Section 1(1)(h) to assure that they are consistent with the EPA rules. See Finding 13.3.

126. Comment: The word "sediment" should be deleted at both places where it appears in 405 KAR 16:090 Section 2 or the entire regulation should be deleted pending EPA's revision of the coal mining point source category standards (44 FR 76788, December 28, 1979).

Response: Although the Federal analogs to the State regulations, 30 CFR 816.46(b) and (c), relating to sediment storage design volume have been remanded, the Secretary believes the proposed suggestion would make the State section inconsistent with the remaining Federal requirement in 30 CFR 816.46(a) to use a sedimentation pond. In the June 12, 1980, revised submission, Kentucky rules 405 KAR 16:090E Section 2 and 18:090E Section 2 contain revised language which the Secretary finds consistent with the court order and SMCRA.

127. Comment: 405 KAR 16:090 Section 5(4) and 405 KAR 18:090 Section 5(4) should be deleted pending EPA's revision of the coal mining point source category standards (44 FR 76788, December 28, 1979).

Response: 30 CFR 816.46(h) the Federal analog to the Kentucky rule concerning sediment removal, has been remanded; however, the State included revised language in the June 12, 1980, submission. The Secretary finds the State regulations, 405 KAR 16:090E Section 5(d) and 18:090E Section 5(4), inconsistent with the Federal requirement in 30 CFR 816.46(a) to use a sedimentation pond. This issue is discussed in Finding 13.10.

128. Comment: The KCA suggests the addition of new sections, 405 KAR 16:090 Section 5(18) and 405 KAR 18:090 Section 5(18) to read: "Nothing in this regulation shall prevent the use of properly designed and constructed rock dams as approved by the department." This will clarify intent.

Response: The Secretary does not believe the suggested language is necessary. As written, sedimentation ponds must be constructed to specified performance standards and standard engineering principles. If rock dams can be constructed to meet those minimum standards, the regulatory authority has the discretion to approve such structures.

129. Comment: 405 KAR 16:110 Section 1(2) and 405 KAR 18:110 Section 1(2) should be changed to read: "Monitoring shall include measurements from a sufficient number of wells, *springs or other ground water discharges. . . .* Springs or other groundwater discharges can be as good as wells for monitoring ground water flow and quality.

Response: Kentucky's revised proposed regulations, dated June 12, 1980, reflect that "springs" may also be used for monitoring.

30. Comment: 405 KAR 16:120 and 405 KAR 18:120 concerning the use of explosives should be changed to reflect the May 2, 1980, U.S. Court of Appeals decision.

Response: The Secretary believes 405 KAR 16:120E as presented in the June 12, 1980 revised submission reflects applicable requirements for the permanent program. The May 2, 1980 decision cited by the commenter remanded certain rules in the interim program (30 CFR Parts 715 and 717). The decision did not affect requirements in the permanent program. 405 KAR 16:120, as submitted June 12, 1980 does reflect remands and suspensions in the permanent program. See discussion under "General Background on the State Program Approval Process."

131. Comment: The KCA recommends changing 405 KAR 16:120 Section 2(1) to read: "On the request to the department by a resident or owner of a dwelling or structure that is located within one-half mile of any part of the area *where blasting operations are to be conducted,* the permittee shall promptly conduct a pre-blasting survey of the dwelling or structure." Otherwise, the regulation could require a pre-blast survey for owners two or three miles from a blasting operation.

Response: The Secretary finds that Kentucky's requirement is consistent with 30 CFR 816.62 and Section 515(b)(15)(E) of SMCRA, which require such a pre-blasting survey for any dwelling or structure which is within one-half mile of any part of the permit area. Therefore, the language suggested by the commenter would not be

consistent with the Federal requirements.

132. Comment: The commenter recommends that 405 KAR 16:120 Sections 2 (1) and (2) and 405 KAR 18:120 Sections 2 (1) and (2) concerning the pre-blasting survey be revised by deleting the word "structure" in paragraph (1), and substituting the word "facilities" in subsection (2) for "structure." The revised language would exclude barns and outbuildings from the requirement to conduct pre-blasting surveys and clarify intent. Lower-grade outbuildings should not be protected so stringently.

Response: The Secretary believes that the intent of the Federal regulation at 30 CFR 816.62 is to protect property from damage without value judgment on the quality of the property. The suggested revision would render the Kentucky rules inconsistent with the Federal rules.

133. Comment: 405 KAR 16:120 Section 2(3) and 405 KAR 18:120 Section 2(3) should be revised to require that the names of the owner or owner's representative accompanying the surveyor be included in the written report. This protects the operator.

Response: The suggested change has been included in the Kentucky revised program and is considered acceptable by the Secretary.

134. Comment: In 405 KAR 16:120 Section 3(1)(a), the KCA recommends changing 20 days to 30 days. A 30-day blasting period before having to republish in a newspaper is more realistic and practical.

Response: The 30-day period suggested by the commenter has been incorporated into the June 12, 1980, revised program submission and the Secretary finds it consistent with Federal requirements.

135. Comment: 405 KAR 16:120 Section 4(1)(b)(3) and 405 KAR 18:120 Section 3(17)(b)(3) should be revised by allowing three working days to file a report after blasting at night. This change makes this requirement for filing a report after night blasting more practical.

Response: Kentucky's revised program of June 12, 1980, excludes weekends and legal holidays, thus reflecting the suggested revisions.

136. Comment: 405 KAR 16:120 Section 4(5)(d) and 405 KAR 18:120 Section 3(5)(d) should be revised by adding "upon a written finding by the department that such tests are necessary and reasonable," to the requirement for an airblast measurement.

Response: Kentucky's regulation is the same as 30 CFR 816.65(e)(4), which makes airblast measurement discretionary with the regulatory authority. Therefore, the intent of the suggested change is included in the Kentucky rule.

137. Comment: The KCA suggests changing the minimum distance from 1000 to 300 feet within which blasting shall not be conducted near any building used as a dwelling, school, church, hospital or nursing home in 405 KAR 16:120 Section 4(6)(a) to be consistent with the May 2, 1980, U.S. Court of Appeals decision.

Response: Kentucky's revised regulation, dated June 12, 1980, reflects the suggested change.

138. Comment: 405 KAR 16:120 Section 4(9) and 405 KAR 18:120 Section 3(9) should be revised to allow measurement of the maximum peak particle velocity as the vector sum of the three measurements taken in three mutually perpendicular directions. The commenter also suggests inserting language to allow the department to reduce the maximum peak particle velocity allowed, if it "makes a determination based on pertinent data" that a lower standard is required. Vector sum monitors presently in use give a more accurate reading of total vibration of all three plains without reducing the maximum of any one level.

Response: Kentucky's regulation allows use of the vector sum, but the Secretary finds this inconsistent with Federal requirements at 30 CFR 816.65(i). See Finding 13.15.

139. Comment: The KCA recommends deleting the last sentence of 405 KAR 16:120 Section 5(2) and 405 KAR 18:120 Section 4(2). As written this sentence voids the whole meaning of this subsection and does not allow for variations.

Response: The Secretary does not agree that the last sentence would void the subsection or eliminate variations in use of other equations for determining peak particle velocity. The sentence properly indicates that the final result, regardless of equation, must comply with the performance standard.

140. Comment: 405 KAR 16:120 Section 5(3) and 405 KAR 18:120 Section 4(3) should be revised to read, "The department *based on pertinent data* may require a seismograph record of any or all blasts. . . ." This change would allow the operator to know why a record is required.

Response: Kentucky's regulation is consistent with 30 CFR 816.67(c) which allows regulatory authority discretion in determining when seismographic measurements are needed. The DNREP would be determining why a record is needed at the time that he or she evaluates the application and determines when the record is needed. The need for the record would be based on site-specific consideration in applying the performance standards for blasting.

141. Comment: 405 KAR 16:120 Section 6(1) and 405 KAR 18:120 Section 5(1) should be revised to require in records of blasting the name of the "permittee, operator or" person conducting the blasting operation. This suggested language would conform to Federal regulation 30 CFR 817.68(a).

Response: Federal requirements at 30 CFR 816.68(a) and 817.68(a) use the term "operator." The Secretary does not believe that the term "person," as used by Kentucky, is a significant departure from the Federal language.

142. Comment: 405 KAR 16:130 and 405 KAR 18:130 should contain a definition of "rock." The KCA suggestes using the highway department's definition.

Response: The Secretary does not believe the definition is necessary for program approval because "rock" is not defined in a legislative rule in the Federal regulatory program. The State may, at its discretion, develop a definition of "rock."

143. Comment: The department should consider and incorporate the "zoned concerpt method" for disposal of excess spoil. This method is described in the Marh, 1980, *Coal Age* magazine (pp. 83–89).

Response: The method in question is not required under any Federal rule and the Secretary will not require Kentucky to adopt it.

144. Comments: A new sentence should be added at the end of 405 KAR 16:130 Section 1(6) and 405 KAR 18:130 Section 1(6) to read: "The department may approve a long-term static safety factor of 1.3 under the following conditions: (a) The structure has a class A hazard classification and (b) the volume of the fill is less than 250,000 cubic yards." The 1.5 long term static safety factor was not completely justified originally and some flexibility should be allowed where there is a smaller fill which would present a smaller risk if there is failure. Additionally, 1.3 is used on the bench for approximate original contour.

Response: The suggested change has been added to the June 12, 1980, revised program submission, but the Secretary has determined the Kentucky rules to be inconsistent with 30 CFR 816.71(f). See Finding 13.18. The rationale for the 1.5 static factor versus the 1.3 static factor is discussed extensively in the preamble to the Federal rules at 44 FR 15205 (1979).

145. Comment: The words "horizontal lifts" should be deleted in the first

sentence of 405 KAR 16:130 Section 1(6) which requires that spoil be transported and placed in horizontal lifts. Horizontal lifts are not essential to prevent mass movement and to ensure a long-term statics safety factor of 1.5. In addition, this would interfere with drainage during placement of the fill.

Response: Kentucky's use of the term "horizontal lifts" is consistent with 30 CFR 816.71(f). Placement in horizontal lifts reduces the possibility of mass wasting by preventing "layering" parallel to a slope with subsequent lubrication of the "layer" interfaces which would increase the potential for seepage and mass wasting.

146. Comment: New sections in 405 KAR 16:130 Section 1(15) and in 405 KAR 18:130 should be added to read: "Excess spoil or topsoil may be disposed off a permitted area upon the approval of the department only in those situations where offsite disposal is feasible and consistent with P.L. 95–87." This change would allow excess spoil or topsoil to be transported off the permitted area to building sites.

Response: Under the Federal rules at 30 CFR 816.71(a), all activities associated with the mining operation must be within a permit area to assure that the disposal areas are covered by the performance standards and bonding requirements of SMCRA. Therefore, the suggested change would not be consistent with the Federal requirements. (See Section 515(b) (2) of SMCRA.) Any offsite disposal not considered in an original permit application would require a permit revision.

147. Comment: The KCA recommends changing 405 KAR 16:130 Section 2(3) and 405 KAR 18:130 Section 2(3) concerning the disposal of excess spoil in valley fills by deleting the phrase "less if required" and substituting the phrase "as otherwise approved." This change would allow for placement of spoil in lifts greater than four feet. As long as the engineer can justify stability, etc., larger lifts should be allowed.

Response: Kentucky's revised program of June 12, 1980, reflects conditions under which lifts of greater than four feet can be used. However, the Secretary finds this to be inconsistent with the Federal requirements. See Finding 13.23. The Secretary, in promulgating the Federal rules, determined that lifts no greater than 4 feet were required to achieve densities necessary to assure stability, prevent mass movement, avoid contaimination of fill drainage systems, or avoid the creation of voids. (See preamble to the Federal rules at 44 FR 15206.)

148. Comment: The reference to "100-year, twenty-four (24) hour precipitation event" in 405 KAR 16:130 Section 2(4) and 405 KAR 18:130 Section 2(4), which sets the standard for the diversion channels to ensure that they are designed to safely pass surface water runoff, should be deleted and "ten (10) year" inserted instead. This revised language is consistent with 405 KAR 16:080 Section 1(2) which allows for only a 10-year recurrence interval.

Response: Kentucky's use of the "100-year, twenty-four (24) hour" language is consistent with 30 CFR 816.72(d). Further, 405 KAR 16:080E Section 1(2) provides the department with discretion to specify a precipitation event larger than a 10-year recurrence interval.

149. Comment: Clarification of 405 KAR 16:150 and 18:150 concerning non-coal wastes is needed. Provisions should be made for other means of disposal off the permit area such as by use of trash haulers or septic tank cleaners.

Response: The requirements for waste disposal found in the Kentucky program are consistent with 30 CFR 816.89 which requires non-coal wastes to be disposed of within the permit area. Thus, it is not necessary to request that the 405 KAR 16:150E and 18:150E be clarified.

150. Comment: The commenter states that established roads which are used by the public and which cannot be controlled by the operator to restrict public use should be exempt from 405 KAR 16:170 relating to air quality.

Response: Kentucky's regulation is an analog to 30 CFR 816.95 relating to air quality which has been remanded. Therefore, the Kentucky section is being affirmatively disapproved. See discussion under "General Background on State Program Approval Process" for discussion of effect of this disapproval.

151. Comment: All of subsections (2), (3), (9), (15) and (19) of 45 KAR 16:170 Section 2 concerning control measures to protect air resources should be deleted because they appear to be tailored more to western United States operations. Also these are extraordinary measures not usually used for state-of-the-art air pollution control. Finally, Section 3 gives the department sufficient discretion and authority to require these measures when deemed necessary.

Response: As discussed in comment 151 above, the existing State requirements are based on 30 CFR 816.95 which has been remanded. Therefore, the State section is being affirmatively disapproved.

152. Comment: 405KAR 16:1709 Section 3 should be revised by deleting the words "department determines" and substituting the words "secretary, based upon applicable regional studies, finds" in the sentence providing authority for requiring additional measures for protecting air resources. Regional studies now required by the department under the Clean Air Act will show whether the practices now used in the industry will be adequate to meet applicable ambient air quality standards. These extraordinary measures should be applied only in those cases where the secretary determines that nonattainment exists and that use of these measures will result in attainment.

Response: The State requirement is based on a remanded Federal regulation, 30 CFR 816.95, and therefore is affirmatively disapproved. See discussion in comment 151 above.

153. Comment: 405 KAR 16:180 Section 1(3) should be changed to read: *"Only in those cases where a finding is made as provided in subsection (2), the department may require that* a permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in 'Environmental Criteria for Electric Transmission System'. * * *" These guidelines for construction of transmission lines should apply in those cases where some tangible benefit can be derived. These guidelines were originally intended for application in the western coal fields (see the permanent Federal regulations).

Response: Although these guidelines may have more frequent application in the West, the Secretary believes the protection of eagles and other large birds has national importance. Therefore, the guidelines have applicability in the East and Kentucky's revised program regulations accurately reflect 30 CFR 816.97(c) in this respect.

154. Comment: The last sentence of 405 KAR 16:190 Section 2(2)(c) concerning backfilling and grading requirements should be deleted. That sentence states that "In no case may highwalls be left as part of terraces."

Response: The quoted language is the same as that in 30 CFR 816.102(b)(3) and Section 515(b)(3) of SMCRA and is, therefore, acceptable. The Secretary believes that it was Congress' intent that no highwalls be left as part of terraces.

155. Comment: The first sentence of 405 KAR 16:190 Section 6 and 405 KAR Section 18:190 Section 4 should be revised to require filling, grading or other stabilizing when a significant number of rills or gullies deeper than 9 inches form in areas that have been regarded and topsoiled. Without some

quantity control, regrading could be ordered for one rill.

Response: Kentucky's requirement is the same as 30 CFR 816.106. Addition of the suggested language would render the Kentucky regulation less stringent than the Federal requirement. The intent of both the State and Federal regulations is to prohibit erosion and sedimentation regardless of the number of rills or gullies. Latitude for flexibility in stabilizing singular rills without regrading is afforded by the wording, "the rills and gullies shall be filled, graded, *or otherwise stabilized.*"

156. Comment: 405 KAR 16:200 Section 2 and 405 KAR 18:200 Section 2, concerning use of introduced species for revegetation, should be changed by deleting the words "if approved by the department." If the permittee meets the conditions specified, then the department should not be allowed to act arbitrarily in disapproving an introduced species.

Response: The suggested language was incorporated in 405 KAR 18:200E Section 2 in the Kentucky revised progam of June 12, 1980. The Secretary finds this revision inconsistent with 30 CFR 817.112. (See Finding 13.30.) The primary objective of allowing the use of introduced species is to obtain a quick, temporary and stabilizing ground cover. Use of such species is intended to reflect special needs, not normal procedure. The regulatory authority must determine if the proposed practice satisfies all identified conditions including the special needs required by 30 CFR 817.112(b).

157. Comment: Relative to 405 KAR 16:200 Section 3 and 405 KAR 18:200 Section 3, the KCA suggests the following to eliminate mandated seeding during unfavorable conditions: In the last sentence, delete the words "as contemporaneously as practicable with" and substitute "during the first normal period for favorable planting conditions after.

Response: The June 12, 1980, revised Kentucky program incorporated the suggested language in 405 KAR 18:200E. This language is considered acceptable by the Secretary.

158. Comment: Relative to Section 4(3) of 405 KAR 18:200 and 405 KAR 16:200, the KCA recommends deleting the words "The department determines that" to prevent arbitrary actions by the department in requiring annual grasses and grains alone, as in situ mulch, or in conjunction with another mulch.

Response: The Kentucky regulations are the same as 30 CFR 816.114(c). The regulatory authority must have authority to determine if the aforementioned practice is appropriate to a particular situation.

159. Comment: 405 KAR 16:200 Section 4(2) and 405 KAR 18:200 Section 4(2) should be deleted and be replaced with the following: "Whenever the method of mulching and soil stabilizing practices as approved in the permit application does not achieve the purposes set out in paragraph (1) above, the department may require mulches to be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation." This change would give the operator freedom to use the most effective, economical, and agronomically sound practices available to him for achieving stabilization.

Response: Kentucky's language is consistent with 30 CFR 816.114. Further, the Secretary believes the regulations relating to mulching and soil stabilization provide sufficient flexibility to satisfy a variety of conditions and circumstances.

160. Comment: Section 405 KAR 16:210 Section 2 should be revised to read: "lands *which have not been mined and* has received . . . basis of *its potential utility.*" The regulation should not require the reestablishment of a postmining land use which will be impossible to attain if native resources have already been depleted (irreversible damage has occurred).

Response: Kentucky's revised program of June 12, 1980, incorporates provisions for consideration of premining land use. However, the State provisions have been found to be less stringent then 30 CFR 816.133(b). See Finding 13.35.

161. Comment: The KCA recommends that 405 KAR 16:210 Section 4(4) be revised by adding: "In the context of this subparagraph, 'if appropriate' allows the operator to sign this letter of commitment if the operator is going to do both the mining and the development of the postmining land use." This addition clarifies the intent of the regulations and is consistent with the preamble to the permanent Federal regulatory program (44 FR 15244).

Response: Kentucky's rule is consistent with 30 CFR 816.133(c)(4). Further, the Secretary believes the letter of commitment must be signed by the applicant who will be responsible for ensuring that all terms and conditions of the permit will be carried out.

162. Comment: 405 KAR 16:210 Section 4(9)(a) should be deleted because the Federal counterpart was remanded by court opinion on February 26, 1980.

Response: The Secretary believes the Kentucky regulation in the June 12, 1980, revised submission appropriately deletes the suspended language in 30 CFR 816.133(c) which required an operator to include a letter of commitment for the postmining land use.

163. Comment: One of the biggest problem areas with Kentucky's permanent regulatory program is that dealing with roads. The KCA contends that the design criteria has no substantial relationship to the environmental performance standards. Therefore, the department should reevaluate the regulations concerning roads and use the "State window" provision to address Kentucky's problems.

Response: The court opinion of May 16, 1980, remanded the Federal regulations concerning roads at 30 CFR 816.150–816.176. The Kentucky regulations have been reviewed against SMCRA and found to be acceptable. See discussion of remanded regulations under "General Background on State Program Approval Process."

164. Comment: 405 KAR 18:010 Section 2 concerning maximization of coal recovery should be deleted because of the distinct difference between surface and underground mining.

Response: Kentucky's regulation is consistent with 30 CFR 817.59. The Secretary believes that the requirement is appropriate to minimize the need for subsequent surface mining operations.

165. Comment: 405 KAR 18:040 Section 1 should be revised by deleting the language "exploration hole, other drill hole or" and adding the phrase "of a permanent nature" following the words "underground opening." Lining and casing all drill holes including exploration holes is totally unwarranted and impractical.

Response: Kentucky's requirement is consistent with 30 CFR 817.13. The Kentucky regulation does not mandate casing and linings but provides the regulatory authority with flexibility to require management of such facilities as necessary to prevent acid drainage or other toxic drainage from entering ground and surface waters.

166. Comment: 405 KAR 18:050 Section 2(4) should be changed to begin with the phrase "where prime farmlands are encountered." This change will clarify intent.

Response: Kentucky's requirement is consistent with 30 CFR 817.22. The suggested change would not correctly clarify intent because the regulation pertains to all soils, not just those associated with prime farmlands.

167. Comment: 405 KAR 18:050 Section 3(2) should be revised to read, "*In those cases where topsoil will not be immediately used and redistribution will take place within six (6) months,* stockpiled materials shall." This revision would clarify intent of the

distinct difference between surface coal mining and underground coal mining.

Response: The Secretary believes the suggested change would not provide adequate protection for stored topsoil. Potential for environmental degradation of stored topsoil is not necessarily related to time or the type of mining operation, but rather to whether the stored materials are subject to wind and water erosion, compaction, etc., immediately upon storage. Therefore, action must be taken to protect the topsoil resources.

168. Comment: 405 KAR 18:050 Section 4(1) should be deleted in its entirety. This would clarify intent of the distinct difference between surface coal mining and underground coal mining.

Response: Kentucky's regulation is consistent with 30 CFR 817.24. The Secretary believes these requirements are necessary to protect topsoil removed and replaced incident to underground mining operations. Therefore, the suggested change is not appropriate.

169. Comment: 405 KAR 18:050 Section 6 should be revised to read: "This regulation . . . supporting vegetation *as provided in Section 3(2) of this regulation.* Where . . . within the permit area *or outside the permit area as approved by the department.*" This change will clarify intent of the distinct difference between surface coal mining and underground coal mining.

Response: Kentucky's regulation is consistent with the Federal requirement. The commenter's suggested reference to Section 3(2), however, has merit and may clarify this regulation. Acceptance of the suggestion is at the discretion of the State. The second suggestion, use of topsoil outside the permit area, is inconsistent with Federal requirements because all such activities must be part of the approved permit and within the permit area in order to assure compliance with the performance standards.

170. Comment: The KCA believes that 405 KAR 18:060 Section 5(1) should be revised by inserting the words "where necessary" following the word "prevent." Prevention of the gravity discharge of water from some mines is unwarranted if it can be shown that the discharge will meet water quality standards.

Response: Kentucky's regulation is consistent with 30 CFR 817.50(a). Further, paragraph (2) of Section 5 provides exceptions to the general requirements of paragraph (1). The Secretary, therefore, believes the commenter's concerns are adequately considered in the program.

171. Comment: 405 KAR 18:060 Section 7 concerning replacement of water rights should be revised to read: "*Unless otherwise compensated as agreed to by the landowners and the permittee, as approved by the department,* the permittee . . . ." This recommendation is justified because it has been agreed to by an environmentalist group and is a reasonable change.

Response: Kentucky has omitted requirements for water rights and replacement due to underground mining comparable to 30 CFR 817.54 from its June 12, 1980, revised program. This omission is acceptable since the corresponding Federal section has been remanded.

172. Comment: The size of sedimentation ponds should be based on .125 acre feet per acre disturbed for total pond volume. West Virginia has received commitments from OSM to allow it to include its current sedimentation pond design requirements (which follows this formula) in its State program and feels that Kentucky should follow the same lead.

Response: The revised Kentucky program of June 12, 1980, includes the recommended change in 405 KAR 18:090E Section 2. The Federal counterpart, 30 CFR 817.46(b), has been suspended. See discussion of suspended and remanded regulations in the "General Background on State Program Approval Process."

173. Comment: The KCA recommends deleting 405 KAR 18:090 Section 3 because EPA is revising the coal mining point source category standards as per 44 FR 76788, December 28, 1979.

Response: The Secretary believes the June 12, 1980, revised program at 405 KAR 18:090E Section 3 deletes the portion of 30 CFR 816.46(d) that was remanded. The commenter's suggestion, however, would make the State program inconsistent with the remaining language in 30 CFR 816.46(d) and the EPA regulations currently in effect. The State will have an opportunity to amend its program after the new OSM and EPA regulations have been promulgated.

174. Comment: The KCA suggests addition of "the department shall allow a reasonable time for discovery of non-existing dwellings which were not indicated upon the original permit" to 405 KAR 18:120E Section 3(6)(a). This change will prevent unreasonable closures of the blasting operations for newly discovered dwellings (usually house trailers of which the operators are unaware).

Response: The suggested change has merit but is not required for program approval. Since 405 KAR 18:120E Section 3(6)(a) prohibits blasting within 300 feet of any building used as a dwelling, school, church, hospital or nursing facility, it seems reasonable that the operator would be willing to survey areas near the borders of the permit area prior to blasting to identify whether new structures have been placed in the protected area rather than to risk violation of a performance standard, especially one that would be readily susceptible to citizen complaints.

175. Comment: The KCA suggests deleting Section 2 of 405 KAR 18:210 which requires public distribution of mining schedules for underground mining to minimize subsidence. The KCA contends that there is no provision in SMCRA that requires this rule, it would be unduly alarming to residents, and it would be impossible to predict six months ahead in most cases, especially for small operators.

Response: 405 KAR 18:210E Section 2 has been found less stringent than 30 CFR 817.122 because it does not require that a full six month notice be given to property owners when underground mining will occur beneath their residences. (See Finding 13.50.) The intent of 30 CFR 817.122 is to inform property owners of potential subsidence effects and measures to to prevent subsidence effects which would likely cause less alarm than damage due to subsidence that was not expected. If future underground operations are shown to have no adverse effects on property owners' residences as a result of the required planning, public concern will be eliminated. Section 516(a) of SMCRA requires the Secretary to promulgate regulations directed toward the surface effects of underground mining operations and Section 516(b) requires each underground mining operator to adopt measures consistent with known technology in order to prevent subsidence causing material damage and to maintain the value and foreseeable use of surface lands.

176. Comment: 405 KAR 18:210 Section 4(1), which prohibits underground mining activities beneath or adjacent to perennial streams unless certain conditions are met, should be changed to read as follows: "(1) Underground . . . beneath any perennial . . . department *in conjunction with the Mine Safety and Health Administration (MSHA) and the Kentucky Department of Mines and Minerals* . . . information *provided to MSHA and the Kentucky Department of Mines and Minerals,* determines . . . ."

Response: Kentucky regulation 18:210E as revised on June 12, 1980, incorporates the consultation portion of the commenter's suggestion which the Secretary finds acceptable, but does not remove the words "or adjacent to" which precede "any perennial" stream.

The suggested wording would result in a State regulation less stringent than 30 CFR 817.126(a) since it could allow mining up to the edge of a stream. As discussed in the preamble to the Federal rules at 44 FR 15276, the term "adjacent to" is intended to prohibit subsidence that might jeopardize the functioning of the streams.

177. Comment: The KCA suggested that 405 KAR 18:210 Section 4(3) be changed to read as follows: "Underground mining activities shall not be conducted beneath any public buildings" instead of "beneath or in close proximity to any." The wording "or in close proximity to" was not in P.L. 95–87.

Response: Implementation of this suggestion would result in 405 KAR 18:210E being less stringent than 30 CFR 817.126(c). Authority for 30 CFR 817.126(c) is provided for by Section 516(a) of SMCRA. The intent of the Federal regulation is to prevent material damage to the structures and material damage could result from mining in close proximity. Kentucky's revised program of June 12, 1980, in 405 KAR 18:210E Section 4(3) replaced the wording "or in close proximity to" with "adjacent to." The Secretary finds this acceptable.

178. Comment: 405 KAR 18:220 concerning postmining land use capability should take into account the distinct differences between surface and underground mining and any Federal regulation changes.

Response: The comment is not clear on the specific differences that should be considered. The postmining land use provisions of 30 CFR 817.133(b)(1) for underground mining were remanded and 405 KAR 18:220E of the June 12, 1980, revised submission reflects the court order. However, the same language has been remanded from the provisions for surface mining in 30 CFR 816.133(b)(1). The Secretary is not expecting any changes in postmining land use rules for underground mining except for those regulations that were remanded.

179. Comment: The promulgation of 405 KAR 18:230 regarding roads should be delayed pending OSM's revisions to comply with Judge Flannery's decision of May 16, 1980.

Response: The June 12, 1980, submission contains road regulations that are not based on the remanded Federal rules and which are not inconsistent with SMCRA. See discussion of remanded regulations under "General Background on State Program Approval Process" and response to KCA comment 164 above.

180. Comment: The Federal definition of "natural hazard lands" should be substituted for Kentucky's proposed definition at 405 KAR 24:010 Section 1(4). The definition, as now written, is more stringent than Federal requirements.

Response: The Kentucky program as submitted to the Secretary has never contained a 405 KAR 24:010. However, the Kentucky definition of "natural hazard lands" at 405 KAR 7:020E Section 1(71) is consistent with the Federal definition at 30 CFR 762.5.

181. Comment: Sections 405 KAR 24:010 Section 1 (5) and (7) should be revised by subsititing the word "structure" for "building" in the first definition and striking the word "structure" in the second definition. These changes would clarify the intent of the regulations.

Response: The Kentucky program as submitted to the Secretary has never contained a 405 KAR 24:010. The Secretary is therefore unable to address this comment.

182. Comment: The definition of "Public park" at 405 KAR 24:010 Section 1(8) should be revised to read "Public park means . . . or local agency for *general* public recreational use . . . It includes any land leased *and* reserved to the public . . . " This change would clarify intent. Also, public parks should be reserved for use of the general public and not "held open" for specific individuals. "Held open" could include any and all public lands that are not meant to be public parks.

Response: Kentucky's definition of "public park" at 405 KAR 7:020E Section 1(100) of the June 12, 1980, revised submission is consistent with 30 CFR 761.5. As discussed in the preamble to the Federal rules at 44 FR 14991, the Federal definition has been developed to include all parks that are used by the public, which could mean parks that are not necessarily dedicated as public parks. The Secretary finds the State definition consistent with the Federal definition.

183. Comment: The KCA recommends deleting the words "and economically" from 405 KAR 24:020 Sections 3(6)(a) and 4(6)(a) and from 405 KAR 24:030 Section 8(1) which establish when an area must be designated unsuitable for mining upon petition. The department cannot fairly administer such a subjective term. Economics are different for different operators. This change should also be made consistently throughout the regulations.

Response: Section 522(a)(2) of SMCRA specifically requires that an area shall be designated unsuitable for mining if reclamation is not technologically and economically feasible. Deleting the word "economically" would, therefore, render Kentucky's proposed regulation less stringent than the Federal requirements.

184. Comment: The words "on the basis of a long-term coal contract" in determining what constitutes "substantial legal and financial commitments" should be deleted from the first sentence of 405 KAR 24:030 Section 2(2) because this is more stringent than the Federal regulations. Further, it discriminates against operators who wish to sell on the open market.

Response: The Secretary finds that Kentucky's regulation is consistent with the Federal requirements at 30 CFR 762.5 since the Federal definition includes that phrase.

185. Comment: 405 KAR 24:030 Section 5(3)(d), notes the KCA, should be changed to read: "The economy of Kentucky *and specific local mining regions*." The economy of the specific local mining region should be considered in designating lands unsuitable for mining. The local mining region, in most cases, will have the most obvious economic impact. This change is also consistent with Section 8(3).

Response: The Secretary believes the revised language in Kentucky's regulation 405 KAR 24:030E Section 5(3)(d) of June 12, 1980, adequately addresses the issue raised by the commenter. Although Kentucky uses the phrase "and its coal mining regions" in lieu of the the language suggested by the commenter, the results will be similar.

186. Comment: 405 KAR 24:030 Section 8(2), concerning when an area may be designated unsuitable for mining upon petition, should be revised by deleting the word "the" preceding the term "surface coal mining" and the word "operation" immediately following that phrase. These deletions would make the regulations applicable to the surface coal mining region in general rather than a specific operator's coal mining operation.

Response: The suggested revision would not be consistent with the Federal requirements. Kentucky's language is identical to the language in Section 522(a)(3) of SMCRA and 30 CFR 762.11(b).

187. Comment: The KCA recommends deleting the word "plans" from 405 KAR 24:030 Section 8(2)(a) because the term is subjective and easily abused.

Response: The suggested change would be inconsistent with the Federal requirements. Section 522 (a)(3)(A) of SMCRA and 30 CFR 762.11(b)(1) specifically require that, upon petition, the area be designated unsuitable for mining if it is determined to be incompatible with existing State, area

wide or local land use policies, *plans,* and programs.

188. Comment: The KCA recommends changing 405 KAR 24:030 Section 8(2)(b) concerning criteria for lands unsuitable for mining to read, "Affect fragile . . . important historic, cultural, scientific, *and* aesthetic and natural systems." This change would make this regulation consistent with Section 522(a)(3)(B) of P.L. 95–87.

Response: Kentucky's June 12, 1980, revised program reflects the suggested change.

189. Comment: According to the KCA, 405 KAR 24:040 Section 2(4), concerning areas designated unsuitable for mining under Section 522(e) of SMCRA, should be revised to read, "Lands which will . . . . National Register of Historic Places unless approved jointly by the regulatory authority and the Federal, State or local agency with jurisdiction over the park or the historic site." The added language is taken from Section 522(e)(3) of P.L. 95–87 and makes this Federal requirement complete. Without this addition, Section 2(4) is more stringent than the Federal law.

Response: Kentucky's June 12, 1980, revised program reflects the suggested revision which deleted protection under Section 522(e)(3) for properties eligible for the National Register of Historic Places.

190. Comment: The KCA recommends adding the following sentence to the end of 405 KAR 24:030 Section 9 which requires the State to maintain a map of all areas designated unsuitable for mining: "A supply of such maps shall be readily available at each agency for distribution to the public without charge." This would ensure that copies are available to the public upon request.

Response: Kentucky's regulation is consistent with Federal requirements. Adoption of the suggestion is discretionary with the State.

191. Comment: 405 KAR 24:050 Section 4(5)(a), (b), and (c) should be deleted. These requirements are too subjective, are covered by other regulations on lands unsuitable for mining and are more stringent than the requirements of Section 522 of P.L. 95–87.

Response: The Secretary is unable to address the issue raised because of an apparent reference error.

192. Comment: The phrase "progressively or otherwise" should be inserted between "shall" and "be removed" in Section 1(3) of 405 KAR 18:130 which requires that all vegetative and organic materials *shall be* removed from a disposal area for underground development wastes and excess spoil.

Response: Revisions received June 12, 1980, include the phrase, "progressively or in a single operation" which is similar to the suggested change and is acceptable.

193. Comment: Section 3 of 405 KAR 18:140 concerning water control measures in waste banks should be modified so that the inclusion of subdrains is discretionary.

Response: Section 3 of 405 KAR 18:130E of the June 12, 1980, revised submission contains provisions for rock core chimney drains instead of subdrains. The Secretary believes that this will provide for flexibility and finds it consistent with the Federal requirements.

194. Comment: Section 4(4)(c) of 405 KAR 18:130 and 16:130 concerning the requirement for a drain and filter system in a fill should be deleted in its entirety on the grounds that the design of a durable rock fill is such that the whole fill is a drain.

Response: The suggested change would make 405 KAR 16:130E inconsistent with 30 CFR 816.74(c)(3) and 30 CFR 817.74(c)(3) and Section 515(b)(22)(C) of SMCRA which require appropriate internal drainage systems in all excess spoil fills. Fill material does not always remain "free draining" over very long periods due to weathering of shale materials and subsequent downward movement of the fine grained particles into the voids between larger particles at the bottom of the fills. Such actions can block drainways creating reservoirs (pockets) of impounded water that can create phreatic surfaces in the fill and further speed weathering of shale materials in the fill. A separate drain system, with a properly designed protective filter, will remain free draining and effectively prevent formations of water pockets in a properly designed rock fill. This issue is also discussed in Findings 13.20 and 13.24.

195. Comment: Section 2 of 405 KAR 18:190 should not require returning the permit area of an underground mine to approximate original contour (AOC).

Response: The Federal requirements (30 CFR 817.101(b)(1) and 817.102) for returning the permit area for an underground mine to AOC have been remanded to the extent that they did not provide flexibility for stabilized fills. The Kentucky regulations in the June 12, 1980, revised submission provide for flexibility and are consistent with the Federal requirements that remain in effect and the court decision.

196. Comment: The last sentence of 405 KAR 18:230 Section 4(3) concerning culverts and bridges be modified by changing, "100-year twenty-four (24)" to "10-year twenty-four (24)." The 100-year design was greater than required by the Kentucky Department of Highways.

Response: 405 KAR 18:230E Section 4(3) of the State's February 29, 1980, initial submission was deleted from the June 12, 1980, revised submission since the Federal counterpart, 30 CFR 816.153(c), was remanded. See discussion of remanded regulations under "General Background on State Program Approval Process."

197. Comment: Section 2(2) of 405 KAR 18:110 concerning surface and ground water monitoring should be deleted in its entirety because of the May 2, 1980, U.S. Court of Appeals decision.

Response: The May 2, 1980, Court of Appeals decision concerns the interim program and does not affect ground water monitoring requirements of the permanent program. Therefore, the suggestion is not appropriate.

198. Comment: The following sentence should be added to 405 KAR 18:230 Section 1(4)(a) concerning approval of alternate specifications for Class I roads: "Performance shall be determined by the effect that the proposed alternate design has on the environment."

Response: Kentucky replaced 405 KAR 18:230 Section 1(4)(a) with 405 KAR 18:230E Section 1(3) in July 12, 1980, program revision, but chose not to incorporate the commenter's suggestion. The Federal regulations for roads (30 CFR 817.150–817.176) have been remanded. The Secretary finds Kentucky's road regulations consistent with SMCRA. See discussion on remanded regulations under "General Background on State Program Approval Process."

199. Comment: The KCA suggested that Section 3(3)(a) of 405 KAR 20:010 which places limits on the use of coal exploration roads be changed to read as follows: "Vehicular . . . exploration. Travel . . . periods when *irreparable* damage to vegetation or the land surface could result." The rationale behind the suggestion is that there will be cases where construction of roads during exploration may lead to more environmental damage than if the area were left as is. The suggested changes will add more flexibility to the department's discretionary authority.

Response: 405 KAR 20:010E Section 3(3)(9) has been found consistent with 30 CFR 815.15(c)(1). If the suggested modification were included, the State regulation would be less stringent than the Federal regulation which is intended to prevent unacceptable damage, even in the short-term, to vegetation and the land surface.

200. Comment: The requirement of 405 KAR 20:010 Section 3(3)(b) concerning the length of time a coal exploration road may be in place, should be deleted in its entirety and substituting a set of requirements that take into account the brevity of the use of such exploration roads. It is economically unfeasible to construct a road and then tear it down after only a week to six months of use.

Response: Federal regulations at 30 CFR 816.150–816.176 have been remanded. See discussion under "General Background on State Program Approval Process" for effect of the remand on the Secretary's decision. The Secretary finds that the Kentucky road regulations at 405 KAR 20:010E Section 3(3)(b) are consistent with SMCRA.

201. Comment: The KCA suggests that 405 KAR 20:030 Section 1(1)(a) concerning the minimum width of undisturbed area to be left between auger mining be revised to read: "any point *where a future underground opening is anticipated* between each group." Also, paragraph 1(1)(b) should be deleted. Under Section 1(1)(a), underground openings need to be preplanned by trained engineers and not be arbitrarily situated in conjunction with an augering operation. Additionally, this amounts to unjustifiable confiscation of mineral properties and obviates optimal selection of a deep mine openings, which should be determined by extraneous engineering and economic criteria.

Response: The suggested change would not be consistent with the Federal requirements, and the Secretary believes that Kentucky's requirements are consistent with 30 CFR 819.11(a)(1) and (2). The limitations were established in the Federal regulations to insure maximum coal recovery as required by SMCRA Section 515(b)(1) by assuring that acceptable undisturbed areas are left for safe underground openings at a later time. The defined distances will allow for planning the underground opening when underground mining is expected. This is discussed extensively in the preamble to the Federal rules at 44 FR 15280

202. Comment: 405 KAR 20:060 Section 2(6) should be revised by deleting the language "shall not" and substitution with the word "may." Also, the word "not" should be omitted. The only reason for prohibiting woody materials in backfill is the creation of unstable conditions in the backfill which in fact such materials do not. So long as material is placed near the highwall on the solid flat pit floor, unstable conditions will not exist.

Response: The suggested change would allow the burying of woody material in the backfill area which is not consistent with the Federal requirement. Kentucky's regulation is consistent with 30 CFR 826.12(e). Burying of woody materials in fill material may result in mass wasting or sliding as the woody materials decompose. Placement of such materials near the highwall may, in some cases, reduce the potential for mass wasting or seepage. It will not, however, prevent possible subsequent exposure of the highwall.

H. Terry Lombardo, representing the Island Creek Company, submitted the following comments:

1. Comment: The provisions of 405 KAR Chapter 24 (Areas unsuitable for Mining), 405 KAR 20:040 (Prime Farmland), 405 KAR 18:220 and 16:210 (Postmining Land Use), and 405 KAR 18:050 and 16:050 (Topsoil) should be deleted as a result of the decision by the U.S. District Court of the Southern District of Indiana which invalidated and declared unconstitutional several portions of the Surface Mining Act and OSM regulations concerning these subjects.

Response: The Indiana court decision has been appealed to the Supreme Court and a "stay" decision has been issued. Until a final decision is issued, the provisions of the permanent regulatory program, except for those requirements suspended or remanded by the District Court of the District of Columbia or its Court of Appeals, will remain in effect.

2. Comment: 405 KAR 18:210 Section 3(2) concerning protection of surface owners from subsidence should be revised by placing the word "or" at the end of subsection (2)(b), after the semicolon. As written, the regulation implies that the operator must do (a) restore the property and (b) purchase the property or, in the alternative, (c) compensate the owner. The proposed rule should require the operator to take one of three alternative actions in the event of material damage.

Response: The June 12, 1980, revised submission includes the recommended change.

3. Comment: 405 KAR 18:210 Section 4(4) should be deleted because the term "imminent danger" in the context used in this provision is vague, ambiguous and subject to overly broad discretion by the department in its interpretation. Furthermore, this provision seemingly is concerned with the safety of persons, rather than the environment, and that area is already regulated by the Kentucky Department of Mines and the Mine Safety and Health Administration. Finally, and most importantly, this provision constitutes a "taking without just compensation" against the mine operator and coal owner.

Response: Section 516(c) of SMCRA and 30 CFR 817.126(d) require the regulatory authority to suspend underground mining operations which pose imminent danger to inhabitants of urbanized areas, cities, towns, and communities. Kentucky's regulation is consistent with those requirements and, therefore, the suggested change is not necessary.

4. Comment: Section 1(1)(a) of 405 KAR 16:070, and 18:070, as written, applies to all surface drainage from disturbed areas, including reclaimed areas. This is too broad and should be revised to exclude those areas not being actively mined to conform with the Environmental Protection Agency (EPA) regulations and the decision in *NCA* v. *Andrus*, U.S. Circuit Court of Appeals for the District of Columbia.

Response: While 405 KAR 16:070E Section 1(1)(a) and 18:070E Section 1(1)(a), as contained in the June 12, 1980, revised submission were modified in light of the court decision, the Secretary does not believe that the modified language clearly reflects the court decision. Therefore, the Secretary has affirmatively disapproved those rules. See discussion under "General Background on the State Program Approval Process" and under "Secretary's Decision."

5. Comment: Section 1(1)(b) of 405 KAR 16:070 and 18:070 should be revised because it is too encompassing, as noted in the comment above.

Response: 405 KAR 16:070E Section 1(1)(b) and 18:070E Section 1(1)(b), as contained in the June 12, 1980, revised submission were modified by the State in light of the court decision. The revised language, however, does not require that treatment facilities be retained until applicable State and Federal water quality requirements for the receiving streams are met. This is discussed in Finding 13.3.

6. Comment: Use of the term "small" in Section 1(1)(c) of 405 KAR 16:070 and 18:070 is vague and ambiguous terminology and leaves total discretion with the agency in its application. This may result in the lack of uniform application of the regulation which is contrary to the purpose of the Act.

Response: The use of the term "small" is consistent with 30 CFR 816.42(a)(3)(A) and 817.42(a)(3)(A). The applicant initiates the exemption request based on the belief that the total disturbed area is small and that sedimentation ponds, etc., are not necessary. Based on this information, the regulatory authority will evaluate the applicant's information and other available information to

determine the validity of the request. Such procedures should provide for uniform application of the requirements.

7. Comment: The requirement to construct ponds before any surface mining activities are begun is inappropriate because various activities which would be defined as surface mining activities could be conducted on the site without causing any perceptible change in water quality or discharge.

Response: Kentucky's definition of "surface mining activities," 405 KAR 7:020E Section 1(128), pertains only to operations for removal of the overburden and the coal. It does not include such activities as surveying, road construction, etc. SMCRA Section 515(b)(10) requires protection of the hydrologic balance both during and after "surface mining operations" which is defined in SMCRA Section 702(27) to include "activities conducted on the surface of the lands in connection with a surface coal mine or surface impacts incident to an underground mine." Therefore, the construction of sediment ponds in advance of "surface mining activities," as required by Kentucky's rule, 405 KAR 18:90E Section 1(1), is appropriate and found consistent with the Federal requirements.

8. Comment: The requirements to meet effluent limits for mixed drainage in total is contrary to *NCA* v. *Andrus* and EPA regulations. Section 1(1)(f) of 405 KAR 16:070 and 18:070 should be revised to provide for a "net/gross" test per the NCA decision.

Response: Federal regulation 30 CFR 816.42(a)(1) has been remanded. Therefore, in accordance with the court order, the Secretary has disapproved the analogous Kentucky regulations as set forth in the "General Background on State Program Approval Process" and the "Secretary's Decision."

9. Comment: EPA and OSM regulations as revised on December 28, 1979, and December 31, 1979, both provide that the rainfall variance applies for a 10-year 24-hour precipitation event or for any precipitation event when the pond design criteria to contain or treat such a rainfall are met by the operator. Kentucky's regulation should reflect these requirements.

Response: The Secretary agrees that the Kentucky regulations in 405 KAR 16:070E Section 1(1)(h) and 18:070E Section 1(1)(h) are not consistent with the Federal requirements. The Secretary has requested additional information in Finding 13.4.

10. (a) Comment: The terms "formal conference" and "informal conference" are used in 405 KAR 7:090 Section 3 without any distinction between the two.

Response: The Secretary agrees with this comment and has included it in Finding 27.5.

(b) Comment: There is an apparent conflict between 405 KAR 7:090 Section 3(1) (b) and (e) concerning prepayment of penalty for a violation.

Response: The Secretary agrees. See response to comment A.10 from the Appalachian Research and Defense Fund of Kentucky for further discussion.

(c) Comment: The phrase "and that a final order should be issued" is vague in 405 KAR 7:090 Section 3.

Response: The Secretary does not agree that this language is vague. Failure to request a hearing within the time limits established constitutes a waiver of the right to the hearing. The language "and that a final order should be issued" gives finality to the DNREP decision that hearing rights have been waived and is in accordance with both 405 KAR 7:090E Section 3(5)(i), KRS 350.032(2) and KRS 224.085 which provide for appeals of "final" orders.

(d) Comment: The word "default" used in 405 KAR 7:090 Section 3 needs to be defined.

Response: The Secretary does not believe that use of the term default is unclear. The term "default," as used in 405 KAR 7:090E Section 3, concerning requests for formal hearings, means that failure to appear without good cause or failure to comply with any pre-hearing or interlocutory order will constitute grounds for dismissal of the administrative action by the hearing officer and would apply to actions of the petitioner or the respondent, as appropriate. Therefore, the Secretary does not believe that a definition is required. However, the State may, at its discretion, develop a definition of "default" but the Secretary will not require it for program approval.

(e) Comment: 405 KAR 7:090 Section 3(2) provides the department with unusual discretionary authority as it relates to the department's authority to bring show cause proceedings regarding permit suspension or revocation.

Response: The Secretary has determined that KRS 350.465(3)(f) relative to permit suspension or revocation is consistent with Section 521 of SMCRA. The Secretary believes that discretionary authority provided in 405 KAR 7:090E Section 3(2) is acceptable when used in connection with 405 KAR 12-020E Section 5 for permit issuance or denial hearings.

(f) Comment: The term "affirmative case" needs to be defined.

Response: The Secretary assumes that the term "affirmative case" as used in 405 KAR 7:090E Section 9 can be interpreted to mean "prima facie case" consistent with 43 CFR Part 4. Therefore, the Secretary will not require a definition in order for the program to be approved. The State may develop the definition at its discretion.

(g) Comment: The terms "minor" and "serious" need clarification in 405 KAR 7:090 Section 10.

Response: Section 518(a) of SMCRA provides that a civil penalty "may" be assessed for the violation of any permit condition or any other provision of Title V of SMCRA, except that if such violation leads to the issuance of a cessation order, a civil penalty "shall" be assessed. 405 KAR7:090E section 10, which establishes what the hearing officer shall consider in determining the seriousness of a violation, is consistent with Section 518(a) of SMCRA. The terms "minor" and "serious" are not inconsistent with Section 518(a) of SMCRA inasmuch as the use of these terms does not adversely affect the mandatory civil penalties for all cessation orders. While the Secretary will not require the definitions for program approval, the State may develop the definitions at its discretion.

(h) Comment: 405 KAR 7090 Section 11 seems to contradict Section 10 which allows that a penalty might not be assessed at all in a minor violation.

Response: The Secretary agrees with the commenter. See Finding 19.4.

(i) Comment: 405 KAR 7:090 Section 12 nees to define conditions for awarding costs and expenses.

Response: The Secretary agrees with the comment to the extent set forth in Finding 27.12. It is, however, unclear how the commenter uses the term "define conditions." The Secretary's evaluation of consistency of the State regulation is based on a comparison with 43 CFR Part 4. If the State regulation met that test, the Secretary would have been able to find it consistent with the Final requirements.

11. The commenter also submitted comments from the Kentucky Coal Association which duplicated those submitted by Mr. Bill Caylor representing the Kentucky Coal Association. These are all discussed in response to Mr. Caylor's comments under paragraph G above.

I. Comment: Peabody Coal Company (PCC) submitted the legislative summary regulations. Also included was a list of Kentucky regulations which PCC maintains are "similar to the remanded Federal regulations" and which PCC apparently feels should be affirmatively disapproved in their entirety. (See Administrative Record No. KY–242.)

Response: The Secretary has considered the submitted list in making his determination on which Kentucky regulations are based on suspended or remanded Federal regulations. The Secretary's final list is included under "Secretary's Decision."

J. The following additional comments were submitted by the Council of the Southern Mountains, Inc., Applachian Coalition and Environmental Policy Institute and Citizens of the Commonwealth of Kentucky:

1. Comment: Following are several differences between Kentucky's law and SMCRA. First, the Kentucky statute is more restrictive in its standing requirements than the Federal statute. It requires that a citizen bringing an action for failure to enforce be "any citizen of this Commonwealth having knowledge." This language differs from "all persons having an interest which is or may be adversely affected."

Response: The Secretary agrees with this comment and has included it in Finding 1.2(a).

2. Comment: Kentucky demands an oath requirement for persons bringing a mandamus-type action under KRS 350.250. This will have a chilling effect on the initiation of such actions and will limit citizen access to the courts.

Response: The Secretary does not believe that an oath requirement imposed a significant burden on a citizen bringing a suit and does not find the requirement inconsistent with SMCRA.

3. Comment: The scope of the Kentucky citizen suit provisions is not as broad as the Federal provisions, in that KRS 350.250(3) provides for suit against "any person" for violations rather than the "State or any other person." The Kentucky statutory provisions defining "person" does not include the State or agencies and instrumentalities of the State.

Response: The Secretary agrees with this comment and has included it in Finding 1.2(c).

4. Comment: KRS 350.250 does not contain the savings clause found at Section 520(e) of the Federal Act. This is necessary to insure that the citizen suit provision provides an additional, rather than an exclusive, cause of action.

Response: The Secretary agrees with this comment and has included it in Finding 1.2(e).

5. Comment: KRS 350.250 does not provide for damage actions comparable to those under Section 520(f) of SMCRA. The proposed statutory revision is confusing and ambiguous in its effect and clearly fails to spell out a damages action such as that envisioned by SMCRA.

Response: The Secretary agrees with this comment and has included it in Finding 1.2(c).

6. Comment: With respect to the award of costs and expenses, Kentucky must demonstrate that awards are "appropriate" unless exceptional circumstances would render an award unjust.

Response: The comment is unclear as to the specific State section which the commenter considers objectionable. KRS 350.250(2) is considered equivalent to SMCRA Section 520(d) with respect to award of costs and expenses.

7. Comment: The Kentucky statute and regulations are totally inadequate with regard to imminent hazard orders. The fundamental problem is that the imminent hazard provisions are effective only where findings are made and authority exercised under another Kentucky statute, KRS 224.071. This statute requires the making of undefined findings which, on their face, appear more restrictive than the findings required for imminent hazard sanctions. The language mandates issuance of an order only where a condition "presents a danger to the health or welfare of the people of the State or results in or is likely to result in damage to natural resources" and where it is "prejudicial to the interests of the people of the State to delay action until an opportunity for a hearing can be provided." These appear to be far more narrow than "imminent danger to the health or safety of the public" and "significant, imminent environmental harm."

Response: The Secretary disagrees with the comment. KRS Chapter 224 provides general authority for the DNREP to carry out its mandate through several divisions, e.g., Divisions of Solid Waste, Air and Water, Bureau of Surface Mining, etc. KRS Chapter 350 provides even more particular or specific mandates to the DNREP to be carried out by the Bureau of Surface Mining. With regard to imminent danger cessation orders, KRS 350.130(4) provides that when the DNREP determines that a condition in an operation creates an "imminent danger to the health or safety of the public" or is causing or can reasonably be expected to cause "significant, imminent environmental harm" a cessation order will immediately be issued. While the standards for taking summary enforcement action in other divisions within the DNREP may be more restrictive than the standards for the Bureau of Surface Mining, the Secretary is not persuaded that the general reference to KRS 224.071 contained in KRS 350.130(4) somehow renders KRS 350.130(4) less effective.

The Secretary does not perceive the language "presents a danger to the health or welfare of the people of the State or results in or is likely to result in damage to natural resources" (as contained in KRS 224.071) to be in conflict with the "imminent danger to the health and safety of the public" language contained in both KRS 350.130(4) and SMCRA.

Likewise, the Secretary is not persuaded that the language "prejudicial to the interests of the people of the State to delay action until an opportunity for a hearing can be provided" (contained in KRS 224.071) is somehow inconsistent with the mandate in both KRS 350.130(4) and SMCRA to issue summary cessation orders when necessary. The general authority provided by KRS 224 for all bureaus does not limit the mandate in KRS 350.130(4) in regard to coal mining.

8. Comment: KRS 350.130(4) refers to "condition or operation" causing harm "in violation of this chapter or the regulations," rather than conditions, practices, or violations causing or likely to cause an imminent hazard. An imminent hazard may result from a condition, practice *or* a violation. Kentucky law does not reflect this.

Response: The Secretary disagrees with the comment. The KRS 350.130(4) term "condition or operation" is perceived to be as broad as the term "condition, practice or violation" as found in Section 521 of SMCRA. Further, it should noted that the definition of "imminent danger to the health and safety of the public" found in KRS 350.130(4) contains the term "condition or practice, or any violation of a permit or other requirement of this Act."

9. Comment: The proposed Kentucky counterparts to both Sections 518 (e) and (f) of SMCRA involve refusal to comply with "final" agency action. Under these provisions, for example, refusal to comply with an imminent hazard order under review would not give rise to civil and criminal penalties. These provisions are not in accordance with those of Section 518 of the Act.

Response: The Secretary disagrees with the comment. The Secretary does not perceive that there is any material difference between the term "final order' as used in KRS 350.990 and "order" as used in Section 518 of SMCRA. The Secretary does not contemplate that, for example, a cessation order, once issued, can be violated (even if it is presently under administrative or judicial appeal) without the provisions of Section 518 of SMCRA becoming operative.

10. Comment: There are several deficiencies with respect to citizen participation in rulemaking proceedings.

Kentucky proposes that participation in rulemaking be covered under KRS 13.085. However, under that section, a public hearing on a proposed rule is granted only upon request by a person "having an interest in the subject matter." A public hearing should be automatic and notice must be published. Secondly, the standard for requesting a hearing is unclear. If it has meaning, then it is an impermissible limitation on access. There does not appear to be a guarantee of a 30-day minimum period in which to submit written comments, as required under Section 501 of SMCRA. Finally, there is no indication that there is judicial review provided to review rulemaking, as required under Section 526 of SMCRA.

Response: Although KRS 13.085 may not require a hearing on proposed rules, it is common practice for such a hearing to be held. States are not required to meet the terms of SMCRA Sections 501 and 526 exactly as long as they have adequate public participation. Finding 22 explains how the Secretary determined that Kentucky's public participation in development of the program is adequate. Since future rule changes must be submitted to OSM as State program amendments, it is believed public participation will be assured in the future.

11. Comment: All citizen access to information appears to be governed by the Kentucky Open Records Act. Its provisions cannot restrict such access to any greater extent than 30 CFR 840.14 and 842.16 or the Freedom of Information Act (5 USC 552). The commenter believes that an attorney general's opinion is necessary to ensure this construction of the Open Records Act insofar as it relates to the surface mining program.

Response: The Kentucky Open Records Act, KRS 61, was submitted with the Kentucky program resubmission of June 12, 1980, and reviewed as part of that package. The Secretary sees no basis to find that the Open Records Act might be considered inconsistent with 30 CFR 840.14 and 842.16. In addition, regulations in 405 KAR 8:010E Section 12, 8:020E Section 3, and 24:030E Section 6 are consistent with the Federal requirements and will not require a legal opinion.

12. Comment: Kentucky's June 12, 1980, revised program fails to fully include the public participation procedures set forth in 43 CFR Part 4. Specifically, the regulations are ambiguous regarding discovery rights in administrative proceedings; intervention rights are not as broad as those guaranteed for persons with an interest which is or may be adversely affected; eligibility to practice before the DNREP in administrative proceedings is too stringent regarding lay representation of corporations or unincorporated associations; and costs and expenses, while provided, are a morass of conflicting concepts and not in accordance with 43 CFR Part 4. To correct these deficiencies, the commenter provided specific language for inclusion in 405 KAR 7:090 Section 3(5)(2), 405 KAR 7:090 Section 8, 405 KAR 7:090 Section 12 and 405 KAR 7:090 Section 3(4) and language concerning provisions for eligibility to practice before the DNREP in administrative hearings. That language can be reviewed in Administrative Record Document No. KY–222.

Response: The Secretary agrees that Kentucky's regulations do not adequately address the public participation procedures set forth in 43 CFR Part 4. See Findings 27.6, 27.10, 27.11, 27.12, and 27.14. The Secretary also believes that the revisions suggested by the commenter appear to include provisions consistent with the Federal requirements. Kentucky should, therefore, carefully evaluate and consider these comments in preparing its resubmission.

13. Comment: 405 KAR 7:090 Section 11(2)(b) concerning extensions of the abatement period is without any basis in the Federal Act and regulations and allows an operator to bypass the requirements of 405 KAR 7:090 Sections 3(4) (a) and (b) (formal hearing requirements) in achieving relief from an abatement period set out in a notice of violation. Section 3(4)(a) is sufficient to provide temporary relief from notices and cessation orders, only upon the finding by a hearing officer that all conditions therein are met and all interests sufficiently protected. Section 11(2)(b) allows for an end-run of those requirements, as well as an indefinite extension of the 90-day limit on abatement periods. Notwithstanding the department's attempt to cure the section by appearing to limit its application, it must be deleted.

Response: The reader is referred to the response to Appalachian Research and Defense Fund of Kentucky, comment No. A.11.

14. Comment: 405 KAR 7:090 Section 3(5)(i) should be revised to read, "any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 22.085 and 350.032(2). Upon receipt by the department of notice of the filing of an appeal, if no transcript has been previously prepared shall, as a part of the record, cause a copy of the testimony taken before the department to be transcribed. The transcript shall be prepared at department expense, and shall be prepared as soon as is practicable." The proposed addition makes clear that the department will bear the expense of the transcript preparation and that preparation will be undertaken as quickly as possible.

Response: Although the suggested revision may clarify who will bear the burden of expense and transcript preparation, the Secretary does not believe that the change is necessary for a program to be approved. Adoption of the suggestion is, therefore, discretionary with the State.

15. Comment: 405 KAR 7:090 Section 3(5)(c) should be amended with the insertion of a new fourth sentence between "transcribed" and "when certified" to read: "If the hearing officer determines that the issues presented in a hearing are substantial or complex or for other similar circumstances, the hearing officer shall determine if it is necessary for a full and fair determination that a transcript be prepared at department expense to accompany the hearing officer report to the Secretary, and shall so order if it is found to be."

Response: The suggested language may clarify 405 KAR 7:090E Section 3(5)(c). The Secretary believes, however, that the existing language permits the hearing officer to consider such facts in reaching a decision on the need for a transcript. Therefore, the suggested change is not essential to determining the adequacy of the program.

16. Comment: 405 KAR 7:090 Section 3(5)(d) should be amended to include a new sixth sentence to be inserted between "order" and "There shall" and to read: "An additional seven (7) days shall be allowed for the filing of a response to exceptions taken by a party." The eighth sentence would then read: "The Secretary shall consider . . . and responses to exceptions." The ninth sentence would read: "The Secretary . . . exceptions *and responses to exceptions thereto.*"

Response: The Secretary does not find that such a change is essential to adequately satisfy Federal requirements because the right to file exceptions is granted to all parties and not limited to the non-prevailing party(ies), all rights to respond to the report and recommended order of the hearing officer are preserved.

K. Comment: Mr. and Mrs. J. Duane Owens, Ms. Rebecca Simpson, Mr. Stephen E. Ball, Lydia Surgner, Ransom Hensley, Hazel King, Sarah Lynn Cunningham, Don Huesman, Ethel Gabbard, Angie Debord, Everett Akers, Martin Newell, Jenny Davis, and

Ashland Howard asserted that Kentucky should not receive primacy because of a history of poor performance.

Response: The Secretary cannot consider past performance in evaluating a program submission. Section 503 of SMCRA specifically requires that the States "demonstrate only the capability to carry out the Act." As discussed in the preamble to 30 CFR Chapter VII (44 FR 14946–14947) a State's past history of administration is not considered a fair indicator of its future abilities under the Federal legislation, and past performance would have to be judged on factors which may not necessarily relate to a State's future intentions or capabilities (44 FR 14961).

L. Comment: Steven R. Young of Donan Engineering, Inc., commented that the Kentucky regulations deleted any phrase of its law and regulations that would require a professional geologist in favor of a professional engineer and requested OSM to require a correction.

Response: The Secretary believes that this is an area of State discretion and will not require change for program approval.

M. Jackie Swigart, Secretary, Department for Natural Resources and Environmental Protection, spoke at the Kentucky, July 22, 1980, public hearing and entered several documents into the record. (See Administrative Record No. KY–262.) These comments and documents dealt with the following issues:

1. Comment: Ms. Swigart discussed the DNREP response to OSM's June 6, 1980, comments on legislation (Administrative Record No. KY–157). Ms. Swigart pointed out that several of the issues were cleared up by the July 16, 1980, DNREP letter which forwarded a synthesis of the legislation and discussed the State's position on OSM's concerns (Administrative Record No. KY–252).

Response: This document was considered a modification to the State program and was discussed in a meeting between OSM and the State on July 22, 1980 (Administrative Record No. KY–253). The results of the meeting are reflected in the Secretary's findings.

2. Comment: A synopsis of the changes DNREP made to the submission's narrative sections was entered into the record. (See Administrative Record No. KY–262.)

Response: The synopsis did not contain new material for the program submission, and it has been considered by OSM as a summary of State actions on the narrative changes made in the June 12, 1980, revised submission.

3. Comment: Ms. Swigart made several comments relative to OSM's review process. The comments were based on a resolution passed by the Kentucky Legislative Research Commission (Administrative Record No. KY–262) recommending that OSM (a) work from the assumption that the Commonwealth will act in good faith, (b) read the statute, regulations and program plan documents together, (c) not comment beyond its authority, (d) recognize Kentucky's unique expertise, (e) not require definitive answers to questions that OSM has not yet itself answered, (f) recognize the rights of a State under the tenth amendment of the U.S. Constitution, (g) recognize that the requirement for primacy is "consistency" with Federal requirements and that the concept implies a certain degree of flexibility, (h) recognize that the statutory deadline for approved State programs will precede the resolution of remanded regulations and fine tuning of details can be accomplished after primacy is approved in full, (i) must more effectively and positively assist the States in their efforts to achieve primacy, and (j) recognize the individuality and unique conditions of each State.

Response: The Secretary has utilized these suggestions in the review of State programs. This is demonstrated throughout the Secretary's findings, where appropriate. The Secretary believes he has treated Kentucky fairly in the State program review process, while fulfilling all his duties under SMCRA.

N. The Environmental Policy Institute and the Council of Southern Mountains provided the following comments on letters provided by the State and for which the comment period was reopened on September 18, 1980 (45 FR 62157–62158):

1. (a) Comment: In addressing the August 18, 1980, DNREP letter, the commenter asserts that KRS 350.028(3) conflicts with KRS 350.130 (1) and (4) thus adversely affecting the mandatory field enforcement provisions of KRS 350.130 (1) and (4).

Response: The Secretary believes that the legal opinion as contained in the August 18, 1980, DNREP letter together with 405 KAR 12:020E and KRS 350.130 provide for the mandatory enforcement required by Section 521 of SMCRA. The authority and power granted to DNREP through KRS 350.028(3) relates to actions taken by the DNREP where prior hearings are appropriate, for example, show cause hearings for permit suspension or revocation. The language of KRS 350.130, applying particularly and singularly to the extraordinary administrative action of summary cessation of surface coal mining operations, should not, under the Kentucky case law cited in the August 18, 1980, DNREP letter, be adversely affected by the more general language of KRS 350.028(3). Moreover, KRS 350.130 (1) and (4) were enacted subsequent to KRS 350.028(3). A well-settled tenet of judicial construction is that the most recent expression of the legislature should prevail where construction of related statutory language is in issue.

(b) Comment: The commenter suggests that the concerns noted by OSM in its June 6, 1980, letter to DNREP (Administrative Record No. KY–157) with respect to KRS 350.090(1) and KRS 350.113(3) be resolved by DNREP policy statement.

The Secretary agrees. See Findings 1.1 and 4.1.

2. Comment: The commenter states that KRS 350.250 limits citizen suits to "any citizen of the Commonwealth" and is thus less stringent than Section 520 of SMCRA which provides for suits by "any person."

Response: The Secretary agrees. See Finding 1.2(a).

3. Comment: The commenter states that KRS 350.990(1) is deficient in that the statute on its face does not apply to cessation orders.

Response: The Secretary agrees. See Finding 2.5.

4. Comment: The commenter states that it is not clear that citizens have the right to go to the mine site during the bond release process as required by Judge Flannery's ruling in the permanent program regulation litigation.

Response: The Secretary agrees. See Finding 18.13.

5. Comment: The commenter suggests that the DNREP relative to scope of mandamus as set forth in the August 19, 1980, DNREP letter be made a condition of program approval.

Response: The Secretary believes that the DNREP letter of August 19, 1980, as an opinion from the chief legal counsel of DNREP, adequately addressed OSM's concerns by demonstrating that KRS 350.250 has language broad enough to encompass mandamus for performance of nondiscretionary duties.

O. The Appalachian Research and Defense Fund of Kentucky also provided comments on the letters provided by the State and for which the comment period was opened on September 18, 1980 (45 FR 62157–62158):

1. Comment: The commenter states that it is satisfied that the language of KRS 350.250 approximates the intent and scope of Section 520(a)(2) of SMCRA.

Response: The Secretary agrees. See the Secretary's response to comment No. N. 1, above, from the Environmental Policy Institute.

2. Comment: The commenter states that it is concerned that KRS 350.990(1) fails to provide for a $750 per day minimum penalty for failure to abate the Kentucky equivalent of cessation orders.

Response: The Secretary agrees in part. See Finding 2.5. While the Secretary does not believe that a $750 per day minimum penalty is provided immediately for the Kentucky equivalent to an imminent danger cessation order, he does believe that the language of KRS 350.990(1) provides for a $750 per day minimum for the Kentucky equivalent to a failure to abate cessation order. This is consistent with the Federal laws and rules which only require the $750 minimum after failure to abate following a previous order or notice.

3. Comment: The commenter states that it is concerned that KRS 350.250 does not, by the use of the language "any citizen of the Commonwealth," extend standing to bring a citizen suit as broadly as does Section 520 of SMCRA through its language "any person having an interest."

Response: The Secretary agrees. See Finding 1.2(a) and the Secretary's response to comment No. N. 2, above, from the Environmental Policy Institute.

4. Comment: The commenter states that it is concerned that KRS 350.028(3) conflicts with KRS 350.130(1) and (4), thus adversely affecting the mandatory enforcement provisions. The commenter further states that the legal opinion of the General Counsel of DNREP of August 18, 1980, is unconvincing.

Response: The Secretary disagrees. See Finding 2.3 and the Secretary's response to comment No. N. 1, above, from the Environmental Policy Institute. Essentially, the Secretary believes that the legal opinion of the General Counsel of the DNREP together with KRS 350.130 and 405 KAR 12:020E provide for the mandatory enforcement required by Section 521 of SMCRA because the authority and power granted to the DNREP in KRS 350.028(3) relates to actions taken by the DNREP where prior hearings are appropriate, for example, show cause hearings for permit suspension or revocation. The language of KRS 350.130, applying particularly and singularly to the extraordinary administrative action of summary cessation of surface coal mining operations, should not, under the Kentucky case law cited in the General Counsel's letter of August 18, 1980, be adversely affected by the more general language of KRS 350.028(3). Moreover, KRS 350.130(1) and (4) were enacted subsequent to KRS 350.028(3). A well-settled tenet of judicial construction is that the most recent expression of the legislature should prevail where construction of related statutory language is in issue.

Federal Agencies Outside Interior

A. Mine Safety and Health Administration (MSHA) submitted the following comments:

1. Comment: MSHA requires an abandonment plan prior to removing an impoundment. Also a plan for extinguishing coal processing waste fires must be approved before the fire can be extinguished.

Response: The Secretary believes that MSHA's comments are adequately addressed by Kentucky's proposed regulations. 405 KAR 16:090E Section 5(13)(d) addresses the abandonment plan requirement by incorporating the provisions of 30 CFR 77.216. Specifically, paragraphs 77.216–2 (a)-(k) of these rules require an impoundment plan which must include general provisions for abandonment. With regard to approval of a plan for extinguishing coal processing waste fires, 405 KAR 16:140E Section 5 specifically notes that the DNREP and MSHA must jointly approve a plan for extinguishing burning coal waste.

2. Comment: 405 KAR 16:160 Section 1 and 405 KAR 18:160 Section 1, design requirements for diverting drainage from the upstream area of an impoundment, are less stringent than MSHA guidelines. Kentucky's February 29, 1980, proposed rules require design standards to accommodate peak runoff from a 100 year 24 hour precipitation event. MSHA guidelines, on the other hand, call for a 100 year 6 hour precipitation event.

Response: The State regulation is consistent with 30 CFR 816.93 which requires design standards to carry the peak runoff from a 100 year 24 hour precipitation event. The Secretary of Labor concurred in the Federal regulations, as required by Section 516(a) of SMCRA, on February 21, 1980. (See preamble to the Federal rules at 44 FR 14909.)

B. Tennessee Valley Authority (TVA) commented as follows:

1. Comment: The hydrologic information required by various parts of Kentucky's February 29, 1980, proposed regulations will often be difficult and expensive to obtain. The data gathered is to be used to determine the probable hydrologic consequences (PHC) of the proposed mining operation; however, Kentucky's proposed submission does not elaborate on how the required hydrologic data might be utilized in the PHC determination.

Response: The hydrologic data required by Kentucky's regulations will be used by the permit applicant to identify, evaluate, and describe the probable hydrologic consequences. This same data will be available to the regulatory authority for use in evaluating and reaching a decision on the permit application. Kentucky's submission satisfies the basic requirements of the Federal counterparts for protecting the hydrologic balance in 30 CFR 816.41–816.57 and 817.41–817.57.

2. Comment: 405 KAR 16:180 Section 1(4)(i) of Kentucky's June 12, 1980, resubmission, concerning selection of plant species, should be expanded to include the criteria: "their proven ability to survive and grow on surface mine spoil" and "their ability to quickly provide quality food and cover (5 to 8 years) for fish and wildlife." Also, Section 1(4)(i) should include a statement stressing the need to permanently retain safely-constructed sediment ponds for the benefit of fish and wildlife needs.

Response: The Secretary does not believe the addition of the criteria suggested is necessary for program approval since the State's provisions are consistent with their Federal counterparts. The revegetation requirements in 405 KAR 16:200E are designed to provide suitable ground cover, depending upon the approved postmining land use. This includes the use of vegetative species which will survive and grow on the reclaimed land and which will meet vegetative productivity requirements. Further, adding language in this section regarding retention of sediment ponds would be redundant. 405 KAR 16:090E permits retention of sedimentation ponds, provided they are part of the postmining land use and meet certain standards specified in 405 KAR 16:100E.

3. Comment: Although 405 KAR 16:110 Section 1 of Kentucky's June 12, 1980, resubmission follows the Federal counterpart, the requirements for measuring infiltration and subsurface flow should be deleted because they are meaningless in decisionmaking. In the humid East measurement of infiltration is almost meaningless because it can be so variable. Also, subsurface flow measurement is best done with a ground water model and cannot be "monitored" per se unless the flow is into an underground mine. Issues related to preserving the recharge capacity of ground water are better dealt with in the determination of probable hydrologic consequences.

Response: The determination of probable hydrologic consequences is a premining phase whereby baseline information is gathered and use to predict the impacts to the hydrologic regime. Kentucky's regulation 405 KAR 16:110E requires surface and groundwater monitoring to determine the quality and quantity of water during the mining operation. Furthermore, Kentucky's proposed program must include provisions for monitoring infiltration rates and subsurface flows to be consistent with Federal requirements. The Federal regulations (as mirrored by Kentucky's rules), however, provide that the manner of monitoring be approved by the regulatory authority. Such discretion, the Secretary believes, permits the regulatory authority considerable flexibility in determining what measurements need to be monitored at a specific site and how such monitoring shall be conducted.

4. Comment: The words "adjacent to and on the blast side of" should be substituted for the word "at" in line 3 of 405 KAR 16:120 Section 4(9) of the June 12, 1980, Kentucky resubmission.

Response: Incorporation of the suggested language would make Kentucky's regulation less stringent than 30 CFR 816.65(i), which establishes the minimum peak particle velocity for blasting. The use of the phrase "adjacent to and on the blast side of" would tend to narrow protection to a specific area around a dwelling. The Federal requirements, as mirrored in part by Kentucky, provide a broader area of protection. For additional discussion of Kentucky's blasting regulations, see Findings 13.10 through 13.16.

C. The Department of Energy (DOE) commented as follows:

1. Comment: Kentucky's February 29, 1980, submission did not include the Federal requirements of 30 CFR 731.14(c). This section requires a legal opinion from the appropriate State legal counsel and an explanation of the differences between the Kentucky proposed program and the Federal program.

Response: The Secretary agrees with this comment. See Finding 12.

2. Comment: The narrative description in State Section 731.14(g)(2) should describe how the cost of reviewing the applications has been estimated. Further, it would be helpful to mine operators if this section also addressed whether the fee is partially or wholly refundable under any set of circumstances.

Response: The Secretary does not believe that it is necessary for the Kentucky program to describe how costs of reviewing applications are estimated as a condition for program approval. Kentucky has elected to charge a standard fee of $250 per application plus $50 per permit acre. Such nominal charges will not exceed the cost of reviewing, administering, and enforcing the permit, in accordance with Section 7(a) of SMCRA and the regulations promulgated thereunder.

Additionally, Kentucky's regulations fully satisfy the requirements of 30 CFR 771.25 which does not require that a State program address whether permit fees are partially or wholly refundable. The Secretary agrees that information on whether permit fees are refundable would be useful to operators; however, establishment of such a policy is discretionary with the State.

3. Comment: The narrative description in State Section 731.14(g)(3) should be revised to incude the numerical values for each feature of the bond computation format.

Response: The Secretary believes that Kentucky's description for implementing, administering, and enforcing a system of performance bonds and liability insurance needs extensive revision. In particular, the "scoring" system and computation formula, as noted by DOE, needs further explanation and discussion. Additional comment regarding Kentucky's proposed bonding requirements may be found in Finding 18.

4. Comment: The narrative description in State Section 731.14(g)(12) of the program submission should provide a more thorough discussion of the specific civil and criminal penalties to which persons with a conflict of financial interest will be subject. This section should also discuss how these restrictions will be enforced.

Response: The Secretary agrees. See Finding 23.

5. Comment: The staffing description in State Section 731.14(i) of the proposed program should include an ecologist as part of the proposed staffing.

Response: Kentucky has included environmental specialists, agronomists, wildlife biologists, foresters, soil scientists, and environmental engineers in its proposed staffing. The Secretary has asked for additional information on the State's proposed staffing, and the Director of OSM will provide the State with specific comments, including additional information for staff for the biological sciences.

D. The U.S. Forest Service and Glen Murray, State Conservationist, State of Kentucky, provided the following comments:

1. Comment: Increased flexibility is needed in the Federal and State bonding requirements to encourage a more innovative and viable mining research and demonstration program. Specifically, bonding requirements should recognize opportunities for State and Federal agencies and research-oriented organizations to assume reclamation liability for research and demonstration projects involving active mining operations. State Conservationist, Glen Murray, provided suggested language for amending P.L. 95–87 and 30 CFR 780.28, which can be reviewed in Administrative Record Document No, KY–161.

Response: Subsequent to the receipt of the above comments, the Department of Agriculture's Committee on Reclamation of Lands Affected by Mining (RECLAM) petitioned the Director of OSM to amend 30 CFR 780.28. The petition contains language nearly identical to that submitted by Glen Murray with his comments on the Kentucky proposed program. RECLAM's petition was published for public comment in the June 18, 1980 **Federal Register** (45 FR 41167). Based on comments received, the Director will issue a written decision either granting or denying the petition. If the petition is granted, the Director will initiate a rulemaking proceeding. For additional discussion of comments received by OSM on bonding exceptions for research and demonstration projects, the reader is referred to 45 FR 43437, August 6, 1980.

2. Comment: The Forest Service would like to be involved in the preliminary on-site investigation of the proposed mine area, as provided by 405 KAR 8:010 Section 4 of Kentucky's regulations. Further, the Forest Service would like to incude, in a memorandum of understanding with the State, cooperative procedures for Forest Service-administered lands having severed mineral rights.

Response: Cooperative procedures such as those suggested by the comment would appear to benefit the effective and efficient administration of the State's surface mining program but are not required for State program approval. Lands administered by the Forest Service are regulated through the Federal lands program in 30 CFR Subchapter D. 30 CFR 741.20 of Subchapter D requires the Regional Director of OSM, not the State, to forward a permit application involving Federal lands (as defined in 30 CFR 701.5) within the boundaries of national forest lands, to the Forest Service for review and consent. Thus, the Forest Service will have an opportunity to review and consent to mining operations

involving Federal minerals, Federal surface, or both.

3. Comment: The Forest Service suggested revising Kentucky's February 29, 1980, regulation 405 KAR 8:020 Section 2(2)(f) to specify that the surface owner be notified in writing when an applicant contemplates exploration operations.

Response: Kentucky's regulation regarding the right to enter and explore is consistent with Federal requirements. The Forest Service also will be made aware of possible exploration operations through applicant contact for consent to enter Forest Service lands. Additional cooperation between the State and the Forest Service, however, would be beneficial in effectively carrying out the purpose and intent of the State's surface mining requirements.

4. Comment: The Forest Service suggested that Kentucky reword 405 KAR 24:020 Section 2(7) of the February 29, 1980, submission to provide for a 100-foot buffer area adjacent to the boundaries of any national forest. The Forest Service believes a buffer zone is necessary to provide adequate protection of surface resources and watershed adjacent to the boundaries of national forest land.

Response: The Federal regulations do not require a buffer zone. Kentucky's regulation 405 KAR 8:010E Section 4 provides for early review and coordination with appropriate local, State, or Federal agencies. During this preliminary review, Forest Service representatives would have the opportunity to recommend "set-back" distances to protect Forest Service-administered resources. The establishment of buffer zones or "set back" distances, however, would be dependent on negotiations between the Forest Service and the regulatory authority.

5. Comment: The Forest Service recommended revising Kentucky's February 29, 1980, regulation 405 KAR 24:040 Section 3 to include areas adjacent to the boundaries of any national forest and to provide that the Forest Service be allowed any input it considers relevant to the proposed coal mining operation and to the protection of Forest Service-administered lands.

Response: The suggested language is not required by the Federal regulations for program approval. Kentucky's regulation, which establishes a procedure for obtaining assistance in determining if a proposed operation is located within the boundaries of an area designated unsuitable for mining, is consistent with the Federal procedures in 30 CFR 761.12. Other coordination efforts (e.g. 405 KAR 8:010E Section 4) and public participation requirements included in Kentucky's proposed program provide sufficient opportunity and flexibility for the Forest Service to provide comment to protect its resources.

E. The Soil Conservation Service (SCS), commenting on behalf of USDA's Committee on Reclamation of Lands Affected by Mining (RECLAM), commented as follows:

1. Comment: The SCS representative indicated that prime farmland could be lost if Kentucky's February 29, 1980, definition of "historically used for cropland" is misinterpreted. The Kentucky definition is worded differently than the Federal counterpart in that it is not specific with regard to the meaning of the term "acquisition."

Response: The Secretary agrees with the comment as indicated in Finding 12.2(d).

2. Comment: The SCS suggested that the words "cotton," "grain," "sorghum," and "oats" be deleted from 405 KAR 20:040 Section 5(2) and elsewhere in Kentucky's proposed program submission of February 29, 1980, wherever similar language occurs.

Response: The Secretary does not believe the suggested changes are required. The language used in Kentucky's submission is consistent with 30 CFR 823.15(b) which includes those crops in the list of crops which must be grown on prime farmlands during the reclamation phase.

F. The Appalachian Regional Commission provided the following comments:

1. Comment: Some parts of Kentucky's resubmission of June 12, 1980, such as the bonding program and regulatory enforcement program, are somewhat vague with regard to how the State intends to carry them out.

Response: It is recognized that certain descriptions of the systems or methodologies for the bonding and enforcement programs, as required by 30 CFR 731.14(g), lack sufficient information to adequately evaluate them. The State of Kentucky will be asked to revise the appropriate descriptions. For additional discussion of Kentucky's "systems," the reader is referred to Finding 17, 18, 19, and 20.

G. The Department of Agriculture, Science and Education Administration, provided the following comments:

1. Comment: The commenter was concerned about the long-term impacts of regulatory imposed management practices and asked if the return to approximate original contour requirements should apply in Appalachia if there is to be multiple use for these surface mined areas.

Response: The Federal regulations at 30 CFR 816.102 and 817.102 and Section 515(b)(3) of SMCRA require that the land be returned to approximate original contour. Kentucky's proposed program cannot contain requirements less stringent than those Federal requirements.

2. Comment: To achieve the desired stabilization, revegetation, or productivity level, a fertility standard related to the undisturbed natural soil is needed to support the soil amendment needs.

Response: 405 KAR 16:050E Section 5 of Kentucky's June 12, 1980, revised submission provides that nutrients and soil amendments in the amounts determined by soil tests shall be applied and that all soil tests shall be performed by a qualified laboratory. These requirements of Kentucky's program are consistent with 30 CFR 816.25. The system provided in both the Federal and State requirements will permit the achievement of the desired long-term postmining stabilization, vegetation, and productivity goals.

H. The U.S. Army Corps of Engineers submitted a letter stating that it had no comments.

Federal Agencies Within Interior

A. The U.S. Fish and Wildlife Service (FWS) commented as follows:

1. Comment: Kentucky's regulations were submitted specifically for the purpose of meeting the federally imposed deadline for program submission and represent an "automatic self-destruct" set of regulations effective for only 120 days and subject to future modifications, the nature of which is not clear. Such procedure makes Kentucky's revised program of June 12, 1980, difficult to interpret and evaluate.

Response: The rules in Kentucky's revised program submission of June 12, 1980, which were enacted under the Governor's emergency rulemaking procedures, have been evaluated against the Federal requirements the same as permanent regulations, since the Federal requirement in 30 CFR 732.12 is only that the regulations be fully enacted. Approval of the Kentucky regulations, however, is conditioned on the full enactment of permanent regulations essentially the same as the approved regulations.

2. Comment: FWS pointed out that the modifications of June 12, 1980, are not compared with the Federal act and regulations as specified in 30 CFR 731.14(c).

Response: Kentucky's revised submission did not contain the side-by-side comparison required by 30 CFR 731.14(c). This is discussed in Finding 12.

3. Comment: The February 26, 1980, decision by the U.S. District Court results in several uncertainties with regard to the requirements of 30 CFR 779.20 and 780.16. FWS believes that Kentucky's modifications made in response to the remanding of these regulations are unsatisfactory. Due to the present uncertainties regarding 30 CFR 779.20 and 780.16, the FWS would support the deletion of these sections from the program until a final legal decision is reached with the understanding that OSM will promulgate revised Federal regulations which will, subsequently, be included in Kentucky's program.

Response: Kentucky regulation 405 KAR 8:030E Section 20 of June 12, 1980, has been modified in accordance with the court order, and the Secretary finds this regulation consistent with SMCRA. However, 405 KAR 8:030E Section 36 is being affirmatively disapproved in accordance with the court order. After OSM promulgates new Federal regulations, the State will be provided a specified period of time to amend its program pursuant to 30 CFR 732.17. Also see discussion under "General Background on the State Program Approval Process."

4. Comment: The FWS made several comments relative to fish and wildlife information in the permitting regulations and process and suggested incorporation of the "mine Permit Application Compliance Guidelines for Fish and Wildlife Resource Information and Reclamation Plans in Kentucky" (MPA Guidelines).

Response: These recommendations relate directly to the Federal requirements for fish and wildlife studies that were remanded, as discussed in comment No. 3 above.

5. Comment: Kentucky's definition of "best technology currently available" should be revised to include the phrase "within the constraints of the permanent program" and include a reference to P.L. 95–87.

Response: Omission of the phrase "within the constraints," which appears in 30 CFR 701.5, does not significantly alter the meaning of the State's definition. The reference to the State law rather than P.L. 95–87 is correct.

6. Comment: 405 KAR 7:080E Section 4 does not include any requirement for fish and wildlife information.

Response: The commenter misunderstands the purposes of this regulation. 405 KAR 7:080E relates to the small operator assistance program (30 CFR 795) which is limited to hydrologic information under P.L. 95–87.

7. Comment: 405 KAR 24:030E Section 5(4) should be rewritten to include relevant information from the Kentucky Department of Fish and Wildlife Resources, in addition to the information from FWS.

Response: The State regulation is consistent with the requirements of 30 CFR 764.21. The Secretary believes that the Kentucky Department of Fish and Wildlife Resources likely would have information useful for the State's data base and inventory system. Sources of information are at the State's discretion, however, and need not be identified in the regulation.

8. Comment: The reference to Section 9 in 405 KAR 24:030 Section 5(2) of the February 29, 1980, submission is unclear as it appears in the section-by-section comparison of the State regulations to the Federal regulations.

Response: This reference error is corrected in the regulations submitted on June 12, 1980, but a corrected section-by-section comparison was not provided with the revised submission. This is discussed in Finding 12.

9. Comment: The FWS made several comments relative to the State narrative description of its systems for consultation, coordination, and use of outside expertise under State Program Sections 731.14 (e), (f), (g)(9)–(10), and (k). Basically, the State has not properly (1) recognized the Kentucky Department of Fish and Wildlife Resources as having duties under the program, (2) developed memoranda of agreement with agencies which must be consulted or provide for compensation to those agencies, and (3) documented the consultation and coordination processes including lines of authority.

Response: The Secretary finds the State processes as described in the program acceptable. The program provides for appropriate notification to all agencies and allows agency input into the State actions. It is at the State's discretion whether or not to delegate duties under the program to other agencies or to pay for these services. While memoranda of agreement would be beneficial, they are not required unless the regulatory authority is delegating actual responsibilities. However, the Secretary is requesting that DNREP further explain how its proposed staff will be adequate. In a separate letter, the Director of OSM will request additional information on staff for the biological sciences.

10. Comment: There are errors in usage of the proper name and address of the Kentucky Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service.

Response: The errors can be corrected in practice and do not affect the substance of the program.

11. Comment: 405 KAR 7:070 has no comparable Federal counterpart and may allow negation of other program requirements.

Response: The revised Kentucky program of June 12, 1980, deleted this section which provided special variances for postmining land use.

12. Comment: The FWS recommends that the methodology for the protection of threatened and endangered species and notification of exploration be incorporated into Kentucky regulation 405 KAR 8:020.

Response: 405 KAR 8:020E is consistent with 30 CFR 776.12, concerning information on any endangered or threatened species. The methodology need not be included in the regulation.

13. Comment: 405 KAR 8:030 Section 11 is less stringent than 30 CFR 779.11 in that the State regulation requires environmental resource information when specifically requested while the comparable Federal regulation requires this information on all applications.

Response: Although the Federal regulations do not contain a statement equivalent to the Kentucky statement that only information required by the regulation must be submitted, the intent is the same. This is particularly evident when one considers that the Federal regulations do not require the applicant to submit certain information that is available to the regulatory authority in satisfactory form elsewhere.

14. Comment: 405 KAR 8:030E Section 12 is less stringent than 30 CFR 779.13(b)(3) in that the State did not address that subsection of the Federal regulations which states that a permit cannot be approved until geology and hydrology information is made available.

Response: Although the State language in 405 KAR 8:030E Section 12 appears to be deficient, 405 KAR 8:010E Section 14 (1) and (3) requires that the information be made available. The Secretary finds this acceptable.

15. Comment: 405 KAR 8:030E Section 13 should be reworded to conform to 30 CFR 779.14(b)(3) to the extent that a waiver for geologic information may be granted only when equivalent information is available.

Response: The Secretary finds this regulation to be less stringent than the Federal counterpart and has requested the State to revise 405 KAR 8:030E Section 13. See Finding 14.5.

16. Comment: 405 KAR 8:030E Section 18 is less stringent than 30 CFR 779.21 in that the State would require soil resources information as required by the regulatory authority and not require this

information on all permits as required by 30 CFR 779.21.

Response: 30 CFR 779.21 has been remanded by the court to the extent that the permit application must contain a soil survey only for those lands which a reconnaissance survey suggests may be prime farmland. The Kentucky regulation is consistent with the court decision.

7. Comment: 405 KAR 8:030E Section 19 should include a provision for acquiring vegetation information as per the MPA Guideline because the guideline would provide specific vegetation information.

Response: The comparable Federal regulation, 30 CFR 779.19(a) leaves the requirement of vegetation information to the RA's discretion. The suggested revision is, therefore, not required for program approval. Use of the guideline would be at the State's discretion.

18. Comment: The FWS recommends that the State incorporate the mine plan application guideline (MPA), which would require additional mapping, into 405 KAR 8:030E Section 23. The comparable Federal regulations 30 CFR 779.24 and 779.25 specifically outline the type of mapping information required.

Response: 405 KAR 8:030E Section 23 is consistent with the mapping requirements of 30 CFR 779.24 and 779.25. Additional mapping requirements are not necessary for program approval.

19. Comment: 405 KAR 10:040 of Kentucky's February 29, 1980, submission offers no apparent avenue for direct notification of the FWS and Kentucky Department of Fish and Wildlife Resources (KDFWR) when a bond release application is being processed. Both agencies should be notified of an application and should be invited to participate in any field inspections and to comment on the application.

Response: 30 CFR Part 807 does not require the type of notification suggested by the commenter. To the extent that the applicant has made general notification of a request for bond release under 405 KAR 10:040 Section 1, Kentucky's regulations are consistent with the Federal counterparts.

20. Comment: 405 KAR 16:060 Section 11 is less stringent than 30 CFR 816.57(a) concerning stream buffer zones in that the State regulation states that the original stream channel will be restored in a manner satisfactory to the regulatory authority while the Federal regulation requires that the stream channel be completely restored.

Response: The Secretary finds the State regulation inconsistent with the Federal requirements. See Finding 13.8.

21. Comment: 405 KAR 20:010 Section 4 is less stringent than 30 CFR 815.17 in that the State regulation does not require a permit for coal exploration if coal will be extracted for commercial sale, unless that sale is for coal testing purposes and a permit application is to be submitted at a later time.

Response: Kentucky's revised program of June 12, 1980, corrected this language that was included in the February 29, 1980, regulations. The Secretary finds 405 KAR 20:010E Section 4 acceptable.

22. Comment: Although FWS recognizes that 405 KAR 24.030 Section 2(b) of the February 29, 1980, submission is consistent with 30 CFR 764.15(7), regarding petitions to designate lands unsuitable for mining received after the comment period on a permit application, the FWS would like to know the disposition of petitions received after the deadline (i.e., would a petition be rejected even if protected species were involved)?

Response: The concern identified in this comment is resolved in the permitting process. As required by 30 CFR 764.15(7) and the State's analog, 405 KAR 24:030E Section 3(6) of the June 12, 1980, revised submission, the DNREP would have discretion to issue a permit when a petition has been submitted after the close of the public comment period on a permit application. The DNREP, however, would still have to comply with 405 KAR 8:010E Section 14(15) to assure that the mining activities would not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. For this reason, threatened and endangered species would be protected and no violation of the Endangered Species Act would occur.

23. Comment: Regarding the discussion of "Mandatory Criteria" for designating lands unsuitable in State Program Section 731.14(g)(11), page 7.1180 of Kentucky's February 29, 1980, submission, FWS points out that the evaluation of technological and economic feasibility should be made in the context of cumulative impact analysis and related costs and technological ability for providing recommended environmental performance standards and mitigation measures. Thus, a thorough evaluation of a petitioned extensive area should consider more than factors restricted to one or more spot-checked areas as proposed.

Response: It is agreed that a decision on a petition should recognize the cumulative impacts and costs that mining would have on a petitioned area. The Secretary believes that Kentucky's "lands unsuitable" program provides for an acceptably detailed and comprehensive evaluation of the environmental resources in a petitioned area and the potential impacts of mining incident thereto.

24. Comment: FWS stated that Kentucky's February 29, 1980, regulation 405 KAR 24:040 does not contain a counterpart to 30 CFR 761.11(b).

Response: The Secretary finds 405 KAR 24:010E Section 2(7) consistent with 30 CFR 761.11(b). The requirements of paragraph (b)(2) of the Federal regulation, however, is not necessary because it applies only to national forest lands west of the 100th meridian and, therefore, is not applicable to the Kentucky program.

25. Comment: Kentucky's February 29, 1980, proposed submission (State Program Section 731.14(g)(1)) should include all permit application forms, worksheets, checklists and other approved forms to be used by the DNREP.

Response: Section 731.14(g)(1) in Kentucky's revised program of June 12, 1980, includes copies of sufficient forms to be used in the program. The Secretary finds Kentucky's proposed permitting system acceptable.

26. Comment: The FWS recommends that the narrative description in State Section 731.14(g)(1) include, for coal exploration of less than 250 tons, a methodology approved by the KDFWS, the FWS, and the DNREP for protecting endangered or threatened species and their critical habitats from the adverse impacts of exploration activities.

Response: The suggested methodology is not required by the Federal rules for program approval. Only the requirements of 30 CFR 776.11, which describe the general requirements for exploration of less than 250 tons, are required.

27. Comment: The narrative description in State Section 731.14(g)(1) should include, for coal exploration of less than 250 tons, procedures to notify the FWS and the KDFWR that an exploration activity will be occurring.

Response: The Federal regulations do not require the notification suggested. Cooperative procedures among the interested parties for such notification, however, could benefit the effective and efficient administration of the surface mining provisions.

28. Comment: The FWS recommended that the narrative description in State Section 731.14(g)(1), for coal exploration of more than 250 tons, provide the methodology used by the technical reviewers to determine if exploration activities will affect threatended or endangered species or any other species

protected by law and that this methodology be reviewed and approved by both the KDFWR and the FWS.

Response: The suggested methodology is not required for State program approval. The program need only contain provisions consistent with 30 CFR 776.13(b)(2), which requires that the regulatory authority find in writing that the applicant for approval to conduct coal exploration activities has demonstrated that the activities will not threaten the continued existence of threatened or endangered species or adversely affect their critical habitats.

29. Comment: The FWS requested that the narrative description in State Section 731.14(g)(1) include a process for notifying the FWS and KDFWR that an application for more than 250 tons has been received and for requesting their review and comments.

Response: This request goes beyond the requirement of the Federal rules and is left to the State's discretion.

30. Comment: The FWS recommends that the narrative description in State Section 731.14(g)(1), concerning the mining permit application review, should reverse the order of the permit application review process by requiring the preliminary date availability study in advance of the reconnaissance walk.

Response: This comment has merit and has been forwarded to the State for consideration at its discretion.

31. Comment: The FWS recommends that the date base utilized in the preliminary data availability study (PDAS) include information on endangered and threatened species and migratory birds.

Response: The narrative description for State Section 731.14(g)(1) indicates that the PDAS will nclude fish and wildlife information. It is anticipated that this will include the recommended information.

32. Comment: The FWS provided detailed questions that it believed should be included in the preliminary review worksheet discussed in the narrative description in State Section 731.14(g)(1) of Kentucky's February 29, 1980, submission. Those questions can be reviewed in Administrative Record Document No. KY–217.

Response: This commenter requests more detail than the Secretary requires in the program description. Preliminary review worksheets are not required in the program, and the State has deleted the preliminary review worksheet from its June 12, 1980, revised program. Kentucky's revised 731.14(g)(1) narrative description is adequate for the detail intended by 30 CFR 731.14(g). The suggested criteria have been forwarded to the State for consideration at its discretion.

33. Comment: The FWS asserts that the State program does not appear to define an avenue for notifying the KDFWR or the FWS on the final decision of the DNREP in regard to approval or disapproval of the mining application. The final program should include this notification.

Response: The Secretary finds that 405 8:010E Section 16 of the Kentucky revised program of June 12, 1980, adequately addresses the procedures for notification of interested parties, including government agencies.

34. Comment: FWS states that, when exploration is proposed on lands designated as unsuitable for mining, the decision on the compatability of the exploration activity with the reason for the designation should not be made until the FWS, KDFWR, the originator of the petition and other interested parties have been notified and given an opportunity to comment.

Response: Kentucky's program describes a process by which the petition review stasff is notified to perform a review for compatability whenever an exploration notice is filed. (See State Section 731.14(g)(11).) This interstaff coordination provides a mechanism for ensuring that the department can make an informed decision on a complete application. The Federal regulations do not require the consultations suggested by the FWS.

35. Comment: The narrative description in State Section 731.14(g)(3) of Kentucky's February 29, 1980, submission does not appear to offer a notification to the KDFWR or the FWS of an application for the release of a performance bond. This section should be modified to provide for such notification and to permit FWS and KDFWR to participate in any field investigations of mine sites where previously identified fish and wildlife issues are involved.

Response: The Federal rules do not require this notification procedure. See comment No. 19 above.

36. Comment: Several blocks in the flow charts in the narrative description in State Section 731.14(g)(11) of Kentucky's Februjary 29, 1980, submission do not seem to be supported by a narrative description (such as "Right to Petition"). These blocks should be fully explained in the final program submission.

Response: Kentucky's narrative adequately explains the petition process. In particular, the narrative at II.3 (page 7.11.11) notes that petitions are reviewed for standing ("Right to Petition"), frivolousness, the existence of coal, etc. These criteria are subparts of the "Initial Petition Review," denoted as block 3 in Figure 2 of the proposed program submission. The reader is encouraged to review the "systems" section of Kentucky's submission along with the corresponding regulations in 405 KAR 24:010E through 24:040E for a complete description of the requirements, procedures, and processes of Kentucky's program for designating lands unsuitable for mining.

37. Comment: FWS suggests expanding the paragraph concerning Kentucky's coordination responsibilities (page 7.11.75) to include the FWS area office in Asheville, North Carolina, and the field office in Cookeville, Tennessee.

Response: The revision suggested is not required for program approval. Kentucky has elected to make the FWS Regional Office in Atlanta the principal point of contact on matters related to designation or termination petitions. The FWS and the State may wish to develop additional procedures relative to interagency points of communications on fish and wildlife matters at their discretion.

38. Comment: The data bases noted in Tables 2 and 3 (pages 7.11.98 through 7.11.105) of the February 29, 1980, submission do not appear to be designed to input and retrieve information on fish and wildlife, especially endangered and threatened species, migratory birds, and hawks and eagles. The data system should include this information.

Response: As an interim step for effectively responding to petitions to designate lands unsuitable for mining, Kentucky proposes to develop a data processing system which will serve as a short-term information system until a more comprehensive and efficient automated geographic information system can be implemented. The input for the individual modules was derived through interviews with over 25 Federal and State agencies, including the FWS.

As noted in the FWS comments, the FWS has been working for several years to develop computerized procedures for describing fish and wildlife. This system is being extensively reviewed and tested and, apparently, is not available to the State of Kentucky for integration into the Kentucky information system. Until such a system becomes available and until Kentrucky can develop a more comprehensive and sophisticated automated data processing system, information on fish and wildlife must be processed manually.

b. The Heritage Conservation and Recreation Service and the Bureau of Land Management submitted letters stating that they had no comments.

Dated: October 22, 1980.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

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GENERAL SERVICES ADMINISTRATION

41 CFR Subparts 1-4.11 and 101-35.2

Government-wide Automatic Data Processing Management and Procurement Regulations

AGENCY: General Services Administration.

ACTION: Closing of comment period.

SUMMARY: On May 28, 1980, the General Services Administration distributed to all Federal agencies and other interested parties proposed revisions of Subpart 1-4.11 of the Federal Procurement Regulations and Subpart 101-35.2 of the Federal property Management Regulations. Review and comments on these proposals were requested to be submitted within 60 days.

The significant changes included in the proposed revisions involve (1) clarification of scope, applicability and definitions, (2) the management process for determining the Federal agency ADP need as the foundation for efficient and economical competitive procurement, (3) higher thresholds for blanket delegations of procurement authority from GSA to Federal agencies, and (4) new policies and procedures regarding planning and evaluation of conversion costs.

GSA plans to issue the revised subparts as final rules prior to the end of 1980.

DATES: The closing date for comments is hereby established as November 14, 1980.

ADDRESSES: GSA (CSEP) Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, procurement Policy and Regulations Branch, Office of Policy and Planning, ADTS, 202-566-0194.

Dated: October 22, 1980.

Frank J. Carr,

Commissioner, Automated Data and Telecommunications Service.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-634; FCC 80-588]

Changes in the Corporate Structure and Operations of the Communications Satellite Corporation

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking initiates a proceeding to consider the need for any changes in the corporate structure and operations of the Communications Satellite Corporation (Comsat) as a result of the Commission's Comsat Study. The Comsat Study was undertaken pursuant to a legislative mandate that the Commission determine whether any changes are required in Comsat's corprate structure and operating activities to ensure that the corporation is able to fulfill effectively its obligations and carry out its functions under the 1962 Satellite Act and 1934 Communications Act. In its final report to Congress, the Commission identified a number of problems with Comsat's corporate structure which it viewed as adversely impacting Comsat's ability to carry out effectively its statutory missions. The Commission concluded that changes are required in Comsat's corporate structure and operations in view of these problems and made certain tentative proposals to effect these changes. This notice provides interested parties the opportunity to comment on the Commission's tentative proposals, as well as suggest alternative approaches and demonstrate how such approaches may deal more effectively with the problems identified in the Comsat Study.

DATES: Interested parties may file comments on or before December 12, 1980, and reply comments on or before January 9, 1981.

ADDRESSES: Comments in response to this notice should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James L. Ball, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632-3214.

SUPPLEMENTARY INFORMATION:

Adopted: October 9, 1980.

Released: October 29, 1980.

In the matter of changes in the corporate structure and operations of the Communications Satellite Corporation.

By the Commission: Commissioner Quello concurring in the result; Commissioner Jones absent.

1. Notice is given pursuant to Section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(1970), and § 1.412 of the Commission's Rules and Regulations of a proposed rulemaking on the above-captioned matter. The purpose of this notice is to provide interested parties an opportunity to comment on the tentative proposals we made in the Comsat Study for changes in the corporate structure and operations of the Communications Satellite Corporation (Comsat). *Communications Satellite Corporation,* 77 FCC 2d 564 (1980).

2. This notice also provides interested parties with an opportunity to suggest alternative approaches to our tentative proposals and to demonstrate how such approaches may deal more effectively with the problems we identified in the Comsat Study regarding Comsat's structure and operations.[1] In particular, we intend to give careful consideration to organizational changes that Comsat has already made in response to the final report of the Comsat Study.

A. Background

(1) Comsat Study

3. On May 1, 1980, we transmitted to Congress the final report of a study of the corporate structure and operational activities of Comsat. The study was undertaken pursuant to section 505 of the International Maritime Satellite Telecommunications Act, 47 U.S.C. 751(1979) which directed the Commission to determine whether any changes are required in Comsat's structure or operations to ensure that the corporation is able to fulfill effectively its obligations and carry out its functions under the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701 (1976), and the Communications Act of 1934, as amended, 47 U.S.C. 151 (1976).

4. In the final report, we identified a number of problems which we viewed as adversely impacting Comsat's continued ability to carry out effectively its statutory missions and fulfill the obligations and responsibilities associated with those missions. We concluded that changes are required in

[1] We will issue a Further Notice of Proposed Rulemaking regarding changes in Comsat's accounting system and in the reporting requirements imposed on Comsat by the Commission's rules.

Comsat's corporate structure and operations in view of these problems and made certain proposals to effect such changes. We then indicated that we were not making a final commitment to those proposals, but considered them subject to change after consideration of public comments submitted in response to a rulemaking proceeding. This proceeding provides an opportunity for such public comment.

(2) Related Proceedings

5. This proceeding is interrelated with ongoing proceedings looking toward achieving a more competitive environment in international communications. We recently initiated two proceedings looking toward restructuring the U.S. international communications market to achieve this end. The first reviews our Authorized User Policy to determine whether Comsat should be permitted to directly provide end-user services. The second seeks to determine the feasibility of removing current tariff restrictions on the resale and shared use of services and facilities provided by U.S. international service carriers.

6. Our Authorized User Policy defines Comsat's role in the provision of international satellite services as primarily that of a "carrier's carrier" leasing satellite circuits to U.S. overseas carriers. *Authorized User Decision,* 4 FCC 2d 421 (1966). It provides that under ordinary circumstances end-users of INTELSAT satellite facilities would be served by U.S. international service carriers. Comsat would be authorized to provide services directly to noncarrier users only in "unique and exceptional circumstances", and such authorization would be dependent upon "the nature of the service, *i.e.,* unique and exceptional, rather than the identity of the user."

7. In our Notice of Proposed Rulemaking in Docket No. 80–170, we proposed to modify our Authorized User Policy by removing constraints on Comsat to provide INTELSAT services directly to endusers. *Aeronautical Radio. Inc.,* 77 FCC 2d 535 (1980). Under our proposal, Comsat would offer INTELSAT services to all prospective purchasers, including its subsidiary, under equal terms and conditions and at tariff rates subject to regulation by the Commission. Comsat could provide transmission capacity directly to large customers such as ARINC and the Department of Defense (DOD).[2] Also, it could provide "full" through service offerings by means of separate subsidiaries organized under the terms and conditions proposed in the Comsat Study.[3]

8. The value of removing restrictions on Comsat's entry into the end-user market may go beyond any benefits that maybe gained from the addition of another carrier to the market. We indicated in our Authorized User NPRM that permitting Comsat to provide end-user services may allow us to introduce intermodal competition for some services and to move away from such artificial regulatory practices as prescribed use formulas and composite rates in favor of reliance on competitive forces to dictate the efficient utilization of satellite and cable technologies. We will explore in Docket No. 80–170 the potential for moving away from these practices as a result of Comsat's entry into the end-user market.[4]

9. In our Notice of Proposed Rulemaking in Docket No. 80–176, we proposed to eliminate current tariff restrictions of the U.S. overseas carriers on resale and shared use of the services they provide. *International Telecommunications Competition,* 77 FCC 2d 831 (1980). The purpose of eliminating current tariff restrictions is to encourage competitive entry into the U.S. end of the international market on a resale basis. We believe that market entry on a resale basis may enhance competition and innovation and cause downward pressure on prices for services and facilities now provided by existing carriers. Docket No. 80–176 concerns both MTS and record services. It is intended to be complementary to the actions we are taking today as well as to our review of the Authorized User Policy in Docket No. 80–170. In addition, it will serve as an adjunct to the ongoing proceeding in Docket No. 80–54 looking to elimination of similar restrictions on domestic public switched network services.[5]

10. Finally, we will soon initiate a proceeding to review our policy relating to the ownership and operation of U.S. earth stations that access the INTELSAT global system. We will consider various options to our current earth station policy. In particular, we will consider the feasibility of earth station ownership by U.S. carriers outside of the present ESOC arrangements, and the benefits if any, of unbundling Comsat's charges for space segment capacity and earth station services.

11. The changes in Comsat's corporate structure that we tentatively proposed in the Comsat Study are designed to complement our pro-competitive policy initiatives in the international market by creating a structural framework that would guard against Comsat using its monopoly INTELSAT/INMARSAT privileges to engage in unfair practices in competitive markets. The changes that we proposed would separate Comsat's INTELSAT/INMARSAT services from its other lines of business in competitive markets. Comsat would be restructured into two distinct corporate elements: One to handle only INTELSAT/INMARSAT functions; the other to handle all present and future non-INTELSAT/INMARSAT lines of business. In this proceeding, we will consider the terms and conditions of separation between these two corporate elements.

12. While we expect each proceeding described above to result in a decision that stands on its own merits, when taken into context they will represent a coordinated examination of various issues concerning the U.S. international communications market and an integrated approach to their resolution. We intend that the decisions we ultimately reach will result in an improved international communications system which offers consumers more choices in services and lower rates for those services.

13. In this NPRM, we first review the basic findings and conclusions of the Comsat Study. We will then outline the tentative proposals that we made in the Comsat study for changes in Comsat's corporate structure and operations. Thereafter, we will describe the recent changes that Comsat has made in its corporate structure in response to the Comsat Study. Finally, we will invite public comment on our proposals and Comsat's recent changes, as well as any alternative approaches that interested parties believe are appropriate.

[2] Such customers would be responsible for making the necessary arrangements to complete the circuits on the foreign end as well as acquiring domestic connecting facilities.

[3] "Full" through service offerings would be comparable to services now provided by U.S. international service carriers and include both foreign and domestic connecting arrangements.

[4] Another issue raised by parties commenting in Docket No. 80–170 is whether U.S. international service carriers should be granted some form of "equitable access" to the INTELSAT system if Comsat is permitted to directly serve end-users. Suggested schemes include granting IRU's or some other type of capital investment privileges. We recognized in the Comsat Study that "equitable access" issues would be ripe for discussion if Comsat is permitted to enter the end-user market. The Commission's staff is now studying these issues and the possibility of initiating a proceeding to consider them.

[5] *Resale and Shared Use of Common Carrier Domestic Public Switched Network Services,* CC Docket 80–54, FCC 80–58, released February 25, 1980.

B. Overview of Comsat Study

(1) Findings and Conclusions

14. In the final report of the Comsat Study, we reviewed the circumstances surrounding U.S. communications policy development up to enactment of the 1962 Satellite Act and the changes that have taken place in satellite communications since then. We described comsat's pervasive role in the establishment and early operation of the global communications satellite system envisaged by the 1962 Act. We also described how that role has changed as INTELSAT, the owner and operator of the system, has become a successful, self-supporting international organization with a world-wide membership.

15. Comsat's role in INTELSAT has changed from that of providing INTELSAT comprehensive system planning, operation and management services to that of providing research and development and technical and planning support services on a contractual basis. As a result, Comsat is seeking new opportunities for application of the corporate technology and expertise that it developed as INTELSAT system manager. Comsat's intention is to pursue such opportunities through diversification of its activities into non-INTELSAT/INMARSAT lines of business. Comsat's goal is to increase the value of the corporation and opportunities for profit by expanding its business horizons. This is to be achieved by applying its technology to new activities which either (1) relate to the corporation's basic business, or (2) have satellite communications as an integral part.

16. We noted in the final report that the rapid development of satellite communications since 1962 provides Comsat with significant opportunities for commercial exploitation of its corporate technology and expertise. Satellite communications technology is now being directed to a variety of commercial, military, specialized and experimental applications through domestic, regional and specialized systems as well as through the INTELSAT global system. As a result, opportunities for diversification by Comsat into new lines of business appear to exist in providing (1) specialized user-oriented satellite services, (2) satellite system planning and consultative services, and (3) high technology equipment and components.

17. We found that, as a matter of policy, Comsat should not be foreclosed from applying its corporate technology and expertise to the development of new lines of business which will result in public benefit. We indicated that Comsat's involvement in diversified satellite-related lines of business would likely contribute to the overall development of satellite communications technology, and therefore be in the public interest.

18. However, notwithstanding such public benefits, we also indicated that Comsat's involvement in diversified lines of business raises significant public policy problems involving its continued ability to carry out its statutory missions and fulfill the obligations and responsibilities associated with these missions. We view these problems as being reflected in four areas of concern: (1) the scope of Comsat's authority as it relates to non-INTELSAT/INMARSAT lines of business; (2) conflict of interest and other related problems resulting from involvement in such activities; (3) competitive advantages in non-INTELSAT/INMARSAT markets flowing from Comsat's unique status as the U.S. Signatory in INTELSAT and INMARSAT: and (4) cross-subsidization and related problem resulting from the misallocation of costs.

19. First as to Comsat's scope of authority, we concluded that Comsat is permitted under the 1962 Satellite Act to engage in activities not inconsistent with its statutory mission. However, we also stated that Comsat's scope of authority likely will remain controversial. Therefore, we recommended that the 1962 Act be amended to clearly define the extent to which Comsat may engage in non-INTELSAT/INMARSAT activities.

20. Second, we found that Comsat's involvement in certain non-INTELSAT/INMARSAT lines of business poses conflict of interest problems with respect to its statutory duties and obligations. We stated that these problems will occur whenever the outcome of a matter before INTELSAT or INMARSAT will have a direct or indirect financial effect on a non-INTELSAT/INMARSAT activity or interest in which Comsat or one of its subsidiaries has undertaken or plans to become involved. Under such circumstances, Comsat is in a position to weigh its outside corporate interests to determine overall profitability to the firm in determining the position it will take as the U.S. representative. Such situations may or may not result in undesirable consequences to the public. However, we emphasized that they should not be permitted to exist absent adequate safeguards to protect the public interest.

21. Third, we found that Comsat's unique INTELSAT/INMARSAT roles provide it with opportunities to gain advantages over U.S. competitors in the markets in which it seeks to participate. As the U.S. Signatory in INTELSAT, Comsat both learns from and contributes to INTELSAT/INMARSAT thinking and can exploit this relationship to the commercial benefit of its other lines of business. The competitive advantages it can enjoy flow from two practices: (1) intra-corporate transfer of INTELSAT-provided technology information to support other lines of business; and (2) integration of INTELSAT/INMARSAT system planning and technology development functions with its other lines of business. We stated that these competitive advantages may be inconsistent with the mandate of the 1962 Act that "maximum competition will be maintained in the provision of equipment and services utilized by the system," 47 U.S.C. 701(c).

22. Fourth, we found that Comsat's involvement in non-INTELSAT/INMARSAT lines of business will increasingly provide it with opportunities to evade rate regulation by shifting costs incurred in the unregulated sector to the regulated sector. We concluded that this practice will be particularly acute with respect to Comsat's ratepayer-funded "corporate R & D" program which provides a technology base for a number of products to be offered through Comsat's competitive lines of business. The overall result will be that Comsat's INTELSAT ratepayers will bear a disproportionate share of research and development costs common to both its regulated and unregulated lines of business.

23. Finally, we found that current statutory, structural, and government oversight safeguards are inadequate to protect the public interest from the problems we foresee as resulting from Comsat's changing role. We said that current safeguards will be insufficient to prevent either the conflict of interest and cross-subsidization problems that may result from Comsat's expanded involvement in non-INTELSAT/INMARSAT lines of business. Also, we said such safeguards will not prevent Comsat from utilizing its status as the sole U.S. representative in INTELSAT and INMARSAT to gain unfair competitive advantage in technology development markets.

(2) Proposed Structural Changes

24. In view of the problems we described in the final report as resulting from Comsat's changing role, we proposed certain changes in Comsat's corporate structure and operations. As

noted above, we proposed that Comsat be separated into two distinct corporate elements (called COMSAT Global and COMSAT National for purposes of discussion, the former being the parent corporation and the latter being the subsidiary). COMSAT Global would be limited to only INTELSAT/INMARSAT functions—(a) investment in INTELSAT and INMARSAT; (b) representation of the United States on the INTELSAT Board of Governors and the INMARSAT Council; and (c) provision of INTELSAT services and INMARSAT services. COMSAT National would handle all present and future non-INTELSAT/INMARSAT lines of business.

25. Under our proposal, COMSAT Global and COMSAT National would be required to be organizationally separate entities, although interlocking directors would be permitted.[6] The COMSAT Global board would have final decisional authority over all corporate lines of business, including control over budgets and expenditures. However, the two entities would have separate officers, facilities, advertising and marketing, records and books of accounts, procurement, and operating personnel. We believe that such restrictions would permit us to separate and more easily identify costs of non-INTELSAT/INMARSAT lines of business which Comsat might otherwise treat as common costs with its INTELSAT/INMARSAT activities.[7]

26. Our proposal would permit a degree of functional integration of high technology facilities and professional personnel. Comsat Labs and the STS division would be located in COMSAT National. COMSAT National would utilize these facilities both to (1) support its various non-INTELSAT/INMARSAT lines of business, and (2) assist COMSAT Global in carrying out its role as the U.S. Signatory in INTELSAT and INMARSAT. COMSAT National would support its non-INTELSAT/INMARSAT lines of business through the system design and engineering services provided by the STS division, and through task-oriented research and development services provided by the Labs. It would assist COMSAT Global in carrying out its INTELSAT/INMARSAT roles by handling all present and future INTELSAT/INMARSAT—awarded technical services contracts for design and development of succeeding generations of the global system and laboratory services contracts for research and development support services. It would also assist COMSAT Global by providing such in-house basic research and development as COMSAT Global may deem necessary in order to reflect the benefits of satellite technology through the global systems.

27. In the final report, we indicated a number of advantages which we believe would accrue from restructuring Comsat in the manner we proposed. First, this arrangement would focus Commission regulation of Comsat's monopoly services on one defined segment of the corporation and provide a framework for clearly identifying rate base elements and relevant costs. Second, it would permit Comsat to engage in central planning and controll of all of its lines of business and preserve the desirable benefits of its current integrated structure with respect to the utilization of high technology facilities and professional resources. Third, we believe that permitting Comsat to maintain an integrated structure with respect to its high technology facilities and professional resources would provide for the most effective utilization of those facilities and resources in pursuit of both INTELSAT/INMARSAT functions and other lines of business. Diseconomies that otherwise would accompany duplication or division of Comsat Labs would be avoided. Ratepayer funding of a COMSAT Global sponsored research and development program would assure that basic satellite communications research in support of INTELSAT and INMARSAT would be continued. Existing synergistic advantages in Comsat's integrated structure which benefit overall satellite technology research would be maintained.

(3) Proposed Non-Structural Controls

28. We emphasized in the final report the need for controls on Comsat's ability to utilize the Labs and the STS division to functionally integrate and coordinate technology and system development done on behalf of the global systems with its other lines of business. We indicated a twofold concern: (1) that misallocations of research and development costs could occur as a result of COMSAT Global continuing to use monopoly derived revenues to fund research and development through the Labs; and (2) that COMSAT National's access to technology and information generated from INTELSAT and ratepayer-funded research done by the Labs would enable it to continue to enjoy the type of advantages in competitive markets that we have described in the final report. The purpose of controls on functional integration and coordination of research and development would be to minimize Comsat's opportunity to evade rate regulation through misallocation of costs and to discourage it from using its unique INTELSAT/INMARSAT roles to maintain exclusive access over technology and information in order to improve its position in competitive markets.

29. The final report outlined three possible controls—one dealing with the conditions under which COMSAT Global and COMSAT National transact business with one another, and two others dealing with the circumstances under which technology transfer and information flow is permitted between them. First, all dealings between COMSAT Gobal and COMSAT National in connection with research and development and other technology support services would have to be on an arms length basis in terms of service prices and conditions. This would normally be accomplished by requiring COMSAT Gobal to procure all such services under competitive bidding procedures. Contracts let under this process, as well as other bids submitted in response to an RFP, would be required to be filed with the Commission where they would be made available for public inspection. In addition, any transaction between COMSAT Global and COMSAT National as a result of a contract awarded to COMSAT National, which involves the transfer of money or resources (such as making available technology information or a prototye developed by another contractor) or detail of personnel (in order to assist the Labs carrying out the contract), must be reduced to writing, specifying all operative terms of the transaction. This information also would be filed with the Commission and made available for public inspection.

30. While competitive bidding would be the normal procedure, we recognize that there may be a need for COMSAT

[6] Our proposal would not require Comsat to organize its non-INTELSAT/INMARSAT lines of business under a single entity. Such lines of business may be organized in several different corporate entities, as long as those entities are separated from Comsat's INTELSAT/INMARSAT lines of business in the manner that would adequately guard against misallocation of costs and minimize opportunity to gain unfair advantages in competitive markets.

[7] In the final report, we determined that Comsat's cost accounting system would not itself prevent misallocation of costs between Comsat's INTELSAT/INMARSAT activities and other lines of business, even though allocation of costs is done in accordance with standard operating practices for the assignment of operating and project costs. We pointed out that Comsat's standard operating practices are the product of prior judgments by its management concerning the appropriate assignment of costs. As a result, Comsat's cost accounting system only records cost allocation as it is done pursuant to established corporate policy and therefore cannot prevent any misallocation of costs that occur as a result of such policy.

Global to procure research and development from Comsat Labs on a sole-source basis. In the final report, we indicated that we would expect that the criteria for determining need for such a sole-source arrangement would be similar to that of INTELSAT in awarding the sole-source laboratory service contract to Comsat Labs—that the Labs has a unique combination of diversified and professional skills not available from other potential suppliers; that the research to be done involves a continuity work in progress at the Labs or transition from past work requiring the accumulated know-how encompassed in the Labs; or that there are no other suppliers qualified to provide the research and development needed. Arrangements for sole-source research between COMSAT Global would be embodied in a contract filed with this Commission and containing the same type of information as described above with respect to competitive awards made by COMSAT Global.

31. Second, COMSAT Global would not be allowed to treat as proprietary or confidential any technology and information to which it has access by virtue of its unique INTELSAT/INMARSAT roles and which it makes available to COMSAT National. The purpose of this requirement would be to treat a problem not addressed by competitive bidding—the advantages Comsat can gain over competitors through intra-corporate transfer of INTELSAT-supplied technology and information. The general rule would be that any such technology and information made available to COMSAT National would have to be made available, immediately and fully, to the public. Two categories of technology and information would fall within this requirement:

(1) *Signatory-derived information.* INTELSAT receives technical reports, studies and memoranda from a variety of sources through its Signatories and, in turn, passes this informatin on to the other Signatories. Comsat does not normally make these documents fully available to U.S. industry in general, or its competitors, in particular.

(2) *Technology and information generated by INTELSAT-sponsored research and development.* This category includes the interim and final technical reports prepared by INTELSAT contractors (including Comsat) which are made available to Signatories. It also includes the INTELSAT status reports of its research and development program which are regularly made available to Signatories. Comsat does not now generally make these documents available to U.S. industry.

32. In the final report, we emphasized that intra-corporate transfer of INTELSAT-provided technology and information, and integration of system planning and research and development, would continue under our proposed restructuring since Comsat would be able to utilize the Labs and the STS division to support both its INTELSAT/INMARSAT functions and its other lines of business. COMSAT National would have access to technology and information generated both by the INTELSAT research and development program or by COMSAT Global's ratepayer-funded program and, as a result, would have the opportunity to utilize such knowledge in the development of services and products in competitive markets. This opportunity would provide Comsat with advantages over its competitors. However, our proposals that COMSAT Global disseminate INTELSAT/INMARSAT-generated technology and information to its competitors would minimize any advantages by granting to those competitors the same access to INTELSAT/INMARSAT technology and information that COMSAT National would enjoy. In essence, COMSAT Global would act as a clearinghouse for the dissemination of such information to U.S. industry, which would have the same opportunity as COMSAT National to exploit it for commercial purposes.

33. The third non-structural control proposed in the final report would involve technology and information generated through ratepayer-funded research and development. Where COMSAT Global enters into a sole-source arrangement with Comsat Labs for research and development, the primary rights (title) to inventions and data generated by such research must reside with COMSAT Global. If COMSAT Global grants COMSAT National license rights to such inventions and data, it must make license rights available to COMSAT National's competitors at the same time and under the same conditions (fair, reasonable and nondiscriminatory). We would not require mandatory licensing with respect to inventions and data generated by ratepayer-funded research done pursuant to competitive bidding. In such cases, COMSAT Global would be free to specify in the RFP where title to inventions and data would reside. Thus, for inventions and data generated by ratepayer-funded research done by other contractors, COMSAT Global could follow normal practices which would place primary rights (title) to inventions and data with the contractor. This would insure that Comsat RFP's would receive the broadest possible interest from suppliers.

34. We stated in the final report that mandatory licensing of invention and data generated by sole-source contracts with Comsat Labs is particularly appropriate in view of the unique role Comsat plays as the U.S. "chosen instrument" is INTELSAT and INMARSAT. Comsat's involvement in research and development in support of its INTESAT/INMARSAT roles should reflect the special status of those roles. As noted, we believe that Comsat should not be foreclosed from applying its corporate technology and expertise to the competitive development of products and services for which there may be a positive marketplace response. However, Comsat should be foreclosed from utilizing its unique role to maintain exclusive access to technology and information in order to gain the type of competitive advantages described in the final report.

(4) Other measures

35. We stated in the final report that the proposals described above should provide a balanced solution to some of the problems we identified with respect to Comsat's current corporate structure, while permitting Comsat to continue to make effective use of its high technology facilities and professional resources. We concluded that our proposals would: (1) minimize any advantages Comsat may have in competitive markets by virtue of its special INTELSAT/INMARSAT roles; and (2) discourage Comsat from burdening its monopoly ratepayers with costs of research and development done under the guise of its INTELSAT/INMARSAT roles, but primarily intended to benefit development of product lines or service offerings in competitive lines of business.

36. However, we also concluded that our proposals would not provide a solution to the conflict of interest problems that we identified in the final report, since common ownership between Comsat's INTELSAT/INMARSAT functions and its other lines of business would continue. We pointed out that the opportunity for Comsat to coordinate all corporate actions in a manner benefiting the entire cooporation flowed from common ownership. As a result, incentives to weigh the interests of its other lines of business when involved in INTELSAT/INMARSAT matters would continue to exist. Therefore, we recommended that Congress consider amending the 1962 Satellite Act to achieve more effective

governmental oversight of Comsat's involvement in INTELSAT and INMARSAT. In addition, we recommended that Congress explore amending the Act to provide for authorization of U.S. governmental representation on Comsat's delegations to INTELSAT and INMARSAT. These issues are not part of this proceeding. We look forward to the opportunity to provide individual views in testimony before Congress should it consider them.

C. Recent Organizational Changes by Comsat

37. Comsat has recently made changes in its corporate structure in response to our final report in the Comsat Study. In a September 25, 1980 letter to the Chief, Common Carrier Bureau, Comsat outlined those changes.[8] Comsat believes that the changes it has made will strengthen its ability to carry out its basic jurisdictional responsibilities while at the same time reduce or eliminate concerns expressed by the Commission in the Comsat Study regarding potential conflicts between its jurisdictional non-jurisdictional activities.

38. Comsat has created a World Systems Division which will be part of the parent corporation (COMSAT Global) and responsible for Comsat's jurisdictional activities in connection with the provision of global telecommunications services through the INTELSAT system and global maritime services through the INMARSAT system. Comsat stated that consolidation of its jurisdictional activities into one division "will permit Commission regulation of these services in one defined segment of the corporation and provide for clear identification of all relevant costs".

39. The World Systems Division will consist of three elements: (1) International Communications Services; (2) INTELSAT Technical Services; and (3) Comsat Laboratories. According to Comsat, this arrangement is intended to separate its jurisdictional activities from its competitive activities. Comsat stated that it has transferred the "major elements" of the STS division to COMSAT General, except for "INTELSAT functions" which have been assigned to the INTELSAT Technical Services element of the new division. Comsat further stated that Comsat Labs would be dedicated to the corporation's primary mission of ensuring United States leadership in satellite communications technology through our roles in INTELSAT and INMARSAT". Also, Comsat indicated that the Labs "will perform, under appropriate reimbursement and information flow arrangements, research and development in areas related to our overall mission for other elements of the Corporation, as well as for other entities". However, Comsat did not specify what these "appropriate reimbusement and information flow arrangements would be. Comsat concluded that these major organizational changes will permit it to better focus on its "unique responsibilities in developing and improving world telecommunications via satellite."

D. Request for Comments

40. We invite comments from interested parties on the structural changes and controls that we tentatively proposed in the Comsat Study. We encourage parties filing comments to consider the proposals in view of our findings in the Comsat Study of the problems we foresee as a result of Comsat's expansion into new lines of business.

41. We invite suggestions for alternative approaches to our proposals for changes in Comsat's corporate structure and controls on its operations. We expect that interested parties submitting such suggestions will show how their alternative approaches will deal more effectively with the problems we found with Comsat's corporate structure and operations. In this respect, we request comments on the structural changes Comsat has already undertaken in response to our final report in the Comsat Study.

42. The changes that Comsat has already made appear to be consistent with the basic intent of our Comsat Study proposals—that Comsat be separated into distinct corporate elements: one to handle only its INTELSAT/INMARSAT functions; and the other to handle all present and future non-INTELSAT/INMARSAT lines of business. It appears, that under Comsat's reorganization, the only lines of business handled by the parent company would be INTELSAT and INMARSAT services through the World Systems Division. All other lines of business would be through separate subsidiaries. For purposes of establishing a complete record in this proceeding, we request Comsat to submit a schematic drawing with its comments that will show the organizational structure of the entire corporation and clearly identify each line of business within that structure.

43. Although Comsat's recent organizational changes appear to be consistent with the basic intent of our Comsat Study proposals, there remains a number of important issues which these changes do not clearly resolve. These issues essentially concern the degree of separation between the parent company and its subsidiaries. Their resolution is required in order to deal effectively with the problems we identified in the Comsat Study with respect to: (1) conflicts of interest and related problems resulting from Comsat's involvement in non-INTELSAT activities; (2) competitive advantages in non-INTELSAT/INMARSAT markets flowing from Comsat's monopoly status as the U.S. Signatory in INTELSAT and INMARSAT: and (3) cross-subsidization and related problems resulting from the misallocation of costs. The unresolved issues generally fall within two categories—allocation of costs between monopoly and competitive services, and treatment of technology and information flow.

44. The issues concerning allocation of costs involve (1) those costs for administrative and central support services which Comsat proposes to be shared between its INTELSAT/INMARSAT functions and other lines of business, and (2) the costs for research and technology development which will ultimately benefit both Comsat's INTELSAT/INMARSAT functions and its other lines of business. We request Comsat to specifically identify in its comments those administrative and central support services which it foresees as being shared by its monopoly and other lines of business, *i.e.,* personnel, procurement, marketing and advertising, general services, legal and auditing services, shareholder matters, etc. We further request Comsat to indicate how these costs will be allocated within its cost accounting system. In particular, we are interested whether (1) costs shared between Comsat and its subsidiaries would be billed in a manner as if it were being billed to an outside entity (additionally, would the bill be itemized by amount for each allocation expense grouping in the billing company's cost accounting system?); and (2) the amount of charges would be kept identifiable in the benefitting entity's general ledger.

45. As for research and technology development costs, we note that Comsat Labs will remain within the parent company under Comsat's recent reorganization, and the costs of Comsat's "corporate R&D" program apparently will continue to be treated as jurisdictional expenses.[9] These

[8] Comsat's letter will be made a part of the record of this proceeding.

[9] Comsat's "corporate R&D" program takes approximately forty percent of the Labs budget.

expenses will be fully passed on to Comsat's INTELSAT ratepayers, notwithstanding our tentative determination in the Comsat Study that INTELSAT ratepayers should not bear the full costs of Comsat's "corporate R&D" program.[10] In the Comsat Study, we found that much of Comsat's corporate-funded research and development is very basic and can lead to multiple benefits and applications other than for INTELSAT. We found that the technology that is developed as a result of Comsat's program is either of general purpose, applicable to all satellite communications needs, or can be intentionally designed for adaptability to diverse satellite communications needs.

46. In view of Comsat's position that the Labs remain in the parent company we request comments from interested parties on how to treat the problem of allocation of common research and development costs between Comsat's monopoly activities and other lines of business. Also, should the Labs remain in the parent company, we request comments on how to treat the technology and information flow problems that we identified in the Comsat Study as resulting from Comsat's ability to use the Labs and the STS division to engage in: (1) intra-corporate transfer of INTELSAT-provided technology information to support other lines of business; and (2) integration of INTELSAT/INMARSAT system planning and technology development functions with its other lines of business. We indicated in the Comsat Study that these practices can give Comsat advantages in competitive markets which can take the form of advance, and sometimes exclusive, access to INTELSAT technology development information and the "lead time" opportunities in marketing that could accrue from such access. We therefore specifically request comments on alternatives to the non-structural controls that we tentatively proposed in the Comsat Study, *i.e.*, competitive bidding for research and development; conditions on proprietary treatment of INTELSAT generated technology and information; and mandatory licensing of inventions and data generated by ratepayer-funded research and development. We request comments on whether other existing remedies such as the Commission's complaint process under the 1934 Communications Act or the anti-trust laws adequately guard against the problems that we identified. In particular, we request Comsat to identify and describe the "appropriate reimbursement and information flow arrangements" under which it would provide research and development services in support of its non-INTELSAT/INMARSAT lines of business.

[10] The costs of the "corporate R&D" program does not include costs associated with specific task-oriented projects specifically done on behalf of Comsat's subsidiaries.

E. Procedural Schedule

47. We will attempt to resolve the issues in this proceeding in concert with any action we take in Docket No. 80–170. We instruct the Chief, Common Carrier Bureau to supplement the record by obtaining any information necessary for the conduct of this proceeding.

48. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed avove must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 C.F.R. § 1.1231.

49. Accordingly, it is ordered, That, pursuant to sections 4(i), 4(j) 201–205, 214, 215, 218, 220, 303, 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, 215, 218, 220, 303, 309, and 403 (1976), sections 102(c), 201(c), and 401 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701(c), 721(c) and 741 (1976), and section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b) (1970), a Notice of Proposed Rulemaking on the above-captioned matter is instituted.

50. It is further ordered, That, interested parties may file comments on matters raised herein on or before December 12, 1980 and reply comments on or before January 9, 1981.

51. It is further ordered, That, in accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, all participants in the proceeding ordered herein shall file with the Commission an original and five (5) copies of all comments and reply comments. In reaching this decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. Copies of comments and reply comments filed in this proceeding shall be available for public inspection during regular business hours in the Commission's reference room at its headquarters at 1919 M Street, N.W., Washington, D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-33402 Filed 10-28-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[CT Docket No. 78-233; FCC 80-571]

Amendment of Part 76 of the Commission's Rules and Regulations Concerning the Network Nonduplication Rules

AGENCY: Federal Communications Commission.

ACTION: Report and order in CT docket No. 78–233.

SUMMARY: The Commission does not adopt a proposed amendment to the cable television network nonduplication rules, which would have exempted network programs of less than 30 minutes duration from application of the rules. The Commission finds that the problem has not been shown to be of sufficient significance to warrant the change. Cable television operators have not shown the existence of an undue burden in complying with the rules nor that the public is in danger of losing programming because of the rules.

EFFECTIVE DATE: Non-Applicable.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
William H. Johnson or Deborah L. Stuehrmann, Cable Television Bureau, (202) 632-6468.

Adopted: October 3, 1980.
Released: October 16, 1980.

In the matter of amendment of Part 76 of the Commission's rules and regulations concerning the network nonduplication rules.

By the Commission: Commissioner Jones concurring in the result.

1. Under the Commission's rules, cable television systems carrying both local and distant television broadcast stations are, in situations specifically defined in the rules (47 C.F.R. Subpart F), required to delete network programs from distant stations that simultaneously duplicate those of local stations. In its *Notice of Proposed Rulemaking* in this proceeding (FCC 78-544, 69 FCC 2d 714, 43 FR 48667), the Commission proposed to end application of the network nonduplication rules to network programming lasting less than 30 minutes such as, for example, short "newsbreak" programs. The *Notice* suggested that the fragmentation of audiences that the nonduplication rules are intended to prevent would not be substantial should the protection be eliminated for network programming of such short duration. The costs and burdens to cable systems in having to either purchase automatic switching equipment or utilize manual switching was believed to outweight any possible benefits to local stations from strict adherence to the rules.

2. The *Notice* specifically sought:

> . . . information relating to the frequency with which nonduplication problems of this type occur including an identification of particular cable operators who have encountered the problem, the cost and difficulty of complying with nonduplication protection requests of this type, and the impact failure to provide such protection would have on local broadcasters.

3. Comments in support of the proposed amendment were filed jointly by 70 CATV Companies and by the National Cable Television Association (NCTA).

4. Comments in opposition to the proposal were filed by the Klix Corporation, Meredith Corporation, National Association of Broadcasters, Television Licensees (joint comments), and American Broadcasting Companies, Inc.

5. After reviewing the comments and reconsidering the assumptions made in the *Notice*, we now believe that no general exceptions should be made for network programming of short (less than thirty minutes) duration.

6. Although the cable industry comments assert that the problem of network non-duplication for programs of short duration involves burdensome costs to the industry and incidental loss of non-network programming, there is very little evidence to suggest that this is the case. The *Notice* sought comments providing factual information supporting the allegation of burdensome costs and inconvenience but little if any conclusive or reliable data was provided. Moreover, both cable and broadcast commenters appear to concede that the "problem" occurs very infrequently because most short-duration programs are scheduled between other network programs, which are subject to protection.

7. This proceeding was commenced in part in response to the matters raised in a special relief petition considered in *Teleprompter of Florida, Inc.*, FCC 78-250, *68* FCC 2d *554*, 42 R R 2d 1389 (1978). In that proceeding, waiver of the nonduplication rules was sought by a cable system being requested to provide protection for a program of five minutes duration. We denied the waiver on the grounds that the petitioner had failed to show that the cost of switching would be unduly burdensome or that subscribers were losing any programming. This rulemaking proceeding was commenced to determine if the issue was one of more general concern. We now conclude that it is not. Cable operators are capable of providing the protection required, either by manual or automatic switching. The burden is not insurmountable, nor has harm to distant stations (some of whose non-network programming might inadvertently be deleted) been shown. The Commission recognizes that this situation may result in local stations receiving more protection than is technically required. However, absent data indicating that the problem is at all significant in scope, we see no reason to amend the rules at this time. We sought comment in our *Notice* on the question of "whether *ad hoc* relief granted in particular circumstances would be a desirable alternative to a change in the rules." We now believe that if the rules in their present form are applied in a reasonable manner there ought to be very few cases in which problems arise and that it is not appropriate to attempt to resolve those few problems that may arise by general rule changes which would likely create new problems of interpretation and implementation. If relief is to be granted at all, it now appears more appropriate to do so through *ad hoc* procedures rather than general rule changes.

In view of the foregoing, the Commission finds that the proposed rule change should not be adopted.

Accordingly, it is ordered, That this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc.-80-33533 Filed 10-28-80; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 45, No. 211
Wednesday, October 29, 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

Gallatin Forest Plan; Gallatin National Forest, Madison, Carbon, Park, Sweetgrass, Broadwater, and Meagher Counties, Mont.; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for the development of the Gallatin National Forest Plan. Possible management alternatives will consider a range of Forest outputs which are responsive to public issues and management concerns at the local level, and also address the goals and objectives established by the Regional Forester. Alternatives will be based on the assessed capabilities and suitabilities of the lands comprising the Gallatin National Forest.

In December 1980 the public and other individuals, agencies, and organizations who may be interested in or affected by the Forest Plan will be invited to participate in the "scoping" process. This process will include identification of issues to be addressed and the issues to be analyzed in depth.

The Forest Supervisor plans to send an information brochure to the public in November asking for comments on potential issues. Public scoping meetings will be held on the following dates and at the following locations:

Date and Location

December 10, West Yellowstone Convention Center, West Yellowstone, MT
December 11, City-County Complex, Livingston, MT
December 15, Big Timber High School, Big Timber, MT
December 16, Bozeman High School Cafeteria, Bozeman, MT
December 17, Gardiner High School, Multi Purpose Room, Gardiner, MT.

All meetings are scheduled to start at 7:30 p.m. These meetings will further define the issues.

The established dates for filing the Draft Environmental Impact Statement is the summer of 1981 and the Final Environmental Impact Statement is July 1982.

The responsible official is the Regional Forester, Tom Coston. For further information, contact John Drake, Forest Supervisor, Gallatin National Forest, Box 130, Bozeman, Montana, 59715.

Dated: October 20, 1980.

James E. Reid,
Acting Regional Forester.

[FR Doc. 80-33681 Filed 10-28-80; 8:45 am]
BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Amended Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the Arizona Advisory Committee to the Commission originally scheduled for November 1, 1980, at Phoenix, Arizona (FR Doc. 80-31311 on page 66827, October 8, 1980), has been cancelled.

Dated at Washington, D.C., October 24, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-33725 Filed 10-28-80; 8:45 am]
BILLING CODE 6335-01-M

Miami Hearing—the State of Civil Rights

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that public hearings of the U.S. Commission on Civil Rights will begin on December 8, 1980 in the Gulfstream Room of the Bayfront Auditorium at 499 Biscayne Boulevard, Miami, Florida. An executive session not open to the public may be convened at any appropriate time before or during the hearings.

The purpose of the hearings is to collect information within the jurisdiction of the Commission, particularly concerning the state of civil rights in Miami.

The Commission is an independent bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, D.C., October 20, 1980.

Arthur S. Flemming,
Chairman.

[FR Doc. 80-33638 Filed 10-28-80; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete; Meeting

AGENCY: Assistant Secretary for Productivity, Technology and Innovation, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Laboratroy Accreditation Criteria Committee for Freshly Mixed Field Concrete. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: November 25, 1980, 9:00 a.m. to 5:00 p.m.

ADDRESS: Main Commerce Building, Room B-841, U.S. Department of Commerce, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards Policy, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (202) 377-3221.

SUPPLEMENTARY INFORMATION: The National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete was established on December 31, 1978 under the provisions of the National Voluntary Laboratory Accreditation Program (NVLAP) procedures (15 CFR Parts 7a, 7b and 7c)

to develop and recommend to the Secretary of Commerce general and specific criteria for accrediting laboratories that test freshly mixed field concrete. The Committee consists of 23 members; 11 of whom represent specifiers, producers, users/contractors, testing laboratories and general interests in the private sector; 7 of whom represent the Federal agency interests; and 4 of whom represent state and local government interests. The Committee is chaired by Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards Policy for the Department of Commerce.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Although the charter for the National Laboratory Accreditation Criteria Committee for Thermal Insulation Materials has been fulfilled, former members of that committee will also be specifically invited to attend as members of the public along with representatives of the NVLAP accredited laboratories because many of the issues to be discussed are pertinent to their interests.

Copies of the minutes and material distributed will be made available for reproduction, following certification by the Chairman in accordance with the Federal Advisory Committee Act, at Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

NOTICE: The National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete will hold its sixth meeting on November 25, 1980 in the Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C. 20230 (public entrance to the building is on 14th Street between Constitution and Pennsylvania Avenues NW.). The Committee will meet from 9:00 a.m. to 5:00 p.m. in Room B–841.

Proposed Agenda Items Include

(1) Status of NVLAP—accreditation of laboratories and the evaluation process;

(2) Possible revision to NVLAP procedures;

(3) Significant issues including proficiency testing program, strict conformance to standard test methods, and addition of new test methods; and

(4) Summary of international laboratory accreditation activities including work of the International Laboratory Accreditation Conference (ILAC) on guidelines for comparing laboratory accreditation criteria.

Dated: October 24, 1980.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology, and Innovation.

[FR Doc. 80–33685 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–13–M

Bureau of the Census

Census Advisory Committee of the American Marketing Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Census Advisory Committee of the American Marketing Association will convene on November 25, 1980, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Marketing Association was established in 1946 to advise the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The Committee is composed of 15 members appointed by the President of the American Marketing Association.

The agenda for the meeting, which is scheduled to adjourn at 4:00 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and Bureau organization, major budget program developments, and other topics of current interest; (2) issue of the 1980 census undercount adjustment; (3) statistical standards and user needs in presenting Census Bureau data; (4) disclosure control in the 1977 economic census, and future directions; (5) general discussion and Committee recommendations; and (6) plans and date for the next meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact Mr. Tyler R. Sturdevant, Chief, Business Division, Bureau of the Census, Room 2633, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–7564.

Dated: October 24, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80–33609 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–07–M

Economic Development Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Snowdon Inc., 216 South Main, Osceola, Iowa 50213, producer of women's underwear and sleepwear (accepted October 1, 1980); (2) Pitts Industries, Inc., P.O. Box 344649, Dallas, Texas 75234, producer of automotive air conditioner clutches (accepted October 1, 1980); (3) Irving J. Dorfman Company, Inc., 6612 Broadway, West New York, New Jersey 07093, producer of embroideries and laces (accepted October 2, 1980); (4) K Industries Corporation, P.O. Box 430, Mineral Wells, Texas 76067, producer of bases for quartz crystals (accepted October 2, 1980); (5) Shamrock Knitting Mills, Inc., 670 South Cobb Drive, Marietta, Georgia 30061, producer of hosiery and knit headwear (accepted October 2, 1980); (6) Archer Rubber Company, P.O. Box 280, Milford, Massachusetts 01757, producer of rubberized sheeting, rainwear, pads and fabric (accepted October 3, 1980); (7) Self-Powered Lighting, Inc., 8 Westchester Plaza, Elmsford, New York 10523, producer of light sources for watches, military equipment, signs and markers (accepted October 3, 1980); (8) La Crosse Rubber Mills Company, 1407 St. Andrew Street, La Crosse, Wisconsin, 54601, producer of footwear for men, women & children (accepted October 3, 1980); (9) Coast Range Plywood, Inc., P.O. Box 538, McMinnville, Oregon 97205, producer of softwood plywood & hardwood veneer (accepted October 3, 1980); (10) Enterprise Machine and Development Corporation, P.O. Box 707, Manor Branch, New Castle, Delaware 19720, producer of textile machinery (accepted October 6, 1980); (11) Lloyd's Electronics, Inc., 180 Raritan Center Parkway, Edison, New Jersey 08817, producer of audio products, including radios, tape players and recorders (accepted October 6, 1980); (12) Sunrise Fashions, Inc., 7100 West Side Avenue, New Bergen, New Jersey 07047, producer of women's coats (accepted October 6, 1980); (13) Beede Electrical Instrument Company, Inc., Main Street, Penacook, New Hampshire 03303, producer of

industrial instrumentation meters and relays (accepted October 7, 1980); (14) Manchester Manufacturing, Inc., P.O. Box 107, Colebrook, New Hampshire 03576, producer of girls' coats and jackets (accepted October 7, 1980); (15) S. G. D'or Industries, Ltd., 38–14 30th Street, Long Island City, New York 11101, producer of shoe and hair accessories, belts, jewelry and metal castings (accepted October 9, 1980); (16) Barnhardt Farms, Inc., Box 579, Urbanna, Virginia 23175, producer of ducks, feathers and other by-products (accepted October 9, 1980); (17) Shellil, Inc., 1506 Paloma Street, Los Angeles, California 90021, producer of women's blouses and dresses (accepted October 10, 1980); (18) Daigle Aqua (U.S.A.), Inc., P.O. Box 894, Plattsburgh, New York 12901, producer of water valve curb boxes, waterworks parts, tools and accessories (accepted October 14, 1980); (19) Master Products, Inc., 129 North Main Street, Yale, Michigan 48097, producer of automotive stampings (accepted October 14, 1980); (20) Fosbrink Machine Company, Inc., P.O. Box 645, Connellsville, Pennsylvania 15425, producer of wire (accepted October 16, 1980); (21) Narricot Industries, Inc., 1131 E. Venango Street, Philadelphia, Pennsylvania 19124, producer of fabric webbing & tape (accepted October 16, 1980); (22) Beta Handbag & Luggage Corporation, 750 West 18th Street, Hialeah, Florida 33010, producer of handbags and luggage (accepted October 16, 1980); and (23) Mida Manufacturing, Inc., 917–21 Arch Street, Philadelphia, Pennsylvania 19107, producer of jewelry (accepted October 16, 1980).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of November 8, 1980.

The Catalogue of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 80–33566 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Order No. 166]

Resolution and Order Approving the Application of the Brownsville Navigation District for a Foreign-Trade Zone in Cameron County, Tex., Within the Brownsville Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zone Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Brownsville Navigation District, a Texas public corporation, filed with the Foreign-Trade Zones Board (the Board) on October 31, 1979, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Cameron County, Texas, within the Brownsville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal, with the exception of proposed Sites 3 and 4, is in the public interest, approves the application, except for those sites.

As the proposal includes industrial park space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation not described in the application. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Cameron County, Tex., Within the Brownsville Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Brownsville Navigation District (the Grantee) has made application (filed October 31, 1979) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Cameron County, Texas, within the Brownsville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisified;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 62 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, with the exception of proposed Sites 3 and 4, said grant being subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior

thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of October 1980, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Homer E. Moyer, Jr.,

Acting Chairman and Executive Officer.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 80-33621 Filed 10-28-80; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 167]

Resolution and Order Approving the Applications of Prince Georges County, State of Maryland, for a Foreign-Trade Zone in Prince Georges County, Adjacent to the Washington, D.C., Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of Prince Georges County, filed with the Foreign-Trade Zones Board (the Board) on May 27, 1980, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Prince Georges County, Maryland, adjacent to the Washington, D.C. Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open spaces on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Mintain a Foreign-Trade Zone in Prince Georges County, Md., Adjacent to the Washington, D.C., Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u)(the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisidiction of the United States;

Whereas, Prince Georges County, Maryland (the Grantee) has made application (filed May 27, 1980) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Prince Georges County, adjacent to the Washington, D.C. Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby granted to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 63 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of October 1980, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Homer E. Moyer, Jr.,

Acting Chairman and Executive Officer.

Attest:

John J. DaPonte,

Executive Secretary.

[FR Doc. 80-33622 Filed 10-28-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Approval of the American Samoa, Connecticut, Mississippi, New Jersey, Northern Marianas, and Pennsylvania Coastal Zone Management Programs

Pursuant to the authority contained in Section 306(a) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1445(a)), notice is hereby given that the Assistant Administrator for Coastal Zone Management (on befalf of the Secretary of Commerce) on September 23, 1980, approved the coastal zone management program of the Northern Marianas and on September 29, 1980, approved the coastal zone management programs of American Samoa, Connecticut, Mississippi, New Jersey, and Pennsylvania.

Approval activates Federal agency responsibility for being consistent with these programs pursuant to the Federal consistency provisions of the Coastal Zone Management Act as of the date of approval. Further information on the responsibilities of affected Federal agencies in this regard may be found in 15 CFR Part 930, published in the **Federal Register**, at page 37142, on June 25, 1979.

A copy of the findings made by the Assistant Administrator in determining that these programs meet the requirements of the Coastal Zone Management Act may be obtained upon request from the Office of Coastal Zone Management. Inquiries regarding the Programs should be addressed to: William Matuszeski, Deputy Assistant Administrator (Acting), Office of Coastal Zone Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634–1672.

Dated: October 20, 1980.

Michael Glazer,

Assistant Administrator for Coastal Zone Management.

[FR Doc. 80–33561 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Additional Import Controls on Certain Cotton and Man-Made Fiber Textile Products From the Republic of Korea

October 22, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling cotton and man-made fiber textile products in Group I (Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669), produced or manufactured in the Republic of Korea and exported during the agreement year which began on January 1, 1980 at the adjusted group level of 166,958,768 square yards equivalent

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers and factors for converting category units into equivalent square yards was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506)).

SUMMARY: Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, the United States Government has decided to control imports in Group I (Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669), at the adjusted level of restraint established for the group to include carryover in the amount of 14,575,765 SYE and swing of 19,876,044 SYE applied during the agreement year which began on January 1, 1980.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On December 27, 1979, there was published in the **Federal Register** (44 FR 76573) a letter dated December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In accordance with the terms of the bilateral agreement, as amended, the United States Government has also decided to control imports of textile products in Group I (Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669), produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1980. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, and withdrawal from warehouse for consumption, of textile products in Group I (Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669) in excess of the designated level of restraint. The level of restraint has not been adjusted to account for imports after December 31, 1979. Imports during the period which began on January 1, 1980 and extending to the effective date of this action will be charged.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1979 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1972, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on November 3, 1980 and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669, as a group, produced or manufactured in the Republic of Korea, in excess of the following adjusted level of restraint: [1]

[1] The term "adjusted level" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977 as amended, between the Governments of the United States and the Republic of Korea which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Adjusted 12-mo level of restraint [2] (yd [2] equivalent)
300, 301, 310-320, 330, 360-363, 369, 600-605, 610-614, 625-627, 630, 665, 666, and 669	166,958,768

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

Textile products in the foregoing group of Categories (300, 301, 310–318, 320, 330, 360–363, 369, 600–603, 605, 610–614, 625–627, 630, 665, 666, and 669) which have been exported to the United States prior to January 1, 1980 shall not be subject to this directive.

Textile products in the foregoing group of categories which have been released from the custody of the U.S Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484 (a) (1) (A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers and factors for converting category units into equivalent square yards was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 53506).

In carrying out the above directions, entry into the United States for consumption shall be construed by the Commissioner of Customs to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-33644 Filed 10-28-80; 8:45 am]

BILLING CODE 3510-25-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 79-1]

National Association of Broadcasters Application for a Stay Pending Appeal Docket No. 79-1

October 24, 1980.

The National Association of Broadcasters has filed a motion with the Copyright Royalty Tribunal (Tribunal) requesting a stay pending appeal of the Tribunal's final determination in Docket No. 79–1, distribution to copyright owners of royalty fees for secondary transmissions by cable systems during 1978.

17 U.S.C. 809 directs the Tribunal to "distribute any royalty fees not subject to an appeal filed pursuant to section 810." The Tribunal finds that pursuant to the appeals of the Tribunal's final determination in Docket No. 79–1 which have been filed, all royalty fees for 1978 secondary transmissions by cable systems are the subject of an appeal, and that no distribution of such royalty fees shall be made by the Tribunal pending the final determination of the pending appeals.

Mary Lou Burg,

Chairman, Copyright Royalty Tribunal.

[FR Doc. 80-33619 Filed 10-28-80; 8:45 am]

BILLING CODE 1410-01-M

[Docket No. 80-4]

Possible Declaration of Controversy Concerning Distribution of 1979 Cable Royalty Fees

October 24, 1980.

In accordance with 17 USC 111(d)(5)(B), the Copyright Royalty Tribunal directs that claimants to royalty fees paid by cable operators for secondary transmissions during 1979 shall submit not later than November 15, 1980 any comments concerning whether a controversy exists concerning the distribution of the 1979 royalty fees. Comments shall be addressed to the Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Washington, DC 20036.

Mary Lou Burg,

Chairman, Copyright Royalty Tribunal.

[FR Doc. 80-33620 Filed 10-28-80; 8:45 am]

BILLING CODE 1410-01-M

COUNCIL ON WAGE AND PRICE STABILITY

Pay Advisory Committee; Meeting

AUTHORITY OF COMMITTEE: The Pay Advisory Committee was established by the Council on Wage and Price Stability pursuant to Executive Order 12161 (44 FR 56663).

TIME AND PLACE OF MEETING: The next meeting of the Pay Advisory Committee has been scheduled for November 17, 1980, at 2:00 p.m. in the Board Room of the Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Persons interested in attending the meeting should contact Cheryl Bailey at 456–6210 by 3:00 p.m. on Friday, November 14, 1980, in order to be assured admission to the building on the meeting day.

PURPOSE OF THE MEETING: The purpose of the meeting is to receive a report on pay developments since the last meeting, to respond to outstanding requests for recommendations (e.g., ESOPs), to discuss the current and foreseeable economic environment and the type of standards program appropriate for that environment.

PUBLIC PARTICIPATION: The meeting of the Pay Advisory Committee will be open to the public. Public attendance will, however, be limited by available space; persons will be seated on a first-come, first-served basis. Persons attending the meeting will not be permitted to speak or participate in the Committee's deliberations. Interested person will be permitted to file written statements with the Committee by mail or personal delivery to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D.C. 20506.

ADDITIONAL INFORMATION: For additional information, please telephone the Office of Public Affairs at (202) 456–6756.

Dated: October 24, 1980.

Sally Katzen,

Advisory Committee Management Officer.

[FR Doc. 80-33712 Filed 10-27-80; 8:45 am]

BILLING CODE 3175-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical Reimbursement Rates for Fiscal Year 1981; Inpatient and Outpatient Medical Care

Notice is hereby given that the Assistant Secretary of Defense (Comptroller) on October 10, 1980, issued the following memorandum to the Assistant Secretaries of the Army (IL&FM), Navy (FM), and Air Force (FM):

"Reimbursement rates for inpatient and outpatient medical care are hereby established for Fiscal Year 1981 as follows:

	IMET [1]	Inter-agency [2]	Others
Per inpatient day:			
Burn Center, Brooke Army Hospital	$481	$853	$1,010
Panama, general medical and dental care	299	344	397
Mental Health Center, Corazol, Panama	119	125	141
All other general medical and dental care	153	285	336
Per outpatient visit:			
Panama area	33	38	44
All other areas	15	28	33

	IMET [1]	Inter-agency [2]	Others
Per FAA Air Traffic Controller Examination		61	

[1] International Military Education and Training Students.
[2] Other Federal Agency sponsored patients and Government civilian employees and their dependents overseas.

"The charge for inpatient medical and dental care given to dependents of military personnel shall be $5.50 per day effective October 1, 1980.

"The Office of Management of Budget published separate tortiously liable third party rates in 45 FR 24293, April 9, 1980."

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 23, 1980.

[FR Doc. 80-33615 Filed 10-28-80; 8:45 am]

BILLING CODE 3810-70-M

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, November 5, 1980 commencing at 1:30 p.m. The hearing will be a part of the Commission's regular November business meeting which is open to the public. Both the hearing and the meeting will be held in the New Ark Room, Radisson Wilmington Hotel, 700 King Street, Customs House Plaza, Wilmington, Delaware. The hearing will be held on the following subjects:

I. Current Expense Budget

A proposed current expense budget for the fiscal year beginning July 1, 1981, in the aggregate amount of $1,942,500, and a capital budget for the same period in the amount of $27,000. The following amounts would be apportioned among the signatory parties, along with the additional appropriations by the Commission, to balance the current expense budget: Delaware $138,400; New Jersey $367,700; New York $270,000; Pennsylvania $424,600: and the Federal Government $285,400. Copies of the current expense and capital budget are available from the Commission on request.

II. Project Review Applications

Applications for approval of the following projects are pending before the Commission as amendments to the Comprehensive Plan and/or as project approvals pursuant to Section 3.8 of the Compact:

1. *Washington Township Municipal Utilities Authority (D–80–13 CP).* A well water supply project to augment public water supplies in Washington Township, Morris County, N.J. Designated as Well No. 8, the new facility has a capacity of 180,000 gallons per day and is expected to yield 90,000 gallons per day.

2. *Hunt-Wesson Foods, Inc. (D–78–32).* An industrial waste treatment project at the company's tomato processing plant in the City of Bridgeton, Cumberland County, N.J. During the canning season, approximately 1.1 million gallons per day of wastewater will be screened to remove solids and then pumped to a nearby spray irrigation field in Fairfield Township.

3. *Atlantic Richfield Company (D–80–38).* A bulkhead repair project at the company's facility in Philadelphia, Pa. Approximately 1530' of bulkhead on the east bank of the Schuylkill River, south of Passyunk Avenue, will be repaired and the area behind the bulkhead will be filled.

III. Water Quality Standards—Oil and Grease

The Comprehensive Plan for the Delaware River Basin includes water quality standards. These standards are also contained in the Commission's *Basin Regulations—Water Quality.* Article 3 of these regulations are the Comprehensive Plan's water quality standards. Article 4 of these regulations concerns the application of the standards and includes, among other things, effluent quality requirements. Limitations on the discharge of oil and grease have not heretofore been included among the Commission's effluent quality requirements but are reflected in Interpretive Guideline No. 1, adopted in January 1972 (Resolution No. 72–1). The Commission is now considering an amendment of its Comprehensive Plan and *Basin Regulations—Water Quality* that would include an effluent quality requirement applying to the discharge of oil and grease. A public hearing on this subject was held by the Commission on July 29, 1980, in West Trenton, N.J. Upon review of testimony received, and further consultation with technical staffs, the Commission is now considering a revised amendment substantially different from that advertisied as the subject of the first public hearing in July. Accordingly, a second public hearing will be held by the Commission pursuant to this Notice on the following proposed amendments:

I. Amend the Comprehensive Plan and Section 3.10.4.D.1 of the *Basin Regulations—Water Quality* by the addition thereto of a new subsection b. to read as follows:

"b. Oil and Grease

1. All existing permitted discharges shall meet the oil and grease limitations in accordance with the DRBC Docket, their NPDES permit or other state permit. In no case shall the oil and grease concentrations exceed 15 mg/l as an average for samples taken during any 30-day period, nor exceed 30 mg/l in any single sample.

2. All new permitted discharges shall meet the following oil and grease limitations:

(i) Not to exhibit readily visible oil;

(ii) Not to exceed 10 mg/l as an average for samples taken during any 30-day period;

(iii) Not to exceed 15 mg/l in any single sample.

3. Discharges which result mainly from the collection of storm water runoff shall meet the following for any 5-year precipitation event.

(i) *Existing permitted discharges:* Shall meet the existing limitations for oil and grease specified in their DRBC Docket, NPDES permit, or other state permit, but in no case shall the oil and grease effluent concentration exceed 30 mg/l in any single sample.

(ii) *New permitted discharges:* Shall meet the following oil and grease concentration in their effluent during any 5-year precipitation event: 15 mg/l in any single sample."

II. Amend Section 4.30.5 of *Basin Regulations—Water Quality* by the addition thereto of a new subsection E. to read as follows:

"E. Oil and Grease

1. All existing permitted discharges shall meet the oil and grease limitations in accordance with the DRBC Docket, their NPDES permit or other state permit. In no case shall the oil and grease concentrations exceed 15 mg/l as an average for samples taken during any 30-day period, nor exceed 30 mg/l in any single sample.

2. All new permitted discharges shall meet the following oil and grease limitations:

(i) Not to exhibit readily visible oil;

(ii) Not to exceed 10 mg/l as an average for samples taken during any 30-day period;

(iii) Not to exceed 15 mg/l in any single sample.

3. Discharges which result mainly from the collection of storm water runoff shall meet the following for any 5-year precipitation event.

(i) *Existing permitted discharges:* Shall meet the existing limitations for oil and grease specified in their DRBC

Docket, NPDES permit, or other state permit, but in no case shall the oil and grease effluent concentration exceed 30 mg/l in any single sample.

(ii) *New permitted discharges:* Shall meet the following oil and grease concentration in their effluent during any 5-year precipitation event: 15 mg/l in any single sample.

4. Samples shall be collected in such manner and at such location as to be representative of the actual discharge, and shall be analyzed in accordance with the method referenced in 40 CFR Part 136."

Persons wishing to testify on any of the subjects referenced above are requested to notify the Secretary to the Commission prior to the hearing.

W. Brinton Whithall,

Secretary.

October 22, 1980.

[FR Doc. 80-33678 Filed 10-28-80; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Black Higher Education and Black Colleges and Universities; Meeting

AGENCY: National Advisory Committee on Higher Education and Black Colleges and Universities.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of the quarterly meeting of the National Advisory Committee on Black Higher Education and Black Colleges and Universities. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1). This document is intended to notify the general public of their opportunity to attend.

DATE: November 24–25, 1980, 9:00 am to 5:00 pm.

ADDRESS: The National Aeronautics and Space Administration Auditorium (NASA), Room 6104, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Carol J. Smith, Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities, Suite 702–6, 1100, 17th Street, N.W., Washington, D.C. 20036, AC 202 653–7558.

The National Advisory Committee on Black Higher Education and Black Colleges and Universities is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90–247 as amended; 20 U.S.C. 1233 *et seq.*) and the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 1) which set forth standards for the formation and use of advisory committees.

This Committee was established to examine all approaches to the higher education of Black Americans as well as enhancement of the historically Black colleges and universities and then to make recommendations to the Secretary of Education in the identification of several courses of action to raise substantially the participation of Black Americans in all sectors and at all levels of higher education. Recommendations are to be formulated regarding the future role and healthy development of the historically Black colleges. In addition, recommendations are to be made regarding development of a research base, stimulation of more scholarship and research by Blacks on questions of public policy relating to the education needs of Blacks, and the development of system supports to achieve the recommendations.

The proposed agenda will include discussion of a number of background papers developed by Committee staff on topics such as: Black faculty, desegregation, *Adams* States, non-resident alien enrollment, Federal involvement in Black higher education, testing and equity.

The Committee members will also entertain discussion on several issue papers focusing on such topics as: articulation between the historically Black colleges and secondary schools, Title III of the Higher Education Act, student financial aid, foundation and corporate sector involvement in Black higher education, grantsmanship, historically Black college (HBC) funding, management of HBC's and monitoring of Federal funds. Discussion of these issues may lead to immediate recommendations to the Secretary on ways to advance Black higher education and enhance the historically Black colleges or result in recommendations for additional research.

The meeting on November 24–25, 1980, will be open to the public beginning at 9:00 a.m. each day. It will be held in the National Aeronautics and Space Administration Auditorium (NASA), Room 6104, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Records are kept of all Committee proceedings and are available for public inspection at the office of the National Advisory Committee on Black Higher Education and Black Colleges and Universities located at 1100 17th Street, N.W., Suite 702–6, Washington, D.C. 20036.

Signed at Washington, D.C., on October 24, 1980.

Albert H. Bowker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 80-33632 Filed 10-28-80; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Continuing Education; Meetings

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of meetings of the National Advisory Council on Continuing Education and three ad hoc committees of the Council. It also describes the functions of the Council. Notice of meetings 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.

DATES: November 19, 1980—Meeting of Ad Hoc Committees. November 19–21, 1980—Meeting of the National Advisory Council on Continuing Education.

ADDRESS: Bay Harbor Inn, Courtney Campbell Causeway, P.O. Box 24283, Tampa, Florida 33623.

FOR FURTHER INFORMATION CONTACT: William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 425 Thirteenth Street, NW, Suite 529, Washington, D.C. 20004. Telephone: (202) 376–8888.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under Section 117 of the Higher Education Act (20 U.S.C. 1009), as amended. The Council is established to advise the Congress, the President, and the Secretary of the Department of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I of the Higher Education Act, including policies to eliminate duplication and effectuate the coordination of programs under this title and other programs offering continuing education activities and services.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending either of these meetings are asked to call the Council's office beforehand.

Ad Hoc Committee Meetings (Committee on Title I; Committee on the Media in Continuing Education; and Committee on International Dimensions of Continuing Education) will be held on

November 19, 1980 from 2:00 P.M. until 4:00 P.M. to review activities of the past year and recommendations for Council follow-up action.

The meeting of the full Council will begin at 8:30 P.M. on November 19, 1980, and will conclude at 12:00 Noon on November 21, 1980. The proposed agenda includes:

—Swearing-in of new members
—Comments from new Chairperson
—Executive Director's Report
—Committee Reports
—Legislative update and analysis of HEA
—Council's mandate and background for projected Council work
—Committee assignments and general planning
—Council meeting schedule
—Executive Committee elections

The swearing-in of new members will be conducted in ceremony on November 19, 1980 from 5:00–6:30 P.M.

Records are kept of all council proceedings, and are available for public inspection at the office of the National Advisory Council on Continuing Education, 425 Thirteenth Street, Suite 529, Washington, D.C.

Signed at Washington, D.C. on October 24, 1980.

William G. Shannon,

Executive Director.

[FR Doc. 80–33696 Filed 10–28–80; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of Korea Concerning Civil Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of the Philippines Concerning Civil Uses of Atomic Energy, the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve the approval of contractual arrangements under which the U.S. Department of Energy, if requested, would consent to the assignments of portions of various uranium enrichment services contracts held by U.S. and foreign utilities. The table that follows specifies the foreign nuclear power projects that will receive the new assignments and the approximate quantities of separative work that will be assigned:

Country	Facility	Separative work units
Japan	Senadi–2	300,000
Japan	Tokyo No. 9	500,000
Japan	Tokyo No. 11	500,000
Korea	KECO No. 9	150,000
Korea	KECO No. 10	120,000
Philippines	PNPP–1	50,000

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, is has been determined that entering into these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 23, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80–33573 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement Between Government of the United States of America and the European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the retransfer of 11.16 kilograms of uranium containing 516.7 grams of U–235 (4.63% enrichment) and 73.8 grams of plutonium from Belgium to Sweden for post-irradiation examination. After completion of this work in Sweden, it is planned to return the material to Belgium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this retransfer, designated as RTD/SW (EU)–114 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 13, 1980.

Dated: October 24, 1980.

For the Department of Energy.

Harold D. Bengelsdorf

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80–33698 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Marion Corp.; Modification of Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of modification of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces the modification of a Proposed Consent Order and provides an opportunity for public comment on the modified Proposed Consent Order.

DATE: Comments to be Submitted by (30 days from publication)

ADDRESS: Send comments to: Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, NW., Room 5114, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, NW., Room 5114, Washington, D.C. 20461 (202/653–3548).

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments Received
III. Proposed Distribution of Refunded Overcharges
IV. Submission of Comments

I. Background

On July 18, 1979, the Office of Enforcement of the ERA published notification in the **Federal Register** that it had executed a proposed Consent Order with Marion Corporation (Marion) of Mobile, Alabama, on June 26, 1979, and invited interested persons to submit comments concerning the terms and conditions of the Consent Order pursuant to 10 CFR 205.199J(c). A press release was issued simultaneously pursuant to 10 CFR 205.199J(c).

The proposed Consent Order was modified on November 12, 1979, to reflect some of the commentors' concerns.[1] The DOE is therefore publishing notice of the modified Consent Order and inviting interested persons to submit comments on the terms and conditions of the Consent Order pursuant to 10 CFR 205.199J(c) and (d).

II. Comments Received

The DOE received six comments on the Consent Order.[2] Several comments suggested that the Consent Order should require Marion to file amended forms with the DOE to report the crude oil receipts for the period covered by the Consent Order pursuant to 10 CFR 211.67(j). Commentors also suggesterd that the Consent Order should require the DOE to adjust Marion's future entitlements by the amount of the entitlements issued to and sold by Marion as a result of incorrect reporting of crude oil receipts.

In addition, all commentors objected to the provision in the Consent Order requiring payment by Marion into the U.S. Treasury. Several of the commentors asserted that all other refiners and eligible firms subject to the Entitlements Program were affected by incorrect reporting of crude oil receipts. Accordingly, they argued that there was no legal basis for Marion's payment of the refund amount to the U.S. Treasury. They contended that DOE should adjust for Marion's reporting errors through the regulatory procedures contained in the Entitlements Program. It was also noted that the provision for payment into the U.S. Treasury would not give protection to Marion from lawsuits by third parties claiming injury.

[1] In adition, the language of several paragraphs was changed for clarity and to reflect current ERA procedures. These changes, however, do not significantly alter the terms or the impact of the original order.

[2] One commentor included an objection previously filed with the DOE attacking the special procedures for distribution of refunds adopted by the DOE now contained in 10 CFR Part 205, Subpart V. These objections were previously responded to in the Preamble to the Final Rule of Subpart V, 44 FR 8562–8566 (February 9, 1979).

After consideration of the above comments and further review of the matter, DOE has agreed to an amendment of the proposed Consent Order. The modified Consent Order does not provide that Marion make a direct payment to the U.S. Treasury. DOE's action, however, should not be deemed to connote agreement with commentors' contentions that the remedy of payment into the U.S. Treasury is unlawful or otherwise improper.

At the same time it has not been determined whether an adjustment to the Entitlements Program would be an effective remedy in this case. We note that the Entitlements Program was designed to achieve a specific measure of equalization of crude oil costs, and, for price-controlled products, potentially resulted in passthrough to customers of a firm's lowered costs. Thus, it is uncertain whether other participants in the Entitlements Program have sustained actual financial injury as a result of misreporting by Marion because the participants were permitted to pass through or "bank" any increased costs attributable to the entitlements. Moreover, since the inception of the Entitlements Program in late 1974, price controls have terminated with respect to many refined products which were controlled at the time Marion improperly reported its crude oil receipts. Thus, an adjustment to Marion's future entitlements might not reach many customers of these products that might have been injured by Marion's actions and could instead result in unwarranted benefits for other refiners and eligible firms.

Accordingly, as an interim measure, the funds instead will be deposited in a suitable account pending the determination of their proper disposition.

III. Proposed Disposition of Refunded Overcharges

In the modified Consent Order, Marion 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 above, the sum of $703,571 in six successive monthly installments commencing December 1, 1979. Refunded overcharges will be in the form of a certified check made payable to the United Stated 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.

IV. Submission of Comments

The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments to Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, Economic Regulatory Administration, U.S. Departent of Energy, 2000 M Street, N.W., Room 5114, Washington, D.C. 20461. You may obtain a free copy of this Consent Order by writing to the same address or by calling (202) 653–3548.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Marion Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 28, 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 Washington on the 23rd day of October, 1980.

Robert D. Gerring,

Director, Program Operations Division, Office of Enforcement, Economic Regulatory Administration.

[FR Doc. 80–33699 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–01–M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of action taken on consent orders.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firm listed below during the month of September 1980. The Consent Orders represent Resolutions of outstanding compliance investigations or proceedings by the DOE and the firms which involve a sum of less than $500,000 in the aggregate, excluding penalties and interest. These Consent Orders are concerned exclusively with payment of the refunded amounts to injured parties for alleged overcharges made by the specified companies during the time periods indicated below through direct refunds or rollbacks of prices.

For further information regarding these Consent Orders, please contact Mr. Edward F. Momorella, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–2662.

Firm name and Address	Refund amount	Product	Period covered	Recipients of refund
Capable Utilities, 147 Peconic Ave., Westbury, N.Y. 11590	$28,115	Motor gasoline	Apr. 1, 1979 to Aug. 31, 1979	End-user customers.
Long Island Reliable, 880 East Hoffman Ave., Lindenhurst, N.Y. 11757.	75,000	No. 2 oil	Nov. 1, 1973 to Apr. 30, 1974	Governmental customers and end-user customers.

Issued on the 14st day of October, 1980, in Philadelphia, Pa.

Edward F. Momorella,

District Manager.

[FR Doc. 80-33575 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 50643-6025-04-82, 50643-6025-05-82]

Commonwealth Edison 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, Collins 4 and 5, owned by Commonwealth Edison Company (Commonwealth) and located at Morris, Illinois.

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 Collins 4 and 5 were issued by ERA on December 21, 1979, and published in the **Federal Register** on January 2, 1980 (45 FR 65).

Description of Prohibition Order Proceedings

In accordance with 10 CFR 501.51 publication of the proposed prohibition orders commenced an initial public comment period, during which period Commonwealth was given an opportunity to challenge ERA's initial finding that Collins 4 and 5 had the technical capability to burn 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 any 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 three-month period during which Commonwealth 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 three-month period ERA will, if it intends to issue a final prohibition order, prepare and publish a Notice of Availability of a Tentative Staff Analysis 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 10 CFR 501.33 afford any interested person an opportunity to request a public hearing on a proposed prohibition order and Tentative Staff Analysis. 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 Analysis. 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 60 days after publication.

Comments and Written Submissions Received on Proposed Prohibition Orders

During the initial comment period, comments on the proposed prohibition orders to Collins 4 and 5 were received from Commonwealth, the League of Women Voters of Illinois, Citizens for a Better Environment and United Mine Workers of America, District 12. None of the commentors proposed that the units remain on oil instead of converting to coal. All of these comments will be fully addressed at such time as ERA issues a Tentative Staff Analysis.

Commonwealth submitted comments which generally support the proposed orders. However, Commonwealth questioned the finding of technical capability to use coal without substantial physical modification or substantial derating of the units. Commonwealth would consider addition of fuel gas desulfurization equipment to be a substantial physical modification. Commonwealth maintains that conversion of Collins 4 and 5 can be accomplished in an environmentally acceptable and an economically feasible manner with the use of low sulfur western coal.

During this comment period, neither Commonwealth nor any other interested person submitted any information contrary to ERA's initial finding that Collins 4 and 5 had the technical capability to burn an alternate fuel (coal) as a primary energy source. Commonwealth did, however, question "the finding, that the units have the capability to burn coal . . . simply because of the units' boiler configuration." The boilers were designed with coal capability, although no coal burners or ash and coal handling facilities are currently located at the Collins generating station.

In accordance with 10 CFR 501.51, Commonwealth also submitted evidence relating to the other findings that ERA is required to make under Section 301(b) of FUA, and identified those exemptions for which Collins 4 and 5 may qualify. Commonwealth asserted that it may be qualified for a temporary public interest exemption as authorized by Section 311(e) of FUA on the grounds that an exemption from the coal conversion would be in the public interest, although the company provided no specific reason why burning oil in Collins 4 and 5 would be in the public interest. In addition, Commonwealth identified the following permanent exemptions for which Collins units 4 and 5 may qualify as authorized by Section 312 of FUA: (1) lack of alternate fuel supply; (2) site limitations; (3) inability to comply with applicable environmental requirements; and (4) State or local law requirements.

For further information contact: William 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 3308, Washington, D.C. 20461, (202) 653–4201.

Edward 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., October 22, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–33571 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 80–18–LNG]

Gas Service Inc., et al.; Application To Amend Natural Gas Import Authorization To Permit Purchase Price Increase

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application to amend natural gas import authorization to permit purchase price increase.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the joint application of Gas Service, Inc. (GSI) and Manchester Gas Company (Manchester) to amend their import authorization, granted by ERA on November 9, 1979 by DOE/ERA Opinion and Order No. 10 in Docket No. 78–006–LNG, in order to permit petitioners to import into the United States volumes of liquefied natural gas (LNG) from Canada at an increased purchase price of $5.9357 per MMBtu F.O.B. Montreal. The currently authorized price is $4.80 per MMBtu F.O.B. Montreal.

The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed on or before November 13, 1980.

FOR FURTHER INFORMATION CONTACT:

Marie E. Lanciotti (Division of Natural Gas), Economic Regulatory Administration, 2000 M St. NW., Room 7108, Washington, D.C. 20461, Telephone (202) 653–3220

James K. White (Acting Assistant General Counsel for Natural Gas and Mineral Leasing), 1000 Independence Ave. SW., Forrestal Bldg., Room 5E064, Washington, D.C. 20585, Telephone (202) 252–2900.

SUPPLEMENTARY INFORMATION: GSI and Manchester are local natural gas distribution companies operating within the State of New Hampshire. In order to meet winter heating season peak day requirements of their respective markets, which consist primarily of high priority residential and small commercial customers, the applicants contracted individually with Gaz Metropolitan, Inc., (Gaz Metro) of Montreal to purchase LNG for a ten-year period commencing November 1, 1978, and ending October 31, 1988. The applicants state that without this LNG they would need to supplement available pipeline gas with a propane air mixture, which may provide unsatisfactory operation of customer appliances when used extensively.

DOE/ERA Opinion and Order No. 10, issued on November 9, 1979, authorized GSI and Manchester to import from Canada up to 30,879 MMBtu's 41,172 MMBtu's of LNG, respectively, for each contract year. The applicants are currently authorized to purchase LNG from Gaz Metro at a price of $4.80 per MMBtu F.O.B. Montreal. This price consists of the then current Canadian export border price of $3.45 per MMBtu in effect at the time the ERA authorization was granted and a $1.35 per MMBtu charge based on the cost of service for the LNG processing facilities.

On January 28, 1980 the Canadian government increased the border price for gas exported to the United States to $4.47 per MMBtu. In addition, since the issuance of DOE/ERA Opinion and Order No. 10 the cost of service charge for the LNG processing facilities allegedly has risen to $1.4657 per MMBtu. Petitioners therefore request authorization to import the LNG at the higher price of $5.9357 per MMBtu F.O.B. Montreal.

OTHER INFORMATION: The ERA invites protests or petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Economic Regulatory Administration, Room 71008, RG–55, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the applicable rules of practice and procedure (18 CFR 1.8 and 1.10). Protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on November 13, 1980.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Protests filed with ERA will be considered in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A hearing will not be held unless a motion for a hearing is made by any party and is granted by ERA, or if the ERA on its own motion believes that a hearing is required. A party filing a motion for hearing must demonstrate how a hearing will advance the proceeding. If a hearing is ordered, due notice will be given to the parties.

A copy of the joint application by GSI and Manchester is available for public inspection and copying in Room 7108, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on October 22, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80–33576 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–01–M

Technical Subcommittee of the Committee on Emergency Preparedness of the National Petroleum Council; Meeting

AGENCY: Department of Energy, Economic Regulatory Administrations.

ACTION: Notice of change in location and time of meeting.

SUMMARY: In the **Federal Register** on September 10, 1980, (45 FR 59615), it was announced the Technical Subcommittee of the Committee on Emergency Preparedness would hold a meeting for the purpose of preparing a proposal for the scope, organization and timetable of an analysis undertaken by the NPC's Committee on Emergency Preparedness of issues bearing on emergency preparedness and the ability of the refining industry to respond to energy emergencies. As a result of the unexpectedly large volume of requests to address this issue, the time and location of the meeting has been adjusted to accommodate the increased space requirements.

DATE AND LOCATION: The Technical Subcommittee of the NPC's Committee on Emergency Preparedness will meet on Friday, October 31, 1980, at 9:00 a.m., in the Chandelier Room of the Sheraton-Carlton Hotel, 16th and K Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:

Mr. Finn K. Neilsen, Acting Deputy

Assistant Administrator, Office of Energy Contingency Planning, 2000 M Street, NW., Washington, D.C. 20461, Room 7302, Telephone (202) 653–3205. Ms. Joan Walsh Cassedy, National Petroleum Council, 1625 K Street, NW., Washington, D.C. 20006, Telephone (202) 393–6100.

Issued in Washington, D.C., on October 21, 1980.

Barton R. House,

Deputy Administrator for Operations and Emergency Management, Economic Regulatory Administration.

[FR Doc. 80-33577 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-013; OFC Case No. 55041-0731-01-12]

Tentative Staff Analysis

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On March 13, 1980, Brunswick Pulp and Paper Company (Brunswick) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking permanent exemptions for a new major fuel burning installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.).* The Act prohibits the use of petroleum or natural gas as a primary energy source in certain new MFBI's. Brunswick filed its petition for exemptions under ERA's interim rule implementing the Fuel Use Act. The interim rule has subsequently been superseded by a final rule published on June 6, 1980 (45 FR 38276 and 45 FR 38320), which became effective August 5, 1980.

Brunswick requested (1) a permanent fuels mixture exemption to use a fuels mixture of hydrogen gas and not more than 25 percent petroleum (No. 6 oil) under § 505.28, (2) an emergency purposes exemption under § 505.29 and (3) a scheduled equipment outage exemption under § 505.31 of the interim rule. On August 5, 1980, §§ 505.28, 505.29 and 505.31 of the interim rule were superseded by Sections 503.38, 503.39 and 503.43 of the final rule, respectively.

The MFBI for which the petition was filed is a package boiler to be constructed at Brunwick's plant facilities in Brunswick, Georgia. The boiler will have a design heat input rate of 198 million Btu's per hour, a steam generating capacity of 150,000 pounds per hour and will be capable of burning hydrogen gas or petroleum or a mixture of both.

ERA accepted Brunswick's petition on May 24, 1980, and published a notice of acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the **Federal Register** on June 4, 1980 (45 FR 37722). Publication of the notice of acceptance commenced a 45 day public comment period pursuant to Section 701 of FUA. During this period, interested persons were also afforded an opportunity to request a public hearing. The period expired on July 21, 1980. No comments were submitted, nor was a hearing requested.

Based upon ERA's review and analysis of the information presently contained in the record of this proceeding, a Tentative Staff Analysis recommends that ERA issue an order granting the requested permanent exemption to use a mixture of hydrogen and petroleum (No. 6 oil) in which the amount of petroleum used in the unit will not exceed 25 percent of the total annual Btu heat input of the primary energy sources of the unit. ERA's staff also recommends that Brunswick's petition requesting permanent exemptions on the basis of (1) emergency purposes and (2) scheduled equipment outages be denied. By petitioning for a fuels mixture exemption, Brunswick had demonstrated that the use of a mixture is economically and technically feasible in the proposed new unit. Brunswick cannot, therefore, meet the evidentiary requirement for an emergency purposes exemption or a scheduled equipment outages exemption, both of which require that a petitioner demonstrate that the use of a mixture is not economically or technically feasible, (§§ 503.39(c)(2) and 503.43(b)(4)).

ERA will issue a final order granting or denying the petition for a permanent exemption from the prohibitions of the Act within six months, unless extended by ERA, after the public comment period provided for in this notice has expired. Notice of, and a statement of reasons for, any extension will be published in the **Federal Register.**

DATES: Written comments and requests for a hearing on the Tentative Staff Analysis are due on or before November 12, 1980.

ADDRESSES: Fifteen copies of written comments, and any request for a public hearing on the Tentative Staff Analysis shall be submitted to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street NW., Washington, DC 20461.

Docket Number ERA–FC–80–013 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128, Washington, DC 20461, Phone (202) 653–4226

Anthony M. Vaitekunas, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3126B, Washington, DC 20461, Phone (202) 653–4237

James Renjilian, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6G–087, 1000 Independence Ave., SW., Washington, DC 20585, Phone (202) 252–2967.

The public file containing a copy of the Tentative Staff Analysis and other documents and supporting materials relating to this proceeding is available for inspection upon request at: ERA, Room B–110, 2000 M Street, NW, Washington, DC, Monday through Friday, 8:00 am–4:30 pm.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) published interim rules on May 15 and 17, 1979 (10 CFR, Parts 500 *et seq.)* (44 FR 28530 and 44 FR 28950), to implement provisions of Title II of FUA. ERA has also published a final rule relating to new facilities on June 6, 1980 (45 FR 38276 and 45 FR 38302), which become effective August 5, 1980. Title II of FUA prohibits the use of natural gas or petroleum in certain new MFBI's unless an exemption for such use has been granted.

Brunswick Pulp & Paper Company (Brunswick) is planning to install at its manufacturing plant facilities in Brunswick, Georgia, a package boiler which will have a design heat input rate of 198 million Btu's per hour, a steam generating capacity of 150,000 pounds per hour and will be capable of burning hydrogen in a mixture with petroleum.

On March 13, 1980, Brunswick filed a petition with ERA requesting (1) a permanent fuels mixture exemption to burn a mixture of hydrogen gas and petroleum (No. 6 oil) pursuant to § 505.28, (2) an emergency purposes exemption pursuant to § 505.29, and (3) a scheduled equipment outages exemption pursuant to § 505.31 of the interim rule.

With respect to the latter two exemptions, Brunswick failed to make in each case the required demonstration under the regulations that the use of a mixture is not economically or technically feasible. By petitioning concurrently for a permanent fuels mixture exemption Brunswick has, in effect, represented that the use of a mixture is economically and technically feasible in the planned boiler. Accordingly, ERA's staff recommends denying the requested permanent

exemptions for emergency purposes and scheduled equipment outages.

In support of its request for a fuels mixture exemption, Brunswick submitted design specifications for the package boiler and an engineering assessment of the gas/oil proportions needed to maintain operational reliability and a reasonable level of fuel efficiency. Brunswick proposes to burn as a primary energy source: (a) hydrogen gas at the regular operational level of the boiler and (b) oil or a mixture of hydrogen gas/oil (82 percent hydrogen and 18 percent oil) when the boiler is operated at higher capacities. Brunswick has certified that the total amount of oil that is proposed to be used in the package boiler will not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in the unit.

ERA's staff has reviewed the information contained in the record of this proceeding to date. Based upon that review, a Tentative Staff Analysis has been made which recommends that an order be issued granting a permanent fuel mixture exemption for the boiler to use a fuels mixture of hydrogen and petroleum in that unit, provided that the amount of oil used does not exceed 25 percent of the total annual Btu heat input of the primary energy sources used.

This Tentative Staff Analysis also takes into account the purposes for which the minimum percentage of petroleum provided by a fuels mixture exemption is to be used, i.e., to maintain reliability of operation, consistent with maintaining a reasonable level of fuel efficiency. Therefore, should this exemption be granted, ERA will not exclude from the definition of primary energy source any fuel used for unit ignition, start-up, testing, flame stabilization, and control uses.

This recommendation is based upon Brunswick's certification that the amount of petroleum to be used in the mixture will not exceed 25 percent of the annual Btu heat input of the primary energy sources used by the unit.

Based upon information provided by Brunswick, ERA conducted an environmental analysis which has been reviewed by DOE's Office of Environment, with consultation from the Office of the General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Recommended terms and conditions: ERA's staff also has tentatively determined and recommends that any order which would grant the requested fuels mixture exemption to Brunswick should, pursuant to Section 214 of the Act, be subject to the following terms and conditions:

1. The amount of petroleum used in the package boiler shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit.

2. In accordance with the reporting requirement in Section 503.38(g) of the final rule, Brunswick will submit an annual report to the Economic Regulatory Administration (ERA), Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW., Washington, DC 20461, each year on the anniversary of the effective date of the exemption, containing the following:

A certified statement indicating the percentage of petroleum used in the boiler, including the actual quantities of hydrogen (in MCF) and petroleum (in Bbls) used, as well as the higher heating value (in Btu's per lb., Btu's per MCF, or Btu's per gallon) of those fuels. The following format should be used for the unit:

Fuel type	Amounts used (tons) (mcf) (bbls)	Btu equivalent	Percent of total annual Btu heat input

3. The quality of any petroleum to be burned in the unit will be the lowest grade available, which is technically feasible, and capable of being burned consistent with applicable environmental requirements.

4. All steam pipes must be insulated and all steam traps properly maintained.

5. Brunswick must comply with any terms and conditions which may be imposed pursuant to the environmental requirements of § 503.15(b) of the final rule.

This Tentative Staff Analysis does not constitute a decision by ERA to grant the requested exemption. Such a decision shall, in accordance with § 501.68(c) of the final rule, be based on the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

Issued in Washington, DC, on October 16, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-33572 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER81-32-000]

Central Maine Power Co.; Proposed Tariff Change

October 21, 1980.

The filing Company submits the following:

Take notice that Central Maine Power Company (Central Maine) on October 16, 1980 tendered for filing as a supplement to existing FERC Electric Tariff, 3rd Revised Volume No. 1, Tariff Schedule W-3 as a noncontract rate for Madison Electric Works (MEW).

Central Maine states that Tariff Schedule W-4 is filed to allow MEW a fixed base for purchasing capacity and energy while allowing MEW to purchase their excess capacity and energy from other sources. The charges for fixed capacity and energy purchases are at the same rate as Tariff Schedule W-1 accepted by the Commission in Docket No. ER79-539. There is no increase to MEW in the cost of electric service for the same capacity and energy levels that they experienced in the past year. Tariff Schedule W-3 establishes excess capacity and energy charges based on the cost of capacity and energy at Central Maine's William F. Wyman Unit No. 4, plus wheeling charges from Unit No. 4 to the MEW system.

Central Maine requests an effective date of December 15, 1980 under statutory procedure.

Central Maine states that acceptance of Tariff Schedule W-3 and granting of the waiver will have no effect on any purchases by any other wholesale customer of Central Maine.

Central Maine further states that copies of the filing were served upon the Chairman and Superintendent of Madison Electric Works.

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 Capital Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 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. 80-33580 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3279]

City of Kent, Ohio; Application for Preliminary Permit

October 7, 1980.

Take notice that the City of Kent (Applicant) filed on July 31, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3279 to be known as the Kent Dam Project located on the Cuyahoga River in Portage County, Ohio. Correspondence with the Applicant should be directed to: Mr. Roy P. Stype, City Manager, City of Kent, 319 South Water Street, Kent, Ohio 44240.

Project Description—The proposed project would consist of existing project works including: (1) Kent Dam, a sandstone structure 125 feet long and 18 feet high at spillway crest elevation 1,030 feet m.s.l.; (2) a reservoir of negligible storage capacity (about 80 acre-feet); (3) a 12-foot wide lock structure at the east (left) abutment containing two 5-foot by 3.5-foot gates; and new project works to include (4) a penstock; (5) a powerhouse with an installed capacity of 500 kW; (6) a discharge conduit or channel; and (7) other appurtenances. Applicant estimates annual generation would average 2.5 million kWh.

Purpose of Project—Project energy would be partially utilized by the City of Kent for municipal purposes with the balance of the energy being sold to local industries and to the local utility company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would accomplish hydrological, engineering, environmental, and economic feasibility studies to determine the optimum design for hydroelectric development of the project site. If feasible, Applicant would prepare an FERC license application. Applicant estimates the cost of the studies under a preliminary permit would not exceed $40,000.

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 17, 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 16, 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 17, 1980. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33581 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP78-111]

Columbia Gulf Transmission Co.; Petition To Amend

October 21, 1980.

Take notice that on September 30, 1980, Columbia Gulf Transmission Company (Petitioner), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP78-111 a petition to amend the order issued May 30, 1978, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the conversion of natural gas measurement from a volume basis to a heat content basis, 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 by order issued May 30, 1978, it was authorized to transport up to 2,000 Mcf of natural gas per day to Amoco Gas Production Company at a rate of 2.5 cents per Mcf for delivery in St. Landry Parish, Louisiana.

Petitioner proposes herein to transport gas on a more equitable thermally equivalent basis instead of on a volume basis, it is stated. It is asserted that the transportation service authorized previously would otherwise remain unchanged.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 6, 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. 80-33582 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-582]

Columbia Gulf Transmission Co.; Application

October 21, 1980.

Take notice that on September 30, 1980, Columbia Gulf Transmission Company (Applicant), P.O. Box 683,

Houston, Texas 77001, filed in Docket No. CP80–582 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Amoco up to 7,000 Mcf of natural gas per day produced in St. Charles Parish, Louisiana. It is stated that Applicant would receive the gas at the tailgate of Texaco Inc.'s Paradis Plant and transport such gas for Amoco through its east lateral and main line systems and redeliver a thermally equivalent quantity of gas less gas used as compressor fuel to Amoco through existing measuring facilities connecting the pipelines of Applicant and Florida Gas Transmission Company (Florida) in St. Landry Parish, Louisiana.

Applicant states that Amoco would pay Applicant a rate of 2.50 cents per Mcf for the transportation service provided. It is asserted that the transportation service would commence upon initial deliveries and would terminate on June 10, 1988. Amoco has advised that the gas would be delivered to Florida in partial satisfaction of its warrenty obligation.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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. 80–33583 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ES81–4–000]

El Paso Electric Co.; Application

October 21, 1980.

Take notice that on October 8, 1980, El Paso Electric Company (Applicant) filed a request with the Commission, pursuant to Section 204 of the Federal Power Act, for authority to negotiate for the placement of up to $18 million of five-year unsecured notes. The Applicant is a Texas Corporation, with its principal office at El Paso, Texas and is engaged in the electric utility business in Texas and New Mexico.

Any person desiring to be heard or to make any protest with reference to the application should on or before November 7, 1980, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33584 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ER81–31–000]

Green Mountain Power Corp.; Proposed Tariff Change

October 21, 1980,

The filing Company submits the following:

Take notice that Green Mountain Power Corporation (GMPC) on October 14, 1980 tendered for filing proposed changes in its Transmission and Metering rate schedule under contracts filed with the Federal Energy Regulatory Commission, as contained in Docket Nos. ER78–33, ER78–187 and ER80–458. The proposed changes would increase revenues from jurisdictional sales and service by $50,525.76 based on the 12 month period ending April 30, 1981.

Copies of the filing were served upon the Village Light Departments of Stowe, Hardwick, Morrisville, Northfield, Jacksonville and Readsboro, Vermont, and on Washington Electric Cooperative of East Montpelier, Vermont, and upon the State of Vermont Public Service Board.

Any person wishing 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 and 1.10). All such petitions or protests should be filed on or before November 10, 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. 80–33585 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. CP80–565]

Midwestern Gas Transmission Co.; Application

October 21, 1980.

Take notice that on September 19, 1980, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80–565 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to implement the terms of gas exchange agreement between Applicant, Northern and Michigan Wisconsin Pipe Line Company (Mich Wis) dated August 15, 1980, wherein Applicant has agreed to transport and deliver on a best-efforts basis to Northern at the North Branch, Minnesota, delivery point the quantities of natural gas requested by Mich Wis to be reduced from deliveries to Mich Wis at the Marshfield, Wisconsin, delivery point. Deliveries by Applicant to

Northern by virtue of the exchange arrangement would be deemed to be deliveries by Applicant for the account of Mich Wis pursuant to the gas purchase contract between the parties dated July 17, 1967, it is asserted.

Applicant submits that the proposed transportation and delivery of natural gas are needed by Northern at the North Branch Delivery Point to enable Northern to meet winter-time requirements on the north end of its system. Northern, it is asserted, would redeliver an equivalent quantity to Mich Wis at a point on Northern's system at Janesville, Wisconsin. No additional facilities would be required to implement the provisions of the stated agreement, it is asserted.

Applicant asserts that it would transport 50,000 Mcf of gas per day on a best-efforts basis and at its option such additional volumes as tendered by Mich Wis with such service to be performed during the period of October 1, 1980, through April 30, 1981, and October 1, 1981, through April 30, 1982. Applicant further asserts that the quantity of gas transported and delivered to Northern at the North Branch delivery point would be equivalent to the volume of gas delivered by Northern to Mich Wis at the Janesville point.

Applicant states that Northern would pay 4.06 cents for each Mcf transported.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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. 80-33586 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC80-94]

Mississippi River Transmission Corp.; Tariff Sheet Filings

October 7, 1980.

Take notice that on September 26, 1980, Mississippi River Transmission Corporation (Mississippi River), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. TC80-94 revised tariff sheets pursuant to Part 281 of the Commission's Regulations under the Natural Gas Policy Act of 1978 to become effective November 1, 1980.

Mississippi River has filed as part of its FERC Gas Tariff, first Revised Volume No. 1, the following rivised tariff sheets:

Second Revised Sheet No. 35.

Third Revised Sheet No. 36.

Second Revised Sheet No. 38.

Third Revised Sheet No. 39.

The revised tariff sheets set forth above are filed to reflect changes in the Index of Protected Essential Agricultural Use (Step 10) Entitlements and in the Index of High Priority (Step 11) Entitlements to be effective during the period November 1, 1980, through April 14, 1981, pursuant to paragraph 8.2(a)(i) of Mississippi's curtailment plan.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 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). 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. 80-33587 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-546]

Monongahela Power Co., et al.; Order Accepting for Filing and Suspending Proposed Rates in Part, Granting Waiver of Notice Requirements, Consolidating Proceedings, and Establishing Procedures

Issued October 17, 1980.

On July 23, 1980, as completed on August 18, 1980,[1] Allegheny Power Service Corporation (APS) filed on behalf of Monongahela Power Company, Potomac Edison Power Company, and West Penn Power Company—the electric utilities making up the Allegheny Power System—Amendment No. 8 to an Operating Agreement dated January 1, 1973, which provides for interchange services between the Allegheny Power System Companies and the Virginia Electric and Power Company (VEPCO).[2]

Amendment No. 8 provides for an increase in the demand charge for short-term power from $0.70/Kw-week to $0.85/Kw/week and an increase in the demand charge for limited-term power from $3.75/Kw/month to $4.50/Kw/month. Related short-term and limited-term third party transmission charges would be increased from $0.175/Kw-week and $0.74/Kw-month to $0.24/Kw/week and $0.00/Kw/month, respectively. The existing 10% adder to the purchase cost of energy and the 15% adder to the purchase cost of energy supplied by third parties would be limited to 2.0 mills/Kwh and 1.0 mills/Kwh, respectively.

APS has requested the Commission to waive the notice requirements of section 35.3 of the regulations to permit Amendment No. 8 to become effective August 1, 1980.

Notice of the filing was issued on August 4, 1980, with responses due on or before August 22, 1980. No comments, protests, or petitions to intervene were filed.

Discussion

APS's proposed short-term and limited-term demand charges, third party transmission charges, and

[1] The Commission's filing requirements were satisfied when Virginia Electric and Power Company submitted its certificate of concurrence and cost support for the revised interchange rates.

[2] *See* Attachment for rate schedule designations.

chapped percentage adders are identical to rates and charges previously accepted by the Commission.[3] Similarly, VEPCO's third party transmission charges and capped percentage adders have also been accepted by the Commission.[4] The Commission permitted the previously submitted rates to become effective on August 1, 1980, and we believe that a concurrent effective date for the instant charges will facilitate implementation of the various service schedules among the parties with which APS is interconnected. Thus, we find that good cause exists to grant waiver of the notice requirements and we shall accept the portions of the instant submittal identified above for filing to become effective August 1, 1980, without suspension.

Our analysis indicates, however, that the short-term and limited-term demand charges proposed by VEPCO suffer from the same inadequacies as the rates recently submitted by VEPCO in Docket No. ER80–485. The company has provided identical cost data in support of the identical short-term demand charge; the proposed limited-term demand charge is based directly on the short-term demand charge (expressed as a per month charge and adjusted to reflect 20% reserves). As in the prior proceeding, we find that these proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept VEPCO's proposed short-term and limited-term demand charges for filing and suspend them as ordered below.

In a number of suspension orders,[5] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that with respect to the same short-term demand charge as that currently proposed by VEPCO, the Commission ordered a one-day suspension in Docket Nos. ER80–484 and ER80–485. We indicated that potentially excess revenues could be offset, in part, by the use of fixed adders, and that the services in question lend themselves to a nominal suspension. Consistent with the suspension period ordered in Docket Nos. ER80–484 and ER80–485, we shall exercise our discretion to suspend VEPCO's short-term and limited-term demand charges for one day permitting that portion of the instant submittal to take effect subject to refund thereafter on August 2, 1980. Moreover, because this docket presents questions of law and fact common to those being considered in Docket Nos. ER80–484 and ER80–485, we shall consolidate this proceeding with the proceedings in Docket Nos. ER80–484 and ER80–485.[6]

In addition, our analysis in Docket Nos. ER80–484 and ER80–485 indicated that VEPCO's use of average system production investment in support of interchange service demand charges was improper because such average system pricing does not track the demand related costs of the marginal units assigned to interchange service. Our order establishing the hearing in those dockets on the proposed demand charge limited the scope of the proceedings to the proper development of the production component of VEPCO's interchange service demand charges. Accordingly, we shall similarly limit the scope of this proceeding to the proper development of the production component of VEPCO's proposed demand charges for short-term and limited-term power.

The Commission Orders

(A) Waiver of the notice requirements of section 35.3 of the Commission's regulations is hereby granted.

(B) APS's proposed short-term, limited-term, and related third party transmission rates (including the associated capped adders) and VEPCO's proposed third party transmission rates (including all of VEPCO's proposed capped adders) are hereby accepted for filing, to become effective August 1, 1980, without suspension.

(C) The short-term and limited-term demand charges proposed by VEPCO in this proceeding are hereby accepted for filing and suspended for one day, to become effective on August 2, 1980, subject to refund pending hearing and decision thereon.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of the short-term and limited-term demand charges proposed by VEPCO in this proceeding. The investigation shall be confined to the limited issue of the proper development of the production component of VEPCO's proposed demand charges for short-term and limited-term power.

(E) This proceeding is hereby consolidated with Docket Nos. ER80–484 and ER80–485 for purposes of hearing and decision thereon.

(F) The administrative law judge previously designated to preside in Docket Nos. ER80–484 and ER80–485 shall convene a conference in this consolidated proceeding at the earliest convenience of the parties in order to establish a procedural schedule that will accommodate consolidation of Docket No. ER80–546 with the pending proceeding.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

Allegheny Power Service Corp., Rate Schedule Designations, Docket No. ER80–546

Designation and Description

Monogahela Power Co.

(1) Supplement No. 6 to Rate Schedule FPC No. 32—Short Term Power
(2) Supplement No. 7 to Rate Schedule FPC No. 32—Limited Term Power

The Potomac Edison Co.

(3) Supplement No. 6 to Rate Schedule FPC No. 33—Short Term Power
(4) Supplement No. 7 to Rate Schedule FPC No. 33—Limited Term Power

West Penn Power Co.

(5) Supplement No. 6 to Rate Schedule FPC No. 31—Short Term Power
(6) Supplement No. 7 to Rate Schedule FPC No. 31—Limited Term Power

[3] *Pennsylvania-New Jersey-Maryland Interconnection, et al.*, Docket Nos. ER80–427, *et al.* (order issued July 31, 1980).

[4] *Pennsylvania-New Jersey-Maryland Interconnection, and Virginia Electric & Power Co.*, Docket Nos. ER80–484 and ER80–485 (order issued August 21, 1980).

[5] *E.g., Boston Edison Co.*, Docket No. ER80–508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80–506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80–488 (August 22, 1980) (one day suspension).

[6] A prehearing conference was held in Docket Nos. ER80–484 and Er80–485 on September 4, 1980, and a procedural schedule has been adopted.

Virginia Electric & Power Co.

(7) Supplement No. 6 to Rate Schedule FPC No. 99 (Concurs in (1)–(6) above)—Certificate of Concurrence

[FR Doc. 80–33588 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. CP81–3–000]

Natural Gas Pipeline Co. of America; Application

October 21, 1980.

Take notice that on October 1, 1980, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP81–3–000 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 lateral pipeline and other facilities (High Plains "C" Project) to attach new gas supplies to its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes under its High Plains "C" Project to construct and operate lateral pipeline consisting of approximately 92 miles of 4, 6, 10 and 12-inch pipeline, approximately 4,000 horsepower of compression, and other appurtenant facilities in Garden, Devel, Cheyenne and Morrill Counties, Nebraska. Also, it is proposed that Applicant would install communication facilities. Applicant states that the pipeline and facilities would deliver up to 40,000 Mcf of gas per day from its area of interest to a point of connection on Trailblazer Pipeline Company's proposed pipeline located in Sedgwick County, Colorado.

Applicant states that the construction is necessary because the new and developing gas fields offer some of the best and most economical sources of long-term gas reserves.

Applicant would purchase gas found in the shallow Miabrara Chalk formation and from any other zones producing under contracted acreage available to it. Applicant projects that 103,600,000 Mcf of combined proved reserves and potential gas supply are contained in the Miabrara Chalk formation within the evaluated area.

It is stated that the total estimated cost of the High Plains "C" Project of $16,650,000 would be financed initially with funds on hand, borrowings under Applicant's revolving credit arrangements or short-term financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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. 80–33589 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. CP80–558]

Northern Natural Gas Co., a Division of InterNorth, Inc.; Application

October 21, 1980.

Take notice that on September 17, 1980, Northern Natural Gas Company, a Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80–558 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to sell for resale volumes in excess of its firm entitlement to West Texas Gas, Inc. (West Texas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is currently authorized to sell and deliver up to 350,000 Mcf of gas per month and 2,294,219 Mcf of gas annually to West Texas for resale to Applicant's pipeline right-of-way grantors and other customers for residential, irrigation fuel, and other high priority uses in rural areas of West Texas and that such sales are made pursuant to Applicant's Rate Schedule X–40.

Applicant proposes herein to implement the terms of a contract between it and West Texas dated August 27, 1980, which provides for the sale of authorized overrun volumes in excess of firm entitlement and stipulates that the availability of overrun volumes would be determined at the sole discretion of Applicant and would be subject to advance operating arrangements, it is said. Applicant asserts that no overrun service would be offered on any day when curtailment below firm entitlement is required anywhere on its system and that during any period when overrun volumes are authorized, Applicant may curtail or completely interrupt such service by giving West Texas reasonable advance notice. It is further asserted that total volumes delivered to West Texas on any day would not exceed that volume which Applicant would be capable of delivering with then existing facilities and under then existing operating conditions on its pipeline system. It is submitted that the rate to be paid by West Texas to Applicant for each Mcf of authorized overrun gas delivered would be that as set forth on the then effective Sheet No. 1c of Applicant's FERC Gas Tariff, Original Volume No. 2, for Rate Schedule X–40.

It is asserted that the proposed overrun service has been requested by West Texas to offer them the opportunity to serve requirements on their system in excess of their firm entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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 of 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. 80-33590 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-19-000]

Tapoco, Inc.; Filing

October 21, 1980.

Take notice that Tapoco, Inc. on October 9, 1980, tendered for filing, under protest, pursuant to Section 35.12 of the Commission's Regulations, a copy of its 1971 Apportionment Agreement with Nantahala Power and Light Company. Tapoco indicates that this agreement is an adjunct to the New Fontana Agreement, on file as Tapoco's Rate Schedule No. 3, which provides for an energy-for-energy swap by Tapoco and Nantahala with the Tennessee Valley Authority. Tapoco indicates that the Apportionment Agreement defines the quantities of energy delivered by TVA to Tapoco in return for the output of the Tapoco generating plants and will terminate at the same time as the New Fontana Agreement, December 1982.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 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. 80-33595 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP75-119-002]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

October 21, 1980.

Take notice that on October 1, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-119-002 a petition to amend the order issued March 20, 1978, as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the establishment of new points of receipt for gas received from Shell Oil Company (Shell) and to extend the term of the transportation service for Shell, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant states that it presently receives from Shell specified volumes of natural gas at specified receipt points and is authorized to transport such gas to an interconnection with Creole Gas Pipeline Company (Creole) at Yscloskey, Louisiana, for delivery to Creole for sale by Creole to Air Products and Chemicals Inc. Applicant proposes herein to add new receipt points from Shell and to extend the term of the transportation service to July 1, 1990.

Applicant proposes to establish two new points of receipt from Shell located at Applicant's Valve No. 526A-213 on its Louisiana Coastal Extension—Main Pass Block 35 Line No. 526A-200, Plaquemines Parish, Louisiana, and near mile post 520A-301 plus 6.95 Miles on its Louisiana Coastal Halter Island Line in Terrebonne Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 6, 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. 80-33591 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76-261]

Texas Eastern Transmission Corp.; Petition To Amend

October 21, 1980.

Take notice that on September 18, 1980, Texas Eastern Transmission Corporation (Petitioner), P.O. Box 2521, Houston Texas 77001, filed in Docket No. CP76-261 a petition to amend the order issued in the instant docket on October 27, 1976,[1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize the addition of two points of exchange between Petitioner and Arkansas Louisiana Gas Company (Arkla), 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 by order of October 27, 1976, it was authorized to exchange natural gas on a gas for gas basis at points where Arkla's transmission lines cross petitioner's transmission lines in Shelby and Marion Counties, Texas, and Caddo Parish, Louisiana, pursuant to July 12, 1976, agreement between the parties.

Petitioner requests amendment of the October 27, 1976, order pursuant to an amendment agreement dated March 18, 1980, so as to include the following two additional points of exchange with Arkla:

(1) Arkla'a Line AT-7, J. H. Ridgeway A-604 Survey, Harrison County, Texas.
(2) Arkla's Line A-150, T. Naramore A-522 Survey, Harrison County, Texas.

Petitioner states that it has been purchasing gas from Insearch Exploration, Inc. (Insearch) pursuant to two gas purchase contracts dated October 27, 1974, from the Whelan Field, Harrison County, Texas. It is asserted that Insearch has gas available from the W. T. Cook Unit and the Williams Unit, both in the Whelan Field, for sale to Petitioner under the above contracts. It is further asserted that Arkla has

[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.

existing facilities connecting the wells into its system and is willing to receive at the two Harrison County, Texas, points natural gas for Petitioner's account and redeliver equivalent volumes of gas to Petitioner at the existing exchange point between the two systems at Arkla's Waskom Products Extraction Plant in East Texas.

It is submitted that implementation of the proposed exchange would enable Petitioner to receive gas into its interstate system from properties which could not other wise be feasibly connected directly to its system. It is further submitted that Arkla has ample capacity on its system to render the service contemplated herein and its obligations under the exchange agreement would have no significant effect on the operation of its system.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 6, 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 the 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. 80-33592 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-575]

Texas Eastern Transmission Corp. Application

October 21, 1980.

Take notice that on September 25, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP80-575 an applicant pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the expansion of two meter stations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to expand its Meter and Regulatory Station Nos. 070 and 519 in Lancaster and Dauphin Counties, Pennsylvania. The proposed expansion would increase the station delivery rates from approximately 562 dekatherms (dt) equivalent per hour to 2,035 dt equivalent per hour at Lancaster and 1,639 dt equivalent to 3,155 dt equivalent per hour at Dauphin, it is asserted. Applicant states that the proposed expansions are necessary in order to meet the peak demand market requirements of Applicant's existing customer, Columbia Gas Transmission Corporation (Columbia).

It is stated that the estimated cost of the expansion would be a total of $204,500 ($133,800 at Lancaster and $70,700 at Dauphin) for which cost Applicant would be reimbursed by Columbia.

Applicant further states that the proposed increases in station delivery rates would not result in an increase in total daily deliveries to Columbia or in contract quanitites nor would it necessitate a change in Applicant's service agreements with Columbia.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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. 80-33593 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-585]

Texas Gas Transmission Corp.; Application

October 21, 1980.

Take notice that on September 30, 1980, Texas Gas Transmission Corporation (Applicant) P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP80-585 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 a metering station in Madison County, Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a metering station to supplement the current service provided to Jackson Utility Division, Jackson, Tennessee, (Jackson) by a single 8-inch pipeline in Jackson, Tennessee. Applicant states that the station would be located at approximately milepost 5+2721 on Applicant's Humbolt 6-inch pipeline in Madison County, Tennessee. It is asserted that the estimated cost of $144,600 would be borne by Jackson.

Applicant contends that the proposed operations would augment Jackson's customer service ability and allow it to add a secondary feed to its present system. It is stated that such activity would not increase Jackson's existing contract demand or quantity entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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. 80-33594 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-1-000]

United Gas Pipe Line Co.; Application

October 21, 1980.

Take notice that on October 1, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-1-000 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 facilities for the rearrangment of its existing Monroe Field Compressor Station and authorizing the operation of said station in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to rearrange certain piping within its Monroe Field Compressor Station No. 1, Ouachita Parish, Louisiana, consisting of three 330 horsepower units, so that gas from Applicant's Monroe Field low pressure gathering system can be delivered into an existing pipeline of Applicant where it would no longer be confined within the state of Louisiana. It is stated that the low pressure system was constructed so that the gas could not leave the state and was used for deliveries of natural gas to the Sterlington Plant of Louisiana Power and Light Company (LP&L). Applicant states that the LP&L has so reduced its purchases that the gas projected to be available from the low pressure system exceeds the anticipated deliveries to LP&L's plant. It is stated that it is necessary, therefore, to rearrange certain piping within the Monroe Field Compressor Station No. 1 in order to make the gas available to Applicant's system generally. This would, it is stated, allow the gas to be delivered outside Ouachita Parish and outside Louisiana.

It is stated that the total cost of the proposal would be $15,000 most of the necessary facilities being already in existence. Applicant states that no new financing would be required.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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. 80-33596 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-578]

United Gas Pipe Line Co., Transcontinental Gas Pipe Corp.; Application

October 21, 1980.

Take notice that on September 29, 1980, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-578 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas between United and Transco, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that by order issued August 9, 1974, in Docket No. CP74-175 United and Transco were authorized to exchange up to 3,000 Mcf of natural gas per day under the gas exchange agreement between them dated November 9, 1973. It is stated that Transco acquired a right to purchase an interest in production from the L. E. Martinez No. 1 well located in Lafourche Parish, Louisiana, attributable to the interest of Goldking Production Company (Goldking).

Applicants state that Goldking has informed Transco that said well has been plugged and abandoned. Furthermore, it is stated, Goldking has filed to abandon said sale of natural gas to Transco. Applicants state that they have agreed to cancel their 1973 gas exchange agreement and to abandon the exchange of natural gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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 the juristiction 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 Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33597 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3424]

Water Power Development Corp.; Application for Preliminary Permit

October 17, 1980.

Take notice that Water Power Development Corporation (Applicant) filed on September 2, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3424 to be known as West Thompson Project located on the Quinebaug River in Windham County, Connecticut. Correspondence with the Applicant should be directed to: Kenneth E. Mayo, P.E., President, Water Power Development Corporation, 23 Temple Street, Nashua, New Hampshire 03060.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' West Thompson Lake Dam and would consist of: (1) a penstock utilizing outlet works which are near the right abutment; (2) a new powerhouse which will contain generating units having a total rated capacity of 2,260 KW; (3) a tailrace 400 feet long; (4) a transmission line; and (5) appurtenant facilities. Applicant estimates the annual generation would average about 7,920,000 KWH.

Purpose of Project—Project energy might be sold to the Connecticut Light and Power Company, but alternative purchasers consist of nearby public institutions, a rural electric cooperative, a municipal utility, or industrial users.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

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 the 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 January 5, 1981, 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 March 6, 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 requirments 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 January 5, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33263 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-583]

Western Gas Interstate Co.; Application

October 21, 1980.

Take notice that on September 30, 1980, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP80-583 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 natural gas facilities, the transportation of natural gas on an exchange basis with Colorado Interstate Gas Company (CIG), and the sale of natural gas to CIG at proposed points of delivery, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to exchange natural gas with CIG on a gas for gas basis and to sell to CIG 25 percent of those volumes delivered for exchange pursuant to a gas transportation, exchange and sales agreement dated July 18, 1980, effective for a primary term of five years. Applicant states that it would charge CIG a cost-of-service rate equal to 30.52 cents per Mcf plus Applicant's monthly average purchase price per Mcf, weighted according to volumes, for gas produced from Grounds No. 1 Well, the Rollins No. 1 Well, and, the Paul Mendenhall No. 1 Well. It is stated that Applicant would deliver gas to CIG at a rate not to exceed 5,000 Mcf per day. Applicant states that any imbalance in the exchange rate would be corrected by delivery adjustments rather than by payments. Applicant states that it would initially pay a

transportation rate of 22.12 cents per Mcf to CIG.

Furthermore, it is stated that Applicant proposes to construct and operate a 100 horsepower compressor and appurtenant facilities in Texas County, Oklahoma, in order to effectuate the proposed transportation, exchange and sales agreement with CIG.

It is stated that the total estimated cost of the facilities would be $110,265.00. Applicant implies that said cost would be financed from funds on hand.

Applicant identifies only one delivery point to CIG in Texas County, Oklahoma, but requests authorization to add additional points of delivery and receipt in the Texas and Oklahoma panhandles as may be agreed upon by Applicant and CIG. CIG would deliver exchange gas to Applicant at various points in Beaver and Cimarron Counties, Oklahoma, and Sherman County, Texas.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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. 80-33598 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CS80-193, etc.]

Robert W. Rea, Jr., et al.; Application for "Small Producer" Certificates [1]

October 22, 1980.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS80-193	8/12/80	Robert W. Rea, Jr., P.O. Box 7574, Monroe, Louisiana 71203.
CS80-194	8/7/80	James G. Myhre, 1910 LTV Tower, Dallas, Texas 75201.
CS80-195	8/8/80	Eldon Walker, 1100 Milam Building, Suite 580, Houston, Texas 77002.
CS80-196	8/20/80	C. David Long, P.O. Box 378, Guymon, Oklahoma 73942.
CS80-197	8/26/80	C. W. Dunnam, 2502 Country Club Drive, Midland, Texas 79701.
CS80-198	8/26/80	Colorado Gas Gathering Company, Inc., Post Office Box 16366, Houston, Texas 77022.
CS80-199	8/27/80	H. E. Karges, P.O. Box 1635, Jackson, MS 39205.
CS80-200	8/29/80	Energy Management Corporation and its affiliate EMC Management Company, 3500 Anaconda Tower, Denver, CO 80202.
CS80-201	9/2/80	Merrill Natural Resources, Inc., Rt. 1, Box 36, Fulks Run, VA.
CS80-202	9/2/80	Platte Valley Petro Energy Inc., 2480 W. 26th Ave., Suite 180B, Denver, CO 80211.
CS80-203	9/5/80	Red Leaf Oil Ltd., 212 N. Third Street, Olean, New York 14760.
CS80-204	9/8/80	Tyler Oil & Gas, Inc., 120 South College, Tyler, Texas 75702
CS80-205	9/11/80	Jalmer Berg, 1100 Milam Building, Suite 580, Houston, Texas 77002.
CS80-206	9/11/80	Dr. William H. Rosenblatt, 515 St. Dominic Medical Office, Jackson, MS 39216.
CS80-207	9/11/80	Harris Energy Corporation, 1670 Broadway, Suite 3350, Denver, CO 80202.
CS80-208	9/15/80	Robert D. Charlebois, US Rte. 20 East, Cazenovia, NY.
CS80-209	9/18/80	Stillwater Drilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-210	9/18/80	Sugar Grove Drilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-211	9/18/80	Catline Drilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-212	9/18/80	Warren Frilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-213	9/18/80	Clinton Drilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-215	9/18/80	Bounty Oil & Gas, Inc., 409 Fenton Bldg., 2E. 2nd St., Jamestown, NY 14701.
CS80-216	9/19/80	Courier Oil Corporation, 610 Marshall, #630, Shreveport, LA.
CS80-217	9/22/80	Flint Oil & Gas, Inc., 421 Franklin Street, Buffalo, New York 14202.
CS80-218	9/22/80	Lucie C. Majoros, 2719 Felton Drive, East Point, Georgia 30344.
CS80-219	9/24/80	The Colorado National Bank of Denver, P.O. Box 5168 T.A., Denver, Colorado 80217.
CS80-220	9/22/80	Bennett Petroleum Corporation, 1580 Lincoln Street, Suite 630, Denver, Colorado 80203.
CS80-221	9/17/80	Belmont Resources, Inc., 239 W, One Bala Cynwyd Plaza, Bala Cynwyd, Penna. 19004.

Docket No.	Date filed	Applicant
CS80-223	9/23/80	Estate of Clara B. Guthrie, 2604 Beloit Street, Monroe, La. 71201.
CS80-224	9/23/80	Alliance Exploration Corporation, 1717 Houston Club Building, Houston, Texas 77002.
CS80-225	9/25/80	Roger C. Hamel, Jr., P.O. Box 1698, Victoria, Texas 77901.
CS80-226	9/25/80	Jack E. Bright, P.O. Box 3157 Victoria, Texas 77901.
CS80-227	9/25/80	L. E. Lewis, 3609 Parader, Dallas, Texas 75228.
CS80-228	9/25/80	Weeks Exploration Company, One Sylvan Road North, Westport CT 06880.
CS80-229	9/26/80	Envirogas Inc., 69 Delaware Ave., Suite 900, Buffalo, NY 14202.
CS80-230	9/29/80	The Home-Stake Oil & Gas Company, 507 Philtower Bldg, Tulsa, OK 74103.
CS80-231	9/29/80	O. Strother Simpson, 507 Philtower Bldg., Tulsa, OK 74103.
CS80-232	9/29/80	Robert C. Simpson, 507 Philtower Bldg., Tulsa, OK 74103.
CS80-233	9/29/80	Patricia A. Russell, 2703 S. Norwood, Tulsa, OK 74103.
CS80-234	9/29/80	Willam G. Seal, 4662 S. Troost, Tulsa, OK 74105.
CS80-235	9/29/80	Gary W. Fisher, 407 S. Independence, Sapulpa, OK 74066.
CS80-236	9/29/80	Harry V. Tucei, 3749 S. Erie, Tulsa, Ok 74135.
CS80-237	9/29/80	The Home-Stake Royalty Corporation, 507 Philtower Bldg., Tulsa, OK 74103.
CS80-238	9/30/80	Mark F. Thompson, 1700 Broadway, Suite 1219, Denver, Colorado 80290.
CS80-239	9/30/80	Diane Thompson, 1700 Broadway, Suite 1219, Denver, Colorado 80290.
CS80-240	9/30/80	Teresa T. Bou-Matar, 1700 Broadway, Suite 1219, Denver, Colorado 80290.
CS80-241	9/30/80	Ruth L. Bozman, 1700 Broadway, Suite 1219, Denver, Colorado, 80290.
CS81-1-000	10/2/80	Estate of John E. McKeen c/o DeForest & Duer, 20 Exchange Place, N.Y., N.Y. 10005.

[FR Doc. 80-33663 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RA81-7-000]

Ron Cromwell Chevron; Filing of Petition for Review

October 22, 1980.

Take notice that Ron Cromwell Chevron on October 14, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the Petition for Review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 6, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 6, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33664 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RA81-6-000]

Self-Serve Chevron; Filing of Petition for Review

October 22, 1980.

Take notice that Self-Serve Chevron on October 14, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 6, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 6, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33665 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket Nos. G-17647-000, etc.]

Shell Oil Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

October 22, 1980.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 31, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions 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

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
G-17647-000, D, 10/9/80	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corporation, Big Foot Field, Frio and Atascosa Counties, Tex.	(1)	.....
G-18054, D, 9/22/80	General American Oil Company of Texas, Meadows Building, Dallas, Tex. 75206.	Southern Natural Gas Company, Dexter Field, Walthall County, Miss.	(2)	.....
CI66-890, 9/8/80 [3]	Conoco Inc., P.O. Box 2197, Houston Tex. 77001.	Texas Eastern Transmission Corporation, Rayne Field, Acadia Parish, LA.	(4)	15.025
CI66-1042, D, 9/23/80	Phillips Petroleum Company, 5 C4 Phillips Building, Bartlesville, Okla. 74004.	Valley Gas Transmission, Inc., Chatham Field, Jackson Parish, La.	(5)	.....
CI72-555-002, C, 10/14/80.	Texas Pacific Oil Company, Inc., 1700 One Main Place, Dallas, Tex. 75250.	Panhandle Eastern Pipe Line Company, Reydon Area, Roger Mills County, Okla., and Hemphill County, Tex.	(6)	14.65
CI76-730, C, 9/22/80	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston Tex. 77046.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Columbia Gas Transmission Corporation, South Timbalier Blocks 29 and 37, Federal Offshore Louisiana.	(7)	14.73
CI77-50-001, C, 10/8/80	Florida Exploration Company, P.O. Box 44, Winter Park, Fla. 32790.	Florida Gas Transmission Company, Vermilion Block 21, Offshore Louisiana.	(8)	15.025
CI77-453, D, 9/22/80	General American Oil Company of Texas.	El Paso Natural Gas Company, S.E. Parsell Field, Hemphill County, Tex.	(2)	.....
CI77-737-000, D, 10/6/80	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Tex. 75221.	Transwestern Pipeline Company, Grayburg-Morrow Field, Eddy County, N. Mex.	(9)	.....
CI78-391, C, 9/22/80	Tenneco Oil Company, P.O. Box 2511, Houston Tex. 77001.	El Paso Natural Gas Company, E/2 of Sec. 29-T32N-R11W, San Juan County, N. Mex. (Limited to the Dakota Formation).	(10)	15.025
CI78-816, C, 9/19/80	Exxon Corporation, P.O. Box 2180, Houston Tex. 77001.	Columbia Gas Transmission Corporation, Eugene Island Blcok 251 Field, Offshore Louisiana.	(11)	15.025
CI80-49, C, 7/21/80	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston Tex. 77046.	Trunkline Gas Company, South Timbalier Block 156 Field, Offshore Louisiana.	(12)	15.025
CI80-180, C, 9/29/80	MCOR Oil and Gas Corporation (Formerly: McCulloch Oil and Gas Corporation), 10880 Wilshire Boulevard, Los Angeles, Calif. 90024.	El Paso Natural Gas Company, Stout No. 1-26 Well, Section 26-T10N-R20W, Washita County, Okla.	(13)	14.65
CI80-464, A, 8/5/80	Texasgulf, Inc., 1100 Milam Building, Houston Tex. 77002.	Northern Natural Gas Company, Block 104, East Cameron Area, Offshore Louisiana.	(14)	15.025
CI81-7-000, A, 10/6/80	ARCO Oil and Gas Company, Division of Atlantic Richfield Company (Operator), P.O. Box 2819, Dallas, Tex. 75221.	Tennessee Gas Pipeline Company, Vermilion Block 104 Area, Offshore Louisiana.	(15)	15.025
CI81-8-000, A, 10/6/80	Exxon Corporation, P.O. Box 2180, Houston Tex. 77001.	United Gas Pipe Line Company, Gabrysch Field, Jackson County, Tex.	(11)	14.65
CI9-000-, B, 10/6/80	Burdette Oil & Gas Co., Inc., P.O. Box 10167, Station "C", Charleston, W. Va. 25312.	Columbia Gas Transmission Corporation, Ravenswood Field, Jackson County, W. Va.	(16)	.....
CI81-10-000 (G-18118), B, 10/9/80.	Appalachian Exploration & Developmet, Inc., One Houston Center, Suite 1000, Houston Tex. 77002.	Gas Transport, Inc., Jackson-Wirt Field, Wood and Jackson Counties, W. Va.	(17)	.....

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
CI81-11-000, B, 10/6/80....	Hanagan Petroleum Corporation, P.O. Box 1737, Roswell, N. Mex. 88201.	Transwestern Pipeline Company, West One-Half of Section 34-23S-25E, Eddy County, N. Mex.	([18])	.....
CI81-12-000, A, 10/9/80....	Union Oil Company of California, Union Oil Center, Room 901, P.O. Box 7600, Los Angeles, Calif. 90051.	United Gas Pipe Line Company, Block A-469, High Island Area, Offshore Texas.	([19])	14.65

[1] Due to lessor demand, Shell released approximately 192 acres all lying outside the Big Foot Olmos "B" Unit. There are no current producing wells on acreage. Also, our geological interpretation indicates there are no potential zones for development between the surface to 4000 feet underlying those lands.

[2] Final determination under Section 103 of the NGPA of 1978.

[3] To shut down the Rayne LaGloria Plant because the gas reserves have been depleted to the extent that it is no longer considered profitable by the plant operator to operate the plant and it is the desire of Conoco, and Texas Eastern to establish a new delivery point which will be at the outlet of a gas processing plant in Acadia Parish, Louisiana, known as the Conoco Acadia Plant.

[4] Conoco and Texas Eastern have agreed, by Agreement dated 7-18-80 to the new delivery point.

[5] Release of acreage due to plugging and abandoning of the J SU C Tremont F No. 1 and the J SU H Tremont B No. 1, both located in Chatham Field, Jackson Parish, Louisiana.

[6] Applicant is filing under Gas Purchase and Sales Agreement dated 3-2-72, amended by Amendment dated 8-1-80.

[7] Applicant is filing under Gas Sales Contract, as amended, dated 8-3-76, and further amended by Amendment dated 8-11-80.

[8] Applicant is filing under Gas Sales and Purchase Contract dated 9-10-76, amended by Amendment dated 7-1-80.

[9] Pressure of casinghead gas involved is too low for gas to enter Purchaser's system. It is uneconomical for either party to compress.

[10] Applicant is filing under Gas Sales Contract dated 1-3-78, amended by Supplemental Gas Purchase Agreement dated 7-20-79.

[11] Applicant is willing to accept a permanent Certificate of Public Convenience and Necessity covering the subject sale conditioned in accordance with the NGPA of 1978 and the Commission's Regulations under said Act.

[12] Applicant is filing to amend its Contract under Amendment dated 4-15-80 and FERC GRS No. 93.

[13] Applicant is filing under Gas Purchase Agreement dated 1-1-80, amended by Amendment dated 1-2-80.

[14] Applicant is filing under Contract dated 7-30-80.

[15] Applicant is filing under Gas Purchase and Sales Contract dated 9-3-80.

[16] Two wells have not been in production since November, 1974, due to natural depletion and pressure decline.

[17] All gas reserves have been depleted to the extent that the continuance of gas service is unwarranted. The only remaining well was plugged and abandoned on 8-15-69.

[18] Well depleted and last sales made in April, 1980, well was plugged and abandoned by the Operator on 4-26-80 and well was the only well committed to Gas Purchase Contract and said contract expired on its own terms on 6-9-80. No further gas production is anticipated from this lease.

[19] Applicant is willing to accept a certificate at an initial rate of the maximum lawful price as prescribed in subsection 104(b) of the NGPA of 1978.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 80-33666 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EC81-1-100]

South Carolina Electric & Gas Co.; Application

October 22, 1980.

The filing company submits the following:

Take notice that on October 10, 1980, South Carolina Electric & Gas Company (Applicant) filed an application seeking an order pursuant to Section 203 of the Federal Power Act authorizing it to purchase certain electric transmission facilities from Duke Power Company.

Applicant is incorporated under the laws of the State of South Carolina, with its principal office in Columbia, South Carolina, and is duly authorized to do business in the State of South Carolina and is engaged in the electric utility business in twenty-four of the forty-six counties in South Carolina.

The Applicant proposes, subject to regulatory approval, to perform its agreement of February 29, 1980, with Duke Power Company to purchase approximately 20.96 miles of 115 kv transmission line located near Newberry and the Saluda Hydroelectric Station. Applicant will pay $912,440.00 in exchange for said property.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 4, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, petitions or protests 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 is determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33667 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-4-000]

Texas Eastern Transmission Corp.; Application

October 21, 1980.

Take notice that on October 1, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP81-4-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to provide a firm storage withdrawal service for certain of its Rate Schedule SS-II customers and to construct and operate additional pipeline facilities required to render such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to

1. Provide a firm storage withdrawal service for the following Rate Schedule SS-II customers at the following firm daily withdrawal quantities:

	Dekatherm equipment per day[1]
The Brooklyn Union Gas Company	12,500
Elizabethtown Gas Company	11,672
New Jersey Natural Gas Company	25,000
Public Service Electric and Gas Company	40,000
Total	89,172

[1] Firm daily withdrawal quantity dekatherm equivalent per day.

2. To construct and operate the following facilities required to render such service:

(a) 28.75 miles of 30-inch pipeline looping Applicant's existing 24-inch Line No. 12 and 30-inch Line No. 19 (Penn-Jersey System) at six locations between Delmont and Bechtelsville compressor stations in Pennsylvania;

(b) 2.0 miles of 36-inch pipeline looping Applicant's existing 24-inch Line No. 12 and 30-inch Line No. 19 between Bechtelsville and Lambertville (No. 26) compressor stations in Pennsylvania;

(c) A compressor addition not to exceed 20,000 horsepower and appurtenant facilities at Applicant's Delmont compressor station in Pennsylvania; and

(d) Expansion of three measuring and regulation stations in New Jersey.

Applicant states that by order issued June 16, 1980, in Docket No. CP80–170 it received authorization to render a long term storage service under its Rate Schedule SS–II for twelve of its existing resale customers and that to render such service, it obtained storage capacity from Consolidated Gas Supply Corporation (Consolidated) which was authorized by Docket No. CP80–220 to provide a firm long term storage service to Applicant under its Rate Schedule GSS.

With recent increases in the availability of gas supplies to the interstate market and Applicant's improved gas supply plus the increased withdrawal quantities offered by the SS–II Service, Applicant submits that its SS–II customers cannot continue to depend upon the availability of pipeline capacity to receive uninterrupted storage withdrawals.

In response to requests from the four SS–II customers scheduled above and after inquiry of all SS–II customers, Applicant has determined that it was economically feasible to render the firm withdrawal service by means of the facilities proposed herein and precedent agreements have been executed with the four SS–II customers which have requested firm daily withdrawal quantities, it is said.

Applicant states that as provided by its Rate Schedule SS–II, the annual costs associated with all facilities which must be added to Applicant's system to render the firm withdrawal deliveries would be borne only by the SS–II customers which requested such service by means of a firm demand charge. Based upon the annual cost of service for the facilities proposed herein Applicant estimates a firm demand charge of $8.44 per dt equivalent of firm daily withdrawal quantity per month for their additional capacity increment.

The estimated total capital cost of the facilities proposed herein is $43,070,000 which cost Applicant would initially finance from funds on hand and/or from borrowings under its revolving credit agreement which may later be replaced with long-term financing, it is said.

Applicant asserts that installation of the proposed facilities on its Penn-Jersey system downstream of the Consolidated delivery point at Oakford would provide 87,620 Mcf per day of increased capacity. Applicant further asserts that the value of its SS–II storage service to its customers in meeting their winter season demand would be further enhanced by the proposal herein and that the increased capacity on its Penn-Jersey system would assure uninterrupted deliveries of the firm withdrawal quantities thus enabling Applicant's SS–II customers to schedule their winter withdrawals with absolute certainty as to the elected firm quantities.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 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. 80–33668 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. CP81–11–000]

Texas Eastern Transmission Corp.; Application

October 22, 1980.

Take notice that on October 9, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP81–11–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Mid Louisiana Gas Company (Mid Louisiana), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated May 19, 1980, Applicant proposes to transport up to 10,000 Mcf of natural gas per day which Mid Louisiana has purchased in West Cameron Block 281, offshore Louisiana, for redelivery, less 1.5 percent fuel and losses, to Transcontinental Gas Pipe Line Corporation onshore at Ragley, Beauregard Parish, Louisiana, for further transportation to Mid Louisiana.

Applicant would receive the subject gas from Michigan Wisconsin Pipe Line Company at an interconnection on Applicant's offshore pipeline system in West Cameron Block 280, it is asserted.

Applicant would be paid $24,568 monthly by Mid Louisiana for the proposed firm service of 10,000 Mcf per day and 8.2 cents per Mcf in excess of 10,000 Mcf per day.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 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. 80-33669 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-12-000]

Texas Eastern Transmission Corp.; Application

October 22, 1980.

Take notice that on October 10, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP81-12-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Public Service Electric and Gas Company (Public Service), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Public Service up to 15,363 dekatherms (dt) equivalent of natural gas per day pursuant to the temporary transportation agreement dated October 9, 1980. It is stated that Public Service has arranged to purchase natural gas from Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) to displace oil for electric generation. Applicant proposes to receive by displacement for Alabama-Tennessee's account the Stated quantities of natural gas at the existing point of interconnection between Applicant and North Alabama Gas District located in Colbert County, Alabama, or other mutually agreeable points and to transport and redeliver equal quantities to Public Service at the existing point of interconnection with Applicant located in Union County, New Jersey, or other mutually agreeable points for a term ending October 31, 1980.

Applicant proposes to charge Public Service a rate of 20.97 cents per dt equivalent except that if the quantities delivered by applicant added to deliveries under Appplicant's Rate Schedules TS-1 and SS-II and other transportation agreements exceed the combined total curtailment of gas sales to Public Service under all of Applicant's firm sales rate schedules, the rate would be 24.03 cents per dt equivalent.

Applicant states that no new facilities would be necessary and that the proposed transportation would neither adversely affect Applicant's customers nor interfere with services or sales to high priority users.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 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 determing 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. 80-33670 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-6-000]

Texas Gas Transmission Corp.; Application

October 22, 1980.

Take notice that on October 1, 1980, Texas Gas Transmission Corporation (Applicant), P.O. box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP81-6-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the rendering of a storage service for Alabama-Tennessee Natural Gas Company (Alabama), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to render a storage service for Alabama of up to 1,500,000 Mcf of natural gas during the period October 1, 1980, through March 31, 1981, pursuant to an agreement between Applicant and Alabama dated September 25, 1980. It is stated that Alabama would deliver natural gas to Applicant for injection into storage through Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) at the existing interconnection of the facilities of Applicant and Tennessee near Egan, Louisiana, during the period October 1, 1980, through October 31, 1980. Applicant states that the stored gas would be redelivered to Alabama during the period November 1, 1980, through March 31, 1981, through Tennessee at the facilities near Egan, Louisiana, or at other mutually agreeable existing interconnections between Applicant and Tennessee. It is asserted that the daily redelivery rate of natural gas would not exceed the amount of the actual volumes of natural gas delivered to Applicant for storage divided by 60. It is stated, however, that Applicant might when necessary to meet its firm requirements reduce or interrupt its daily deliveries to Tennessee for Alabama.

Applicant states that Alabama would pay Applicant 64.5 cents per Mcf for natural gas stored for Alabama. It is asserted that this agreement between Applicant and Alabama would allow Alabama to make a portion of its summer supply of natural gas available for use during the winter period, November 1, 1980, through March 31, 1980.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 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. 80-33671 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP81-3-000]

Texas Gas Transmission Corp.; Application for Relief

October 22, 1980.

On October 1, 1980, Texas Gas Transmission Corporation (Texas Gas) filed with the Commission an application for relief under section 315(b) of the Natural Gas Policy Act of 1978 (NGPA). The application was filed pursuant to § 277.208 of the Commission's regulations, which authorizes original purchasers of natural gas which was removed from Natural Gas Act jurisdiction prior to September 1, 1980, through the operation of section 601(a)(1)(B) of the NGPA, to apply for such relief as may be deemed appropriate due to the fact that the rules requiring bona fide offers and the right of first refusal were not then in effect and available to the original purchaser.

Texas Gas states in its application that it is a natural gas company as defined in section 1(b) of the Natural Gas Act and is also an original purchaser under section 315(b) of the NGPA, as defined in § 277.203(i) of the Commission's regulations. Texas Gas further asserts that it is a purchaser under contracts to which the rights granted by section 315(b) apply, and that certain of these contracts have expired prior to September 1, 1980. The contracts and their respective wells which are the subject of Texas Gas' application for relief are as follow:

1. Texas Gas Contract No. 529

Two wells under this contract have received determinations which would trigger section 315(b). Texas Gas purchased, from Union Oil Company of California, gas produced from the Williams Inc. K No. 5 Well, which has received a determination of eligibility under section 103 of the NGPA. Also under this contract, Texas Gas purchased gas from Transco Exploration Company, Inc., which gas has received an eligibility determination under section 102(c) of the NGPA.

2. Texas Gas Contact No. 367

Under this contract, Texas Gas purchased gas produced from the Lucy Viator Lopez No. 1 Well from the Energy Reserves Group. The gas produced from this well has received a final determination of eligibility under section 102(c) of the NGPA.

3. Texas Gas Contract No. 398

Perry R. Bass, Inc. *et al.* sold gas to Texas Gas under this contract from various fields in Louisiana, including gas produced from the Lucy Viator Lopez No. 1 Well, which was finally determined to be section 102(c) natural gas.

In its prayer for relief, Texas Gas requests that the Commission require that Transco Exploration Company, Energy Reserves Group, Inc., and Perry R. Bass, Inc. *et al.,* submit to Texas Gas a bona fide offer as defined in § 277.203(c) of the Commission's regulations, and grant to Texas Gas the right of first refusal, as defined in § 277.206, and give any other relief as the Commission may deem necessary to safeguard Texas Gas' rights under section 315(b) of the NGPA, with respect to the gas produced from the wells named above.

Any person desiring to be heard or to protest this request for relief shall file a petition to intervene or protest in accordance with the provisions of § 1.8 or § 1.10 of the Commission's Rules of Practice and Procedure. All petitions to intervene or protest shall be filed with the Secretary of the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and must be filed on or before November 13, 1980. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make the protestant a party to the proceeding. Any person desiring to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33672 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-577]

Transcontinental Gas Pipe Line Corp.; Application

October 22, 1980.

Take notice that on September 26, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-577 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 natural gas supply facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate facilities that would consist of approximately 5 miles of 10-inch pipeline with a metering and regulating station and would extend from the producer platforms in Vermilion Block 57 to an underwater tap value in Vermilion Block 46, offshore Louisiana. Applicant expects that at least two wells would be drilled in Vermilion Block 57 which would produce an estimated 10,000 Mcf per day each. The proposed facilities would be jointly owned by Applicant and Columbia Gulf Transmission Company (Columbia Gulf) with each company owning 50 percent. Columbia Gulf would construct the facilities pursuant to authorization granted in Docket No. CP80-281.

Applicant states that these facilities are necessary to attach new gas supplies to its system from Block 57, Vermilion Area, offshore Louisiana.

It is stated that the estimated cost of the proposal would be $1,331,400 which cost would be initially financed through short-term loans and available cash. Permanent financing would be undertaken as a part of an overall long-term financing program at a later date, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 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. 80-33673 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-5-000]

United Gas Pipe Line Co.; Application

October 22, 1980.

Take notice that on October 1, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-5-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement with Amoco dated August 20, 1980, Applicant proposes to transport and deliver Amoco's uncommitted gas produced from Ship Shoal Block 84, offshore Louisiana, to Transcontinental Gas Pipe Line Corporation's (Transco) facilities in Ship Shoal Blocks 72 and 70. It is stated that Transco would redeliver the subject gas at the interconnection between Transco's and Florida Gas Transmission Company's (Florida) facilities in Vermilion Parish, Louisiana, or other mutually agreeable points onshore in southern Louisiana.

Applicant further states that pursuant to a gas purchase contract dated August 20, 1980, Applicant and Southern Natural Gas Company (Southern) would be allowed by Amoco to receive and transport certain quantities of natural gas located in Ship Shoal Block 84 which would be escalated during any party's peak requirement month. It is asserted that in return Applicant and Southern would transport additional quantities for Amoco during such months as Amoco requires more gas to meet its warranty obligations with Florida and/or Florida Power and Light Company.

Applicant states that it would substitute delivery to Amoco whenever Southern would be unable to perform.

Amoco would pay 2.0 cents per Mcf of natural gas transported, it is stated, and would reimburse Applicant for any excess transportation costs incurred. Additionally, Applicant would be reimbursed by Amoco for any delivery charges made by Transco.

Applicant asserts that it would proportionately reduce Amoco's uncommitted gas transported should Applicant's own capacity entitlement be reduced.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 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. 80-33674 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-584]

Western Gas Interstate Co.; Application

October 22, 1980.

Take notice that on September 30, 1980, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP80-584 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity so as to authorize the construction and operation of three additional taps on Applicant's East Line to facilitate the sale of natural gas to Southern Union Gas Company (Southern Union), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate three new taps on its East Line and to sell gas to Southern Union for resale to three new customers. Each proposed tap would be located in Beaver County, Oklahoma.

Applicant states that the proposed taps would serve the following three customers:

Customer	Location
(1) Mr. Phillip Penner.....	Section 29, Township 5 North, Range 21 East, Beaver County, Oklahoma
(2) Mr. Earl Semmer.....	Section 28, Township 5 North, Range 22 East, Beaver County, Oklahoma
(3) Mr. Charlie E. Bond.....	Section 7, Township 4 North, Range 24 East, Beaver County, Oklahoma

Two of the three customers would use the gas purchased from Southern Union for irrigation and incidental farm uses at a peak day rate of 36 Mcf with the third customer having a peak day rate of 1 Mcf of natural gas, it is stated.

Applicant estimates the total cost of the proposed taps to be $1,035 which would be financed by means of internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 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. 80-33675 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-580]

Zenith Natural Gas Co.; Application

October 21, 1980.

Take notice that on September 29, 1980, Zenith Natural Gas Company (Applicant), 321 North Main Street, South Hutchinson, Kansas 67505, filed in Docket No. CP80-580 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon service to Oklahoma Natural Gas Company (ONG) and for a certificate of public convenience and necessity authorizing the sale and transportation of natural gas to and on behalf of Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that until August 25, 1980, Applicant was a wholly owned subsidiary of ONG but on that day ONG sold all of its interest in Applicant to Koskocil Sausage Company.

Applicant states that it initiated service to ONG in 1965. It is submitted that since ONG has developed adequate gas reserves and facilities within the State of Oklahoma to assure continued service to its Oklahoma markets which heretofore have been dependent in small part upon purchases of gas from Applicant, ONG no longer needs gas from Applicant. Applicant, therefore, proposes herein to abandon the sale of natural gas to ONG. In order to accomplish this abandonment of service, Applicant proposes to valve-off permanently its facilities at the existing delivery point to ONG in Woods County, Oklahoma.

In addition, Applicant states that it would abandon receipt of deliveries at existing points of interconnection between Cities Service Gas Company and ONG but that no facilities would be abandoned. Applicant asserts that its facilities would be maintained in the anticipation that gas reserves which may be developed near those facilities would be acquired by Applicant for service to its markets. Applicant further asserts that since ONG has indicated that it has adequate Oklahoma gas supplies to maintain service to its customers, there would be no impact on ONG or its customers resulting from the termination of service hereunder.

Applicant further proposes that upon termination of the sale to ONG it would deliver and sell to Panhandle gas which may become available from time to time in excess of the volumes of natural gas required by Applicant's other existing customers up to a maximum of 5,000 Mcf per day. Applicant would also transport such natural gas as Panhandle may have available for delivery to Applicant from production in the area, it is stated.

Applicant asserts that the price it charges for the gas sold to Panhandle would be Applicant's system weighted average acquisition cost per million Btu during the month in which deliveries of such gas are made plus a transportation charge of 75.0 cents per Mcf. It is further asserted that for Panhandle's gas for which Applicant performs only a transportation service the transportation charge would be 75.0 cents per Mcf for all volumes of gas delivered less fuel gas and losses.

Applicant proposes to sell and transport the gas pursuant to a cost of service arrangement similar to that in its existing rate schedules; thus its rate for service to Panhandle would be based upon a monthly cost of service not to exceed a transportation component of 75.0 cents per Mcf. Applicant anticipates that sales to Panhandle would approximate 450,000 Mcf per year.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 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 157.70). 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 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. 80-33676 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-586]

Cities Service Gas Co.; Application

October 22, 1980.

Take notice that on September 30, 1980, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma

City, Oklahoma 73125, filed in Docket No. CP80–586 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of certain pipeline taps and appurtenant facilities to enable Applicant to render natural gas service to six rural domestic customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate taps necessary to provide natural gas service to the following right-of-way grantors:

1. Tap Applicant's McLouth 20-inch storage pipeline, Leavenworth County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Lorin Brunsvold.
2. Tap Applicant's Jane 20-inch transmission pipeline, Newton County, Missouri, an construct measuring, regulating and appurtenant facilities for delivery of natural gas to Raymond Chavez.
3. Tap Applicant's Atchinson 12-inch transmission pipeline, Atchinson County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Geneva M. Dunster.
4. Tap Applicant's Wichita-Haysville 20-inch transmission pipeline, Sedgwick County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Jimmy Farina.
5. Tap Applicant's Renner Road 26-inch transmission pipeline, Johnson County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to William C. Helming.
6. Tap Applicant's Soldiers Home 8-inch transmission pipeline, Leavenworth County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Thomas M. Scanton.

Applicant states that the sale of gas for Geneva M. Dunster would be made to Kansas Power & Light Company and the other five customers would be served from sales to The Gas Service Company.

It is stated that the total estimated cost of the proposed facilities would be approximately $4,259 which cost Applicant would finance from treasury funds on hand. Applicant estimates that each customer would require approximately 250 Mcf of gas per year.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protests 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 Commisison 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. 80–33653 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. CP72–300]

Consolidated Gas Supply Corp. and Columbia Gas Transmission Corp. Petition To Amend

October 22, 1980.

Take notice that on September 24, 1980, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in docket No. CP72–300 a joint petition to amend the order issued October 24, 1972, [1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize an additional point of exchange and an increase in the daily exchange quantities of gas at an existing point, 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 issued October 24, 1972, as amended, Petitioners were authorized to exchange natural gas and to construct and operate the facilities necessary therefor.

Petitioners propose herein to add a delivery point on Columbia's Line S–53 in Kanawha County, West Virginia, where Consolidated would deliver up to 500 Mcf of natural gas per day to Columbia pursuant to a gas exchange agreement between the parties dated August 1, 1980. Petitioners state that the agreement also provides that any inbalance in the exchange quantities would be corrected on a quarterly basis.

In establishing the additional delivery point, it is stated that Consolidated proposes to construct and operate the facilities necessary to connect its gas supply under its budget authorization.

Petitioners further proposed an increase by Columbia of its deliveries of natural gas to Consolidated at an existing exchange point in Wirt County, West Virginia, up to 2,000 Mcf per day.

Petitioners assert that the subject proposals are required so that they may move newly developed local gas supplies to their respective interstate systems.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 13, 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. 80–33654 Filed 10–28–80; 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.

[Volume 303]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 22, 1980.

Other Purchasers

8100896 Northwest P. L. Corp.
8100897 Northwest P. L. Corp.
8100903 Northwest P. L. Corp.
8100941 Jicarilla Apache Tribe
8100969 El Paso Natural Gas Co.
8100990 Northwest Pipeline Corp.
8100991 Northwest Pipeline Corp.
8100998 Northwest Pipeline Corp.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspections, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 13, 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 DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
ARKANSAS OIL & GAS COMMISSION							
-BI-STATE ENERGY INC				RECEIVED: 10/07/80 JA: AR			
8101028		0314310025	108	ARLIN HUGHES NO 1	BRENTWOOD FIELD	16.0	ARKANSAS LOUISIANA G
8101030		0314310021	108	C R HALEY NO 1	BRENTWOOD FIELD	5.0	ARKANSAS LOUISIANA G
8101025		0314310033	108	E G BRADBERRY NO 1	BRENTWOOD FIELD	6.0	ARKANSAS LOUISIANA G
8101026		0314310034	108	E G BRADBERRY NO 2	BRENTWOOD FIELD	16.0	ARKANSAS LOUISIANA G
8101019		0314310035	108	E G BRADBERRY NO 3	BRENTWOOD FIELD	10.0	ARKANSAS LOUISIANA G
8101027		0314310004	108	J F STARR NO 1	BRENTWOOD FIELD	18.0	ARKANSAS LOUISIANA G
8101020		0314310007	108	J F STARR NO 2	BRENTWOOD FIELD	16.0	ARKANSAS LOUISIANA G
8101022		0314310001	108	JOSEPH MAYO NO 1	BRENTWOOD FIELD	6.0	ARKANSAS LOUISIANA G
8101023		0314310013	108	JOSEPH MAYO NO 2	BRENTWOOD FIELD	6.0	ARKANSAS LOUISIANA G
8101024		0314310019	108	MARION RAMEY NO 1	BRENTWOOD FIELD	12.0	ARKANSAS LOUISIANA G
8101021		0314310011	108	P M RAMEY NO 1	BRENTWOOD FIELD	15.0	ARKANSAS LOUISIANA G
8101029		0314310014	108	P M RAMEY NO 2	BRENTWOOD FIELD	14.0	ARKANSAS LOUISIANA G
8101031		0314310012	108	WALTER MOELLER NO 1	BRENTWOOD FIELD	5.0	ARKANSAS LOUISIANA G
-DIAMOND SHAMROCK CORPORATION				RECEIVED: 10/07/80 JA: AR			
8101047		0313110152	103	C-BAR RANCH INC NO 1	EWING	574.0	
8101012		0307110196	103	J R PUPE B NO 1	KNOXVILLE	68.0	ARKANSAS LOUISIANA G
8101044		0308310056	103	MARY L KNIGHT NO 1	PRAIRIE VIEW	47.0	
-EDWIN L COX				RECEIVED: 10/07/80 JA: AR			
8101032		0308310028	102	PATES NO 1	SPADRA	0.0	ARKANSAS LOUISIANA G
-HADSON PETROLEUM CORP				RECEIVED: 10/07/80 JA: AR			
8101015		0303310055	103	GOINES #1-14	HOLLIS LAKE FIELD	159.0	ARKANSAS LOUISIANA G
-JOHN C OXLEY				RECEIVED: 10/07/80 JA: AR			
8101016		0313110131	103	BAKER NO 1-C	EWING	730.0	ARKANSAS OKLAHOMA GA
8101038		0313110131	103	BAKER NO 1-T	EWING	730.0	ARKANSAS OKLAHOMA GA
-SAMSON RESOURCES COMPANY				RECEIVED: 10/07/80 JA: AR			
8101010		0307110175	102	NORA DOUTHITT NO 2-DUNN A	UNION CITY	75.0	ARKANSAS LOUISIANA G
8101010		0307110175	103	NORA DOUTHITT NO 2-DUNN A	UNION CITY	75.0	ARKANSAS LOUISIANA G
8101011		0307110175	103	NORA DOUTHITT NO 2-ORR	UNION CITY	75.0	ARKANSAS LOUISIANA G
-SANTA FE ENERGY COMPANY				RECEIVED: 10/07/80 JA: AR			
8101014		0308310053	103	MIDLAND OIL CORP #1	WILDCAT	182.5	
-STEPHENS PRODUCTION COMPANY				RECEIVED: 10/07/80 JA: AR			
8101034		0313110140	103	CONDREN #1-C	BONANZA	117.0	ARKANSAS OKLAHOMA GA
8101033		0313110140	103	CONDREN #1-T	BONANZA	117.0	ARKANSAS OKLAHOMA GA
8101036		0313110143	103	H L JOHNSON #1	BONANZA	115.0	ARKANSAS OKLAHOMA GA
8101035		0313110145	103	KAY RODGERS #2-5	MASSARD	75.0	ARKANSAS OKLAHOMA GA
8101041		0304710101	103	MYRTLE ROSS #3	VESTA	165.0	ARKANSAS OKLAHOMA GA
8101037		0313110149	103	R L SKINNER #1	GREENWOOD	35.0	ARKANSAS OKLAHOMA GA
-TEXAS OIL & GAS CORP				RECEIVED: 10/07/80 JA: AR			
8101018		0304710112	102	BOND B-#1	AETNA	350.0	ARKANSAS LOUISIANA G
8101040		0304710132	102	CARTY-DAVIS #1-T	CECIL	50.0	

JA NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8101017		0311510079	103	HOGINS #1	DOVER	40,0	
8101046		0308310048	103	PARKS C #1-C	PARIS	0,0	
8101045		0308310048	103	PARKS C #1-T	PARIS	0,0	
8101039		0304710125	103	WILLIAMS K #1-C	CECIL	150,0	
-WALSH AND WATTS INC				RECEIVED: 10/07/80 JA: AR			
8101042		0302900000	108	HILLIS #1 15645	JERUSALEM	3,0	ARKANSAS LOUISIANA G
8101013		0302900000	108	MORGAN #1 14153	JERUSALEM	8,0	ARKANSAS LOUISIANA G
8101043		0302900000	108	SPEARS #1 15431	JERUSALEM	9,0	ARKANSAS LOUISIANA G
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NORTH DAKOTA GEOLOGICAL SURVEY							
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-AL-AQUITAINE EXPLORATION LTD				RECEIVED: 10/08/80 JA: ND			
8101053	282	3300700381	102	BN 1-27	WHISKEY JOE	30,0	
8101050	285	3300700387	102	STATE 1-16	W/C	20,0	
8101049	286	3300700272	102	STATE 1-24	TR	0,0	
8101052	283	3300700438	102	STATE 4-24	TR	0,0	
8101051	284	3300700354	102	THOMPSON 1-30	W/C	36,0	
-ALPAR RESOURCES INC				RECEIVED: 10/08/80 JA: ND			
8101048	287	3305300921	102	HAMRE #1-14	CHERRY CREEK	182,0	MONTANA-DAKOTA UTILI
-WILLIAM HERBERT HUNT TRUST ESTATE				RECEIVED: 10/08/80 JA: ND			
8101054	281	3300700447	102	A USADCHUK #3	TREETOP	8,0	KOCH HYDROCARBON CO
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OKLAHOMA CORPORATION COMMISSION							
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-ANDOVER OIL COMPANY				RECEIVED: 10/08/80 JA: OK			
8101056	05506	3501700000	103	KOLAR #18-1	WILDCAT	185,0	DELHI GAS PIPELINE C
-APACHE CORPORATION				RECEIVED: 10/08/80 JA: OK			
8101069	05621	3512920413	102	MERRICK #3-1		108,5	MICHIGAN-WISCONSIN P
-BONANZA PETROLEUM INC				RECEIVED: 10/08/80 JA: OK			
8101067	05627	3515121009	103	WHIPPLE NO 1 (UNE)		144,0	DELHI GAS PIPELINE C
-CABOT CORPORATION				RECEIVED: 10/08/80 JA: OK			
8101060	04674	3500736115	108	LEON ALLEN #5	LAVERNE CHESTER	16,0	NORTHERN NATURAL GAS
-CHAMPLIN PETROLEUM COMPANY				RECEIVED: 10/08/80 JA: OK			
8101057	04858	3504721789	103	JACOB A VOTH NO 2 (047-21728)	ENID MISSISSIPPI FIELD	5,6	CHAMPLIN PETROLEUM C
-COLORADO INTERSTATE GAS CO				RECEIVED: 10/08/80 JA: OK			
8101065	05013	3502500000	108	MCCOY #1	KEYES	13,0	COLORADO INTERSTATE
-DALCO PETROLEUM INC				RECEIVED: 10/08/80 JA: OK			
8101058	04857	3509321596	103	BERGDALL #1	SOONER TREND	72,0	PIONEER GAS PRODUCTS
8101059	04852	3507322176	103	THOMSEN NO 1	SOONER TREND	73,0	CITIES SERVICE GAS C
-DAVIS OIL COMPANY				RECEIVED: 10/08/80 JA: OK			
8101070	05618	3501500000	103	HELDERMON NO 1	HINTON	600,0	OKLAHOMA NATURAL GAS
8101064	05278	3501721321	103	POPE NO 1	YUKON NORTHWEST	150,0	DELHI GAS PIPELINE C
-ENERGY RESERVES GROUP INC				RECEIVED: 10/08/80 JA: OK			
8101055	05504	3509321738	103	KLIEWER A #1	RINGWOOD	366,0	AMINOIL USA INC
-GEORGE RUDMAN INC				RECEIVED: 10/08/80 JA: OK			
8101073	05613	3517321934	103	JACK 11 NO 1	SOONER TREND	2,9	PHILLIPS PETROLEUM C
-NORTHWESTERN PRODUCTION INC				RECEIVED: 10/08/80 JA: OK			
8101063	05357	3507322096	103	PATTI CRUMER 1 NO 1	SOONER TREND	10,0	CITIES SERVICE GAS C
-P-T III LTD				RECEIVED: 10/08/80 JA: OK			
8101066	04910	3504721913	103	ANDERSON #12-1	SOONER TREND	274,0	WELLHEAD ENTERPRISES
-PERRY OIL CO				RECEIVED: 10/08/80 JA: OK			
8101062	04894	3504721577	103	CLARENCE #1	SOONER TREND	18,0	PHILLIPS PETROLEUM C

JD NO.	JA DKT	API NO.	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
-PHOENIX RESOURCES COMPANY				RECEIVED: 10/08/80 JA: OK			
8101061	04860	3507300000	103	NELSON #2	HENNESSEY WEST	0,0	CONOCO INC
-PUBLISHERS PETROLEUM				RECEIVED: 10/08/80 JA: OK			
8101072	05614	3508120909	103	THOMPSON NO 1	WILDCAT	18,0	COLORADO GAS COMPRES
-RICKS EXPLORATION CO				RECEIVED: 10/08/80 JA: OK			
8101074	05595	3515120992	103	FRED SMITH 9-C	NE TRYON	240,0	DELHI GAS PIPELINE C
-SOUTHWESTERN EXPLOR CONSULTANTS INC				RECEIVED: 10/08/80 JA: OK			
8101068	05622	3510320922	103	CINNAMON #2	POLO	0,0	ARCO OIL & GAS CO
-TENNECO OIL COMPANY				RECEIVED: 10/08/80 JA: OK			
8101079	05634	3505920750	103	HOWARD 5-12	LOVEDALE NW	5,4	DELHI GAS PIPELINE C
8101075	05372	3509321669	103	KIRKENDALL 2-19	CHESTER WEST	42,0	PHILLIPS PETROLEUM C
-TRANSIERRA EXPLORATION CORP				RECEIVED: 10/08/80 JA: OK			
8101081	05630	3510320944	103	MYRNA STOOPS NO 1	TRANSIERRA-CINNAMON FIEL	9,0	AMINOIL USA INC
8101080	05633	3508120958	103	PASCHALL PROPERTIES INC NO 1	SOUTHWEST PRAIRIE GEM FI	34,0	SUN OIL CO
8101076	05632	3510320936	103	VERL HENTGES NO 1	TRANSIERRA-CINNAMON FIEL	11,0	AMINOIL USA INC
8101077	05631	3510320952	103	VERL HENTGES NO 2	TRANSIERRA-CINNAMON FIEL	10,0	AMINOIL USA INC
-UNION TEXAS PETROLEUM				RECEIVED: 10/08/80 JA: OK			
8101078	05635	3507322428	103	NAKVINDA NO 2	CASHION SEC 13 T15N-R5W	457,0	CHAMPLIN PETROLEUM C
-WILLIAM H DAVIS				RECEIVED: 10/08/80 JA: OK			
8101071	05617	3508321195	103	SETH PRITCHETT #1	NORTH RUSSELL	36,0	EASON OIL CO
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** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM							
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-ARCO OIL AND GAS COMPANY				RECEIVED: 10/06/80 JA: CO 4			
8100957	COA-842-80A	0506706303	103	SOUTHERN UTE 2-4 32-9 (MV)	IGNACIO BLANCO	278,0	NORTHWEST PIPELINE C
8100958	COA-842-80B	0506706303	103	SOUTHERN UTE 2-4 32-9 (PC)	IGNACIO BLANCO	402,0	NORTHWEST PIPELINE C
8100931	COA-791-80B	0506706183	103	SOUTHERN UTE 21-1 32-9 (DAKOTA)	IGNACIO BLANCO (DAKOTA)	484,0	WESTERN SLOPE GAS CO
8100930	COA-791-80A	0506706183	103	SOUTHERN UTE 21-1 32-9 (MV)	IGNACIO BLANCO (MESA VER	265,0	WESTERN SLOPE GAS CO
-AAA OPERATING CO INC				RECEIVED: 10/06/80 JA: NM 4			
8100939	NM-0757-80	3004523462	103	FEDERAL E NO 6	LARGO CHACRA	75,0	EL PASO NATURAL GAS
8100936	NM-0756-80	3004523460	103	FEDERAL J NO 2	LARGO CHACRA	75,0	EL PASO NATURAL GAS
-ALPHA TWENTY-ONE PRODUCTION CO				RECEIVED: 10/06/80 JA: NM 4			
8100889	NM-0794-80	3002526688	103	EL PASO JUSTIS A FED #2	LANGLIE-MATTIX	146,0	EL PASO NATURAL GAS
-AMERADA HESS CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
8100888	NM-0793-80	3003905139	108	J APACHE I #2	OTERO	13,1	EL PASO NATURAL GAS
-AMOCO PRODUCTION CO				RECEIVED: 10/06/80 JA: NM 4			
8100886	NM-0780-80	3004520345	108	A L ELLIOTT D #5	BLANCO-PICTURED CLIFFS	20,0	EL PASO NATURAL GAS
8100887	NM-0781-80	3004509446	108	E E ELLIOTT A #2	BLANCO-PICTURED CLIFFS	19,0	EL PASO NATURAL GAS
8100913	NM-0782-80	3004509188	108	E E ELLIOTT B #6	BLANCO-PICTURED CLIFFS	21,0	EL PASO NATURAL GAS
8100945	NM-0776-80	3003906094	108	FRED PHILLIPS E #1 (2ND FILING)	TAPACITO-PICTURED CLIFFS	21,0	NORTHWEST PIPELINE C
8100885	NM-0779-80	3004507126	108	J C DAVIDSON C #1	FULCHER KUTZ-PICTURED CL	18,0	SOUTHERN UNION GATHE
8100942	NM-0773-80	3003906152	108	JICARILLA CONTRACT 146 #6 (2ND F)	SOUTH BLANCO-PICTURED CL	18,0	NORTHWEST PIPELINE C
8100898	NM 896-80	3003982337	108	JICARILLA CONTRACT 148 #14 (2ND F)	OTERO-CHACRA	21,0	EL PASO NATURAL GAS
8100899	NM-0897-80	300392067	108	JICARILLA CONTRACT 77 #1	BASIN-DAKOTA	20,0	GAS CO OF NEW MEXICO
8100959	NM-0778-80	3004520914	108	NAVAJO TRIBAL N #12	TOCITO DOME - PENN D	11,0	EL PASO NATURAL GAS
8100943	NM-0774-80	3004521350	108	NAVAJO TRIBAL U #15	TOCITO DOME-PENNSYLVANIA	5,0	EL PASO NATURAL GAS
8100944	NM0775-80	3004521497	108	NAVAJO TRIBAL U #26	TOCITO DOME-PENNSYLVANIA	18,0	EL PASO NATURAL GAS
8100946	NM-0777-80	3003921469	108	VALENCIA CANYON UNIT #13	CHUZA MESA-PICTURED CLIF	17,0	EL PASO NATURAL GAS
-ARCO OIL AND GAS COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100961	NM-0938-80	3003922257	103	JICARILLA H 115	W LINDRITH	20,0	EL PASO NATURAL GAS
-BILLY J KNOTT				RECEIVED: 10/06/80 JA: NM 4			
8100978	NM-0949-80	3004523987	103	JK #1	WAW FRUITLAND	21,0	EL PASO NATURAL GAS

JD NO	JA DKT	API NO	SEL	WELL NAME	FIELD NAME	PROD	PURCHASER
*C E LARUE AND B N MUNCY JR				RECEIVED: 10/06/80 JA: NM 4			
8100907	NM-4528-79	3000560369	108	LILLIE FEDERAL #2	SAMS RANCH GRAYBURG	20,0	EL PASO NATURAL GAS
*CHACE OIL COMPANY INC				RECEIVED: 10/06/80 JA: NM 4			
8100973	NM-0918-80	3004320276	103	GULF NAVAJO NO 2	RUSTY CHACRA	48,0	EL PASO NATURAL GAS
*CITIES SERVICE COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100962	NM 942-80	3001522999	103	GOVERNMENT S #2	WINCHESTER MORROW	730,0	EL PASO NATURAL GAS
*CONOCO INC				RECEIVED: 10/06/80 JA: NM 4			
8100906	NM 1910-79	3003900000	108	AXI APACHE N #3	SOUTH BLANCO PICTURED CL	17,4	GAS CO OF NEW MEXICO
8101001	NM-0879-80	3002526586	103	BURGER B-20 NO 3	NEW MEXICO FEDERAL UNIT	2,0	WARREN PETROLEUM CO
8100904	NM-0877-80	3002526641	103	SEMU DRINKARD NO 115	NEW MEXICO FEDERAL UNIT	4,0	PHILLIPS PETROLEUM C
8100960	NM-0936-80	3002526672	103	SEMU EUMONT NO 116	NEW MEXICO FEDERAL UNIT	114,0	WARREN PETROLEUM CO
8100908	NM-0881-80-B	3002526205	103	WARREN UNIT #63 (WARREN TUBB OIL)	NEW MEXICO FEDERAL UNIT	97,0	WARREN PETROLEUM CO
8101003	NM-0881-80-A	3002526205	103	WARREN UNIT NO 63 (BLINEBRY)	NEW MEXICO FEDERAL UNIT	28,0	WARREN PETROLEUM CO
8101000	NM-0878-80	3002526632	103	WARREN UNIT NO 79	NEW MEXICO FEDERAL UNIT	38,0	WARREN PETROLEUM CO
8101002	NM-0880-80	3002526642	103	WARREN UNIT NO 80	NEW MEXICO FEDERAL UNIT	69,0	WARREN PETROLEUM CO
*COTTON PETROLEUM CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
8100938	NM-0898-80	3003921886	103	APACHE #123	LINDRITH GALLUP-DAKOTA W	20,0	NORTHWEST PIPELINE C
8100984	NM-0899-80	3003921887	103	APACHE #124	LINDRITH GALLUP-DAKOTA W	20,0	NORTHWEST PIPELINE C
*DAVE M THOMAS JR				RECEIVED: 10/06/80 JA: NM 4			
8100955	NM-0807-80	3003922150	103	CHACON JICARILLA APACHE D-10	CHACON DAKOTA	247,5	EL PASO NATURAL GAS
8100905	NM-0885-80	3004320430	103	CHACON JICARILLA APACHE D 9	CHACON DAKOTA	49,5	EL PASO NATURAL GAS
8100937	NM-0884-80	3004320431	103	CHACON JICARILLA APACHE D-108	CHACON DAKOTA	74,3	EL PASO NATURAL GAS
*DUGAN PRODUCTION CORP				RECEIVED: 10/06/80 JA: NM 4			
8101009	NM0005-80-ER	3004512245	108	D RACHEL #2	WAW FRUITLAND PC	14,0	EL PASO NATURAL GAS
*E B GERMANY & SONS				RECEIVED: 10/06/80 JA: NM 4			
8100915	NM-0316-80	3003905406	108	CUTLER NO 1	BALLARD P C	5,0	EL PASO NATURAL GAS
8100916	NM-0317-80	3003905510	108	CUTLER NO 2	BALLARD P C	5,0	EL PASO NATURAL GAS
8100917	NM-0318-80	3003905559	108	CUTLER NO 5	BALLARD P C	5,0	EL PASO NATURAL GAS
8100918	NM-0319-80	3003905365	108	CUTLER NO 7	BALLARD P C	5,0	EL PASO NATUREA GAS
*EL PASO NATURAL GAS COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100999	NM-0872-80	3004507049	108	BLANCO NO 12	BLANCO MESAVERDE	18,0	EL PASO NATURAL GAS
*8100998	NM-0871-80	3003920408	108	CANYON LARGO UNIT #164	OTERO-CHACRA GAS	21,0	EL PASO NATURAL GAS
8100950	NM-0893-80-A	3004523851	103	HARDIE D #1A (MV)	BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
8100951	NM-0893-80-B	3004523851	103	HARDIE D #1A (PC)	BLANCO SOUTH PICTURED CL	85,0	EL PASO NATURAL GAS
8100949	NM-0892-80	3004523925	103	HARDIE D #2A	BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
*8100990	NM-0857-80	3004520632	108	HUERFANO UNIT #204	BASIN-DAKOTA	20,0	EL PASO NATURAL GAS
8100932	NM-692-80	3003920234	108	JICARILLA 67 #12	OTERO-CHACRA GAS	22,0	EL PASO NATURAL GAS
8101005	NM-0671-80	3004506280	108	LUDEWICK #10	BASIN-DAKOTA	20,0	EL PASO NATURAL GAS
8100997	NM-0870-80	3004509205	108	LUDWICK #1	AZTEC - PICTURED CLIFFS	21,6	EL PASO NATURAL GAS
8101006	NM-0855-80	3004513113	108	LUDWICK #20	BASIN - DAKOTA	18,0	EL PASO NATURAL GAS
8100920	NM-0011-80	3004500000	108	MORRIS A #3	UNDESIGNATED-FRUITLAND G	4,0	EL PASO NATURAL GAS
8100993	NM-0866-80	3004509060	108	MURPHY E #2	AZTEC PICTURED CLIFFS	20,0	EL PASO NATURAL GAS
8100994	NM-0853-80	3004512078	108	RUSSELL #6 PC	BLANCO SOUTH-PIC CLIFFS	19,0	EL PASO NATURAL GAS
8100966	NM-0932-80-A	3003920983	103	SAN JUAN 27-4 UNIT #13A (MV)	BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
8100967	NM-0932-80-B	3003920983	103	SAN JUAN 27-4 UNIT #13A (PC)	TAPACITO PICTURED CLIFFS	70,0	EL PASO NATURAL GAS
8100992	NM-0861-80	3003920134	108	SAN JUAN 27-4 UNIT #43	BASIN DAKOTA	16,0	EL PASO NATURAL GAS
8100925	NM-0399-80	3003920685	108	SAN JUAN 27-4 UNIT #67	TAPACITO-PICTURED CLIFFS	21,0	EL PASO NATURAL GAS
8100911	NM-0873-80	3003920827	108	SAN JUAN 27-4 UNIT #88	TAPACITO-PICTURED CLIFFS	19,0	EL PASO NATURAL GAS
*8100903	NM-0876-80	3003906929	108	SAN JUAN 27-5 UNIT #4 MV & PC	BLANCO-MV & TAPACITO PC	21,0	EL PASO NATURAL GAS
*8100896	NM-0895-80-A	3003921858	103	SAN JUAN 27-5 UNIT #60A (MV)	BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
*8100897	NM-0895-80-B	3003921858	103	SAN JUAN 27-5 UNIT #60A (PC)	TAPACITO PICTURED CLIFFS	40,0	EL PASO NATURAL GAS
8100983	NM-0851-80	3003907359	108	SAN JUAN 28-4 UNIT #27	BLANCO MESAVERDE	16,0	EL PASO NATURAL GAS

JD NO	JA TXT	API #	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8100924	NM-0502-80	3003920063	108	SAN JUAN 28-5 UNIT #45	BASIN-DAKOTA GAS	21,2	EL PASO NATURAL GAS
8100996	NM-0869-80	3003920472	108	SAN JUAN 28-5 UNIT #89	BASIN-DAKOTA GAS	17,5	EL PASO NATURAL GAS
8100989	NM-0856-80	3003907298	108	SAN JUAN 28-5 UNIT NP #3	BLANCO MESAVERDE	20,0	EL PASO NATURAL GAS
*8100991	NM-0859-80	3003920038	108	SAN JUAN 28-6 UNIT #136	BASIN - DAKOTA	20,0	EL PASO NATURAL GAS
8100925	NM-0533-80	3003920601	108	SAN JUAN 28-6 UNIT #173	SOUTH BLANCO-PICTURED CL	21,2	EL PASO NATURAL GAS
8100964	NM-0930-80	3003922251	103	SAN JUAN 28-6 UNIT #65A	BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
8100965	NM-0931-80	3003922234	103	SAN JUAN 28-6 UNIT #71A	BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
8100902	NM 5115-79	3003907073	108	SAN JUAN 28-6 UNIT #82 PC & MV	BLANCO SOUTH-PICTURED CL	20,0	EL PASO NATURAL GAS
8100912	NM-0874-80	3003907355	108	SAN JUAN 28-7 UNIT #25	BLANCO MESAVERDE	16,0	EL PASO NATURAL GAS
8100922	NM-0109-80	3003920404	108	SAN JUAN 28-7 UNIT NP #151	BASIN-DAKOTA GAS	20,0	EL PASO NATURAL GAS
8100995	NM-0867-80	3003920404	108	SAN JUAN 28-7 UNIT NP #151	BASIN DAKOTA GAS	20,0	EL PASO NATURAL GAS
8101007	NM-0391-80	3004520853	108	SUNRAY E #4	BLANCO-PICTURED CLIFFS G	21,0	EL PASO NATURAL GAS
8100948	NM-0891-80	3004523700	103	TAPP #1A	BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
8100977	NM 894-80	3004523695	103	TAPP #3A	BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
8100914	NM-0664-80	3004512098	108	TAPP #5	SOUTH BLANCO-PICTURED CL	22,0	EL PASO NATURAL GAS
-FRANKS PETROLEUM INC				RECEIVED: 10/06/80 JA: NM 4			
8101004	NM 0929-80	3002526427	103	HAT MESA NO 1		209,0	NATURAL GAS PIPELINE
-GEORGE E COLEMAN				RECEIVED: 10/06/80 JA: NM 4			
8100947	NM-887-80	3004523665	103	DRY CREEK #2	BISTI GALLUP	100,0	EL PASO NATURAL GAS
-GETTY OIL COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100956	NM-0830-80	3002511731	108	A B COATES C NO 19	JUSTIS TUBB DRINKARD	8,0	EL PASO NATURAL GAS
-GULF OIL CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
8100987	NM-0903-80	3004523922	103	NAVAJO LB NO 1	WAW FRUITLAND PIC CLIFFS	0,0	EL PASO NATURAL GAS
-H L BROWN JR				RECEIVED: 10/06/80 JA: NM 4			
8100988	NM-0904-80	3001523098	103	FEDERAL 8 NO 1 NM 38458	BURTON FLAT (MORROW)	145,0	LLANO INC
-J GREGORY MERRION&ROBERT L BAYLESS				RECEIVED: 10/06/80 JA: NM 4			
8100926	NM-0623-80	3004506019	108	CHARTIER #1	GALLEGOS GALLUP	7,0	EL PASO NATURAL GAS
-JACK A COLE				RECEIVED: 10/06/80 JA: NM 4			
8100974	NM-0917-80	3003921907	108	APACHE HILLS NO 6	BALLARD PICTURED CLIFFS	0,0	EL PASO NATURAL GAS
8100933	NM-0746-80	3004320469	103	CHACON AMIGOS NO 1	CHACON DAKOTA ASSOCIATED	70,0	EL PASO NATURAL GAS
-JEROME P MCHUGH				RECEIVED: 10/06/80 JA: NM 4			
8100895	NM-0804-80	3004524273	103	ERIN #1E	BASIN DAKOTA	0,0	NORTHWEST PIPELINE C
-LADD PETROLEUM CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
8100934	NM-0749-80	3004524090	103	AZTEC #2-E	BASIN DAKOTA	291,0	EL PASO NATURAL GAS
8100921	NM-0150-80	3004522955	103	AZTEC S-35	HARPER HILL-FRUITLAND-PC	29,5	EL PASO NATURAL GAS
8100976	NM-0927-80	3004524309	103	KUTZ 1-E	BASIN DAKOTA	105,1	SOUTHERN UNION GATHE
-MESA PETROLEUM				RECEIVED: 10/06/80 JA: NM 4			
8100972	NM-0912-80	3001522958	103	MARALO FEDERAL COM #1	UNDESIGNATED/ATOKA	225,0	NORTHERN NATURAL GAS
8100971	NM-0910-80	3001523008	103	PETERSON FEDERAL COM #1	UNDESIGNATED MORROW	503,0	NORTHERN NATURAL GAS
-MEWBOURNE OIL COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100890	NM-0795-80	3002525894	103	FEDERAL G #1	QUERECHO PLAINS-BONE SPR	110,0	PHILLIPS PETROLEUM C
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED: 10/06/80 JA: NM 4			
8100929	NM-0783-80	3003922197	103	JILLSON FEDERAL NO 3	WEST LINDRITH GALLUP-DAK	31,0	NORTHWEST PIPELINE C
8100940	NM-0760-80	3003922278	103	LINDRITH B UNIT NO 3	CHACON-DAKOTA ASSOCIATED	98,6	EL PASO NATURAL GAS
8100935	NM-0751-80	3003922279	103	LINDRITH B UNIT NO 4	CHACON DAKOTA ASSOCIATED	54,8	EL PASO NATURAL GAS
-NORTHWEST PIPELINE CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
*8100941	NM-0771-80	3003921134	108	JICARILLA 93 #5	GAVILAN PICTURED CLIFFS	23,5	NORTHWEST PIPELINE C
8100970	NM-0908-80	3003920712	108	SAN JUAN 29-5 #68	BASIN DAKOTA	19,0	EL PASO NATURAL GAS
*8100969	NM-0906-80	3003907792	108	SAN JUAN 30-5 #27 MV & DK	BASIN MESAVERDE & DAKOTA	18,0	NORTHWEST PIPELINE C
8100919	NM-5135-79	3003907908	108	SAN JUAN 31-6 #17	BLANCO MV	0,0	EL PASO NATURAL GAS
8100901	NM-4592-79	3004522962	103	SAN JUAN 32-7 UNIT #47	UNDESIGNATED PICTURED CL	212,0	NORTHWEST PIPELINE C
8100928	NM-4590-79	3004522983	103	SAN JUAN 32-7 UNIT #48	UNDESIGNATED PICTURED CL	40,0	NORTHWEST PIPELINE C

JD NO	JA DKT	API NO	SEC	T WELL FAPE	FIELD NAME	PROD	PURCHASER
8100927	NM-4589-79	3004522984	103	SAN JUAN 32-7 UNIT #49	UNDESIGNATED PICTURED CL	42,0	NORTHWEST PIPELINE C
8100900	NM-4591-79	3004522981	103	SAN JUAN 32-7 UNIT #50	UNDESIGNATED PICTURED CL	220,0	NORTHWEST PIPELINE C
*ODESSA NATURAL CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
8100985	NM-0901-80	3004320447	103	CHACON JICARILLA D NO 20	CHACON DAKOTA ASSOC	0,0	EL PASO NATURAL GAS
8100980	NM-0843-80	3003922154	103	JICARILLA J V KD NO 9	CHACON DAKOTA	0,0	EL PASO NATURAL GAS
8100986	NM-0902-80	3003922153	103	JICARILLA J V KD NO 8	CHACON DAKOTA ASSOC	0,0	EL PASO NATURAL GAS
8100981	NM-0844-80	3003922151	103	JICARILLA JV KD NO 10	CHACON DAKOTA	0,0	EL PASO NATURAL GAS
PERRY R BASS				RECEIVED: 10/06/80 JA: NM 4			
8100894	NM-0803-80	3001522945	103	BIG EDDY UNIT #77	WILDCAT MORROW	500,0	NATURAL GAS PIPELINE
8101008	NM 0352-80	3001522966	102	BIG EDDY UT #76	MORROW	0,0	NATURAL GAS PL CO OF
*SOUTHLAND ROYALTY CO				RECEIVED: 10/06/80 JA: NM 4			
8100909	NM-0883-80-A	3004523972	103	CAIN #11E (CHACRA)	UNDESIGNATED CHACRA	75,0	SOUTHERN UNION GATHE
8100910	NM-0883-80-B	3004523972	103	CAIN #11E (DAKOTA)	BASIN DAKOTA	85,0	SOUTHERN UNION GATHE
8100979	NM941-80-A	3004524107	103	MCCLANAHAN #19E (DAKOTA)	BASIN DAKOTA	65,0	SOUTHERN UNION GATHE
*SUN OIL COMPANY (DELAWARE)				RECEIVED: 10/06/80 JA: NM 4			
8100968	NM 937-80	3001500000	108	EDDY FOSTER NO 2	GRAYBURG JACKSON SR Q R	1,0	CONOCO INC
*TENNECO OIL COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100893	NM-0801-80	3004524132	103	CORNELL A 1-E	BASIN DAKOTA	500,0	EL PASO NATURAL GAS
8100954	NM-0806-80-B	3004524151	103	FLORANCE #123 (DAKOTA)	BASIN DAKOTA	500,0	EL PASO NATURAL GAS
8100953	NM-0806-80-A	3004524151	103	FLORANCE #123 (PC)	BLANCO PICTURED CLIFFS	250,0	EL PASO NATURAL GAS
8100952	NM-0805-80	3004524153	103	GARTNER #3	BLANCO PICTURED CLIFFS	250,0	EL PASO NATURAL GAS
8100963	NM-0948-80	3004523957	103	MUDGE COM B #1	BASIN DAKOTA	500,0	EL PASO NATURAL GAS
8100982	NM-0845-80	3004524040	103	MUDGE COM B #2	BASIN DAKOTA	500,0	EL PASO NATURAL GAS
*YATES PETROLEUM CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
8100975	NM 922-80	3000560645	102	IWANOWSKI MM FEDERAL NO 1	UNDESIGNATED WILDCAT ABO	0,0	TRANSWESTERN PIPELIN
8100892	NM-0800-80	3001523150	103	RIO PECOS MM FED #1	UNDESIGNATED MORROW	0,0	TRANSWESTERN PIPELIN
8100891	NM-0799-80	3001522116	103	YATES FEDERAL NO 3	PENASCO DRAW YESO SA	0,0	TRANSWESTERN PIPELIN

BILLING CODE 6450-85-C

[Docket No. CP80-574]

El Paso Natural Gas Co.; Application

October 22, 1980.

Take notice that on September 24, 1980, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP80-574 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain existing pipeline and appurtenant facilities and the transportation, delivery and sale of natural gas to the City of Mesa, Arizona (Mesa), for resale to customers situated in Pinal County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Magma currently provides natural gas service to its customers situated in rural areas in Pinal County, Arizona, which gas is purchased from Applicant.

Applicant states that on December 31, 1979, Magma Natural Gas Company (Magma) and Mesa, both existing distributor customers of Applicant, entered into an agreement providing for the sale by Magma and purchase by Mesa of the gas distribution system owned and utilized by Magma in its natural gas operations.

Applicant asserts that it currently sells and delivers up to 3,641 Mcf of natual gas per day for resale to Magma at the existing Clausen No. 1 meter station located in Pinal County pursuant to the terms and conditions of a currently effective service agreement dated January 7, 1977, between the parties and that in accordance with the terms and conditions of the December 31, 1979, agreement Magma has assigned said service agreement to Mesa.

In order to accommodate Mesa's succession to Magma's gas operations, Applicant proposes to implement the terms of a June 1, 1980, service agreement between it and Mesa which provides for the delivery and sale by Applicant to Mesa of the Natural gas currently being sold to Magma. It is submitted that the term and quantity of natural gas to be provided for Mesa under the new service agreement are identical to the term and combined total volumes of natural gas heretofore provided to Mesa and Magma. Such volumes, it is asserted, would be delivered to Mesa at the presently existing point of delivery on Applicant's mainline transmission system. It is further submitted that no new or additional facilities would be required by Applicant to implement the delivery and sale of natural gas to Mesa.

Upon effectiveness of the proposed acquisition by Mesa, the volumes of natural gas which Magma is entitled to receive would be transferred to the account of Mesa and reflected on the Index of Base Volumes and Index of Priority Limitations contained in Applicant's FERC Gas Tariff, Original Volume No. 1, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 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. 80-33655 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-5-000]

First Chance Chevron; Filing of Petition for Review Under 42 U.S.C. 7194

October 22, 1980.

Take notice that First Chance Chevron on October 14, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) (Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 6, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 6, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33656 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-124]

Go-Clean, Inc.; Filing of Petition For Review

October 22, 1980.

Take notice that Go-Clean, Inc. on September 23, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977)

(Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 6, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 6, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H–025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33657 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Dockets Nos. CP66–110–015, et al., CP79–141–001, et al., CP79–144–001, et al.]

Great Lakes Gas Transmission Co.; Petition To Amend

October 22, 1980.

Take notice that on October 1, 1980, Great Lakes Gas Transmission Company (Petitioner), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket Nos. CP66–110–015, *et al.*, CP79–141–001, *et al.*, and CP79–144–001, *et al.* a petition to amend the order issued June 20, 1976,[1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize adjustment of delivery rates to Michigan Consolidated Gas Company (Michigan Consolidated), 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 under the above orders it was authorized to deliver gas to Michigan Consolidated at twenty delivery points on Petitioner's pipeline system. Pursuant to a service agreement dated December 20, 1978, Petitioner sells to Michigan Consolidated up to 59,758 Mcf of gas per day. It is stated that the sum total of the maximum daily delivery obligation for all such points far exceeds the contractual obligation but that Petitioner is not obligated to deliver daily more than the contract demand. The maximum daily delivery obligations of Petitioner at two of the delivery points are 10,000 Mcf at Petitioner's Crystal Falls Measuring Station, Iron County, Michigan, and 20,000 Mcf at Petitioner's Rapid River Measuring Station, Iron City, Michigan.

It is stated that Michigan Consolidated has requested Petitioner to increase the maximum daily delivery obligation of Petitioner from 20,000 to 30,000 Mcf per day at Rapid River with a corresponding reduction of 10,000 Mcf per day at the Crystal Falls delivery points resulting in elimination of all delivery obligations at such point. Petitioner states that Michigan Consolidated asked that the Crystal Falls delivery point be maintained as an emergency delivery point only. It is stated that this adjustment is necessary due to the increased requirements at the Rapid River delivery point. The change, it is stated, would give Michigan Consolidated additional flexibility in meeting market demands.

Petitioner states that it has no objection to the changes and agreed with Michigan Consolidated in a letter dated September 16, 1980.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 13, 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. 80–33658 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[1] This proceeding was commenced before the FPC. By joint regulaion of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. ES81–3–000]

Iowa Electric Light & Power Co.; Application

October 22, 1980.

Take notice that on October 9, 1980, the Iowa Electric Light and Power Company (the "Applicant") filed an application pursuant to Section 204 of the Federal Power Act with the Federal Energy Regulatory Commission seeking authority to issue and sell up to $6,000,000 principal amount of series U, First Mortgage Bonds.

Any person desiring to be heard or to make protest with reference to this Application should on or before October 31, 1980, filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33659 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ES80–80]

Kansas City Power & Light Co.; Renotice of Application

October 22, 1980.

Take notice that on September 22, 1980, Kansas City Power & Light Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to $150,000,000 principal amount of short-term debt to be issed from time to time with maturities not later than June 30, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to

intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33660 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-576]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

October 22, 1980.

Take notice that on September 25, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-576 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 a new measurement station near Waterloo, Iowa, and the delivery of natural gas to Iowa Public Service Company (IPS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to construct and operate a measuring station which would consist of two separate meters and related appurtenant facilities, to be located in Black Hawk County, Iowa. Applicant would deliver approximately 3,121,000 Mcf of natural gas per year on an interruptible basis to IPS for use in its Electrifarm Turbine Generator Plant to replace middle distillate oil.

Applicant further requests authorization to deliver to IPS on a firm basis up to 41,950 Mcf of natural gas per year for use in serving future residential and commercial customers in a proposed subsidivision development outside of Waterloo, Iowa. It is asserted this firm load would require no increase in IPS' firm entitlements.

Applicant states that the proposed facilities for the new delivery point would cost approximately $231,300 to be borne by IPS.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 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. 80-33662 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[PH/FRL 1646-5; OPP-C30191]

Abbott Laboratories; Application to Conditionally Register Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Abbott Laboratories has submitted an application to conditionally register a pesticide product MYCAR Mycoacaricide Wettable Powder, which contains the active ingredient 3.6×10^8 Colony Forming Unit (CFUs) of *Hirsutella thompsonii* per pound which has not been included in any previously registered pesticide product.

DATE: Comments must be received on or before November 28, 1980, and should bear a notation indicating the EPA registration number.

ADDRESS: Written comments to: Franklin D. R. Gee, Product Manager (PM) 17, Rm. E-341, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 (202-755-1150).

SUPPLEMENTARY INFORMATION: Abbott Laboratories, Chemical and Agricultural Products Division, N. Chicago, IL 60064, has submitted an application to register the pesticide product MYCAR Mycoacaricide Wettable Powder (EPA Registration No. 272-GI) containing a 3.6×10^8 CFUs of *Hirsutella thompsonni* per pound. The application proposes that the product be conditionally registered for use as a miticide on citrus, blueberries, and turf. The proposed classification is for general use.

This application is made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6). Notice of receipt of this application does not indicate a decision by the Agency on the application. Interested persons are invited to submit written comments on the application referred to in this notice.

Notice of approval or denial of this application will be announced in the **Federal Register.** Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

(Sec. 3(c) 86 Stat. 972; (7 U.S.C. 136a))

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33645 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-32-M

PF-204; (PH-FRL 1647-3)

Certain Pesticide Chemicals; Filing of Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed requests with the EPA to establish tolerances and

food additive regulations for certain pesticide chemicals.

ADDRESS: Written comments and inquiries should be directed to: Designated Product Manager (PM), Registration Division, (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by document control number "[PF–204]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The designated product manager at the telephone number given in each petition.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the agency to establish tolerances and regulations for certain pesticide chemicals on certain raw agricultural commodities and food items in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

PP OF2404. Dow Chemical Co., PO Box 1706, Midland, MI 48640. Proposes amending 40 CFR 180.350 by establishing tolerances for the combined residues of the soil microbiocide nitrayprin [2-chloro-6-(trichloromethyl)pyridine] and its metabolite, 6-chloropicolinic acid in or on the raw agricultural commodity rice grain at 0.05 part per million (ppm). The proposed analytical method for determining residues is gas chromatography using electron capture detection. (PM–23, Richard F. Mountfort, Rm. E–351, 202–755–1397).

PP OE2414. Rhone-Poulenc Inc., PO Box 125, Monmouth Junction, NJ 08852. Proposes amending 40 CFR Part 180 by establishing a tolerance for the fugicide iprodione [(3–3,5–dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidine-carboxamide and its metabolites (3-(1-methylethyl-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine carboxamide and 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine carboxamide in or on the raw agricultural commodity kiwifruit at 7 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21, Eugene Wilson, Rm. E–349, 202–755–1086).

PP OF2416. Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409. Proposes amending 40 CFR 180.368 by establishing a tolerance for the combined residues of the herbicide metolachlor [2-chloro-*N*-2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide] in or on the agricultural commodity sunflowers at 0.3 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23, Richard F. Mountfort, Rm. E–351, 202–755–1397).

PP OF2417. Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409. Proposes amending 40 CFR 180.368 by establishing a tolerance for the combined residues of the herbicide metolachlor [2-chloro-*N*-2-ethyl-6-methylphenyl)-*N*-(2-methoxy-l-methylethyl)acetamide] in or on the raw agricultural commodity flax seed at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23, Richard F. Mountfort, Rm. E–351, 202–755–1397).

PP OF2405. Diamond Shamrock Corp., 1100 Superior Ave., Cleveland, OH 44114. Proposes amending 40 CFR 180.275 by establishing tolerances for the residues of the fungicide chlorothalonil (2,4,5,6-tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) in or on the raw agricultural commodities oranges and grapefruit at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with a linear ^{63}Ni electron capture detector. (PM 21, Eugene Wilson, Rm. E–349, 202–755–1806).

FAP OH5272. Diamond Shamrock Corp., 1100 Superior Ave., Cleveland, OH 44114. Proposes amending 21 CFR 193 by establishing a regulation permitting the residues of the fungicide chlorothalonil (2,4,5,6-tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) in the commodity citrus oil at 10 ppm. (PM 21, Eugene Wilson, Rm. E–349, 202–755–1806).

PP OF2422. Monsanto Co., 1101 17th St., NW., Washington, D.C. 20036. Proposes amending 40 CFR 180.364 by establishing tolerances for the combined residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite, aminomethylphosphonic acid in or on the following raw agricultural commodities:

Commodities	Parts per million
Forage grasses	0.4
Forage legumes	0.2

The proposed analytical method for determining residues is gas chromatography using a phosphonorous specific flame detector. (PM 25, Robert J. Taylor, Rm. E–359, 202–755–2196).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80–33651 Filed 10–28–80; 8:45 am]

BILLING CODE 6560–32–M

[PH–FRL 1646–6; OPP–30183A]

Conrel; Receipt of Application to Conditionally Register a Pesticide Product Containing New Active Ingredients; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This notice corrects a document that published in the **Federal Register** of May 5, 1980 (FR Doc. 80–1367). The names of the new active ingredients were listed incorrectly.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–341, 401 M St., SW., Washington, D.C. 20460, (202–755–1150).

SUPPLEMENTARY INFORMATION: EPA issued a notice that publised in the **Federal Register** of May 5, 1980 (45 FR 29632), that Conrel, 110 A St., Needham Heights, MA 02194 had submitted applications to conditionally register pesticide products containing new active ingredients. The ingredients appeared as: "(E)-9-dodecen-1-01-acetate (2.2%) and "Z-9-dodecen-1-01-acetate (9.1%)". Change the 23rd and 24th lines in the first column to read: "(E)-9-dodecenyl acetate (2.2%) and (Z)-9-dodecenyl acetate (9.1%)." (40 CFR 162.5 and 162.6).

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80–33646 Filed 10–28–80; 8:45 am]

BILLING CODE 6560–32–M

[PH–FRL 1647–2; OPP–180520]

New York; Issuance of Specific Exemption for Use of Mesurol on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the New York Department of Environmental Protection (hereafter referred to as the "Applicant") to use Mesurol to control depredating birds on 5,600 aces of grapes in New York. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expies on November 1, 1980.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Registration Division (TS–767), Office of Pesticide Programs,

Environmental Protection Agency, Rm. E–124, 401 M St. SW., Washington, D.C. 20460, (202–426–0233).

SUPPLEMENTARY INFORMATION: According to the Applicant, birds can seriously reduce the crop of marketable grapes. The 80P–875 amount of injury varies from year to year, reflecting bird populations and availability of alternative food sources. Grapes are generally harvested after other berry crops and this can become a major food source for birds. Grapes are subject to feeding at all times after the fruit has begun to ripen. Bird species observed in grape fields include robins, finches, starlings, sparrows, mourning doves, orioles, cedar waxwings, and blackbirds.

There are currently no pesticides registered for bird control in grapes. These are two types of alternative control available: (a) Scare devices, and (b) exclusion devices. Accordingly to the Applicant, scare devices do not prevent, but only reduce, feeding injury; some birds quickly adapt to these devices. The Applicant claims that exclusion devices are prohibitively expensive. Mesurol is currently registered as a bird repellent on cherries.

The Applicant proposed to apply 2.67 pounds of Mesurol, which contains the active ingredient (a.i.) 3,5-dimethly-4-(methylthio) phenyl methylcarbamate, per acre with up to three applications. The Applicant anticipates that grape growers in New York could lose $175,000 if Mesurol is not available.

EPA has determined that residues of the a.i. and its cholinesterase-inhibiting metabolites would not exceed 10 parts per million (ppm) in or on grapes, 20 ppm in or on raisins, and 50 ppm in or on grape pomace and raisin waste, from the proposed use. These residue levels have been judged adequate by EPA to protect the public health. EPA has also determined that the proposed use should not present an undue hazard to the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 1, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Mesurol 75% WP insecticide-bird repellent, EPA Reg. No. 3125–288, may be used.

2. Mesurol may be applied by ground equipment at a rate of 2.67 pounds (2.0 pounds a.i.) per acre. No more than three applications may be made per season.

3. Application of Mesurol is restricted to those grape fields where damage from bird depredation will cause significant economic losses, as determined by Cooperative Extensive or authorized State personnel.

4. Application is to begin at the first sign of major bird damage. A one-day pre-harvest interval is imposed.

5. A total of 33,600 pounds a.i. are authorized to treat up to 5,600 acres.

6. Mesurol is toxic to fish and other aquatic organisms. Precautions must be taken to avoid or minimize spray drift to aquatic areas.

7. Mesurol is highly toxic to bees exposed to direct treatment or residues on crops or blooming weeds. It may not be applied or allowed to drift to crops or weeds when bees are actively visiting the area.

8. All applicable precautions, restrictions, and directions on the registered label must be followed.

9. Residues of the a.i. and its cholinesterase-inhibiting metabolites not exceeding the following levels may enter into interstate commerce: Grapes—10 ppm; raisins—20 ppm; raisin waste—50 ppm; grape pomace—50 ppm. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this section.

10. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a final report summarizing the results of this program by February 28, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–33647 Filed 10–28–80; 8:45 am]

BILLING CODE 6560–32–M

[PH–FRL 1646–8; OPP–180513]

North Carolina Department of Agriculture; Issuance of Specific Exemption To Use Acephate To Control European Corn Borer on Non-Bell Peppers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the North Carolina Department of Agriculture (hereafter referred to as the "Applicant") to use acephate to control the European corn borer on a maximum of 1,200 acres of non-bell peppers in North Carolina. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS–767), Rm. E–107, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: According to the Applicant, the European corn borer *(Ostrinia nubilalis)* is a serious threat to non-bell pepper production in North Carolina. Larvae hatch from eggs, which are laid during the time that the pepper fruits are on the plant, and burrow under the stem cap or into the side of the fruit. Since the non-bell pepper processors cannot sort borer-infested peppers from clean peppers, any shipment received with one percent or greater borer infestation is rejected in total. Shipments of non-bell peppers which cannot be sold to the processors are generally considered a total loss. According to the Applicant, the chemicals registered for use on non-bell peppers do not give a high enough degree of efficacy to be acceptable. The Applicant claims that currently registered alternatives give 70 percent control while acephate is expected to give 90 percent control.

The Applicant proposed to make four applications of acephate at a rate of 1.0 pound active ingredient per acre at 7-to 10-day intervals until 21 days prior to harvest. A maximum of 2 additional applications at a rate of 0.5 pound active ingredient per acre would be made. No application will be made within seven days of harvest.

Acephate is currently registered for use on bell peppers, and permanent tolerances have been established for combined residues of acephate and its metabolite (methamidophos) at 4 parts per million (ppm) in or on bell peppers (of which no more than 1 ppm is the metabolite). EPA has determined that available residue data indicate that the proposed use pattern should not result in residues of acephate in excess of this level in or on non-bell peppers provided a 7-day pre-harvest interval is observed. This level has been judged adequate to protect the public health. No unreasonable adverse effects to man or the environment are expected to result from the proposed use.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly,

the Applicant has been granted a specific exemption to use the pesticide noted above until October 31, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Orthene 75S Soluble Powder, EPA Reg. No. 239–2418, will be used. If an registered label is used it must contain the identical applicable precautions and restrictions which appear on the registered label.

2. Orthene 75S will be applied at a rate of 1.0 pound active ingredient per acre at 7-to 10-day intervals. A maximum of 4 applications may be made at this rate until 21 days of harvest. A maximum of 2 additional applications may be made at a rate of 0.5 pound active ingredient per acre.

3. No applications will be made within 7 days of harvest.

4. Applications may be made with ground equipment using a minimum of 25 gallons and a maximum of 150 gallons of water per acre.

5. A maximum of 1,200 acres may be treated.

6. All applicable directions, restrictions, and precautions on the EPA-registered product label must be followed.

7. Peppers treated in accordance with the above conditions should not exceed combined residue levels of 4 ppm of acephate and methamidophos (of which no more than 1 ppm is methamidophos). Peppers with residues that do not exceed this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

8. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by March 1, 1981. The level of control achieved and resulting yield on the treated acreage should be included in this report or as soon as available.

9. The EPA shall be immediately informed of any adverse effects resulting from the use of acephate in connection with this exemption.

(Sec. 18, as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–33648 Filed 10–28–80; 8:45 am]

BILLING CODE 6560–32–M

[PH–FRL 1647; OPP–180510]

Texas; Crisis Exemption for Fenvalerate on Cabbage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the Texas Department of Agriculture (hereafter referred to as "Texas") has availed itself of a crisis exemption for the use of Pydrin (fenvalerate) to control loopers and *Heliothis* species on approximately 2,500 acres of cabbage in Texas. Because the treatment is expected to continue for more than 15 days, Texas has submitted a request for a specific exemption for a continuation of this program.

DATE: Texas anticipates that the need will continue until harvest.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS–767), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–107, 401 M St., SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: Texas notified EPA on September 3, 1980, that it was initiating a crisis exemption for the use of Pydrin on approximately 2,500 acres of cabbage to control loopers and *Heliothis* species. According to Texas, of the registered alternatives, methamidophos, methomyl, and acephate are the most effective; however, maximum rates of these pesticides provide only 65 to 80 percent control. Texas states that this level of control is not sufficient to prevent damage and provide a marketable product. Texas reports that the crisis will continue until the crop is harvested.

All applications are being made by, or under the direct supervision of, a State-certified applicator when infestations reach economic threshold levels. A maximum of 8 treatments will be made at a rate of 0.1 pound active ingredient (a.i.) per acre for looper control and 0.2 pound a.i. per acre for *Heliothis* species control. Residues of fenvalerate in or on cabbage are not expected to exceed 2 parts per million from this program. A 7-day pre-harvest interval is to be observed. Wrapper leaves are to remain in the field and are not to be used for feed. Texas will make observations for any adverse effects to the environment.

Texas has requested a specific exemption for the continuation of this program.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–33649 Filed 10–28–80; 8:45 am]

BILLING CODE 6560–32–M

[PH–FRL 1646–7; OPP–30190]

Union Carbide Corp.; Applications To Register Pesticide Products Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Union Carbide Corp. has submitted an application to register the pesticide products Thiodicarb Insecticide 75% WP and 500 Thiodicarb Insecticide, which contain the active ingredient thiodicarb [dimethyl N,N′-[thiobis [(methylimino)carbonyloxy]]bis[ethanimidothioate] which has not been included in any previously registered pesticide product. This application is made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6). Notice of receipt of this application does not indicate a decision by the agency on the application. Interested persons are invited to submit written comments on the application referred to in this notice.

DATE: Comments may be submitted on or before November 28, 1980, and should bear a notation indicating the EPA Registration Number.

ADDRESS: Written comments to: Jay S. Ellenberger, Product Manager (TS–767), Room E–303, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger (202–426–2635).

SUPPLEMENTARY INFORMATION: Union Carbide Corp., 7825 Baymeadows, Jacksonville, FL 32216, has submitted to EPA an application to register the pesticide products Thiodicarb Insecticide 75% WP and 500 Thiodicarb Insecticide (EPA Registration Numbers 264–GUR and 264–GUE, respectively) containing [dimethyl N,N′-[(thiobis[(methylimino)carbonyloxy]] bis[ethanimidothioate] at 75% and 44% respectively. The application proposes that the pesticide be classified for general use on cottonseed and soybeans by ground or aerial application.

Notice of approval or denial of this application will be announced in the **Federal Register.** Except for such

material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

(Sec. 3(c)(4), 86 Stat. 972 (7 U.S.C. 136a))

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33650 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-00131; PH-FRL-1646-4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Wednesday and Thursday, December 10 and 11, 1980, beginning at 8:30 a.m. both days and ending at noon on December 11.

ADDRESS: The meeting will be held at: Environmental Protection Agency Headquarters, Room M-3906-3908, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: P. H. Gray, Jr., Office of Pesticide Programs, Environmental Protection Agency, Room TS-770-M 401 M St. SW., Washington, DC 20460, (202-472-9400).

SUPPLEMENTARY INFORMATION: This meeting is the seventh meeting of the full Group. The tentative agenda includes the following topics:

1. Action items from the July, 1980 meeting of SFIREG,
2. Regional reports,
3. Working Committee reports,
4. Other topics which may arise.

Dated: October 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-33682 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. B-15]

TV Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: October 30, 1980.

Cut-Off Date: December 12, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. Because the applications listed in the attached appendix are in conflict with applications which were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with any application listed in the attached appendix will be accepted for filing.

Petitions to deny the applications listed in the attached appendix and minor amendments thereto must be on file with the Commission not later than the close of business on December 12, 1980. Any application previously accepted for filing and in conflict with any application listed in the attached appendix may also be amended as a matter of right not later than the close of business on December 12, 1980. Amendments filed pursuant to this notice are subject to the provisions of § 73.3572(b) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPCT-800806KE (new), Norfolk, Virginia, Tidewater Community Broadcasting, Inc. Channel 49. ERP: Vis. 2796 kW; HAAT: 1005 feet.

BPCT-800806KF (new), Norfolk, Virginia, Focus Broadcasting of Norfolk, Inc. Channel 49. ERP: Vis. 2062 kW; HAAT: 1002 feet.

BPCT-800718KJ (new Major Amendment), Albany, New York, G & M Broadcasting Corporation. Channel 45. ERP: Vis. 1321 kW; HAAT: 1010 feet.

BPCT-800721KJ (new), Schenectady, New York, Union Street Video, Inc. Channel 45. ERP: Vis. 5000 kW; HAAT: 875 feet.

[FR Doc. 80-33677 Filed 10-28-80; 8:45 am]

BILLING CCDE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 80-77]

Failure of Vessel Operating Common Carriers Operating in the Foreign Commerce of the United States To Comply With the Certification Filing Requirements of Section 21(b) of the Shipping Act, 1916; Order To Show Cause

Section 21(b) of the Shipping Act, 1916, (46 U.S.C. § 820) requiries the filing of a periodic, written certification by the chief executive officer of every vessel operating common carrier (VOCC) attesting to:

"(1) a policy prohibiting the payment, solicitation, or receipt of any rebate which is unlawful under the provisions of this Act;

"(2) the fact that such policy has been promulgated recently to each owner, officer, employee, and agent thereof;

"(3) the details of the efforts made, within the company or otherwise, to prevent or correct illegal rebating; and

"(4) full cooperation with the Commission in its investigation of illegal rebating or refunds in United States foreign trades, and in its efforts to end such illegal practices. Failure to file the required certification subjects the delinquent carrier to "a civil penalty of not more than $5,000 for each day such violation continues".

Commission General Order 43 (46 CFR Part 552), which implements section 21(b), requires the written certification mandated by that section to be filed with the Commission by May 15 of each year.

The carriers named in the appendix have published rates in tariffs on file with the Federal Maritime Commission for the carriage of goods in the foreign commerce of the United States and have not filed the cerfication required by May 15 of this year. These carriers are therefore being required to show cause why they should not be found in violation of the certification filing requirements.

If any of the carriers named in the appendix have not filed their certification because they are not actively carrying cargo between ports named in their published tariffs then these carriers would no longer appear to be common carriers by water within the meaning of Section 18(b) of the Shipping Act, 1916 (46 U.S.C. 817(b). Because only *bona fide* common carriers by water are permitted to maintain tariffs with the Commission, those tariffs which pertain to inactive carrier services are subject to cancellation. *Inactive Tariffs of Vessel Operating Carrier,* 20 F.M.C. 433 (1978).

Now, therefore, it is ordered, That pursuant to sections 21(b) and 22 of the Spipping Act, 1916, (46 U.S.C. §§ 820, 821) those vessel operating common carriers by water operating in the foreign commerce of the United States listed in the appendix are named repondents in this proceeding and ordered to show cause why they should not be found in violation of section 21(b) and 46 CFR Part 552 for failure to file with the Commission a written certification attesting to company policies and effects to combat rebating

in the foreign commerce of the United States; and

It is Further Ordered, That pursuant to sections 18(b) and 22 of the Shipping Act, 1916, (46 U.S.C. §§ 817, 821) those respondents which are not offering an active common carrier service in any of the trades covered by their published tariffs are further ordered to show cause why those tariffs should not be cancelled; and

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact and memoranda of law and replies thereto. Oral argument may also be scheduled if deemed necessary by the Commission. Should any party believe that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding and why such proof cannot be submitted through affidavit. Affidavits of fact and memoranda of law shall be file by respondents and served upon all nonrespondent parties of record no later than close of business on December 8, 1980. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel no later than close of business on January 8, 1981. Intervenors shall file as their interests shall appear. Requests for hearing or for oral argument shall be filed on or before January 15, 1981; and

It is further ordered, That any person having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR § 502.72); and

It is further ordered, That, all documents submitted by any part of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR § 502.118). Pursuant to Rule 10, the requirement of Rule 117 that such documents be served on all parties of record is waived for purposes of this proceeding, in regard to respondent's affidavits of fact and memoranda of law.

By the Commission.

Francis C. Hurney,

Secretary.

Appendix.— *Active VOCC's—No Certification*

Acadian Ocean Freight Ltd.
Achille Lauro
Agromar Line
Alaf Line Ltd.
Alianca Line
American Industrial carriers, Inc.
American Shipping Company Inc. S.A.
Americas Shipping Lines, Inc., The
Anglo European Container Line
Armada Lines
Armasal Line
Arrow Line
Asia America Line
Atlantic Caribe Ltd.
Atlantic Transport Co. Ltd.
B.F.I. West Africa Lines, Ltd.
Bahama Adventure Shipping Ltd.
Barbara Line
Belfranline
Bifrost, Ltd.
Booth-Lamport (J/S)
Bridge Line (BLL), Ltd.
C R Line
Cacena Line Ltd.
California International Freight Corp.
Cargo Dispatch, Inc.
Carib Transport, Inc.
Caribbean Express Line
Caribbean Line
Caribbean Steamship Corp.
Caribe Line, Ltd.
Carigulf Lines
Caribbean Lines Corporation
Cartainer Line
Char Ching Marine Company Ltd.
China Ocean Shipping Company
Christensen Canadian African Lines
Clemwood Shipping Company
Coates, Peterson Steamship Co.
Cobelfret Lines
Commonwealth Maritime Company
Compagnie Tahitienne Maritime
Compagnie Maritime Belge
Consorcia Panameno De Navegacion
Crusader Swire Container Service, Ltd.
Cunard-Brocklebank, Ltd.
Cylanco, S.A.
Dafra Lines
Devonia Lines
Divi-Divi Line, Ltd.
Donaca Line
Edward Shipping & Mercantile, S.A.
Empacadora Del Norte, S.A.
Empresa Maritima Del Estado
Euro-Freight Lines, Ltd.
Eurobridge Lines
Eurohold Line
Europe Canada Lakes Line
Fairplay Caribe Limited
Flonac Line
Freight & Chartering Co., Ltd.
French American Service Transport Line
Frota Amazonica, S.A.
Furness Withy (Chartering) Ltd.
Galleon Shipping Corporation
Georgia-Aztex Lines (J/S)
Gulf West Africa Line
Haiga Bridge Shipping S.A.
Hong Kong Guam Carrier S.A.
Hyundai International, Inc.
Iceland Steamship Co.
Inca Lines
Incan Superior, Ltd.
Intercoastal Shipping Agency
Intercontinental Maritima, S.A.
Iraqi State Enterprise for Maritime Transport
Islander Freight & Supply, Ltd.
Japan Shipping Co., Ltd.
Johnson Line
Kingston Shipping S.A.
Koctug Line
L & W Line
Lago Line S.A.
Libra Shipping and Trading Corporation, Ltd.
Linea Islena Ltd.
Lineas Maritimas De Guatemala, S.A.
LTL International Limited
Majestic Lines Inc.
Mammoth Bulk Carriers, Ltd.
Maple Leaf Shipping Co. Ltd.
Mar Azul Motorships, Inc.
Mar Shipping Line, Inc.
Marca Line
Marcella Shipping Company, Ltd.
Marine Agency, Inc.
Marine Autocrusiers of Panama, Inc.
Marine Bulk Carriers
Marine Express Line, S.A.
Maritimas Del Caribe, Co. S. DE R.L.
Maritima San Andres Ltda
Maritime Americas Ltd.
Marsh Harbour Shipping Co. Ltd.
Mazoa Line Corp. S.A.
Mercandia Rederierne
Mexico Express Line
Miami-Caicos Shipping Limited
Mid-Ocean Lines, Inc.
Nauru Pacific Shipping Lines
Nautilius Chartering Inc. S.A.
Naviera Buques Centro Americano, S.A.
Naviera Central, C.A.
Naviera Marfrigo, S.A.
Navieras Caribe, Ltd.
Navimerca Line
Nervion Lines
Nigerian Star Line
Nosac Line
Ocean Transport Agency Inc.
Oceania Line, Inc.
Olympic Steamship, Inc.
Omega De Navegacion, S.A.
Pacific Forum Line
Pacific Navigation of Tonga, Ltd.
Pacific Rim Container Service Inc.
Phoenix Shipping Company, Inc.
Portuguese Line
R.C.D. Shipping Services (J/S)
Rainbow Line
Regent Line
Retla Steamship Co.
Rutland Maritime Management Corp.
Saguenay Shipping Co.
Saimaa Pacific Line
Saipan Shipping Co.
Salsola Shipping Lines SA
San Andres Shipping Line Ltd
Sause Bros Ocean Towing Co., Inc.
Scandinavian Continental Line AB
Sealark Shipping Company S.A.
Seaspan International Ltd.
Seaspeed Services
Seastar Shipping Co., Ltd.
Seatraders, Ltd.
Servicios Maritimos Del Ecuador, S.A.
Siboney Shipping Co. S.A.
Sidruss Shipping Co., Ltd.
Societe Ivoirienne De Transports Maritimes
Societe Nationale Maritime
Springbok Line
Springbok Shipping Co., Ltd.
Straum Steamship Co. Ltd.
Sun Coast Lines Inc.
T. Tainers Systems
Target Navigation and Transportation
Taylor Corporation, Ltd.
TEC Lines Ltd.
Timber Line Ltd.
TMT Line
Tokyo Shipping Co.
Traghetti Mediterraneo S.P.A.
Tranati Lines
Trans Air Marine S.A.
Trans-Caribbean Lines
Transoceanic Navigation Corp.
Transytur Line
Uiterwyk Lines (Far East)
Uiterwyk Lines (Mexico)
Uni-Pacific Container Lines, Ltd.
Union Steamship Co. of N.Z. Ltd.
United Reefer Lines, Inc.
Universal Alco Ltd.
Vaasa Line, O/Y
Valmar De Navegacion, S.A.
Venebuques, S.A.
Victoria Line
Warner Pacific Line
West Indies Shipping Corp.
Westfal-Larsen Line
White Pass Trans Ltd.
Yulsan Shipping Co., Ltd.

[FR Doc. 80-33693 Filed 10-28-80; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1065]

Federal Freight Forwarding, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Federal Freight Forwarding, Inc., 1130 U.S. Highway, #1, Elizabeth, NJ 07201, FMC No. 1065, was cancelled effective October 22, 1980.

By letter dated September 23, 1980, Federal Freight Forwarding, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1065 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Federal Freight Forwarding, Inc. has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission

Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1065 be and is hereby revoked effective October 22, 1980.

It is ordered, that Independent Ocean Freight Forwarder License No. 1065, issued to Federal Freight Forwarding, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Federal Freight Forwarding, Inc.

Daniel J. Connors,

Director, Bureau of Certification and Licensing.

[FR Doc. 80-33694 Filed 10-28-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-76]

Heidelberg Eastern, Inc. and Container Overseas Services, Inc. and Container Overseas Agency, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Heidelberg Eastern, Inc. against Container Overseas Services, Inc. and Container Overseas Agency, Inc. was served October 23, 1980. Complainant alleges that it has been subjected to payment of rates for transportation in violation of section 18(a) et seq. and 18(b)(3) of the Shipping Act, 1916.

This proceeding has been assigned to Chief Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33691 Filed 10-28-80; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Edward Brown, 734 15th St., N.W., Suite 409, Washington, D.C. 20005

Aero Marine Expediters, Inc., 65 Roosevelt Avenue, Valley Stream, NY 11581. Officers: Robert P. Weinrib, President, Thomas G. Coscette, Vice President, Jay C. McQuillen, Vice President

Leonard Bros. International, LTD., 7060 West Fort Street, Detroit, MI 48209. Officers: Jerry F. Leonard, Sr., Chairman of the Board, Jerry F. Leonard, Jr., President, David W. Leonard, Vice President/Secretary/Treasurer, Richard W. Foerster, Vice President

Diosdad C. Roque d.b.a. D.C. Rogue Customs Broker, 2987 Mission Street, #202, San Francisco, CA 94110

Overseas Project Transport, Inc., 3300 S. Gessner, Houston, TX 77063. Officers: Wolfgang Anderson, Vice President, Rolf Krings, President, Klaus Maassen, Vice President

Selax Transport Corporation d.b.a. International Freight Forwarders & Co., 20780 Leapwood Avenue, Carson, CA 90746. Officers: Scott S.W. Lee, President, George Kim, Vice President, Felix C. Duguel, Vice President, Dan Kang, Director, Aeri Chung, Treasurer/Secretary.

By the Federal Maritime Commission.

Dated: October 24, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33692 Filed 10-28-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Chadwick Bancshares, Inc.; Formation of Bank Holding Company

Chadwick Bancshares, Inc., Chadwick, 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 95 percent or more of the voting shares of Farmers' State Bank of Chadwick, Chadwick, 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 Reserve Bank, to be received not later than November 21, 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, October 22, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 33705 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Elm Bancshares, Inc.; Formation of Bank Holding Company

Elm Bancshares, Inc., Elmhurst, 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 100 per cent or more of the voting shares of Elmhurst National Bank, Elmhurst, 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 Reserve Bank, to be received not later than November 21, 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, October 22, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 33706 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Western Bancshares, Inc.; Formation of Bank Holding Company

Western Bancshares, Inc., Milwaukee, Wisconsin, 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 Milwaukee Western Bank, Milwaukee, Wisconsin. 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 Reserve Bank, to be received not later than November 21, 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, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33605 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than November 21, 1980.

A. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. BankAmerica Corporation, San Francisco, California (insurance activities; Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming): To engage, through its direct subsidiary, BA Insurance Company, Inc., a California corporation, in the activity as underwriter (initially as reinsurer) to the extent permitted by relevant state law for credit life insurance and credit accident and health insurance which is directly related to extensions of credit by BankAmerica Corporation and its nonbank subsidiaries.

Such activities will be conducted from an existing office in San Francisco serving the states of Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming. Comments on the application must be received by November 13, 1980.

2. U.S. BANCORP, Portland, Oregon (insurance activities; Colorado, Oregon, and Utah): To engage through a *de novo* subsidiary, Mt. Hood Life Insurance, Inc., in reinsurance for credit life and credit accident and health insurance written through Applicant and its subsidiaries. The office of record of the new corporation will be in Phoenix, Arizona, its operations will be conducted from an office in Portland, Oregon, and it will serve Applicant and its subsidiaries located in Colorado, Oregon, and Utah.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 22, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33601 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Crocker Bank International (New York); Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Crocker Bank International (New York), New York, New York, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under section 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a branch in Chicago, Illinois. Crocker Bank International (New York) operates as a subsidiary of Crocker National Bank, San Francisco, California.

The factors that are to be considered in acting on this application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. 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 November 21, 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, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33602 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Irene Bancorporation, Inc.; Formation of Bank Holding Company

Irene Bancorporation, Inc., Irene, South Dakota, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers State Bank, Irene, South Dakota. 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 Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 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, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33603 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

SBT Corp.; Acquisition of Bank

SBT Corporation, Savannah, Georgia, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 90 per cent or more of the voting shares of the successor by merger to The First National Bank of Valdosta, Valdosta, Georgia. 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 November 21, 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, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33604 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 20, 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 the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invested from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 17, 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, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Interstate Commerce Commission

The ICC requests clearance of revision of Form C-1, Annual Report, required to be filed by some 166 Private Car and Refrigerator Car Line Companies, pursuant to section 11145 of the Interstate Commerce Act. Data collected by Form C-1 are used for economic regulatory purposes. By Final Rule No. 37346, effective for the reporting year beginning January 1, 1980, and due to be filed by March 31 of the year following the reporting year, ICC eliminated the filing of Form B-1, Refrigerator Car Lines Owned or Controlled by Railroad Companies. Now all Refrigerator Car Lines will be required to file the revised version of Annual Report, Form C-1, along with Private Car Line Companies. The ICC states that the revised Form C-1 will reduce the carriers' reporting burden and will provide an adequate source of information. The ICC estimates that reporting burden will average two hours per report.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 80-33709 Filed 10-28-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF THE INTERIOR
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 Tenneco Oil Exploration and Production has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4082, Block 18, Sabine Pass Area, offshore Texas.

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 Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 21, 1980.

E. A. Marsh,

Staff Assistant for Operations Gulf of Mexico OCS Region.

[FR Doc. 80-33635 Filed 10-28-80; 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 Tenneco Oil Exploration and Production has submitted a Development and

Production Plan describing the activities it proposes to conduct on Leases OCS–G 3584 and 4231, Blocks 170 and 181, Ship Shoal 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 Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 21, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80–33652 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

California Desert Conservation Area Advisory Committee: Meeting

Notice is hereby given in accordance with Pub. L. 92–468 and 94–579 that the California Desert Conservation Area Advisory Committee will meet November 20 and 21, 1980, on the public lands with the California Desert Conservation Area near Baker, California.This meeting will be a committee workshop to review the Proposed Plan and Final Environmental Impact Statement for the California Desert Conservation Area, and to prepare their advice to the Secretary of the Interior for the final Plan. The meeting will begin at 8:00 a.m., Thursday, November 20, and Friday, November 21, at the Desert Studies Center at Soda Spings, nine miles southwest of Baker, California. The meeting is open to the public.

Further information may be obtained from Mr. Clayton A. Record, Jr., Chairman, California Desert Conservation Area Advisory Committee, c/o California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

Dated: October 21,1980.

James B. Ruch,

State Director.

[FR Doc. 80–33625 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–84–M

Prineville Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Prineville District Advisory Council will be held on November 19, 1980.

The Council will meet in the District conference room at 8:30 a.m. at 185 E. 4th Street, Prineville, OR 97754.

The agenda includes:

1. A field tour of points in the Brothers Environmental Statement area representative of major activities germane to the land use plan and environmental statement to be written for the area.

2. A brief pre-tour meeting to acquaint members with the land use plan requirements and time schedules.

3. A post-tour discussion to consider involvement role of Advisory Council in planning procedures.

4. Subsequent meeting arrangements.

The public and news media is welcome to attend any segment of the Council meeting. Tour participants are expected to provide their own transportation and lunch.

Persons wishing to address the Council either orally or in writing are requested to contact the District Manager at the above address by November 17, 1980.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty days following the meeting.

Reinard B. Okeson,

Acting District Manager.

October 17, 1980.

[FR Doc. 80–33624 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–84–M

[INT FEIS 80–47]

Proposed Geothermal Leasing Within the Coso Known Geothermal Study Area, Inyo County, Bakersfield District, Calif.; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Final Environmental Impact Statement discussing anticipated impacts of a proposed geothermal leasing program for an area within the Coso Known Geothermal Resource Area, in the Bakersfield District, Inyo County, California. The proposal involves competitive and non-competitive geothermal leasing of the Federal lands in a 72,640 acre area centered on the Coso Known Geothermal Study Area.

A 30-day public review period for the Final EIS will commence from date of this publication.

Copies of the Final Environmental Impact Statement are available upon request from the following offices:

California State Office (911), Bureau of Land Management, 2800 Cottage Way, Rm. E–2841, Sacramento, California 95825, Telephone (916) 484–4541.

Bakersfield District Office, Bureau of Land Management, 800 Trustun Avenue, Room 311, Bakersfield, California 93301, Telephone (805) 861–4191.

Copies of the Final Environmental Impact Statement are available for public reading and review at the two above locations plus the following:

Office of Information, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone (202) 343–5717.

Kern County Beale Memorial Library, 1415 Trustun Avenue, Bakersfield, California 93301.

Dated: October 21, 1980.

James B. Ruch,

State Director.

[FR Doc. 80–33688 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–47–M

[ES 11592]

Arkansas; Notice of Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The National Park Service, Department of the Interior, has filed application ES 11592 for the withdrawal from all forms of appropriation of the following described land:

Fifth Principal Meridan, Arkansas

T. 15 N., R. 17 W.,
Sec. 3, NE¼NE¼.
T. 15 N., R. 18 W.,
Sec. 8, NW¼NW¼;
Sec. 10, NW¼NE¼.
T. 16 N., R. 19 W.,
Sec. 25, SW¼SE¼.
T. 16 N., R. 22 W.,
Sec. 1, S½SW¼, SW¼SE¼, NE¼SE¼;
Sec. 2, S½SE¼;
Sec. 7, SE¼NW¼, SW¼NE¼;
Sec. 12, NE¼NW¼, SW¼SE¼;

Sec. 17, NW¼SE¼.
T. 17 N., R. 14 W.,
Sec. 2, S½N½SW¼.
T 17 N., R. 21 W.,
Sec. 29, SW¼SW¼.
T. 18 N., R. 14 W.,
Sec. 34, SE¼SE¼.

These lands aggregate approximately 723.05 acres in Marion, Searcy and Newton Counties, Arkansas. The National Park Service desires to use the land as an integral part of the Buffalo National River Area. A notice of the proposed withdrawal was previously published as F.R. Document No. 76–6633 in 41 F.R. 10114 on March 9, 1976.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given than an opportunity for a public hearing is afforded in connection with the pending withdrawal application.

All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the Director, Eastern States, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, on or before November 28, 1980. Notice of the public hearing will be published in the **Federal Register,** giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with Bureau of Land Management Manual Sec. 2351.16B. All previous comments submitted in connection with the withdrawal application are included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a schedules public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before November 28, 1980.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected; would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with the pending withdrawal application should be addressed to the Eastern States Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

Roger Hildebeidel,

Eastern States Director.

[FR Doc. 80–33680 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–84–M

Ely District, Nevada—Grazing Advisory Board Meeting

Notice is hereby given, in accordance with Public Law 94–579, that a meeting of the Ely District Grazing Advisory Board will be held Wednesday, December 3, 1980.

The meeting will convene at 10:00 a.m. (PST) at the conference room of the White Pine County Library, Courthouse Plaza, in Ely, Nevada. The Agenda for the meeting will include: (1) minutes of the previous meeting, (2) Schell and Egan grazing EIS progress report, (3) cooperative resource management, (4) public comment period, (5) wild horse report, (6) range improvement maintenance, (7) M–X missile impact on the district, and (8) advisory board recommendations.

The meeting is open to the public. Interested persons may make oral statements to the board at approximately 3:00 p.m. (PST), December 3, 1980. Written statements must be submitted to the Ely BLM office by COB December 2, 1980. Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the Ely District Manager.

A summary of the minutes of the Advisory Board meeting will be on file at the Ely District office and will be available for public inspection and reproduction during regular office hours for 30 days following the meeting.

Dated: October 20, 1980.

Neil B. McClury,

District Manager.

[FR Doc. 80–33641 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that ninety (90) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service proposes to negotiate a concession contract authorizing the operation of a marina and related facilities for the public at Fort McNair Yacht Basin, in Washington, D.C.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the office of the Superintendent, National Capital Parks-East, 1900 Anacostia Drive SW., Washington, D.C. 20020.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, National Capital Parks-East, 1900 Anacostia Drive, P.O. Box 38104, Washington, D.C. 20020, for information as to the requirements of the proposed contract.

Dated: October 23, 1980.

Manus J. Fish, Jr.

Regional Director, National Capital Region.

[FR Doc. 80–33686 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–70–M

San Antonio Missions Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 6:30 p.m., Tuesday, November 18, 1980, Bexar County Commissioners Court, 1st Floor, Bexar County Court, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Public Law 95–629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

—General Management Plan Status Report
—Land Acquisition Plan
—Boundary Map Report
—Park Protection Zone Status
—Subcommittee Reports

The meeting will be opened to the public, however, facilities and space for accommodating members of the public will be limited and persons will be

accommodated on a first come, first serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206; telephone (512) 229–6009).

Minutes of the meeting will be available for public review four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: October 21, 1980.

Ben L. Moffett,

Acting Regional Director, Southwest Region.

[FR Doc. 80–33687 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–70–M

[INT FES 80–46]

General Management Plan, Yosemite National Park, Calif.; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a final environmental impact statement for the proposed General Management Plan for Yosemite National Park. The proposal, under which most operational facilities would be relocated from Yosemite Valley to El Portal, will guide overall park management and development including specific development concept plans for all developed areas, proposed additions to the park wilderness recommendation, and minor boundary adjustments. Overnight accommodation units will decrease by 10% and will serve 12% fewer people. Camping will increase 9%; and day parking will decrease 16%, significantly reducing overcrowding and automobile traffic in Yosemite Valley. Six alternatives considered are: (1) Provide resource-related activities and moderate amount of commercial services; (2) Emphasize backcountry experiences and provide only mimimal commercial services; (3) Provide large range of recreational and social activities supported by substantial commercial activities in a natural park setting; (4) No action; (5) Provide resource-related activities and reduce accommodations and commercial services; (6) Relocate most operational facilities from Yosemite Valley to El Portal and Wawona.

The final environmental impact statement (EIS) includes and incorporates by reference the August 1978 draft EIS, for its analyses of alternatives and discussion of the affected area. A limited number of copies are available upon request to: Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, CA 95389, Telephone: (209) 372–4461.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone (202) 343–6843.

Office of Public Affairs, National Park Service, Western Regional Office, 450 Golden Gate Avenue, San Francisco, CA 94102, Telephone (415) 556–5186.

Superintendent, Yosemite National Park, CA 95389, Telephone (209) 372–4461.

Dated: October 23, 1980.

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 80–33564 Filed 10–28–80; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–79]

Certain Cathode Sputter Coated Class Transparencies; Termination

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation No. 337–TA–79, *Certain Cathode Sputter Coated Class Transparencies.*

SUMMARY: The parties to this investigation have filed a joint motion to terminate based upon a settlement agreement. After reviewing the record, including comments from interested Federal agencies and private parties, the Commission has terminated this investigation.

SUPPLEMENTARY INFORMATION: In connection with the Commission's investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) of alleged unfair methods of competition and unfair acts in the importation or sale of certain cathode sputter coated glass transparencies in the United States, the complainant, the respondents, and the Commission investigative attorney filed a motion on April 25, 1980 (motion No. 79–2) to terminate this investigation on the basis of a settlement agreement.

On May 28, 1980, the Administrative Law Judge filed her recommendation that the motion be granted. Notice of the pendency of the motion to terminate and the general nature of the settlement agreement were published in the **Federal Register** on July 21, 1980 (45 CFR 48751).

RECONSIDERATION: Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission Action and Order. Such petitions must be in accord with Commission Rule 210.56 (19 CFR 210.56).

PUBLIC ACCESS TO RECORD: Copies of the Commission's Action and Order, and any other public document in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0480.

By order of the Commission.

Issued: October 22, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80–33702 Filed 10–28–80; 8:45 am]

BILLING CODE 7020–02–M

[Investigaiton No. 337–TA–81]

Certain Hollow Fiber Artifical Kidneys; Motion 81–23 Granted

On October 6, 1980, the Commisison voted to grant Motion 81–23 and extend the time for completion of the hearing before the presiding officer until December 2. 1980.

Copies of the Commission's Action and Order and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523–0161.

By order of the Commission.

Issued: October 20, 1980.

Kenneth R. Mason,

Secretary

[FR Doc. 80–33704 Filed 10–28–80; 8:45 am]

BILLING CODE 7020–02–M

[701-TA-65, 66, 67, and 68 (Preliminary)]

Leather Wearing Apparel From Brazil, Korea, Taiwan and Uruguay; Institution of Preliminary Countervailing Duty Investigations and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations to determine whether there is a resonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from Brazil, Korea, Taiwan, and Uruguay of leather wearing apparel, provided for in item 791.76 of the Tariff Schedules of the United States (TSUS).

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Vera Libeau, Senior Investigator (202-523-0368).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted following receipt of a petition on October 15, 1980, filed by Ralph Edwards Sportswear, Inc., on behalf of domestic producers of leather wearing apparel. The petition requested the imposition of additional duties in an amount equal to the net amounts of the alleged bounties or grants.

Authority

Section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the alleged subsidized imports. Such a determination must be made within 45 days after the date on which a petition if filed under section 702(b) or on which notice is received from the Department of Commerce of an investigation commenced under section 702(a). Accordingly, the Commission, on October 21, 1980, instituted preliminary countervailing duty investigations Nos. 701-TA-65, 66, 67, and 68. These investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 F.R. 76457) and particularly, subpart B thereof.

Written Submissions

Any person may submit to the Commission on or before November 17, 1980, a written statement of information pertinent to the subject matter of these investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10 a.m., e.s.t., on November 12, 1980, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the senior investigator for these investigations, Ms. Vera Libeau (202-523-0368). It is anticipated that parties in support of the petition for countervailing duties and parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the senior investigator.

Inspection of Petition

The petition filed in these cases is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-33703 Filed 10-28-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

Modification of Programs in Criminal Justice Statistics, JS-1 through JS-6

These six programs were announced on pages 37914 through 37916 of the **Federal Register** on June 5, 1980. As a result of limited availability of funds and a reevaluation of the programs by the Bureau of Justice Statistics, relative priorities for funding are established as follows:

Highest Priority: Program JS-1, Grant and Cooperative Agreement Program to Establish State-Level Capability for Statistical Analysis in Criminal Justice, and Program JS-2, Cooperative Agreement Program to Provide State and Local Governments with Access to Federal Informational Resources in Criminal Justice.

Second Priority: Program JS-3, Cooperative Agreement Program to Collect State-Level Offender Based Transaction Statistics (OBTS) Data, and Program JS-4, Cooperative Agreement Program to Collect Statewide Data on Adult Probation.

Third Priority: Program JS-5, Competitive Cooperative Agreement Program to Develop Statistical Techniques and Methods for the Analysis of Specific Topics in Criminal Justice, and Program JS-6, Competitive Cooperative Agreement Program to Investigate Issues in Criminal Justice for Future Multi-State Statistical Programs.

In addition, Program JS-3 is modified by deletion of the following sentence: "Where no appropriate state-level program exists or is under development, the Bureau of Justice Statistics will entertain applications from metropolitan areas or combinations of metropolitan areas which account for a substantial percentage of the serious offenses committed in the state." Eligibility will be limited to appropriate state-level agencies.

Extensions of the application deadlines for Programs JS-5 and JS-6 were announced on page 60504 of the **Federal Register** on September 12, 1980. Those deadlines (November 30, 1980 for JS-5 and December 31, 1980 for JS-6) remain in effect. However, decisions on funding for these two programs may be deferred, and it is anticipated that only a small number of awards will be made.

Dated: October 24, 1980.

Harry A. Scarr,

Director, Bureau of Justice Statistics.

[FR Doc. 80-33617 Filed 10-28-80; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Babcock & Wilcox Water Reactors; Meeting Postponed

The October 30, 1980 meeting of the ACRS Subcommittee on Babcock and Wilcox Water Reactors has been postponed indefinitely. Notice of this meeting was published October 24, 1980.

Dated: October 24, 1980.

John C. Hoyle,

Advisory Committee Management Officer

[FR Doc. 80-33629 Filed 10-28-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Fluid Dynamics; Meeting

The ACRS Subcommittee on fluid Dynamics will hold a meeting on November 13, 1980 at the Amfac Hotel, 1380 Old Bayshore Highway, Burlingame, CA. to review NucleDyne's Passive Containment System and the status of NRC Programs on Mark II Containments and Asymetric Loads. Notice of this meeting was published Oct. 24, 1980.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Thursday, November 13, 1980, 8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Andrew L. Bates (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., Eastern Time.

Dated: October 22, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33628 Filed 10-28-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on November 13-14, 1980, in Room 1046, 1717 H St., NW, Washington, DC. The Subcommittee will continue to obtain information to aid the full Committee in preparing a response to the NRC Commissioners' request for comments on proposed rulemaking on the storage and disposal of nuclear waste and the adequacy of the record (Waste Confidence Rulemaking PR-50-51), and to obtain information to aid in the preparation of the ACRS Annual Report to Congress on the NRC Reactor Safety Research efforts. Notice of this meeting was published October 24.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss the ACRS Annual Report to Congress on the NRC Reactor Safety Research Program and Budget. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION (9)(B)). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Thursday, November 13 and Friday, November 14, 1980, 8:30 a.m. until the conclusion of business each day.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NCR Staff, their consultants, and other interested persons.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., Eastern Time.

The ACRS is required by Section 5 of the 1978 NRC Authorization Act to review the NRC Reactor Safety Research Program and Budget and to report the results of the review to Congress. In order to perform this review, the ACRS must be able to engage in frank discussions with members of the NRC Staff and such discussions would not be possible if held in public sessions. I have determined, therefore, in accordance with Subsection 10(d) of the Federal Advisory Committee Act (Public Law 92-463), that, should such sessions be required, it is necessary to close portions of this meeting to prevent frustration of the above stated aspect of the ACRS' statutory responsibilities. The authority for such closure is 5 U.S.C. 552b(c)(9)(B).

Dated: October 23, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33630 Filed 10-28-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Facility Operating License No. DPR-40 issued to Omaha Public Power District (the licensee), which revised the Technical Specifications for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska. The amendment is effective as of its date of issuance.

This amendment changes the Technical Specifications to revise the charcoal filter flow rates and clarify the term operable.

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 licensee's submittals dated March 14, 1978 (as supplemented May 1, 26, 1978, March 6 and May 24, 1979), and August 5, 1980, (2) Amendment No. 52 to License No. DPR–40, 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 W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska. 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 14th day of October 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80–33626 Filed 10–28–80; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–443 and 50–444]

Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), et al.; Request for Action Under 10 CFR 2.206

On August 22, 1980, the Commission declined to review a February 11, 1980, decision of the Director of the Office of Nuclear Reactor Regulation (NRR) concerning the Public Service Company of New Hampshire's (PSNH) Seabrook Station. The Director's February 11th decision denied a petition under 10 CFR 2.206 filed by the Seacoast Anti-Pollution League (SAPL). *See* DD–80–6, 11 NRC 371 (1980). While the Commission was considering whether to review the Director's decision, counsel for SAPL wrote the Commission on June 30, 1980, to inquire as to the status of the Commission's deliberations on the Director's decision and to provide additional information which SAPL alleged would support issuance of an Order to Show Cause to PSNH.

Although the Commission declined to review the Director's decision, the Commission has referred SAPL's June 30th letter to the Director for consideration under 10 CFR 2.206. SAPL's letter raises issues concerning the adequacy of emergency planning and the need for measures to mitigate the consequences of severe accidents. As provided in 10 CFR 2.206, appropriate action will be taken on SAPL's letter within a reasonable time.

Copies of SAPL's letter are available for inspection in the Commission's Public Document Room at 1717 H Street N.W., Washington, D.C. 20555, and in the local public document room at the Exeter Public Library, Front Street, Exeter, New Hampshire 03883.

Dated at Bethesda, Maryland this 21st day of October 1980.

For the Nuclear Regulatory Commission.

Edson G. Case,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 80–33627 Filed 10–28–80; 8:45 am]

BILLING CODE 7590–01–M

Three Mile Island Unit 2 Advisory Panel; Establishment

The Nuclear Regulatory Commission has determined that establishment of an Advisory Panel is necessary and in the public interest in order to obtain advice and consultation on the major activities required to decontaminate and safely clean-up the Three Mile Island, Unit 2 nuclear power facility near Harrisburg, Pennsylvania.

The Commission believes that such an advisory panel should be convened for the purpose of obtaining input and views from the residents of the Three Mile Island area and affording Pennsylvania government officials an opportunity to participate in the Commission's decisional process regarding clean-up plans for the facility. The panel will consider the comments expressed by the local residents, and make recommendations to the Commission. These recommendations are expected to aid the NRC in developing the Programmatic Environmental Impact Statement related to clean-up and disposal of radioactive wastes.

The panel will consist of twelve members as follows:

(1) Three members shall be appointed from among persons representing agencies of the State of Pennsylvania;

(2) Three member shall be appointed from among persons representing agencies of the State of Pennsylvania;

(3) Three members shall be appinted from among persons representing the scientific community; and

(4) Three members shall be appointed from among persons having their principal place of residence in the viciinty of the Three Mile Island nuclear reactor.

Dated in Washington, D.C. this 24th day of October 1980.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 80–33701 Filed 10–28–80; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Performance Review Board; Notice of the Names of the Members

AGENCY: U.S. Railroad Retirement Board.

SUMMARY: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: James J. Costello, Bureau of Personnel, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611 (312–968–0932).

SUPPLEMENTARY INFORMATION: Sec. 4314 (c) (1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Maynard I. Kagen, Director of Research

2. Ralph A. Vicari, Director of Data Processing and Accounts

3. George A. DeLaney, Director of Unemployment and Sickness Insurance

4. Kenneth J. Nolan, Deputy Executive Officer (Alternate).

By Authority of the Board.

R. F. Butler,

Secretary of the Board.

[FR Doc. 80–33562 Filed 10–28–80; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21758; 70-6512]

Central Power & Light Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

October 22, 1980.

Notice is hereby given that Central Power & Light Company ("CP&L"), 120 North Chaparral Street, Corpus Christi, Texas 78401, an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CP&L proposes to issue and sell at competitive bidding up to $100,000,000 principal amount of its First Mortgage Bonds, Series R, Due December 1, 2010. The interest rate of the bonds and the price to be paid to CP&L (which will not be less than 99% nor more than 102.75% of the principal amount thereof) will be determined by competitive bidding. The bonds will have refunding protection until December 1, 1985, and will be subject to a 1% sinking fund beginning in 1982. The bonds will be issued under and secured by CP&L's Indenture, dated November 1, 1943, between it and The First National Bank of Chicago, Trustee, as previously amended and as to be further amended by a Supplemental Indenture to be dated December 1, 1980.

The net proceeds from the issuance and sale of the bonds will be used to repay short-term borrowings which were incurred or expected to be incurred to finance construction expenditures and to finance future construction expenditures. Approximately $75,000,000 of short-term borrowings are expected to be outstanding as of December 23, 1980, the planned date of issuance of the bonds. No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of CP&L if it were not part of the Central and South West System. No expenditures will be made by the company for the construction or acquisition of any facility not so needed prior to the time all funds covered by the declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities, construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951), would be needed to provide service to customers of CP&L if it were not part of the *Central and South West System.*

CP&L's estimated construction and fuel exploration and development expenditures for the years 1980 through 1981 are estimated at $198,000,000, $198,000,000, and $278,000,000, respectively. Approximately $168,000,000 of the 1980 estimated total had been expended as of August 31, 1980.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $120,000, including accountants' fees of $7,500 and legal fees of $18,500. The fee of counsel for the purchasers of the bonds is estimated at $19,500 and is to be paid by the successful bidders. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33607 Filed 10-28-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11409; 812-4697]

Cyprus Corp. et al.; Filing of Application for an Order of the Act Exempting Certain Proposed Transactions and Permitting Certain Proposed Transactions

October 22, 1980.

In the matter of The Cyprus Corporation, The RET Income Fund Incorporated, GPM REIT Managers, Inc., Gardner and Preston Moss, Inc., John L. Gardner, Robert F. Birch, One Winthrop Square, Boston, Massuchusetts 02110; and J. B. Fuqua, J. B. Fuqua Foundation, Inc., 3800 First National Bank Tower, Atlanta, Georgia 30383.

Notice is hereby given that The Cyprus Corporation ("Cyprus"), The RET Income Fund Incorporated ("RET"), GPM REIT Managers, Inc. (the "RET Adviser"), Gardner and Preston Moss, Inc. ("Gardner"), John L. Gardner ("Mr. Gardner"), Robert F. Birch ("Mr. Birch"), J. B. Fuqua ("Mr. Fuqua"), and J. B. Fuqua Foundation, Inc. (the "foundation") (collectively, "Applicants"), filed an aplication on June 26, 1980, and amendments thereto on September 18, 1980 and October 17, 1980, for an order: (1) Pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act"), exempting from the provisions of Section 17(a) of the Act, in connection with the proposed merger of RET with and into Cyprus, the issuance of Cyprus to Mr. Fuqua and the Foundation of shares of its common stock in exchange for shares of common stock of RET owned by each of them, and the issuance by Cyprus to Gardner, Mr. Gardner and Mr. Birch of shares of its common stock and preferred stock in exchange for shares of common stock and preferred stock of RET; and (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting Gardner to sell, and Mr. Fuqua to purchase, 88 percent of the stock of the RET Adviser; permitting Mr. Fuqua to contribute to Cyprus at no cost to Cyprus, and Cyprus to accept, the assets of the RET Adviser; permitting the RET Adviser to serve as investment adviser to RET during the period between the closing date of the merger and the effective date of the merger; and permitting Gardner to serve as investment adviser to Cyprus following approval of an investment advisory

agreement between Gardner and Cyprus. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants

According to the application, Cyprus and RET are each registered under the Act as closed-end, diversified, management companies. Applicants represent that, as of September 5, 1980, Cyprus had total net assets of approximately $13.8 million, beneficially owned by approximately 4,300 shareholders of record, and RET had total net assets of approximately $44.2 million, beneficially owned by approximately 6,600 shareholders of record. Applicants represent that Cyprus has outstanding shares of common stock ("Old Cyprus Common") and $1.70 Cumulative Preference shares ("Old Cyprus Preferred"), and that RET has outstanding shares of common stock ("RET Common") and $4.38 Cumulative Preference Shares ("RET Preferred"). Applicants state that the RET Adviser is owned of record 500 shares of RET Common and 100 shares of RET Preferred. Applicants represent that the RET Adviser is an 88-percent-owned subsidiary of Gardner, which is a Massachusetts corporation engaged in business as an investment adviser furnishing investment advice (together with its subsidiaries) to clients, including RET and other investment companies, with combined portfolios of approximately $1 billion. Applicants also state that Gardner is a party to the investment advisory agreement between the RET Adviser and RET (the "Existing RET Advisory Agreement") and may be deemed to be co-adviser of RET for purposes of the Act. In addition, Applicants represent that Audit Investment Research, Inc. ("Audit") is employed by the RET Adviser as a sub-adviser.

Applicants state that Mr. Gardner is the chairman of the board of RET, the RET Adviser and Gardner, and that his principal business is the business of Gardner. Applicants represent that, as of September 5, 1980, Mr. Gardner was the record or beneficial owner of 45.5 percent of the outstanding voting securities and 26.1 percent of the outstanding nonvoting securities of Gardner and the beneficial owner of 10,500 shares of RET Common and 150 shares of RET Preferred. In addition, Applicants state that Mr. Birch is president and a director of RET; president, treasurer, and a director of the RET Adviser; and president and a director of Gardner. Applicants represent that, as of September 5, 1980. Mr. Birch was the record or beneficial owner of 36.4 percent of the outstanding voting securities and 24.9 percent of the outstanding nonvoting securities of Gardner and the beneficial owner of 2,000 shares of RET common and 154 shares of RET Preferred.

Applicants state that Mr. Fuqua is the president and chairman of the board of Cyprus and the beneficial owner of 605,000 shares, or 37.2 percent, of Old Cyprus Common which amounts to 26.5 percent of the outstanding voting stock of Cyprus. Of this stock, Applicants state that 600,000 shares are owned in the name of Fuqua Investment Company ("FIC"), a Georgia corporation all of the stock of which is owned by Mr. Fuqua, and 5,000 shares are owned in the name of the Foundation. In addition, Applicants state that Mr. Fuqua may be deemed to be the beneficial owner of 630,600 shares, or 16.6 percent, of the outstanding shares of RET Common, which amounts to 14.4 percent of the outstanding voting stock of RET. Of this stock, Applicants state that 480,600 shares are owned in Mr. Fuqua's name and 150,000 shares are owned by the Foundation. Applicants respresent that neither Mr. Fuqua, FIC nor the Foundation owns Old Cyprus Preferred or RET Preferred.

Applicants represent that the Foundation, a Georgia nonprofit corporation, was organized by Mr. Fuqua, who is the chief contributor to the Foundation and serves as its president and one of its three directors. Applicants also represent that the Foundation is a charitable organization exempt from federal income taxation. Applicants state that the Foundation is the record owner of 3.9 percent (150,000) shares of the outstanding shares of RET Common and 0.3 percent (5,000 shares) of the outstanding shares of Old Cyprus Common.

Proposed Transactions

The transaction which gives rise to most of the matters discussed in the application is the merger of RET with and into Cyprus (the "Merger"). Applicants represent that the Merger and certain related transactions are governed by the "Amended and Restated Plan of Recapitalization of The Cyprus Corporation and Agreement and Plan of Merger by and between The Cyprus Corporation and The RET Income Fund Incorporated" dated as of September 9, 1980 (the "Merger Agreement"). Applicants represent that the Merger Agreement will be submitted for approval of (1) the holders of a majority of the outstanding shares of Old Cyprus Common and Old Cyprus Preferred, each voting as a separate class, (2) the holders of a majority of each class of Cyprus capital stock, other than those shares owned by Mr. Fuqua or his affiliates or associates, and (3) the holders of two-thirds of the outstanding shares of RET Common and RET Preferred, each voting as a separate class. Applicants state that, subject to the satisfaction of certain conditions, the closing of the Merger will take place on the next business day following the last to adjourn of the shareholders' meetings of RET and Cyprus called for the purpose of approving the Merger Agreement, or on such later date as may be mutually agreed upon by RET and Cyprus (the "Closing Date"), and that the Merger will be consummated on the tenth business day following the Closing Date (the "Effective Date").

Applicants state that immediately prior to the Merger Cyprus will effect a recapitalization by means of a reverse split whereby each three shares of Old Cyprus Common will be converted to one $.30 par value common share ("New Cyprus Common") and that Cyprus will establish a new class of preferred stock to be denominated Cyprus $1.80 Cumulative Preferred Shares ("New Cyprus Preferred"). Applicants represent that provisions of New Cyprus Preferred are: (a) a cumulative preference dividend of $1.80 per share payable quarterly; (b) a liquidation preference at the Effective Date of approximately $15.40 per share (which is calculated by determining the total liquidation preference of Old Cyprus Preferred and RET Preferred immediately prior to the Merger, and dividing that number by the total number of shares of New Cyprus Preferred to be issued in the Merger), which will increase at the rate of $.35 per share annually, commencing November 1, 1981 and each November 1 thereafter through November 1, 1991, at which time the liquidation preference will increase to the extent required to total $20; (c) the right to convert such shares at any time at the then current liquidation preference, into up to two shares of New Cyprus Common with New Cyprus Common valued at its then net asset value so long as Cyprus is registered under the Act; and (d) New Cyprus Preferred may be called for redemption at an initial price of $23 per share, which will decrease by $.25 per share annually, commencing October 30, 1981 and each October 31 thereafter through October 31, 1992, at which time the redemption price will be $20 per share (all outstanding shares of New Cyprus Preferred must be retired on October 31, 1992 at a price of $20 per

share). Applicants state that one share of New Cyprus Preferred will be exchanged for each outstanding share of Old Cyprus Preferred.

Applicants state that in the Merger each share of RET Common will be converted into that number of shares of New Cyprus Common which will have a net asset value equal to the net asset value of a share of RET Common as of the close of business on the business day immediately preceding the Closing Date and that three shares of New Cyprus Preferred will be issued in exchange for each share of RET Preferred. Applicants state that the Merger Agreement provides that upon the consummation of the Merger Cyprus, as the surviving corporation (the "Surviving Corporation"), will be authorized to operate as a non-diversified company as defined in the Act. Following the Merger, Applicants represent that the Surviving Corporation intends to meet the requirements of Subchapter M of the Internal Revenue Code of 1954, as amended, and would be able to invest up to 25 percent of its assets in the stock of each of two companies which are in different industries. Thus, Applicants maintain, the Surviving Corporation will have investment objectives substantially similar to those of Cyprus and RET—primarily to obtain current income sufficient to pay dividends on outstanding preferred stock and, secondarily, to enhance the value of outstanding common stock. Applicants represent that to the extent consistent with its primary objective, the Surviving Corporation will have as its long-term objective the acquisition of a significant investment interest in one or more companies for the purpose of changing from an investment company to an operating or holding company, although, in view of its primary investment objective, Applicants anticipate that the Surviving Corporation will continue to conduct a significant investment business following such change.

Applicants state that, at the time of the closing under the Merger, Mr. Fuqua, under the terms of a purchase agreement dated as of March 28, 1980, will purchase all of the outstanding stock of the RET Adviser from its shareholders for an aggregate cash purchase price of $500,000 plus accrued management fees (the "Share Purchase Transaction"). Applicants represent it is planned that the RET Adviser will continue to serve as investment adviser of RET between the Closing Date and the Effective Date, and that immediately following the Effective Date Mr. Fuqua will contribute all of the assets of the RET Adviser, except cash, cash-equivalent items and securities, to Cyprus. Applicants state that the purchase by Mr. Fuqua of the stock of the RET Adviser will result in an assignment as defined in the Act and, consequently, automatic termination of the Existing RET Advisory Agreement. Applicants represent that since it is planned that the RET Adviser will continue to act as investment adviser to RET between the Closing Date and the Effective Date, the shareholders of RET will be asked to approve for this period an investment advisory agreement (the "New RET Advisory Agreement"), which will be identical to the Existing RET Advisory Agreement except that the RET adviser will not be authorized to enter into a sub-advisory agreement with Audit.

According to the application, Cyprus was internally managed from June 15, 1979 to August 24, 1980 and, accordingly, did not rely principally on a separate investment adviser for investment advice with respect to its investment policies and decisions. Applicants state that since August 25, 1980 Gardner has acted as investment adviser to Cyprus, without compensation, pursuant to an investment advisory agreement dated as of August 25, 1980 (the "GPM Advisory Agreement"). Applicants represent that the GPM Investment Advisory Agreement will be submitted to the shareholders of Cyprus for approval by a majority of the outstanding voting securities of Cyprus and that such approval is a condition to the consummation of the Merger. Applicants state that, if approved, the GPM Advisory Agreement will remain in effect, subject to its termination provisions, for two years from and after the date of its execution, irrespective of whether the Merger is consummated, and thereafter upon requisite annual approval as required by the Act. Applicants state that under the GPM Advisory Agreement Gardner has agreed (1) to manage, subject to the supervision of the board of directors of Cyprus, the investment and reinvestment of the assets of Cyprus, (2) to furnish Cyprus, at Gardner's own expense, with office space and facilities, equipment and personnel for managing investments of Cyprus and to provide, if desired by Cyprus, members of Gardner's organization to serve as officers or agents of Cyprus, and (3) to assist in administering the affairs of Cyprus, subject to the supervision of the Cyprus board of directors by furnishing to Cyprus all necessary office facilities, equipment and personnel, in order to perform such administrative services and arranging, if desired by Cyprus, for members of its organization to serve without salary from Cyprus as officers or agents of Cyprus to perform such services. Applicants state that under the GPM Advisory Agreement Gardner assumes and shall pay or reimburse Cyprus for the compensation, if any, of the officers of Cyprus who are employees of Gardner, and the charges and expenses incurred by Gardner for Cyprus for such office space. Applicants also represent that the GPM Advisory Agreement provides that Cyprus will assume and pay all expenses other than those specifically required to be paid by Gardner. Applicants state that as compensation for its services under the GPM Advisory Agreement Gardner will be paid by Cyprus as follows: (a) for all services during the period commencing with the date of the GPM Advisory Agreement and terminating upon the date of approval of the GPM Advisory Agreement by the shareholders of Cyprus, no compensation will be paid by Cyprus to Gardner; (b) for all investment advisory services rendered after the date of approval of the GPM Advisory Agreement by the shareholders of Cyprus, Gardner will be paid a fee, payable monthly and computed at the rate of .5 percent per year of the average of the weekly aggregate net assets of Cyprus up to $20,00,000, zero percent per year of the average of the weekly aggregate net assets in excess of $20,000,000 and up to the combined net assets of Cyprus and RET as of the Effective Date (as defined in the Merger Agreement) (the "Effective Date Assets") and .25 percent of the average of the weekly aggregate net assets in excess of the Effective Date Assets; and (c) for all administrative services rendered by Gardner ("Covered Administrative Services") after approval of the GPM Advisory Agreement by the Cyprus shareholders, Gardner will be paid by Cyprus an annual fee of $20,000.

Sections 17(a) and 17(b)

Section 17(a) of the Act provides, in part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, knowingly to sell any security or other property to such registered company, or knowingly to purchase from such registered investment company, any security. Section 17(b) of the Act provides, however, that the Commission upon application may exempt a transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned,

and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Mr. Fuqua is an affiliated person of Cyprus and the Foundation is an affiliated person of Mr. Fuqua. In addition, Applicants state that in the Merger Mr. Fuqua and the Foundation will be selling shares of RET Common to Cyprus in exchange for shares of New Cyprus Common. Applicants also state that Messrs. Gardner and Birch are affiliated persons of Gardner and affiliated persons of an affiliated person of Cyprus and that, in the Merger, they will be selling shares of RET Common and RET Preferred in exchange for shares of New Cyprus Common and New Cyprus Preferred, respectively. Accordingly, Applicants request an order, pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act in connection with the Merger: (1) The issuance of shares of New Cyprus Common in the Merger to Mr. Fuqua and the Foundation in exchange for shares of RET Common owned by each of them; and (2) the issuance of shares of New Cyprus Common and New Cyprus Preferred in the Merger to Gardner and Messers. Gardner and Birch in exchange for shares of RET Common and RET Preferred owned by each of them.

In support of this request, Applicants represent that Mr. Fuqua, the Foundation, Gardner and Messrs. Gardner and Birch will receive New Cyprus Common in exchange for the RET Common owned by them in precisely the same manner as all other holders of RET Common, and that Gardner and Messrs. Gardner and Birch will receive New Cyprus Preferred in exchange for the RET Preferred owned by each of them in precisely the same manner as all other holders of RET Preferred. Applicants maintain that the transactions with respect to RET Common will be on the basis of the net asset values of New Cyprus Common and RET Common and are consistent with the policies of Cyprus and RET and with the provisions of the Act. Applicants submit the one-for-three reverse split with respect to Old Cyprus Common is merely an administrative action designed to enhance the market value of New Cyprus Common without changing the proportionate ownership of New Cyprus Common and that the issuance of New Cyprus Common in the Merger in exchange for RET Common will be determined solely on the basis of relative net asset values of such common stock. Applicants argue that, with respect to the issuance of the New Cyprus Preferred in exchange for both Old Cyprus Preferred and RET Preferred, the boards of directors of Cyprus and RET weighed the perceived advantages of the Merger to the holders of their respective preferred shares against the fact that the consummation of the Merger would, in effect, extend the redemption date of the preferred shares of each corporation. Applicants represent that each board separately concluded that the advantages of the Merger to the holders of its preferred shares outweigh any disadvantages from the extention of redemption dates. In addition, Applicants argue that the change in diversification limitations and the improved asset base resulting from the Merger will better enable the Surviving Corporation to achieve the basic investment objective of earning the dividends for the New Cyprus Preferred and obtaining increases in net asset value for the benefit of the New Cyprus Common and to pursue an investment and business strategy designed to take advantage of the current undervaluation of equity securities of operating companies.

Section 17(d) and Rule 17d–1

Section 17(d) of the Act and Rule 17d–1 thereunder provide that it shall be unlawful for an affiliated person, or an affiliated person of an affiliated person, or a registered investment company, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or arrangement in which any such registered investment company, or company controlled by such registered investment company, is a participant, unless an application concerning such arrangement has been granted by the Commission. In passing upon such application, the Commission will consider whether the participation of such registered investment company is on a basis different from, or less advantageous than, that of the other participants.

Applicants state that the Share Purchase Transaction, the continuation of the RET Adviser as investment adviser to RET between the Closing Date and the Effective Date, and the services of Gardner under the GPM Advisory Agreement as investment adviser to Cyprus following approval of the GPM Advisory Agreement (and, if the Merger is consummated, to the Surviving Corporation following the Merger) are transactions which may be deemed to constitute joint enterprises or other joint arrangements. Accordingly, Applicants request an order, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder: (1) Permitting the Share Purchase Transaction, (2) permitting Mr. Fuqua to contribute to Cyprus and Cyprus to accept the assets of the RET Adviser following the Share Purchase Transaction, (3) permitting the RET Adviser to serve as investment adviser to RET during the period between the Closing Date and the Effective Date; and (4) permitting Gardner to serve as investment adviser to Cyprus following the approval of the GPM Advisory Agreement.

In support of the Share Purchase Transaction, Applicants represent that the assets of the RET Adviser consist of cash and cash-equivalent items, investment records, investment memoranda, research material, and computer software programs and printouts concerning sercurities and investment matters, but that the cash and cash-equivalent items (including securities) will be distributed to the shareholders of the RET Adviser prior to the Share Purchase Transaction. According to Applicants, Mr. Fuqua perceived that the Share Purchase Transaction would give Cyprus an additional element of bargaining power in negotiating an agreement with an external investment adviser and that, in the event that the Surviving Corporation determined to resume internal management, the assets of the RET Adviser would benefit management at that time. Accordingly, Applicants submit that the Share Purchase Transaction is consistent with the provisions, policies and purposes of the Act and that, to the extent that the participation of the Surviving Corporation in the Share Purchase Transaction is different from that of any other participant, it is at least equally advantageous, since the Surviving Corporation will benefit from the transactions at no cost to it.

In support of the New RET Advisory Agreement, Applicants state that the directors of Cyprus and RET concluded, in approving the Merger Agreement, that it was appropriate to provide an adequate amount of time between the Closing Date and the Effective Date in order to confirm the relative net asset values of the common stocks of Cyprus and RET and to complete other transitional matters required in connection with the Merger. Applicants submit that it is necessary for RET to continue to receive investment advisory services during this period and, consequently, that the New RET Advisory Agreement is necessary and in the best interests of RET. In addition to providing investment advice during this period, Applicants state that the RET Adviser will provide substantial services in connection with transitional

matters involved in the Merger. Applicants state that the New RET Advisory Agreement is identical to the Existing RET Advisory Agreement, except that the RET Adviser will not be authorized to enter into a sub-advisory agreement with Audit, and, accordingly, RET will be receiving substantially the same level of investment advisory services from substantially the same personnel drawing on substantially the same advisory resources for the same rate of compensation during this period as has been the case in the past. Applicants submit that the New RET Advisory Agreement is in the best interests of RET, that such Agreement is consistent with the provisions, policies and purposes of the Act, and the participation of RET in the New RET Advisory Agreement is not on a basis different from or less advantageous than that of any other participant in the transaction.

In support of the GPM Advisory Agreement, Applicants state that the directors of Cyprus unanimously approved the GPM Advisory Agreement after considering the following factors: (1) During the period from August 30, 1979 to August 25, 1980 the investment performance of Cyprus, on an internally-managed basis, had been disappointing; (2) during the same period the overall investment performance of RET, under the management of the RET Adviser, was significantly better than that of Cyprus; and (3) RET and Cyprus are extremely similar investment companies since each was established with the same basic investment objectives and policies and the subsequent experience of each has been similar. In addition, Applicants represent that the board of directors of Cyprus has determined that the proposed fee under the GPM Advisory Agreement, based upon the size of Cyprus' portfolio, is substantially less than the costs which Cyprus would incur for investment management and Covered Administrative Services on an internally-managed basis, and appears to be less than the fee which would normally be charged by other external investment advisers for rendering similar services. Further, Applicants state that Cyprus' directors were advised that, if the Merger were consummated, the resulting fee under the GPM Advisory Agreement for an investment company with approximately $55,000,000 in net assets (which, based upon the size of the Cyprus and RET portfolios as of August 21, 1980, approximates the combined net assets of the Surviving Corporation upon consummation of the Merger) would be less than Cyprus' board of directors anticipated incurring for investment management and Covered Administrative Services on an internally-managed basis. In addition, Applicants represent that the amount of the fee under the GPM Advisory Agreement appeared to the board to be less than the amount which would normally be charged by other external investment advisers for rendering similar advisory and administrative services. In summary, Applicants maintain that the costs proposed under the GPM Advisory Agreement are more economical to Cyprus and that, based upon either the existing net assets of Cyprus or the anticipated combined net assets of RET and Cyprus upon consummation of the Merger, the resulting fee can be expected to be less than the amount which Cyprus had been expending when internally managed and less than the fees charged by other external advisers for providing similar services. Consequently, Applicants submit that the GPM Advisory Agreement is in the best interests of Cyprus and is consistent with the provisions, policies and purposes of the Act, and that participation of Cyprus in the GPM Advisory Agreement is not on a basis different from or less advantageous than that of any other participant in the transaction.

Notice is further given than any interested person may, not later than November 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33608 Filed 10–28–80; 8:45 am]

BILLING CODE 8010–01–M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

October 22, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of:

Patrick Petroleum Co., Common Stock, $0.10 Par Value (File No. 7–5768)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 13, 1980 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33606 Filed 10–28–80; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1920; Amendment No. 1]

Indiana; Declaration of Disaster Loan Area

The above declaration (see 45 FR 65100) is hereby amended by adding the following counties and adjacent counties within the State of Indiana which constitute a disaster area as the

result of physical damage caused by natural disasters as indicated:

County	Natural disaster	Date
Benton	Drought and high temperature.	6/20–7/30/80
Carroll	Heavy rains	6/1–2, 7/80
	Drought	6/20–7/31/80
Clinton	Drought	6/20–7/31/80
Lake	Drought	6/20–8/7/80
La Porte	Drought and high temperature.	7/1–7/31/80
Marshall	Drought and high temperature.	7/1–8/2/80
Pulaski	Drought	6/20–7/31/80
St. Joseph	Drought	6/20–7/31/80
Starke	Drought	6/19–7/31/80
Vermillion	Drought	6/20–7/31/80

All other information remains the same, i.e. the termination date for filing applications for physical damage is until the close of business on March 16, 1981, and for economic injury until the close of business on June 16, 1981.

Dated: October 16, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80–33696 Filed 10–28–80; 8:45 am]

BILLING CODE 4000–01–M

[License No. 09/09–5267]

Solid Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On August 12, 1980, a notice was published in the **Federal Register** (45 FR 53629), stating that Solid Capital Corporation, located at 652 Kearney Street, Suite 1 & 2, San Francisco, California 94108, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1980), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business August 27, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 09/09–5267 to Solid Capital Corporation, on October 10, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 22, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80–33690 Filed 10–28–80; 8:45 am]

BILLING CODE 8025–01–M

Sunshine Act Meetings

Federal Register
Vol 45, No. 211
Wednesday, October 29, 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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COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 AM Friday, November 7, 1980.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1981-80 Filed 10-27-80; 12:56 pm]

BILLING CODE 6351-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, November 3, 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)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Application for Consent to Consolidate and Establish two Branches:

Manufacturers Bank of Saline, Saline, Michigan, an insured State nonmember bank, for consent to consolidate under its charter and title with State Savings Bank of Clinton, Clinton, Michigan, also an insured State nonmember bank, and to establish the two offices of State Savings Bank of Clinton as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,496-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Case No. 44,508-L—The Drovers' National Bank of Chicago, Chicago, Illinois.

Case No. 44,514-NR—United States National Bank, San Diego, California.

Case No. 44,537-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

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 the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: October 27, 1980.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

S-1984-80 Filed 10-27-80 3:08 pm]

BILLING CODE 6714-01-M

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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, November 3, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed merger of The Huntington National Bank, Columbus, Ohio, and The First National Bank of Burton, Burton, Ohio.

Request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed consolidation of Fidelity National Bank of Pa., Williamsport, Pennsylvania, and Commonwealth Bank and Trust Company, Muncy, Pennsylvania.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Bronson, Bronson & McKinnon, San Francisco, California, in connection with the receivership of United States National Bank, San Diego, California.

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. 44,524-SR—Village Bank, Pueblo West, Colorado.

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.

Report of the Controller regarding the Corporation's securities portfolio inventory as of September 30, 1980.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., 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: October 27, 1980.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

[S–1985–80 Filed 10–27–80; 3:08 pm]

BILLING CODE 6714–01–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

October 24, 1980.

Amendment to Previous Notice.

TIME AND DATE: 10:00 a.m., Wednesday, October 29, 1980.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will also consider and act upon the following:

4. Quarto Mining Company, North American Coal Corporation, etc., Docket Nos. LAKE 79–119, etc.; Petition for Discretionary Review.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5632.

[S–1982–80 Filed 10–27–80; 2:00 pm]

BILLING CODE 6820–12–M

5

FEDERAL RESERVE SYSTEM (Board of Governors).

TIME AND DATE: 10:00 a.m., Monday, November 3, 1980.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: October 24, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S–1972–80 Filed 10–24–80; 4:23 pm]

BILLING CODE 6210–01–M

6

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: F.R. 45, October 20, 1980, Page No. 69341.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., Friday, October 24, 1980.

CHANGES IN THE AGENDA: The meeting has been cancelled.

[S–1983–80 Filed 10–27–80; 2:39 pm]

BILLING CODE 6750–01–M

7

INTER–AMERICAN FOUNDATION.

TIME AND DATE: 1:30 to 5:30 p.m., November 10, 1980.

PLACE: Board Room, Inter-American Foundation, 1515 Wilson Boulevard, Arlington, VA 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Swearing-in of New Board Members.
2. Election of Retiring Board Members to Advisory Council.
3. Chairman's Report.
4. President's Report.
5. Minutes of the September 16, 1980, Meeting.
6. Report on the Foundation's Program in Mexico and Central America.
7. Review of the Foundation's Fellowship Program.
8. Discussion of the Foundation's Relations with Congress.
9. Overview of Project Histories in Ecuador.
10. Discussion of Board Meeting in Mexico, January, 1981.

CONTACT PERSON FOR MORE INFORMATION: Lawrence E. Bruce, Jr., (703) 841–3812.

[S–1978–80 Filed 10–24–80; 4:32 pm]

BILLING CODE 7025–01–M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10:00 a.m. on November 6, 1980.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell (202) 634–4015.

Dated: October 27, 1980.

[S–1986–80 Filed 10–27–80; 3:42 pm]

BILLING CODE 7600–01–M

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1:00 p.m. on November 13, 1980.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell (202) 634–4015.

Dated: October 27, 1980.

[S–1987–80 Filed 10–27–80; 3:43 pm]

BILLING CODE 7600–01–M

10

POSTAL SERVICE (Board of Governors).

Notice of meeting.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. 7.5) and the Government in the Sunshine Act (5 U.S.C. § 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Thursday, November 6, 1980, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

Agenda

1. Minutes of the meeting of October 6, 1980.

2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. 1981 Meeting Dates. (The Board will consider a schedule of dates for Board meetings during 1981.)

4. Quarterly Report on Financial Performance. (Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the Quarterly Summary of Financial Performance.)

5. Quarterly Report on Service Performance. (Mr. Jellison, Senior Assistant Postmaster General, Operations Group, will present the Quarterly Summary of Service Performance.)

6. Report on Employee and Labor Relations. (Senior Assistant Postmaster General Ulsaker and members of the Employee and Labor Relations Group staff will report to the Board on developments in the E&LR area.)

7. Automated System for the expanded Zip Code Program. (The Board will consider a proposed capital investment for the procurement of optical character reader channel sorters and related mechanization for the expanded Zip Code letter mail processing system.)

W. Allen Sanders,

Assistant Secretary.

[S-1979-80 Filed 10-24-80; 4:33 pm]

BILLING CODE 7710-12-M

11

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9:00 a.m., November 6, 1980.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois, 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

(1) Consulting/Technical Assistance Project for the Board, May–June 1979.
(2) Registration requirements for unemployment benefits.
(3) President's Reorganization Project—Report on Strengthening Federal Cash Management.
(4) Procedure for handling of routine correspondence.
(5) Progress report on relocation of the Board.
(6) Appeal of nonwaiver of overpayment, Bennie Williams.
(7) Appeal of nonwaiver of overpayment, Ernest Jones.
(8) Appeal of nonwaiver of overpayment, Auriel L. Kern.
(9) Geraldine C. Stinson appeal (unemployment insurance benefits as social insurance).

Portion Closed to the Public

(A) Appeal from referee's denial of disability annuity, Mario Compomizzi.
(B) Appeal from referee's denial of disability annuity, Ronald J. Atkins.
(C) Appeal from referee's denial of disability annuity, Harold Hoffer.
(D) Appeal from referee's denial of disability annuity, Clinton B. Hundley.
(E) Appeal from referee's denial of disability annuity, Betty L. Voerg.
(F) Appeal from referee's denial of disabled widow's insurance annuity, Elvira Biscaind.
(G) Appeal from referee's denial of disability annuity, William E. Deramus.
(H) Appeal from referee's denial of disability annuity, Edward R. Yun.
(I) Appeal from referee's denial of disability annuity, Alfred L. Jacques.

CONTACT PERSON FOR MORE INFORMATION:

R. F. Butler, Secretary of the Board, Com. No. 312–751–492C, FTS No. 387–4920.

[S-1980-80 Filed 10-27-80; 9:54 am]

BILLING CODE 7905-01-M

12

TENNESSEE VALLEY AUTHORITY (Meeting No. 1255).

TIME AND DATE: 10:15 a.m., EST, Monday, November 3, 1980.

PLACE: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

Discussion Item

1. Proposed policy for dispersed power production.

Action Items

A—Project Authorization

1. No. 3530—Install additional chemical treatment ponds at Colbert, Johnsonville, and Widows Creek Steam Plants.
2. No. 3534—Replacement of superheater and reheater pressure parts assemblies in Gallatin Steam Plant Units 3 and 4.

B—Purchase Awards

1. Req. No. 824655 (Reissue)—Air Distribution Components for Hartsville and Phipps Bend Nuclear Plants.
2. Req. No. 827934—Computer Center Building for TVA's Chattanooga Office Complex.
3. Req. No 826618—Erection of turbine generator, main feed pumps and feed pump turbines, for Yellow Creek Nuclear Plant, Unit 1.
4. Req. No. 177450—Replacement pressure parts assemblies for Gallatin Units 3 and 4.

C—Power Items

1. Adoption of supplemenal resolution authorizing 1980 Series E Power Bonds.
2. Resolution authorizing the Chairman and other Executive Officers to take further action relating to issuance and sale of 1980 Series E Power Bonds.
3. Deed conveying to Central Electric Power Association, Carthage, Mississippi, the remaining 1.59-acre portion of TVA's Kosciusko Substation site located in Attala County, Mississippi.
4. Bill of sale and quitclaim deed covering conveyance of a 6.5-mile section of TVA's deenergized Lewisburg-Columbia District >No. 1 46–kV Line to the Duck River Electric Membership Corporation.
5. Lease agreement with the city of Okolona, Mississippi, covering lease of a section of TVA's Okolona-Amory 46–kV Line.
6. Letter agreement with Middle Tennessee Electric Membership Corporation covering arrangements for lease of an additional portion of TVA's Smyrna 161-kV Substation site.

D—Personnel Items

* 1. Change of status for John R. Paulk from Manager, Resource Programs, to Director of Land and Forest Resources, Office of Natural Resources, Norris, Tennessee.
* 2. Temporary change of status for E. David Daugherty, Jr., from Assistant to the Director to Assistant Director, Division of Energy Demonstrations and Technology; Office of Power, Chattanooga, Tennessee.
3. Consulting contract with Selox, Inc., Chattanooga, Tennessee, for advice and assistance in connection with TVA's planned coal gasification facility, requested by the Office of Coal Gasification.
4. Consulting contract with E. L. Clark, Chevy Chase, Maryland, for advice and assistance in connection with TVA's planned coal gasification facility, requested by the Office of Coal Gasification.

E—Real Property Transactions

* 1. Conveyance of highway easement to State of South Dakota over certain of TVA's unpatented mining claims in Fall River County, South Dakota.
. Filing of condemnation suits.

F—Unclassified

* 1. Prepayment of costs for transporting 5,000 tons of Eastern United States coal to a commercial-scale coal gasification plant in Greece for testing purposes.
* 2. Settleement of dispute under contract with Continental Oil Company (Conoco) concerning 1977 and 1978 deliveries of uranium concentrates.
3. Request of Vincent J. Van Pelt, a TVA employee, for permission to file application for patent on a protection device for mechanical equipment.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: October 27, 1980.

[S-1988-80 Filed 10-27-80; 3:52 pm]

BILLING CODE 8120-01-M

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* Approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Wednesday
October 29, 1980

Part II

Department of the Interior

Heritage Conservation and Recreation Service

Urban Park and Recreation Recovery Program

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

36 CFR Part 1228

Urban Park and Recreation Recovery Program

AGENCY: Heritage Conservation and Recreation Service, U.S. Department of the Interior.

ACTION: Final rule.

SUMMARY: This Rule is published to finalize the administration of the grant-in-aid program under the Urban Park and Recreation Recovery Program (Title X of the National Parks and Recreation Act of 1978, Pub. L. 95–625) and to report on comments received on the interim regulations published in the August 9, 1979, **Federal Register** (44 FR 47018). The Program Information section has also been revised in response to general requests for clarification.

EFFECTIVE DATE: November 28, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Powell Allen, Ms. Carol Jacobson, or Ms. Runore Wycoff, Division of Urban Programs, Heritage Conservation and Recreation Service, 440 G Street NW., Room 310, Washington, D.C. 20243 (202) 343–5971.

SUPPLEMENTARY INFORMATION: In the National Urban Policy Report of March 27, 1978, a new Federal Grant Program was proposed for urban communities to compete for funds to revive and rebuild parks and recreation facilities. On October 13, 1978, the National Parks and Recreation Act of 1978, Pub. L. 95–625, was passed by the Congress; and on November 10, 1978, the President signed the bill into law. Title X, the Urban Park and Recreation Recovery (UPARR) Act of 1978, authorized the Secretary of the Interior to establish a five year program to provide Federal grants to economically hard-pressed communities, specifically for the rehabilitation of critically needed recreation areas and facilities, and the development of improved recreation programs. The Secretary of the Interior has delegated the responsibility for developing the Urban Park and Recreation Recovery Program to the Director, Heritage Conservation and Recreation Service. The Heritage Conservation and Recreation Service provides technical and supervisory grant assistance to applicants.

On August 9, 1979, the Heritage Conservation and Recreation Service published as an Interim Rule in the **Federal Register** (44 FR 47018) Subparts A, C and D of the UPARR Regulations. Subpart B, Uniform Criteria for Preparation of Local Recovery Action Programs, was published as a Final Rule on March 10, 1980 (45 FR 15456). Appendixes A and B, Program Eligibility Provisions, were published as a Final Rule on October 9, 1979 (44 FR 58088).

It is necessary to publish these Grant Procedures as a Final Rule to respond to comments received on the Interim Rule, and complete the timetable for UPARR Program administration. Therefore, in accordance with the Departmental regulations on rulemaking in 43 CFR 14, these Grant Procedure requirements are published as a final rule effective (30 days after date of publication). Comments on the Interim rules published August 9, 1979, (44 FR 47018) are incorporated into these final rules as described in the Public Comments section. The public was given a 60 day comment period on the Interim rules which was effective from August 9 to October 9, 1979. Other major changes between the interim and final regulations are discussed in the Revisions section following Public Comments.

A Final Regulatory Analysis has been submitted to the Department of the Interior based upon the determination of significance for these Grant Procedure regulations. Copies of the Final Regulatory Analysis may be obtained from the Heritage Conservation and Recreation Service, Division of Urban Programs, 440 G Street, N.W., Room 310, Washington, DC 20243. Applicability of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally-assisted programs and projects is explained in § 1228.51 of these regulations. The Urban Park and Recreation Recovery Program is listed as No. 15.417 in the Catalog of Federal Domestic Assistance.

Program Information

The objectives of the Urban Park and Recreation Recovery (UPARR) Program are to assist physically and economically distressed urban jurisdictions to revitalize their recreation systems, and to enhance overall recreation opportunities through the use of existing and potential recreation resources. The program is targeted to distressed jurisdictions based upon criteria established by the Secretary, and published in the **Federal Register**, Tuesday, October 9, 1979, (44 FR 58088), as Appendices A and B of this Part.

The intent of the UPARR Program is to stimulate ongoing local commitments to system revitalization and operation, in line with overall urban revitalization objectives of the National Urban Policy. The program aims to develop linkages between cities and States, between urban recreation, physical resource and human services programs, between the Federal Government and the States, and between the Department of the Interior and other Federal agencies, that will help ensure the long-term success of overall urban revitalization efforts.

To meet the objectives of this program, there are three types of grants available which are discussed in Subparts C & D of this Part.

(a) Recovery Action Program Grants.—Section 1007(c) of the Act allows the provision of up to 50 percent matching grants to eligible local applicants, as listed in Appendix B to this Part, or to those discretionary applicants within Standard Metropolitan Statistical Areas (SMSAs), for the development of Recovery Action Programs, as described in Subpart B, March 10, 1980 (45 FR 15456).

(b) Rehabilitation and Innovation Grants.—Subject to appropriate requirements as established by OMB Circulars A–102 and A–95, Federal Management Circular 74–4, Executive Orders, and regulations mandated by law, financial assistance is available to eligible general purpose local governments (**Federal Register**, October 9, 1979, [44 FR 58088]) for the purpose of rehabilitating and revitalizing recreation systems. These grants are competitive, and targeted to aid in the rehabilitation of urban recreation facilities which have fallen into disuse or disrepair; to encourage innovations in the delivery of urban recreation services; to stimulate and support local commitments to recreation system recovery and maintenance; and to improve the management and delivery of recreation service to urban residents. The targeting of UPARR assistance will focus on persons and places most in need.

Public Comments

A 60 day required comment period on the Interim Rule for these regulations ended on October 9, 1979. A total of 18 letters were received. Of these, nine were general information requests. The nine remaining letters specifically addressed the regulations, and contained 17 substantial comments.

Public Comment Summary Chart

Subject of comment		Number of comments
§ 1228.32	Funding and matching share	3
§ 1228.33	Timing and duration of projects	2
§ 1228.36	Land ownership and control	2
§ 1228.37	Pass-through funding	3

Subject of comment	Number of comments
§ 1228.44 Fundable elements	2
§ 1228.50 Grant selection criteria	3
§ 1228.56 Historic preservation compliance	2
Total comments received	17

§ 1228.32 Funding and matching share.

1. One question asked whether the in-kind contributions, services or cash used as a matching share for the UPARR Program, could also be used as a match for other programs. They may not be used for other federal program matches per OMB Circular A–102, Attachment F, 3. (b)(2) which states:

(b) All contributions, both cash and in-kind, shall be accepted as part of the grantee's matching share when such contributions meet all of the following criteria:

(2) Are not included as contributions for any other federally-assisted program;

As a result of this comment, a sentence has been added to clarify Section 1228.32 (a) and (c)(2); "In-kind contributions for the UPARR Program may not be used as the matching share for other federally-assisted programs."

2. A clarification was requested on the local use of State or private matching contributions. The use of State or private contributions is entirely dependent upon agreements made between the State or private contributor and the local applicant. If no specific type or element of a proposal has been earmarked for the contributions, the local applicant may use the funds in any way consistent with the intent of that proposal.

3. The use of in-kind donations for the 50% match for preparation of a Recovery Action Program was questioned because of the wording in § 1228.32(a) "Local in-kind donations—may be used as *part of* the 50% local match." This section has been corrected to state that *all or part* of the 50% match may be comprised of in-kind donations.

§ 1228.33 Timing and duration of projects.

1. A comment on this section regarded confusion with the wording, and requested explanation of the rationale behind the one year initiation limit for Innovation proposals. The one year limit on initiating Innovation proposals is based on a legislative requirement that successful Innovation proposals be used in annual reports to evaluate their national demonstration possibilities and effectiveness. Therefore, it was determined that once an Innovation grant is approved, one year was a reasonable time within which the project should begin to produce some desired results. Innovation proposals are primarily service-oriented rather than construction-oriented. For this reason, they should not incur long construction delays, or require more seasonable conditions for getting a project started. It was determined, therefore, that it would not be unreasonable to require evidence, at the end of one year, that an Innovation project could be successful enough to provide recreation opportunities and allow nationwide exposure to the idea. Also, after only one year, with the achievements and/or problems still fresh in the minds of those implementing the project, sharing the idea with other communities could begin, while there was still time in the UPARR Program budget to provide coordination and good technical assistance.

Rehabilitation proposals must be initiated during the first full construction season following grant approval. For both Rehabilitation and Innovation projects, three construction seasons or three years, has been established as a reasonable time frame in which to complete all physical rehabilitation work.

2. With regard to staged projects, the question was asked as to whether two approaches would be permitted in applications. The language was clear in this section, and has been clarified to state that both approaches are permissible. An applicant jurisdiction may submit a single proposal application which includes stages for various projects or services. Such a proposal must request the entire amount of funding necessary to complete each stage. An applicant jurisdiction may also submit a proposal which is only one stage of a much larger project. In such applications, the single stage of a larger project must stand on its own merit in the program competition, and provide direct recreation opportunities. Each stage must increase the recreation utility of a site or facility, independent of subsequent stages. Funding of one stage in no way implies that subsequent stages will also be funded.

§ 1228.36 Land ownership, control and conversion.

1. The question was asked as to what constitutes "adequate" tenure and control of the land or facilities. "Adequate" in this case means ownership by the applicant jurisdiction or sub-grantee. If the land is not owned, then a non-revocable lease of at least 25 years, or a non-revocable lease providing ample time to amortize the total costs of the proposed activity, must be in effect at the time of grant approval. After a property is improved or developed with UPARR funds, it may not be converted to other than public recreation use without approval of the Director, HCRS.

2. One comment suggested the possibility of funding projects for nursing homes. It must be emphasized that this program applies only to public or non-profit areas and facilities which provide recreation opportunities to the general public. Institutions such as hospitals or nursing homes, whether in private or public ownership, would normally not qualify for UPARR recreation improvements because they usually serve only the residents of those institutions. There are exceptions, however, and those would be considered. The UPARR Program is targeted to close-to-home neighborhood recreation which must be open to the public and serve all population groups.

§ 1228.37 Pass-through funding.

1. One comment requested the addition of more detailed information on how a non-profit or special purpose agency actually receives pass-through funds, and who is responsible for awarding these funds. This information has been added to the regulations. Grant funds are always awarded to the local applicant jurisdiction who is the grantee. The applicant jurisdiction may, or may not choose to pass-through funds, as stated in the legislation, Section 1006 (a)(1), "At the discretion of such applicants—." A potential pass-through recipient, must work with its local government applicant jurisdiction. The recipient must also comply with priorities identified in the local five year Recovery Action Program. This process is intended to fulfill the UPARR Program priority criteria for participation by neighborhood non-profit groups, create new partnerships between the public and private sectors, and provide assurances that pass-through projects will help revitalize the entire community recreation system.

2. Two comments concerned the fact that some applicant jurisdictions may have difficulty assuming responsibility for pass-through recipients. The legislation for the UPARR program is intended to assist local governments in their systemwide revitalization process, and requires them to make long-term commitments to continuing operations and maintenance. If grants were awarded directly to independent special districts or non-profit groups, there could be no reasonable assurance that public recreation projects were being

coordinated with a local Recovery Action Program, or that projects or services could be maintained beyond the grant funding period. The UPARR Program is based upon the National Urban Policy to make Federal programs more responsive to urban needs, and to give aid to cities with critical problems. Improving partnerships between Federal, State, local officials, private individuals and groups is also a goal of the UPARR Program. Therefore, local commitments of long-term planning and maintenance are necessary to conserve those urban resources in which substantial investments have been made in past years.

§ 1228.44 Fundable elements.

1. One comment suggested that costs associated with work on the grant application, and other costs incurred prior to grant approval should be reimbursable.

(a) With regard to administrative costs incurred for the preparation of application forms and narrative statements, the UPARR Program must take an approach based upon the legislative nature of the program. Assistance from UPARR is awarded on a national competitive basis. Therefore, because there can be no guarantee that a community will receive grants, all competitors are expected to assume responsibility for application preparation. This Federal program is also supportive of a minimum of paperwork. We believe that those communities which have the greatest need for grants, will be able to provide sufficient information in their applications without excess research or complicated analysis costing them more than is necessary. Because this program is targeted to distressed communities, it is realized that many community applications will be brief and to the point. Another program objective is to stimulate local planning, partnerships and initiative, and therefore, fees to consultants to prepare applications are not reimbursable under the UPARR Program.

(b) Costs prior to grant approval. Reasonable architectural and engineering fees essential for preparation of the cost component of a proposal incurred within a period 9 months prior to preapplication submission to HCRS are reimbursable. Other costs incurred prior to approval of a Rehabilitation, Innovation or Recovery Action Program grant are not reimbursable.

2. The second comment on this section asked whether cost increases, after final grant approval, will be considered. No cost increases will be considered after a final grant agreement has been signed. However, shifts of monies within a proposal before approval of the grant, which do not result in a change in competitiveness of the proposal will be considered, but must have prior approval of HCRS. Those respective proposals or parts of projects which require cost increases will have to be resubmitted as new proposals under another grant competition, as stated in § 1228.62.

§ 1228.50 Selection criteria.

1. One comment expressed concerned with the Rehabilitation criteria dealing with the Federal UPARR investment per capita, stating that larger urban areas have more competitive advantage over smaller cities. In response to this comment, the UPARR Program has a Congressional legislative mandate which gives priority to large cities. It is recognized that all communities have specific needs and can use assistance, however, the UPARR legislation specifically states that the program be targeted to large urban jurisdictions experiencing difficulties. Section 1002 (c) and (d) of the Act states:

The Congress finds that—(c) the greatest recreational deficiencies with respect to land and facilities and programs are found in many large cities, especially at the neighborhood level; (d) inadequate financing of urban recreation programs due to fiscal difficulties in many large cities has led to the deterioration of facilities, nonavailability of recreation services, and an inability to adapt recreational programs to changing circumstances.

This legislation provides the direction to fund projects which have a clear impact on local park and recreation systems. A project's anticipated impact in meeting recreation recovery needs, and its effectiveness in terms of dollars spend for benefits gained, are primary considerations. Therefore, the Rehabilitation selection criteria include a per capita quantification to indicate the relationship of grant size to population. However, this criterion is only one of 10, which means that a proposal may rank high in the overall competition, even if it does not score high on this one factor.

2. One comment suggested that the State participation selection criteria be eliminated because some States may not be able provide funding assistance. The legislative intent of the UPARR Act is to encourage States to participate. A State does not have to provide funding assistance for a jurisdiction to receive credit under this criterion. Credit is given if the State provides technical assistance to local governments in recreation planning, proposal design, implementation or operation and maintenance of rehabilitated sites or facilities; or if the State is responsive to urban needs in other State recreation programs.

3. One comment suggested a clarification of Innovation criterion #9 on the transfer of role. This does not necessarily mean a transfer of funding responsibility. Transfer of role can refer to a change in service, management or operation responsibility. For example, if a neighborhood group manages a park with city funds, there is a transfer of the role of management, which may relieve city personnel or equipment to concentrate efforts in other parks. It is not the intent of the Act to substitute Federal money for adequate local funding of recreation programs. As stated in Section 1007(a)(4) of the Act regarding commitments, all applicants must demonstrate: "intention to maintain total local public outlays for park and recreation purposes at levels at least equal to those in the year preceding that in which grant assistance is sought beginning in fiscal year 1980 except in any case where a reduction in park and recreation outlays is proportionate to a reduction in overall spending by the applicant." The intent of this criterion is to promote involvement of quasi-public and private interests in community revitalization. Local governments should continue to provide adequate funding for recreation facilities and programs. However, the burden of operation and maintenance could be eased if community groups and the private sector supplement and enhance recreation opportunities, in concert with local public efforts.

§ 1228.56 Grant program compliance requirements.

Two comments with regard to historic preservation compliance recommended the inclusion of a definition of historic property in § 1228.3 and a reference to the provisions of 36 CFR 800, "Protection of Historic and Cultural Properties". These additions have been made to the regulations.

Minor Revisions to Interim Regulations

The following minor revisions to the interim regulations have been made to clarify the language on administrative policy since the completion of the first three UPARR grant competitions.

1. Most of the Program Information from the interim regulations has been incorporated into the final regulations because of its clarity in explaining the primary intent of the program and the basic requirements which must be met by grant applicants.

2. § 1228.36—Added (c) on assistance for properties developed with the LWCF, which explains the legislative statement in the Act that UPARR grants should complement and enhance the efforts of both programs.

3. § 1228.37—Pass-through, requirements are expanded and explained with more detail for clarification.

4. § 1228.40 Historic Properties. Formerly a [Reserved] section.

5. § 1228.41—(c) did not relate to demolition and replacement, and was transferred to § 1228.36 as (d).

6. § 1228.42—Entire section rewritten for detail and clarity.

7. Two [Reserved] Sections § 1228.43 and § 1228.45 have been used to separate Fundable Elements for each type of grant.

8. § 1288.44 (a)—Added clarification on architectural and engineering costs incurred 9 months prior to grant approval, and other cost elements for reimbursement.

9. § 1228.50—(a) was deleted because it was restated in, and has more relevance to, § 1228.52 (a).

10. § 1228.53—(b) was split into two paragraphs, and the numbered paragraphs after (b) were rearranged in chronological order respective to the preapplication process.

11. § 1228.60—(a) The PARTS outline of Circular A–102 attachments, along with (b) and (c) were deleted because they are restatements of A–102 standard requirements. (f) was incorporated into § 1228.44 (a) because it relates to limits on fundable elements.

Who Is Eligible

(a) *Eligible Cities and Counties.* Eligible applicants for the UPARR program include those designated cities and counties listed in Appendix B, October 9, 1979 (44 FR 58092), and as amended. The insular areas are eligible under separate authorized funds (16 U.S.C. 2512).

(b) *Discretionary Eligibility and General Requirements.* Section 1005(b) of the Act states that at the Secretary's (Director's) discretion, up to 15 percent of the program funds appropriated annually may be granted to general purpose local governments which are located in Standard Metropolitan Statistical Areas (SMSAs), provided that these grants are in accordance with the intent of the program. Those governments in SMSAs may compete for grants under the program at the Secretary's discretion regardless of whether or not they are included on the list of eligible jurisdictions.

(1) Applicants interested in discretionary funding must comply with the same requirements as the listed eligible jurisdictions. An approved Recovery Action Program must be on file with the respective HCRS Regional Office prior to consideration of a grant for funding. Grants to discretionary applicants are competitive; and proposals which meet the intent and criteria of the program will be judged with other proposals on a nationwide competitive basis.

(2) For the Director's review, discretionary applicants must also submit a narrative statement, signed by the community's chief executive, which explains and quantifies the state of physical and economic distress of the applicant's jurisdiction. Statistics and discussion on distress must relate, but are not limited to, the same criteria used to select the listed eligible jurisdictions (Appendix B of this Part). Discretionary applicants should provide as much up-to-date information on their distress in order to show need for UPARR assistance. No determination of discretionary eligibility will be made until a certified grant preapplication is sent to Washington, and these will be made on a case-by-case basis.

(3) Rehabilitation, Innovation and Recovery Action Program proposals from discretionary applicants must comply with the respective selection criteria for each type of grant (Subpart D of this Part).

(c) *Pass-Through Eligibility.* Section 1006(a)(1) of the Act states that, at the discretion of the eligible general purpose local governments, and if consistent with an approved application, Rehabilitation and Innovation grants may be transferred in whole or in part to independent special purpose local governments, private non-profit agencies (including incorporated community or neighborhood groups), or county or regional park authorities; provided that they offer recreation opportunity to the general public within the jurisdictional boundaries of an applicant. Recovery Action Program grants are for the use of an applicant jurisdiction and, therefore, are not subject to pass-through provisions (Subpart B of this Part).

Authorization of Funding

(a) *Funding.* A total of $730 million is authorized for five years: $151 million for FY 1979 through 1982 and $126 million for 1983. Grants for all projects in any one State shall not exceed 15 percent of the total funds authorized to be appropriated in any fiscal year.

(1) Insular areas are each authorized the sum of $250,000 for each of the fiscal years 1979 through 1983. These sums will not be subject to the matching provisions of the other grants, and may only be subject to such conditions, reports, plans and agreements, if any, as determined by the Director.

(2) Up to 10 percent of the total funds authorized in any fiscal year may be used for Innovation grants, and up to 3 percent of the total funds authorized in any fiscal year may be used for Recovery Action Program grants.

(3) If no funds are used for Innovation and Recovery Action Program grants within any fiscal year, then the total funds authorized in any fiscal year may be used for Rehabilitation grants.

(4) Grants to discretionary applicants must not exceed, in the aggregate, 15 percent of the funds appropriated in any fiscal year for Rehabilitation, Innovation and Recovery Action Program grants.

(b) *Matching and State Incentive.* As an incentive for State involvement in the recovery of urban recreation systems, the Federal government will match, dollar for dollar, State contributions to the local share of an Innovation or Rehabilitation grants; up to 15 percent of the approved grant. The Federal share will not exceed 85 percent of the approved grant.

(1) The Director shall also encourage States and private interests (businesses, non-profit associations and industries) to contribute to the non-Federal share of project costs. State and local government shares may be derived from any State or local government source of revenue.

(2) No money from the Land and Water Conservation Fund (LWCF) or any other Federal grant program, other than general revenue sharing and the Community Development Block Grant (CDBG) program, may be used to match grants under this program. The legislative intent of the UPARR Program is to complement LWCF funding. LWCF is for acquisition and development of outdoor recreation areas and facilities. UPARR is targeted to distressed urban areas, to help revitalize indoor as well as outdoor recreation facilities. UPARR is not intended to discourage States from continuing to allocate LWCF funds to the cities. As stated in the legislation, Section 1003; "This short-term program is intended to complement existing Federal programs such as the Land and Water Conservation Fund and Community Development Grant Programs—."

Delegation of Secretarial Authority

The Director, Heritage Conservation and Recreation Service, has been delegated the program authority by the Secretary of the Interior to develop and implement the Urban Park and Recreation Recovery Program (Part 248

Departmental Manual 1 and 2, June 8, 1979, and limitations therein, as established by Secretarial Order 3017, January 25, 1978).

Statement of Significance

The Department of the Interior has determined that this document is a significant rule and requires a regulatory analysis under Executive Order 12044 and 43 CFR Part 14; and further, that it is not a major Federal action significantly affecting the quality of the human environment which would require preparation of an Environmental Impact Statement.

A Final Regulatory Analysis has been submitted to the Department based upon the determination of significance for these Grant Procedure regulations. Copies of the Final Regulatory Analysis may be obtained from the Heritage Conservation and Recreation Service, 440 G Street NW., Room 310, Washington, DC 20243. A Grant Manual detailing program guidelines and policies for the administration of the Urban Park and Recreation Recovery Program will be available at a later date.

Authorship Statement

The primary authors of these regulations were Mr. Powell Allen, Ms. Carol Jacobson and Ms. Runore Wycoff of the Heritage Conservation and Recreation Service, 202/343–5971.

Dated: October 22, 1980.

Robert L. Herbst,

Assistant Secretary for Fish and Wildlife and Parks.

In consideration of the foregoing, new Subparts A, C and D, and Reserved Sections of Subpart B are added to 36 CFR Chapter XII Part 1228 to read as follows:

PART 1228—URBAN PARK AND RECREATION RECOVERY ACT OF 1978

Subpart A—General

Sec.

1228.1 Purpose of regulations.
1228.2 Legislative authority.
1228.3 Definitions.
1228.4–1228.9 [Reserved]

Subpart B—Local Recovery Action Programs

* * * * *

1228.18–1228.29 [Reserved]

Subpart C—Grants for Recovery Action Program Development, Rehabilitation and Innovation

1228.30 General requirements.
1228.31 [Reserved]
1228.32 Funding and matching share.
1228.33 Timing and duration of projects.
1228.34–1228.35 [Reserved]

Sec.

1228.36 Land ownership, control and conversion.
1228.37 Pass-through funding.
1228.38–1228.39 [Reserved]
1228.40 Historic properties.
1228.41 Demolition and replacement of existing recreation properties.
1228.42 Expansion and new development.
1228.43 Fundable elements: Recovery action program grants.
1228.44 Fundable elements: Rehabilitation and innovation grant common elements.
1228.45 Fundable elements: Innovation grants.
1228.46 Citizen participation requirements.
1228.47 [Reserved]
1228.48 Federal coordination.
1228.49 [Reserved]

Subpart D—Grant Selection, Approval and Administration

1228.50 Grant selection criteria.
1228.51 A–95 clearinghouse requirements.
1228.52 Recovery action program grant applications.
1228.53 Preapplication process for rehabilitation and innovation grants.
1228.54 Rehabilitation and innovation grants—full application process.
1228.55 [Reserved]
1228.56 Grant program compliance requirements.
1228.57–1228.59 [Reserved]
1228.60 Grant administrative procedures.
1228.61 [Reserved]
1228.62 Amendments to approved grants.
1228.63 Grant payments.
1228.64 [Reserved]
1228.65 Other requirements.
1228.66 [Reserved]
Appendix A—Criteria for eligibility (44 FR 58088).
Appendix B—List of eligible jurisdictions (44 FR 58088).

Authority: Title X, National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 2501–2514.

PART 1228—URBAN PARK AND RECREATION RECOVERY ACT OF 1978

Subpart A—General

§ 1228.1 Purpose of regulations.

The purpose of this rule is to set forth guidelines for awarding and administering the three types of grants available through the UPARR program. The three types of grants available are: Rehabilitation, Innovation and Recovery Action Program. The objectives of this rule are to: (1) explain the policies to be followed for awarding grants; (2) list the requirements and criteria to be met for each type of grant and discretionary eligibility; (3) discuss fundable uses and limitations; (4) explain how proposals will be selected and funded; and (5) describe the application process and administrative procedures for awarding grants.

§ 1228.2 Legislative authority.

The policies and procedures of this rule are created to implement the Urban Park and Recreation Recovery Act of 1978, Title X of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 U.S.C. 2501–2514. The Act provides Federal grants to economically hard-pressed communities specifically for the rehabilitation of critically needed recreation areas and facilities, and for the development of improved recreation services this program is authorized for a period of five years.

§ 1228.3 Definitions.

As used in this Part:

Applicant Jurisdiction: The general purpose local government making the actual funding request or in receipt of UPARR funding assistance. This term applies whether the unit is an eligible or discretionary applicant.

Appropriation: The yearly funding level made available by Congress to implement the UPARR Act.

Assistance: Funds made available by the Service to a grantee in support of a public recreation project.

Direct Expenditures or Direct Costs: Those expenditures or costs that can be associated with a specific project.

Director: The Director of the Heritage Conservation and Recreation Service or any other officer or employee of the Service to whom is delegated the authority involved.

Discretionary Applicants: General purpose local governments in Standard Metropolitan Statistical Areas as defined by the Census but not included in the list of eligible applicants developed and published in accord with Sec. 1005 of the UPARR Act.

Federal Management Circular 74–4 (FMC 74–4): FMC 74–4 establishes principles and standards for determining (administrative) costs applicable to grants and contracts with State and local governments.

General Purpose Local Government: Any city, county, town, township, parish, village, or other general purpose political subdivision of a State, including the District of Columbia, and insular areas.

Grant: The act of providing a specific sum of money for the development of a specific project, consistent with the terms of a signed agreement; also the amount of money requested or awarded.

Grantee: The general purpose local government receiving a UPARR grant for its given use, or for authorized pass-through to another appropriate public or private non-profit agency.

HCRS: Heritage Conservation and Recreation Service.

Historic Property: Such a property is one listed in, or determined eligible to be listed in the National Register of Historic Places.

In-kind Contributions: In-kind contributions represent the value of non-cash contributions provided by: (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of the value of donated or loaned equipment or supplies, or contributed services directly benefiting and specifically identifiable to the project, and can be used as part of the grantee's non-Federal matching share.

Innovation Grants: Matching grants to local governments to cover costs of personnel, facilities, equipment, supplies, or services designed to demonstrate innovative, and cost-effective or service-effective ways to augment park and recreation opportunities at the neighborhood level; and to address common problems related to facility operations and improved delivery of recreation service, excluding routine operation and maintenance activities.

Insular Areas: Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands.

Maintenance: All commonly accepted practices necessary to keep recreation areas and facilities operating in a state of good repair, and to protect them from deterioration resulting from normal wear and tear.

OMB Circular A–95 (A–95): Establishes procedures for the evaluation, review and coordination of Federal and federally assisted programs and projects. This circular defines project notification and review procedures governing Federal grant agencies, State, metropolitan and areawide clearinghouses.

OMB Circular A–102 (A–102): Circular A–102 provides the standard for establishing consistency and uniformity among Federal agencies in the administration of grants to States, localities and federally recognized Indian tribes.

Participant: The grantee, or other agency or organization requesting and/or receiving assistance.

Pass-through: The transfer of funds at the discretion of the applicant jurisdiction, to independent, general or special purpose local governments, private non-profit agencies (including incorporated community or neighborhood groups), or county or regional park authorities, who offer recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction.

Pass-through recipient: Synonymous with subgrantee.

Private Non-profit Agency: A reputable community-based, non-profit organization, corporation, or association organized for purposes of providing recreation, conservation, education or other community services directly to urban residents; on a neighborhood or communitywide basis, through voluntary donations, voluntary labor, or public or private grants.

Project: A single site-specific area or service-specific program proposed or approved for funding.

Project Costs: All necessary charges made by a grantee in accomplishing the objectives of a project, during the grant period.

Property: Site and/or facility.

Proposal: An application for UPARR assistance which may contain one or more projects.

Recovery Action Program: A local park and recreation Recovery Action Program (plan) required under Sec. 1007 of the UPARR Act, which contains expressions of continuing local commitment to objectives, priorities and implementation strategies for overall park and recreation system planning, rehabilitation, service, operation and maintenance.

Recreation Areas and Facilities: Parks, buildings, sites, or other indoor or outdoor facilities which are dedicated to recreation purposes and administered by public or private non-profit agencies to serve the recreation needs of community residents. These facilities must be open to the public and readily accessible to residential neighborhoods. They may include multiple-use community centers which have recreation as one of their primary purposes, but major sports areas, exhibition areas, and conference halls used primarily for commercial sports, spectator, or display activities are excluded from UPARR assistance.

Rehabilitation Grants: Matching capital grants to local governments for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor or indoor recreation areas and facilities; including improvements in park landscapes, buildings, and support facilities; excluding routine maintenance and upkeep activities.

Secretary: The Secretary of the Interior.

SMSA: Standard Metropolitan Statistical Area as defined by the Bureau of the Census.

Special Purpose Local Government: Any local or regional special district, public-purpose corporation or other limited political subdivision of a State: including but not limited to, park authorities; park, conservation, water or sanitary districts; and school districts.

Sponsor: See Participant.

State: Any State of the United States, or any instrumentality of a State approved by the Governor; the Commonwealth of Puerto Rico, and insular areas.

Statewide Comprehensive Outdoor Recreation Plan (SCORP): A State recreation plan required by the Land and Water Conservation Fund Act.

Subgrantee: A general or special purpose local government, private non-profit agency, county or regional park authority requesting or in receipt of UPARR funding under an applicant jurisdiction.

UPARR: Urban Park and Recreation Recovery Act of 1978 or Program.

§§ 1228.4—1228.9 [Reserved]

Subpart B—Local Recovery Action Programs

* * * * *

§§ 1228.18—1228.29 [Reserved]

Subpart C—Grants for Recovery Action Program Development, Rehabilitation and Innovation

§ 1228.30 General requirements.

Applicants must have an approved Recovery Action Program on file with the appropriate HCRS Regional Office prior to applying for Rehabilitation or Innovation grants. Rehabilitation and Innovation proposals must be based on prioritites identified in the applicant jurisdiction's Recovery Action Program. Once HCRS has indicated that a Rehabilitation or Innovation proposal is fundable, the applicant must meet all documentation requirements imposed by OMB Circulars A–102, A–95 and FMC 74–4. Regional offices of HCRS will provide technical assistance to grantees in complying with these requirements.

§ 1228.31 [Reserved]

§ 1228.32 Funding and matching share.

(a) *Recovery Action Program Grant Matching.* Up to 50 percent matching grants are authorized for the preparation of Recovery Action Programs (RAP). State, local and private in-kind donations of assistance (salaries, supplies, printing, etc.) for the preparation of a RAP may be used as all or part of the 50 percent local match. Such in-kind contributions for the UPARR Program may not be used as the matching share for other federally-assisted programs. In addition, Section 1009 of the Act provides that reasonable local costs of Recovery Action Program development may be used as part of a

local match for Innovation or Rehabilitation grants only when the applicant has not recieved a Recovery Action Program grant. Reasonable costs means costs for supplies, salaries, etc., which are not excessive in relation to the normal market value within a geographic area. These costs must be well documented and included in the preapplication for the proposal in which they are to be used as a match. The match can only be used once, and allowed only after the RAP Has been approved by the respective HCRS Regional Office.

(b) *Rehabilitation and Innovation grant matching.* The program provides for a 70 percent Federal match for rehabilitating existing recreation facilities and areas. Seventy percent matching funds are also authorized to local governments for innovation grants which will address systemwide coordination, management and community resource problems through innovative and cost-effective approaches.

(c) *Sources of Matching Share.*

(1) *State Incentive.* As an incentive for State involvement in the recovery or urban recreation systems, the Federal government will match, dollar for dollar, State contributions to the local share of an Innovation or Rehabilitation grant; up to 15 percent of the approved grant. The Federal share will not exceed 85 percent of the approved grant. The Director shall also encourage States and private interests to contribute to the non-Federal share of project costs. State and local government shares may be derived from any State or local government source of revenue.

(2) *Cash.* State, local and private funds may be used as the non-Federal share of project costs. In addition, two types of Federal funds may be used as part of a local match: General Revenue Sharing (Treasury Department) and Community Development Block Grant (CDBG) program funds (Department of Housing and Urban Development) [See also § 1228.56(b)]. Section 1009 of the UPARR Act prohibits use of any other type of Federal grant to match UPARR grants.

(3) *Non-Cash.*

(i) *Material goods.* HCRS encourages in-kind contributions including real property, buildings or building materials, and equipment to applicants by the State, other public agencies, private organizations or individuals. The value of the contributions may be used as all or part of the matching share of project costs, but must be appraised and approved by the Service prior to grant approval. Details regarding these types of donations are covered in OMB Circular A–102. In-kind contributions for the UPARR Program may not be used as the matching share for other Federally-assisted programs.

(ii) *Services.* Any type of service or assistance which relates directly to a grant and the provision of a recreation opportunity, can be used as a matching share; e.g., technical and planning services, construction labor, playground supervision or management services.

§ 1228.33 Timing and duration of projects.

(a) Construction components of projects must be initiated during the first full construction season following grant approval. The time for completing construction components of either Rehabilitation or Innovation proposals will be limited to three years or three construction seasons, whichever is greater. Any component of an Innovation proposal which is to provide services or programs, must be started within one year from grant approval. The grant project term and expiration date for Rehabilitation and Innovation proposals will be established by HCRS at the time of grant approval.

(b) When an applicant wishes to complete a project in a number of stages, the applicant may request UPARR assistance for all the stages in a single application or proposal. In such cases, the three year limit on construction still applies. If an applicant wishes to request funding for only a single stage at time, each stage must be structured in such a manner that it will increase the recreation utility of the property, or provide direct recreation opportunities, independent of subsequent stages. Funding of one stage of a multi-staged proposal in no way implies that subsequent stages will also be funded.

§§ 1228.34–1228.35 [Reserved]

§ 1228.36 Land ownership, control and coversion.

Section 1010 of the Act provides that no property improved or developed with assistance through the program shall, without the approval of the Director, be converted to other than public recreation use. Therefore, any applicant or sub-grantee must demonstrate, at the time of grant approval, that it has adequate tenure and control of the land or facilities for which UPARR assistance is proposed, either through outright ownership or lease.

(a) Lands or facilities that are not under adequate tenure or control will not be considered for UPARR assistance. If the land is not owned by the applicant or sub-grantee, then a non-revocable lease of at least 25 years, or a non-revocable lease providing ample time to amortize the total costs of the proposed activity, must be in effect at the time of grant approval. The lease cannot be revocable at will be the lessor. The costs of acquisition or leasing of land or facilities are not eligible for assistance under the provisions of the Act, Section 1014.

(b) The conversion or replacement of properties assisted through UPARR to non-recreation use must be in accord with the current local Recovery Action Program, and approved by the Director. Requests for permission to convert UPARR-assisted properties must be submitted to the Director in writing. The replacement property must assure the provision of adequate recreation properties and opportunities of reasonable equivalent location and recreation usefulness. For leased property which is developed or improved with UPARR funds, the grantee, as a condition of the receipt of these funds, must specify in a manner agreed to by the Director, in advance of the conversion, how the converted property will be replaced once the lease expires.

(c)UPARR Program funds may be used to rehabilitate facilties built or develop with LWCF assistance only after a determination is made by HCRS that the facility has been maintained in accordance with the LWCF Program.

(d) Applicants must certify that any property acquired after January 2, 1971, and to be improved or enhanced by UPARR assistance, was acquired in conformance with P.L. 91–646, the Uniform Relocation and Land Acquisition Policies Act (See 41 CFR Parts 114–50).

§ 1228.37 Pass-through funding.

Section 1006(a)(1) of the Act states that at the discretion of the applicant jurisdiction, and if consistent with an approved application, Rehabilitation and Innovation grants may be transferred in whole or in part to independent special purpose local governments, private non-profit agencies (including incorporated community or neighborhood groups) or city, county, or regional park authorities, provided that assisted recreation areas owned or managed by them offer recreation opportunities to the general public within the boundaries of the applicant's jurisdiction. No UPARR funds may be passed through for Recovery Action Program grants. The decision on whether or not to pass money through to non-profit organizations or governmental units is made by the applicant jurisdiction which is responsible for the grant; not

HCRS. Organizations, agencies or governmental units seeking funding assistance on a pass-through basis must work with an applicant jurisdiction in the preparation of the UPARR application, and the applicant jurisdiction will be responsible for the submission of the application. The applicant jurisdiction has full responsibility and liability for funds passed through to subgrantees. In the event of default by the pass-through recipient, the applicant jurisdiction must assume responsibility for ensuring that all provisions of the grant agreement are carried out, including the continued delivery of recreation services resulting from the grant. The pass-through of funds may constitute the entire grant proposal submitted by an applicant jurisdiction, or may be only a portion of it.

(a) *Applicant responsibilities.* The applicant jurisdiction possesses full responsibility and liability for funds passed-through to subgrantees. It should take precautions to ensure that pass-through agencies can reasonably be expected to comply with grant requirements.

(1) *Application requirements.* The applicant jurisdiction is responsible for actual preparation and submission of both the pre- and final grant applications. Organizations, agencies or governmental units seeking funding assistance on a pass-through basis must work with the applicant jurisdiction. The applicant jurisdiction may request any or all of the necessay documentation from the subgrantee. It is essential that applicants take precautions to pass-through grants only to reliable and capable agencies or organizations that can reasonably be expected to comply with grant and project requirements.

(2) *Recommended pass-through recipient standards.* Because the grantee has full responsibility for the pass-through grant, the grantee should ensure that subgrantees meet the following minimum standards.

(i) Demonstrate a history of providing recreation services to the distressed community. The history of providing recreation services must be commensurate with the amount of UPARR assistance requested. A pass-through subgrantee may be a non-profit or neighborhood organization which has provided other social services to the community, or a newly formed, but reliable and capable group which can reasonably be expected to comply with grant and project requirements.

(ii) Take responsibility for the same application, administration and compliance responsibilities as that of the applicant jurisdiction.

(iii) Certify that property improved or developed with UPARR funds will remain dedicated to public recreation use.

(iv) Work through and with the applicant jurisdiction.

(v) Demonstrate that the existing, or soon to be developed, recreation property which it owns or operates is accessible to residents of targeted distressed areas.

(vi) Demonstrate adequate tenure and control of the property to be rehabilitated or used for innovation, through lease or ownership.

(vii) Establish a contractual agreement with the applicant juisdiction which is binding and enforceable to assure that the applicant jurisdiction can adequately meet its contractual obligations under the grant.

(viii) Be empowered to contract or otherwise conduct the activities to be supported as a result of the grant.

(ix) Not discriminate on the basis of residence except in reasonable fee differentials.

(x) Be generally recognized as a provider of service to urban residents.

(xi) Have adequate financial resources, the necessary experience, organization, technical qualifications and facilities; or a firm commitment, arrangement, or ability to obtain such.

(xii) Have an adequate financial management system which provides efficient and effective accountability and control of all property, funds, and assets sufficient to meet grantee needs and grantee audit requirements.

(xiii) Private non-profit agencies or corporations should also be properly incorporated as a non-profit organization with an elected and autonomous board which meets regularly.

(b) *Pass-through property and fee limitations.* Rehabilitation or Innovation assistance on property not in public ownership, operated by a private non-profit organization through a pass-through grant, will be limited to that portion of the property which directly provides recreation services. Such recreation services must be available to the public on a non-membership, non-fee, or reasonable fee basis, and during reasonable prime time. If a fee is charged or is required for the services resulting through the Rehabilitation or Innovation grant, the fee should be comparable to prevailing local rates for similiar services. Charges for recreation services will only be permitted if they do not unfairly jeopardize participation in the recreation service by the disadvantaged population.

§§ 1228.38–1228.39 [Reserved]

§ 1228.40 Historic properties.

Properties listed in or determined eligible for listing in the National Register of Historic Places must be treated in accordance with the Advisory Council on Historic Preservation procedures described in 36 CFR 800, "Protection of Historic and Cultural Properties." Applicants must identify such properties in the preapplication if they are situated at a UPARR grant site.

§ 1228.41 Demolition and replacement of existing recreation properties.

Demolition will only be supported when rehabilitation is not feasible or prudent. In the case of demolition, the demolition costs should not exceed 75% of the proposed cost for replacement. The applicant must present a cost analysis (well documented case) for demolition and replacement versus rehabilitation. When assistance for demolition is requested, the applicant must also indicate how the replacement will increase the site's recreation utility, and how the useable life of the property will be increased.

§ 1228.42 Expansion and new development.

(a) *Expansion.* Because the UPARR Program is targeted to distressed areas, every assurance should be made that if any expansion takes place, existing recreation facilities are up to building standards and the following general requirements are met.

(1) The general category of sites/facilities or programs involved must be an identified priority in the jurisdiction's Recovery Action Program.

(2) The results of the expansion must not substantially increase the personnel or maintenance costs of the applicant jurisdiction's overall recreation system unless expansion of the system has been addressed as a priority in the jurisdiction's Recovery Action Program, and the RAP strategies specifying how the funds for increased personnel or maintenance costs associated with the expansion will be obtained. The preapplication narrative must describe the extent of increased personnel and maintenance for the project(s) included in the proposal, if any, and methods of financing them.

(3) The expansion must increase the extent, volume, scope, or quality of recreation opportunities to residents of distressed neighborhoods.

(b) *New development.* For purposes of this program, new development is defined as the developing for changing of relatively unimproved property which has not previously been developed for

recreation. This includes the creation of new parks and facilites.

(1) *Rehabilitation.* New development will not be assisted under a rehabilitation grant.

(2) *Innovation.* New development may be allowed under an Innovation grant when it is directly related to a specific innovative idea or technique, increases the utility of a property and/or service program, and increases recreation opportunites for users in the target area.

§ 1228.43 Fundable elements: Recovery Action Program grants.

Reasonable and documented costs necessary for preparing a Recovery Action Program may be reimbursed by UPARR funds from a 50 percent matching grant. These costs may include expenses for professional services; local public meetings; data collection and analysis; preparation, editing and printing of appropriate reports, plans, maps, charts and other documents forming a part of the plan; and supporting costs, supplies and other approved costs. Costs incurred prior to the approval of a Recovery Action Program grant will not be eligible for reimbursement or cost sharing.

§ 1228.44 Fundable elements: Rehabilitation and Innovation grant common elements.

(a) All Rehabilitation and Innovation proposals must be based on priorities identified in the applicant jurisdiction's local Recovery Action Program. An applicant may apply for UPARR assistance only in an amount which, together with other available public and private resources, is adequate to complete the work approved by the grant agreement. The applicant must document the availability and source of these resources at the time of preapplication for UPARR assistance. Fundable elements in both Rehabilitation and Innovation proposals may include: materials and labor, site planning, architectural and engineering fees, and other costs for activities necessary to complete the approved project. Reasonable architectural and engineering fees essential to the preparation of a proposal application, incurred within a period 9 months prior to preapplication submission to HCRS, are reimbursable. Architectural and engineering fees prior to the 9 month period will not be eligible for reimbursement or cost sharing. Other costs incurred prior to approval of any UPARR grant, and fees to consultants for preparation of UPARR grant applications are not reimbursable. No more than 5 percent of the total grant cost may be used by the grantee or pass-through sub-grantee for grant administrative costs. The remaining funds must be made available for projects. Any costs incurred for travel outside the local applicant jurisdiction will not be reimbursable without prior approval from HCRS.

(1) *Local intent.* Rehabilitation and Innovation proposals which provide recreation to residents within a distressed local neighborhood area will be given higher priority. Proposals which have a primary intent to attract or to provide recreation for visitors from outside the applicant jurisdiction, or proposals whose primary objective is the enhancement of the area's economy through the attraction of visitors to the jurisdiction, will not be considered. Innovation proposals which transport residents from distressed neighborhoods to recreation opportunities outside the local jurisdiction, may be considered eligible for funding.

(2) *Conservation and energy.* Proposals which foster the conservation of energy and natural resources are encouraged; e.g. improvements in accessibility which reduce the need of automobile transportation, efficient use of electrical or other power sources, and water conservation.

(3) *Multiple site requests.* Rehabilitation and Innovation proposals may request funding for neighborhood-oriented recreation facilities or services which affect the entire recreation system of the applicant jurisdiction, several specific sites or areas, or a single site or area. Innovation proposals which affect multiple facilities or services must be oriented to a single purpose, or one basic innovative category or approach.

(4) *Support facilities.* The rehabilitation of support facilities for any grant project will be eligible for funding only when such facilities are well defined, are included as part of an overall rehabilitation effort, and provide direct recreation opportunities and benefits to the population being served. Rehabilitation grants may cover costs of remodeling, expanding or developing (see § 1228.42) existing outdoor or indoor recreation areas and facilities, including improvements in park landscapes and buildings. Assistance for the rehabilitation of multi-service facilities must be prorated to those elements within the proposal necessary for the provision of recreation opportunities.

(5) *Elements excluded from funding.* The Act excludes UPARR assistance for major sport arenas, exhibition areas and conference halls used primarily for commercial sports, spectator, or display activities; routine maintenance and upkeep supplies or activities; and for the acquisition of land or interests in land.

(b) [Reserved.]

§ 1228.45 Fundable elements: Innovation grants.

(a) Innovation grants may cover costs related to improved delivery of recreation services (including personnel, training, facilities, recreation equipment and supplies), except those which pertain to routine operation and maintenance not directly related to the provision of recreation opportunities. All equipment and supply requests in Innovation proposals will be reviewed to assure that they will substantially contribute to the recreation services intended under the specific grant. The intent of Innovation grants is to test new ideas, concepts and approaches aimed at improving facility design, operations or progamming in the delivery of neighborhood recreation services. They should also contribute to a systems approach to recreation by linking recreation services with other critical community programs; such as transportation, housing, and health programs. The UPARR Program will competitively choose the best quality Innovation proposals with nationwide demonstration potential, and which serve people who most need the new recreation services. An innovative community recreation project may be a service, a process, an organizational arrangement or a technique. The innovation should demonstrate a concept that is untried, unique, and/or advances the state of the art for recreation. Ideas from successful Innovation proposals will be disseminated nationwide through annual progress reports to Congress, as required in Section 1015(b) of th Act, and through the ongoing technical assistance efforts of HCRS. Information seminars, workshops and other techniques may also be used to provide the greatest possible exposure of these ideas for use in other communities. Because the legislation limits the yearly funds available for Innovation grants (not more than 10% of funds authorized), the majority of Innovation grants should ideally be monetarily smaller awards aimed at leveraging public and private community support and providing activities with high demonstration value, rather than large-scale development or expansion projects. The long-range intent of funding innovative proposals is to support and demonstrate a great variety of ideas during the five year implementation of the UPARR Program. For this reason, only one or two proposals having a similar emphasis or approach will be funded. Proposed

Innovation projects which have been demonstrated before or are currently being operated in other cities, may be considered for UPARR assistance if the application identifies and addresses the question of the special nature or circumstances surrounding the new project.

(1) *Program services.* Innovation grant costs may include those costs which relate to: demonstrations of the improved multiple-use of public buildings e.g., schools, community centers, libraries; unique program expansions or increases in services; purchase of recreation services on a contractual basis; increased access to recreation areas; and cost-effective management techniques.

(2) *Adaptive reuse.* In addition to providing services for areas or facilities already in recreation use, Innovation grants may provide funding for the adaptive reuse of areas or facilities not currently in recreation use, or those where mixed community use occurs. Physical rehabilitation of facilities not currently in recreation use (whether public or private) may be funded as part of an Innovation proposal, and would be classified as adaptive reuse. An example would be conversion of an abandoned building to a unique community recreation center. When only a portion of the area or facility will be used for recreation, only that portion will be eligible for UPARR funding.

(3) *Supplies.* Funds may be used to purchase expendable supplies and equipment which relate directly to an Innovation proposal, such as sports equipment, arts and crafts supplies, chairs and tables if needed for an activity, and essential emergency or safety equipment. General office supplies and furniture not used exclusively to provide recreation services as a part of the proposal, or not an inherent component of the proposal, will not be reimbursable.

(4) *Coordination.* Local costs incurred for coordinating any grant proposal activities and programs with other public, non-profit or private community services may be reimbursable.

(5) *Personnel.* Eligible personnel costs for Innovation proposals will be limited to salaries and benefits of those employees directly engaged in the provision of recreation services or formulation of new techniques. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of committed volunteer service may be counted toward the local matching share of funds, if the service provided is an integral part of an approved proposal.

(6) *Special populations.* A proposal which will provide recreation opportunities primarily for a specific demographic group, such as the elderly, youth or handicapped, may be funded. However, the recreation provided must be open to the public, incorporate some activities for the general population, and address needs as identified in the local Recovery Action Program. Services for special populations, such as transportation to recreation facilities, may also be funded.

(b) *Basic types of Innovation proposals.* Types of Innovation proposals which can be funded are suggested by, but not limited to, the following types:

(1) The unique integration of recreation with other community services; such as transportation, public housing and public safety; either to expand or update current services, or to link programs within the social service structure of a neighborhood, or between neighborhoods.

(2) New management and cost-saving or service-efficient approaches for improving the delivery of recreation services should be fundamental to all Innovation and Rehabilitation proposals, and may also be the prime focus of an Innovation proposal. Extending hours of operation, increasing the variety of recreation programs, contracting with commercial or private non-profit agencies to supply specific recreation services, or assisting citizens in designing and operating their own programs, are examples of management approaches.

(3) New approaches to facility design which emphasize user needs and preferences and promote efficient operation and energy conservation.

(4) New fiscal techniques to generate revenue for continuing operation and maintenance, such as tax credits.

(5) Techniques for improving transportation and access to recreation opportunities.

(6) Techniques to facilitate private, non-profit, and community involvement in providing recreation opportunities.

(7) Improved use of land resources; such as utilizing abandoned railroads and highway rights-of-way, waterfronts, street spaces, or derelict land for recreation.

(8) Adaptive reuse or multiple use of public or private facilities and areas. (Private areas or facilities utilized must be opened to the public.)

(9) Techniques to prevent or reduce crime, abuse and vandalism; such as better design, non-destructible building materials, or use of community volunteers to supervise areas.

(10) Communications and public awareness of recreation opportunities, including education in leisure services; but excluding research.

§ 1228.46 Citizen participation requirements.

(a) *Recovery Action Program Grants.* Citizen participation is required for developing and implementing a Recovery Action Program (§ 1228, Subpart B), but is not required in the process of preparing a local Recovery Action Program grant application.

(b) *Rehabilitation and Innovation grant.* The applicant shall provide citizens with an adequate opportunity to participate in the development of a Rehabilitation and/or Innovation proposal and in implementation, monitoring and evaluation of the activities supported through the grants. The applicant shall also encourage the submission of views and proposals, particularly by residents of blighted neighborhoods and citizens with low and moderate incomes. The applicant is encouraged to utilize a variety of approaches to ensure public involvement. Nothing in these requirements, however, shall be construed to restrict the legal responsibility and authority of the applicant for the execution of its Recovery Action Program, and the development of its UPARR applications.

§ 1228.47 [Reserved]

§ 1228.48 Federal coordination.

Applicants requesting UPARR assistance under one of the three grant categories shall investigate the possibilities of administrative and/or funding coordination with other Federal programs. Higher priority is given to proposals which relate to a comprehensive neighborhood revitalization strategy, including, but not limited to programs such as the Department of Housing and Urban Development (HUD) Neighborhood Self-Help program.

§ 1228.49 [Reserved]

Subpart D—Grant Selection, Approval and Administration

§ 1228.50 Grant selection criteria.

(a) *Recovery Action Program grant selection criteria.* The following criteria will be used in evaluating Recovery Action Program grant applications and in deciding priorities for funding:

(1) Degree of need for funds to develop a Recovery Action Program and an ongoing planning process, including the size and complexity of the community's problems, deficiencies in

existing planning, and in the capability of the community to initiate and sustain continuing planning efforts.

(2) Degree of the community's commitment to systematic planning, including financial, personnel and time resources already devoted to planning or committed for the future.

(3) Extent to which current park and recreation planning is integrated with overall community planning or would be better integrated as a result of the grant, including use of other Federal or State funds for related planning purposes.

(4) Appropriateness and efficiency of the planning program's work elements (scope, timing, methodology, staffing and costs) in relation to the basic requirements for Recovery Action Programs contained in Subpart B, § 1228.10–.18 (45 FR 15456).

(b) *Rehabilitation Grant Selection Criteria.* The following criteria will be used to evaluate and rank Rehabilitation proposals:

(1) The Federal UPARR investment per person served by the entire system; relationship between the size of the community and the amount of grant funds requested. Highest priority will be given to proposals with lower per capita costs in relation to recreation benefits provided.

(2) Providing neighborhood recreation needs. Higher priority will be given to proposals serving close-to-home recreation needs, lower priority to those serving area or jurisdiction-wide needs.

(3) Condition of existing recreation properties to be rehabilitated, including the urgency of rehabilitation and the need to maintain existing services.

(4) Improvement in the quality and quantity of recreation services as a result of rehabilitation, including improvements at specific sites and overall enhancement of the recreation system.

(5) Improvement of recreation service to minority and low to moderate income residents, special populations, and distressed neighborhoods.

(6) Proposal's consistency with local government objectives and priorities for overall community revitalization.

(7) Neighborhood employment opportunities created.

(8) State participation in the proposal, including financial and technical assistance.

(9) Private participation by both the non-profit and for-profit sectors in the proposal, including contributions of financial assistance.

(10) Jurisdiction's commitment to implementing its overall Recovery Action Program.

(c) *Innovation Grant Selection Criteria.* The following criteria will be used to evaluate and rank Innovation proposals:

(1) Degree to which the proposal provides a new, unique or more effective means of delivering a recreation service that can serve as a model for other communities.

(2) Degree of citizen involvement in proposal conceptualization and implementation.

(3) Degree to which the proposal may lead to a positive, systemic change in how park and recreation services are provided. Extent to which the proposal creates opportunities for new partnerships between the people affected, private interests within the community, and public agencies (e.g., Mayor's Office, Recreation Department, Board of Education, Planning Department, social service agencies).

(4) Degree of commitment of community and proposal participants to continue the long term program objectives, including commitments to continue funding after the requested Federal grant money is no longer available. Extent of private resources committed to providing funds or in-kind services for continuing operation and maintenance of projects.

(5) Degree to which proposal managers use the Federal funds to leverage greater public or private investments (in the form of services and materials, as well as dollars).

(6) Degree to which the proposal provides potential coordination with other community, State and Federal programs of community development and those providing recreation to the target population (e.g., public and private non-profit, education programs, CETA for employment, HUD programs).

(7) Extent of improvement in the quality and quantity of recreation services as a result of the Innovation project.

(8) Degree to which the proposal ties in with goals, priorities and implementation strategies expressed in the local park and recreation Recovery Action Program.

(9) Degree to which the proposal leads to a transfer of a recreation role traditionally performed by a public entity, to quasi-public or private non-profit interests. This degree means the degree to which the private sector can take full responsibility, supplement, or fill the gaps in public recreation services, management or operation; either through a transfer of funding responsibility, or an exchange of technique or method approaches which may prove to be more effective under the private sector. This should in no way alter the public sector responsibility to continue to provide and/or monitor good quality recreation facilities and services.

(10) Degree to which a proposal benefits disadvantaged community populations and/or those areas within a distressed community which have the greatest recreation deficiencies.

Note.—Innovation proposals for the adaptive reuse of non-recreation areas or structures, through rehabilitation for recreation should also address rehabilitation selection criteria, particularly the criteria covering Federal investment per person served and the degree to which the proposal would serve close to home recreation needs.

§ 1228.51 A–95 clearinghouse requirements.

Notice of intent to submit any application for UPARR funding must be forwarded by the applicant, no later than 60 days prior to submission of a grant application, to the State clearinghouse and appropriate metropolitan or areawide clearinghouses, in accordance with OMB Circular A–95 and Interior Department Manual Part 511. If a jurisdiction wishes to compress the A–95 timetable, it must receive approval of the clearinghouse. Appropriate A–95 notifications must be submitted for all three types of UPARR grants at both preapplication and full application stages. Standard Form 424 is to be used for these notices unless otherwise specified by the clearinghouse. Comments from clearinghouses, if available, must be included with the preapplication. All A–95 comments will become part of the required application and proposal file which will be retained by HCRS. A–95 requirements for Recovery Action Programs and grants are discussed in § 1228.52.

§ 1228.52 Recovery Action Program grant applications.

The application procedure for Recovery Action Program grants differs from the procedure for Rehabilitation and Innovation grants. Ranking and selection for funding of Recovery Action Program grants will be initiated on the basis of a full application, preparation of which will be assisted through meetings with HCRS regional staff.

(a) *Preapplication Conference.* In the preparation of a Recovery Action Program grant application, applicants are encouraged to discuss with HCRS regional personnel, or State personnel, when an agreement between HCRS and the State covers such action, the adequacy of the proposal in meeting the requirements for a Recovery Action Program. Prior to formal submission, the Recovery Action Program grant application should be reviewed with the appropriate HCRS Regional Office.

(b) *Submission of Applications.* In addition to Standard Form 424 on Federal Assistance notification, applicants for Recovery Action Program grants shall submit the following documents and required attachments to HCRS Regional Offices:

(1) OMB Form 80–RO190, completed as prescribed by OMB Circular A–102. (Application for Federal assistance, for non-construction programs)

(2) Grant agreement form.

(3) Narrative statements which will be used in evaluating grant applications in relationship to the selection criteria as defined in § 1228.50(a), including:

(i) The need for the planning grant.

(ii) The jurisdiction's existing or proposed commitments to developing a full Recovery Action Program and an ongoing planning process.

(iii) The relationship of the planning program to overall community plans and programs.

(iv) Appropriateness of the proposed planning program's scope, timing and methodology in relation to UPARR planning requirements and the community's identified planning needs.

(v) Dollars and work years to be devoted to development of each element in the proposed Recovery Action Program, including some indications of the qualifications of staff members who will work on the program.

(vi) If appropriate, a discussion of work elements to be contracted out to other government agencies, private consultants or private non-profit agencies, including the reasons for contracting work elements instead of doing the work within the community's own planning agencies.

(4) Applications for RAP grants need a full 60 day A–95 clearinghouse review. Clearinghouse comments for RAP grants must then be submitted to HCRS. Final RAP's also must be submitted to clearinghouses, in accordance with OMB Circular A–95.

§ 1228.53 Preapplication process for Rehabilitation and Innovation grants.

To reduce the amount of time and documentation needed for a full application, and to foster the competitive aspects of the UPARR program, a preapplication procedure is used.

(a) The preapplication must provide information adequate to guide proposal selection. Grants will be awarded in accordance with the availability of funds. Funding for an approved grant will not be increased from subsequent yearly appropriations.

(b) Applicants are encouraged to discuss their proposals with their HCRS Regional Office to determine basic fundability and competitiveness prior to submitting a preapplication.

(c) If a State is assisting the applicant in preapplication preparation, providing a source of matching share, or giving technical assistance, the State may assist in submission of the preapplication to the appropriate HCRS Regional Office with the applicant's prior approval. The amount, source and assurance of State assistance for a matching share must be specified in the preapplication.

(d) The following procedural guidelines shall apply to submission and approval of Rehabilitation and Innovation proposals.

(1) Preapplications shall be submitted to the appropriate HCRS Regional Office by the chief executive officer of the applicant jurisdiction. The preapplication must include those items as set forth in the *Preapplication Handbook,* available from any HCRS Regional Office. In addition to the narrative on selection criteria, all preapplications for Rehabilitation proposals must include a short description stating; (i) the problem addressed by the proposal, including existing conditions, (ii) the reason for the problem or why the condition exists, and (iii) the proposed solution to the problem and what corrective measures will be used.

(2) An applicant may have no more than one Innovation and one Rehabilitation proposal under consideration in any one funding cycle.

(3) Any existing and/or proposed fees or charges for recreation opportunities or services provided through a UPARR grant, whether for public, private or non-profit activities, must be identified in the preapplication.

(4) Discretionary applicants must submit a narrative statement, signed by the chief executive of the applicant jurisdiction, which explains and quantifies the degree of physical and economic distress in the community. Statistics and discussion on distress shall address, but need not be limited to, the criteria used to select eligible jurisdictions contained in Appendix A of this Part. A discretionary narrative statement must be included in each preapplication.

(5) All submitted grant preapplications will be reviewed by HCRS Regional Offices to assure that they meet all minimum legal and technical standards before being certified as eligible for competition. Proposals not meeting minimum standards will be returned to the applicant. Periodically, all certified proposals will be evaluated in the Regional Offices before being submitted to Washington, where they will be judged by national panels whose member are knowledgeable in recreation and urban revitalization. Innovation and Rehabilitation proposals will be judged by separate panels.

(6) Following review and ranking by the panels, the Director will approve tentative grant offers for those proposals which may be funded. Successful applicants will be notified by the HCRS Regional Offices, and completion of the formal application process will take place. The formal application process must be completed within 120 days of notification of the tentative grant offer, or the tentative grant offer may be withdrawn. Final approval of a grant and obligation of funds will occur when all application requirements have been met and the appropriate documents are on file. No costs may be incurred or reimbursed, except incurred architectural and engineering fees indicated in § 1228.44, until HCRS approval of the grant agreement.

(7) Unfunded proposals may require modifications to improve their competitiveness. Applicants with such proposals will be advised by HCRS of suggested modifications, if any, to increase their chances for funding in future grant rounds.

(8) If an applicant wishes a proposal to remains in competition, it may be considered for two additonal funding cycles, with or without minor modifications, before it is returned to the applicant. Major modifications of scope and/or total funding request will require complete resubmission of a proposal as a new preapplication. Applicants who wish to change the scope and/or total funds requested for a proposal which is already in competition, must submit a written request for withdrawal of the previous proposal before submitting a new proposal in the same competition.

(9) The Director reserves the right to withdraw a grant offer if it is determined that any preapplication contains misstatements or misrepresentations of fact, or problems identified which cannot be resolved.

§ 1228.54 Rehabilitation and Innovation grants—full application process.

Once a Rehabilitation or Innovation proposal has received a tentative grant offer, applicants will be responsible for compliance with all applicable Federal laws and regulations listed in OMB Circular A–102, including those specific Acts and Executive Orders listed in § 1228.56 of these regulations. The applicant must also complete all documentation and other requirements specified by OMB circulars A–102, and

A–95 within 120 days. Regional Offices of HCRS will provide technical assistance to grantees in complying with these requirements. A grant will not be approved until the applicant is in compliance with the above requirements.

§ 1228.55 [Reserved].

§ 1228.56 Grant program compliance requirements.

(a) Once a proposal has received a grant offer, applicants will be responsible for compliance with all applicable Federal laws and regulations, including, but not limited to:

Architectural Barriers Act of 1968 (P.L. 90–480)
Clean Air Act and Federal Water Pollution Control Act
Copeland Anti-kickback Act
Endangered Species Act of 1973 (Pub. L. 93–205)
Executive Order 11246, Equal Employment Opportunity
Executive Order 11593, Protection and Enhancement of the Cultural Environment
Executive Order 11625, Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise
Executive Order 11988, Floodplains Management
Executive Order 11990, Protection of Wetlands
Executive Order 12088, Federal compliance with Pollution Control Standards
Executive Order 12185, Conservation of Petroleum and Natural Gas
Flood Disaster Protection Act of 1973 (Pub. L. 93–234)
Historical and Archeological Data Preservation Act of 1974 (Pub. L. 93–291) 36 CFR 66
National Environmental Policy Act of 1969 (Pub. L. 91–190)
National Historic Preservation Act (Pub. L. 89–665)
Nondiscrimination Section 109 of the Housing and Community Development Act of 1974 (42 USC 5301) as amended.
Section 504 of the Rehabilitation Action Act of 1973
Title VI of the Civil Rights Act of 1964, Executive Order 11764
Title VIII of the Civil Rights Act of 1968 (42 USC 3601) as amended, Executive Order 11063 (27 FR 11527)
Uniform Relocation Assistance & Land Acquisition Policies Act of 1970 (Pub. L. 91–646)

(b) Applicants using General Revenue Sharing or Community Development Block Grant monies as a matching share must check with the responsible federal agencies, i.e. Treasury or HUD to determine if the Davis-Bacon Act is applicable. (HUD regulations 24 CFR Part 570 [CDBG]. Treasury regulations 31 CFR Part 51, State and Local Fiscal Assistance Amendments of 1976 [P.L. 94–488], General Revenue Sharing program.) Questions concerning other CDBG requirements should be addressed to the HUD Area Office serving the UPARR applicant jurisdiction.

§§ 1228.57–1228.59 [Reserved]

§ 1228.60 Grant administrative procedures.

(a) *Admininstrative Requirements for Recipients of UPARR Assistance.* For all grants under this Program, the administrative requirements are the attachments listed in the Office of Management and Budget (OMB) Circular A–102 (as revised).

(b) *Accounts, Audit, Inspection.* Adequate financial records must be maintained by the applicant to support all expenditures or costs covered by a Recovery Action Program, Rehabilitation or Innovation project, as specified in Federal Management Circular (FMC) 74–4 and OMB Circular A–102.

(c) *Additional conditions.* The Director may, with respect to any grant, impose additional conditions prior to, or at the time of grant approval, when in his or her judgement these conditions are necessary to assure or protect advancement of the grant purposes, the interests of public health or safety, or the conservation of grant funds. Extra requirements may be imposed on high-risk grantees who have records of default on prior federal grants.

(d) *Remedies for Noncompliance.* In appropriate circumstances, the Director may suspend or recoup the financial assistance provided under UPARR, upon the formal finding that the Grantee is in violation of the terms of the grant or the provisions of these regulations.

§ 1228.61 [Reserved]

§ 1228.62 Amendments to approved grants.

Changes which alter the scope of any approved UPARR competitive grant must be submitted to and approved by HCRS. Once a grant offer is made, based upon the preapplication, no increases in the amount of UPARR funding specified in the original proposal will be considered. Such changes should be the basis of a new proposal or application.

§ 1228.63 Grant payments.

The Director shall make payments to a grantee of all, or a portion of any grant award, either in advance or by way of reimbursement. Advance payments on approved Rehabilitation or Innovation grants will be in an amount not to exceed 20% of the total grant cost [Section 1006(2) of the Act].

§ 1228.64 [Reserved]

§ 1228.65 Other requirements.

(a) *Requirements for Operation and Maintenance.* Grantees are required to keep all UPARR assisted properties in reasonable repair to prevent undue deterioration, and to encourage public use during reasonable hours and times of tne year, according to the type of facility and intended uses.

(b) *Non-discrimination.* There shall be no discrimination for UPARR assisted programs or services on the basis of residence, except in reasonable fee differentials.

(c) *Sunset Reports.* In compliance with the sunset and reporting provision of the Act, Section 1015(b), an annual report will be prepared on the achievements of the Innovation grant program, with emphasis on the nationwide implications of successful innovation projects. A final report on the overall impact of the UPARR Program will be prepared within 90 days of the expiration of the authority. Additional project information may be requested from applicants to facilitate the preparation of such reports.

§ 1229.66 [Reserved]

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federal register

Wednesday
October 29, 1980

Part III

Water Resources Council

Synthetic Fuel Development for the Upper Missouri River Basin; Water Assessment

WATER RESOURCES COUNCIL

Synthetic Fuel Development for the Upper Missouri River Basin; Water Assessment

AGENCY: United States Water Resources Council.

ACTION: Notice of water assessment report for public review and comment.

SUMMARY: This notice incorporates the Water Assessment Report prepared by the Water Resources Council staff under provisions of Section 13(a) of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended.

DATE: Comments on this report are due on or before January 27, 1981.

ADDRESS: Send comments to: Gerald D. Seinwill, Acting Director, U.S. Water Resources Council, 2120 L Street, NW., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Ronald L. Scullin, Staff Specialist, U.S. Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037. Phone: 202/254–6352.

Dated: October 24, 1980.

Gerald D. Seinwill,

Acting Director.

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Preface

The U.S. Water Resources Council (WRC) staff has prepared this report under the provisions of paragraph (a) of Section 13 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended. This report summarizes the results of an assessment of water requirements, water supply availability, and other water implications of synthetic fuel development in the Upper Missouri River Basin. Under a memorandum of agreement with WRC, the Missouri River Basin Commission conducted the regional assessment and published a regional report entitled "Upper Missouri River Basin: Water Availability Asssessment for Coal Technology Requirements," which serves as the principal basis for this report. Publication of this report in the **Federal Register** is mandated under the provisions of Section 13 to enable public review and comment during a 90-day period.

This summary highlights important aspects of the Upper Missouri regional assessment. Individuals or organizations that want to comment on the water and energy regional assessment should examine the *full technical report* entitles: Section 13(a) Water Assessment Report—Synthetic Fuel Development for the Upper Missouri River Basin.

Copies of the full report can be obtained from: Wanda Phelan, U.S. Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037, (202) 254–8290.

After the 90-day review period, the WRC staff will analyze the comments received and revise the report as appropriate. WRC will forward the comments, the WRC analysis, and the final water assessment report to the Secretary of Energy.

National Energy Concerns

On July 15, 1979, President Carter addressed the Nation regarding one of the most important problems confronting us—the energy crisis. Calling the "erosion of our confidence in the future" a "fundamental threat to American democracy," the President urged us to tackle the specific problem of energy as part of an effort to regain our national assurance. To give us "energy security," the President outlined various initiatives in his strategy to reduce our imports of foreign oil. A cornerstone of his energy policy was the commitment to develop alternative sources of fuel from American resources, especially our vast coal reserves. The President proposed a major program to accelerate development of technologies for synthetic fuels from coal, oil shale, and biomass. The program would produce the equivalent of 2 million barrels per day of substitutes for imported oil by the early 1990's. On June 30, 1980, the President signed the Energy Security Act, legislation designed to achieve this production goal.

Among the emerging technologies that could be used to exploit the Nation's coal resources are coal gasification (coal converted to gaseous products) and coal liquefaction (coal converted to liquid products). Judicious selection of research and development projects, pilot plants, and demonstration and commercial efforts will develop useful information on a variety of options to derive synthetic fuels from coal. The successful implementation of the emerging technologies ultimately will require the solution of complex technical, economic, social, and environmental issues. One important factor that will influence our ability to develop a basic level of synthetic fuels production is water.

Water Resources Council's Water and Energy Program

The Federal Nonnuclear Energy Research and Development Act of 1974 (P.L. 93–577, as amended) authorizes an extensive and accelerated program for research and development of nonnuclear energy technologies that will lead to full-scale commercialization. Within the Act, Congress expressed a strong concern about the water resources implications of new energy technologies. The Governing Principles of the Act state: "Any program for the development of a technology which may require significant consumptive use of water after the technology has reached the stage of commercial application shall include thorough consideration of the impacts of such technology and use on water resources . . . ." Subsection (a) of Section 13, the authorization for this report, provides that the U.S. Water Resources Council shall conduct water assessments of such nonnuclear energy technologies.

Water and energy assessments will help advance water resources planning and management strategies that ensure that water will be available for energy technology development and other beneficial uses. Section 13(a) assessments which are currently being conducted as part of the Water Resources Council's water and energy program include the water resources regions of Upper Colorado, Ohio, Pacific Northwest, Great Basin, California, Lower Colorado, Rio Grande and Texas-Gulf.

Purpose of the Assessment

The Upper Missouri River Basin, which comprises most of the Northern Great Plains, contains large deposits of coal that have been estimated at 165 billion tons (see Figure 1). Extraction of this resource has increased in recent years. With the continuing national problems of energy supplies and the current national emphasis on coal utilization, coal development is

expected to increase rapidly in the area. Because expanded development and conversion of coal resources in the Great Plains seems imminent, especially in light of the President's goals and the fact that the first full-scale commerical coal gasification plant soon will be constructed in Mercer County, N.D., the Water Resources Council conducted a regional water and energy assessment of the Upper Missouri Basin.

The purpose of the Upper Missouri assessment was to determine the availability of water to support certain hypothetical levels of synfuel development for three types of coal conversion technologies and to identify the effects that synfuel development could have on the water resources of the region. The three coal conversion technologies examined were:

- *High Btu Gasification*—The chemical and physical conversion of solid coal to methane gas. Methane has sufficient heat content (near 1,000 Btu/cubic foot) to be a pipeline quality substitute for natural gas.
- *Low Btu Gasification*—The chemical and physical conversion of solid coal to gas with heat value of 100–500 Btu per cubic foot. Low Btu gas is used for industrial purposes, including electric power generation.
- *Liquefaction*—The chemical and physical conversion of solid coal to produce liquid hydrocarbons. Synthetic crude oil is generally an intermediate if not the final product of the process.

Hypothetical unit size coal conversion plants were sited in reasonable locations in the assessment area. Actual synthetic fuel development may consist of partial, single, or multiple unit size conversion plants. For any of the conversion technologies, a unit size plant produces a synthetic fuel that has the energy equivalent of 250×10^9 Btu per day.

The assessment was not designed to address site-specific questions. Therefore, users of this report are cautioned not to interpret information as applicable to a specific site.

Conduct of the Assessment

The Missouri River Basin Commission (MRBC) staff provided study management for this assessment. The assessment was conducted by representatives from the States of Montana, Wyoming, North Dakota, and South Dakota and from Federal agencies using existing published and unpublished data and information. During early phases of the assessment, the Department of Energy (DOE) provided the MRBC with a technical report on coal technologies and their potential for development in the Upper Missouri Basin. The MRBC study manager was responsible for implementing the scope of work, coordinating the work effort among participants, reviewing hydrologic and engineering data, and preparing the draft and final regional report. Guidance was provided to the study manager by WRC and the MRBC Water and Energy Committee. The participating States were represented on this committee.

Contractual assistance on specific elements of the assessment was provided by the U.S. Bureau of Reclamation (now Water and Power Resources Service), U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Geological Survey, participating States, and consultants.

Major Assumptions and Projections

Figure 2 illustrates the Upper Missouri assessment area and its eight assessment subareas. The subarea boundaries represent a combination of political and hydrologic delineations.

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Fig. 1—Distribution of Coal Reserves

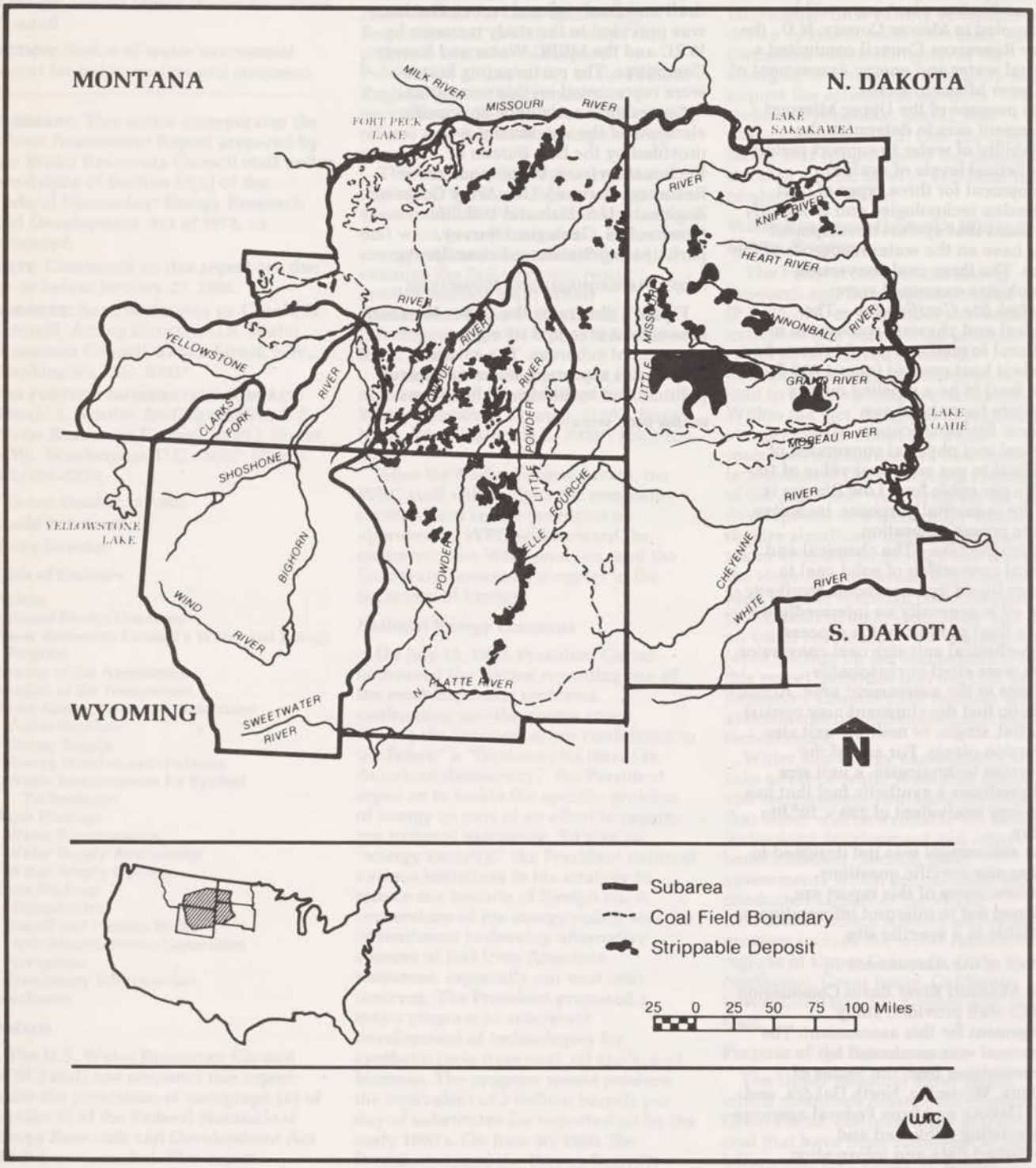
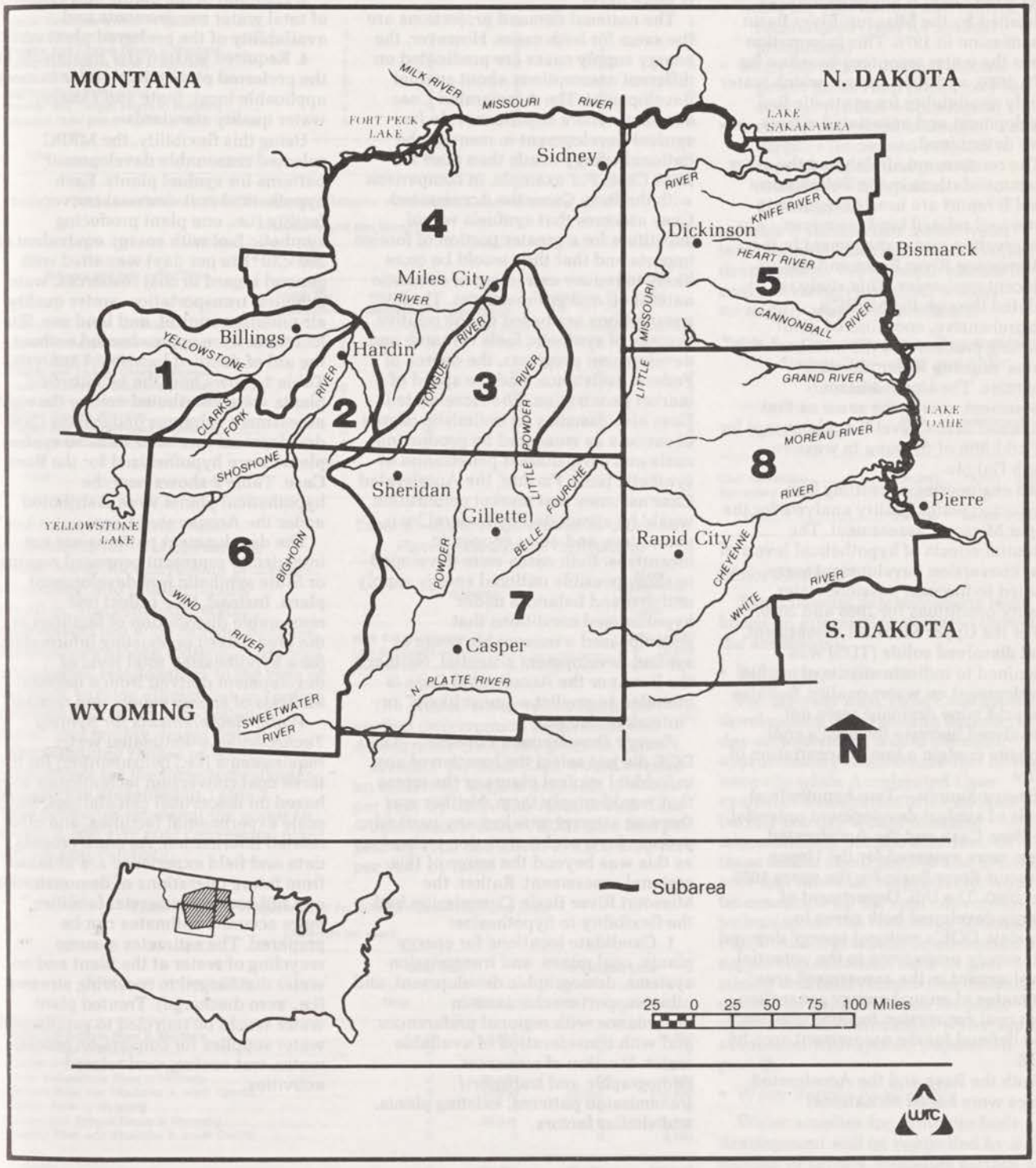


Fig. 2—Assessment Area with Subareas



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Water Baseline.—Current and projected levels of water uses, water requirements, water availability, and economic activity (including coal mining) were taken from the *Yellowstone River Basin and Adjacent Coal Area Level B Study* which was published by the Missouri River Basin Commission in 1978. This information forms the water resources baseline for 1975, 1985, and 2000 against which water supply availability for synthetic fuel development and associated effects were determined.

The recommended plan and the other recommendations in the Yellowstone Level B report are used as a guide to water and related land resources conservation and management in the Yellowstone River Basin and the adjacent coal areas. This study is updated through the MRBC's comprehensive, coordinated, joint planning process and the member States' ongoing water planning programs. The Upper Missouri assessment area is the same as that examined in the Level B study except for the addition of the area in western South Dakota.

An engineering consulting firm conducted water quality analysis for the Upper Missouri assessment. The potential effects of hypothetical levels of coal conversion development were studied to forecast possible water quality conditions for 1985 and 2000.

For the Upper Missouri assessment, total dissolved solids (TDS) was examined to indicate effects of synfuel development on water quality. Sulfates and acid mine drainage were not considered because the area's coal deposits contain a low concentration of sulfur.

Energy Supply.—Two hypothetical levels of synfuel development potential, the Base Case and the Accelerated Case, were assessed for the Upper Missouri River Basin for the years 1985 and 2000. The U.S. Department of Energy developed both cases to translate DOE's national energy demand and supply projections to the potential development in the assessment area. Estimates of annual energy generation from coal conversion technologies were also defined for the assessment area by DOE.

Both the Base and the Accelerated Cases were based on national consumption of 98 quads (quadrillion Btu) in 1985 and 143 quads in 2000. However, more recent DOE supply and demand studies suggest these levels of energy consumption may be high and that a level of 125 quads or less in 2000 is more likely.

The national demand projections are the same for both cases. However, the energy supply cases are predicated on different assumptions about synfuel development. The Accelerated Case assumes a more significant role for synfuel development in meeting the national energy needs than does the Base Case. For example, in comparison with the Base Case, the Accelerated Case assumes that synfuels would substitute for a greater portion of foreign imports and that they would be more likely to reduce extraction of domestic natural oil and gas resources. These assumptions are based on the relative success of synthetic fuels research and development programs, the degree of Federal assistance, and the speed of market penetration. The Accelerated Case also assumes an optimistic degree of success as measured by production costs and early market penetration of synthetic fuels. Further, the Accelerated Case assumes that market penetration would be stimulated by Federal loan guarantees and other economic incentives. Both cases were developed to show possible national energy supply and demand balances under hypothesized conditions that encompassed a reasonable range of synfuel development potential. Neither the Base nor the Accelerated Case is intended to predict a "most likely" or "intended" future.

Energy Development Patterns.—The DOE did not select the location of any individual synfuel plants or the mines that would supply them. Neither was there an attempt to select any particular process for a coal conversion technology as this was beyond the scope of this regional assessment. Rather, the Missouri River Basin Commission had the flexibility to hypothesize:

1. Candidate locations for energy plants, coal mines, and transmission systems, demographic development, and other support mechanisms in accordance with regional preferences and with consideration of available water, location of resources, demographic and transport/transmission patterns, existing plants, and similar factors.

2. The number and size of plants (including any preferred technology and process mix) best suited to meeting the regional energy supply projections and consistent with projected water resource conditions.

3. Location of the plants and estimates of total water requirements and availability of the preferred plant mix.

4. Required wastewater treatments for the preferred plant mix in order to meet applicable local, State and Federal water quality standards.

Using this flexibility, the MRBC selected reasonable development patterns for synfuel plants. Each hypothetical unit size coal conversion facility (i.e., one plant producing synthetic fuel with energy equivalent of 250×10^9 Btu per day) was sited with general regard to coal resources, water supplies, transportation, water quality, air pollution control, and land use. Site locations were approximated without the aid of detailed locational analysis. Table 1 shows how the hypothetical plants were distributed among the eight assessment subareas under Base Case development levels. In 1985, no synfuel plants were hypothesized for the Base Case. Table 2 shows how the hypothetical plants were distributed under the Accelerated Case.

The development patterns are not intended to represent proposed regional or State synthetic fuel development plans. Instead, they reflect one reasonable distribution of facilities in the area, based on existing information, for a hypothesized total level of development derived from a national analysis of energy supply and demand.

Water Requirements for Synfuel Technologies.—Estimated water requirements (i.e., consumption) for the three coal conversion technologies were based on theoretical calculations, small-scale experimental facilities, and other related information. As more process data and field experience are obtained from future operations of demonstration and full-scale commercial facilities, more accurate estimates can be prepared. The estimates assume recycling of water at the plant and no water discharged to receiving streams (i.e., zero discharge). Treated plant water would be recycled to supplement water supplies for conversion process water, wet cooling, and related activities.

Table 1.—*Synthetic Fuel Development Patterns: Base Case—1985 and 2000*

[Number of unit size plants]

Subarea and river basin/State	1985	2000			
		High Btu gasification	Low Btu gasification	Liquefaction	Total
1 Upper Yellowstone River in Montana	0	0	0	1	1
2 Bighorn River in Montana	0	0	0	0	0
3 Powder and Tongue Rivers in Montana	0	0	0	1	1
4 Lower Yellowstone River in Montana	0	2	0	2	4
5 Missouri River and tributaries in North Dakota	0	9	0	2	11
6 Bighorn River in Wyoming	0	0	0	0	0
7 Powder and Tongue Rivers in Wyoming	0	4	0	0	4
8 Missouri River and tributaries in South Dakota	0	0	0	0	0
Total	0	15	0	6	21

Table 2.—*Synthetic Fuel Development Patterns: Accelerated Case—1985 and 2000*

[Number of unit size plants]

Subarea and river basin/State	1985	2000			
	High Btu gasification	High Btu gasification	Low Btu gasification	Liquefaction	Total
1 Upper Yellowstone River in Montana	0	0	1	1	2
2 Bighorn River in Montana	0	0	0	0	0
3 Powder and Tongue Rivers in Montana	1	4	0	3	7
4 Lower Yellowstone River in Montana	0	1	0	1	2
5 Missouri River and tributaries in North Dakota	6	8	0	4	12
6 Bighorn River in Wyoming	0	0	0	0	0
7 Powder and Tongue Rivers in Wyoming	0	9	0	0	9
8 Missouri River and tributaries in South Dakota	0	0	1	0	1
Total	7	22	2	9	33

For this assessment, water requirements for coal conversion include water for conversion processes, wet cooling, and related facility operation. The estimated water requirements are wide ranging because of differences among individual process technologies, relationships to the type of coal used, varying efficiencies in cooling equipment, air and water pollution control, and facility design options.

The estimated ranges of water requirements for the three technologies assessed are presented in Table 3. These estimates represent the water to operate a unit size coal conversion plant at 90 percent capacity.

Table 3.—*Water Requirements for a Unit Size Plant for the Synfuel Technologies*

Technology	Water requirements (acre-feet per year)
High Btu gasification	5,960–14,030
Low Btu gasification	6,550
Liquefaction	4,700–7,800

The annual water requirement for synfuel development in the Base and Accelerated Cases are given in Table 4.

Overall, the Base Case would require an estimated 194,000 acre-feet of water per year by 2000. The Accelerated Case would require about 78,000 acre-feet per year by 1985 and about 276,000 acre-feet per year by 2000.

Table 4.—*Water Requirements by Synfuel Case—1985 and 2000*

[Acre-feet per year]

Subarea and river basin/State	Base Case		Accelerated case	
	1985	2000	1985	2000
1 Upper Yellowstone River in Montana	0	6,630	0	14,350
2 Bighorn River in Montana	0	0	0	0
3 Powder and Tongue Rivers in Montana	0	7,800	8,700	66,550
4 Lower Yellowstone River in Montana	0	33,160	0	16,580
5 Missouri River and tributaries in North Dakota	0	115,250	69,000	110,800
6 Bighorn River in Wyoming	0	0	0	0
7 Powder and Tongue Rivers in Wyoming	0	30,840	0	60,640
8 Missouri River and tributaries in South Dakota	0	0	0	6,550
Total [1]	0	194,000	78,000	276,000

[1] Rounded to nearest thousand acre-feet per year.

In addition to these water requirements, synfuel development would stimulate related water uses, referred to here as secondary water requirements. In this assessment, the secondary water uses examined were:

- water for coal mining and related land reclamation (coal for synfuel production)
- water for offsite thermal electric power generation (electricity to operate synfuel technologies)
- water for increased municipal water supplies (increased supplies to support population growth attendant with synfuel development)

Table 5 summarizes major water requirements associated with synfuel development. Water requirements for coal conversion are about 4 times secondary water requirements.

Table 5.—*Cumulative Water Requirements by Synfuel Case—1985 and 2000*

[Acre-feet per year]

Type of water use	Base case 2000	Accelerated case	
		1985	2000
Coal conversion	194,000	78,000	276,000
Secondary	53,000	20,000	74,000
Total	247,000	98,000	350,000

Major Findings

The following determinations were based on information gathered during the assessment.

- Water Requirements

For the year 2000, Base Case synfuels development at 1.1 million barrels per day oil equivalent would consume approximately 250,000 acre-feet of water annually while Accelerated Case synfuels development at 1.7 million barrels per day would consume approximately 350,000 acre-feet. Of these totals, about 200,000 and 276,000 acre-feet of water, respectively, would be consumed by the coal conversion technologies. The remaining 50,000 and 74,000 acre-feet would be consumed by supporting activities, such as goal mining and land reclamation, thermal electric power generation for plant operations, and municipal water supply associated with synfuel population growth.

- Water Supply Availability

Water supplies for synthetic fuels development will be controlled by a number of factors, including surface and groundwater resource conditions, the extent to which these resources have

been institutionally committed or allocated, and the extent to which instream uses would be affected by additional depletions. These factors were analyzed to estimate the present and future water resources baseline against which water availability for synfuels development and possible effects of synfuels development were measured. Except as otherwise noted, the Accelerated Case—2000 is the basis for the analysis that follows below. For this summary report, the assessment subarea findings are aggregated to the State level. The projected surface water flows have been adjusted for streamflow depletion by irrigation, electric generation, municipal and domestic water supplies, livestock, etc.

Wyoming—Projected surface flows of the Bighorn River will average about 2 million acre-feet annually in 2000. Typical low-flow conditions (7-day, 10-year flow) include the augmenting effects of Boysen and Buffalo Bill Reservoirs. Boysen Reservoir has Federal water available for contract pending completion of an Environmental Impact Statement and water availability studies by the U.S. Water and Power Resources Service. The legal availability of water in the Big Horn River may be influenced by future quantification of Federal Reserved and Indian water rights.

In the northeast section of Wyoming, the Powder and Tongue River Basins contain some of the richest coal reserves in the Upper Missouri assessment area. Surface water flows in the Powder and Tongue Rivers are projected to average about 500,000 acre-feet annually in 2000. Because existing low-flow conditions are near zero, use of available surface flows would require reservoir storage for both the Base and Accelerated Cases. Water requirements for the Accelerated Case would exceed the average annual flow by 10 percent and the dry year flow (80 percent exceedence level) by nearly 25 percent.

Groundwater is available in northeast Wyoming, but present information is insufficient to determine its full potential as a major water source. The availability of surface water in this area may be constrained by institutional provisions of the Belle Fourche River and Yellowstone River Compacts. The Accelerated Case could deplete streamflows to the maximum level for all projected uses allowed by provisions of the compacts. Quantification of Federal Reserved rights may further affect future availability of water.

Montana–Projected surface flows in the Upper Yellowstone River in 2000 will average over 5 million acre-feet annually. Typical low-flow conditions (7-day, 10-year) will exceed 0.5 million acre-feet per year. Synfuel development patterns by 2000 would deplete the Upper Yelowstone River by less than 1 percent of the average annual flow or about 2 percent of the low-flow condition. Conflicts with other offstream or instream uses would be minimal.

In the Lower Bighorn River, projected surface water flows will average over 2.4 million acre-feet annually in 2000. Low-flow conditions are generally enhanced to exceed 700,000 acre-feet per year by regulated releases at Yellowtail Reservior. The Yellowtail Reservoir has Federal water available for contract pending completion of an Environmental Impact Statement and water availability studies by the U.S. Water and Power Resources Service. The legal availability of water may be influenced by quantification of Federal Reserved and Indian water rights on the Bighorn River in both Montana and Wyoming.

Flows in the coal-rich Lower Powder and Tongue River Basins in Montana are affected by upstream depletions in Wyoming. Projected downstream surface water flows will average nearly 600,000 acre-feet annualy in 2000. Water requirements for the Accelerated case would exceed the average annual flow by 10 percent and the dry year flow by nearly 15 percent. In combination with the upstream synfuel water requirements in Wyoming, over 20 percent of the projected average annual downstream flow of the Powder and Tongue Rivers would be depleted. Over 25 percent of the dry year flow would be depleted for the same level of development. Because low-flow conditions are near zero, use of further surface water supplies for both the Base and Accelerated Case would require reservoir storage in Montana and Wyoming. Groundwater is also available in this area but information is insufficient to determine its full potential as a major source of water supply. Institutional considerations that may influence water availability include the Yellowstone River Compact and future quantification of Federal Reserved and Indian water rights.

The flows of the Lower Yellowstone River in Montana are also affected by aggregated upstream depletions for synfuel development. Projected surface flows in the Lower Yellowstone will average about 7.8 million acre-feet annually in 2000. Synthetic fuel development would deplete the lower basin average annual and dry year flows by less than 1 percent and less than 2 percent under low-flow conditions. In the entire Upper and Lower Yellowstone River Basin, the aggregated requirements of synfuel development under the Accelerated Case would be about 2 percent of the projected average annual downstream flow in 2000, nearly 3 percent of the dry year flow, or about 15 percent of low-flow conditions. Conflicts between instream uses and synthetic fuel development could arise under low-flow conditions. The legal status of available water supplies may be affected by quantification of Federal Reserved and Indian water rights. The recent reservation of over 6 million acre-feet per year of water by the State of Montana may also influence synfuel development potential in the Lower Yellowstone.

North and South Dakota.—By the year 2000, projected surface flows in the Upper Missouri River and tributaries will average about 15.8 million acre-feet annually in North Dakota and about 16.7 million acre-feet annually in South Dakota. Total water requirements for synthetic fuel development in both States would be less than 1 percent of average annual surface flows.

By 2000, the aggregated water depletions for synthetic fuel development for the Accelerated Case in the entire assessment area would be less than 2 percent of the average flow of the Missouri River in South Dakota.

Tributaries to the Missouri River in North and South Dakota will supply over 2 million acre-feed annually to the river. Some of these tributary waters could be developed for synthetic fueld supply. However, because of low-flow conditions in these tributaries, reservoir storage would be required.

- Water Supply Options

Existing single- and multiple-purpose water supply systems in the Upper Missouri River Basin would require major modification and expansion to provide water for regional synthetic fuel development and production.

In North and South Dakota, water for the hypothetical coal conversion development levels could be provided by diversions from the Missouri River. Water for coal conversion in North Dakota could be conveyed by an aqueduct system originating at Lake Sakakawea. In South Dakota, an aqueduct system could divert water from Lake Oahe.

For the Tongue and Powder River Basins, the assessment evaluated three hypothetical options for expanded surface water supplies to meet the demands of the two synfuel development cases. These three options were chosen because there was sufficient information to examine them at a broad conceptual level and to

estimate the order of magnitude of their costs and potential effects on the water resources. In addition to these three illustrations, however, there are other regional water supply options, including: development of groundwater supplies, conjunctive use of groundwater and surface water, conveyance of water from Lake Oahe to the Tongue and Powder River Basins, and water conservation. The assessment did not address groundwater as a regional supply alternative (either sole source or conjunctive use) because of data limitations. The conveyance of Lake Oahe water to the Tongue and Powder Basins as a single-purpose aqueduct serving only synfuel needs was deemed too expensive, and a multipurpose aqueduct from Lake Oahe was not assessed. Water conservation has been indirectly reflected in the water availability projections.

The three water supply options to supply surface water for synfuel development along the water-short Tongue and Powder River Basins of Montana and Wyoming are described briefly in the following sections. Their possible effects on water quantity, water quality, and environmental components and their estimated costs are listed as well. (Annual costs for the three options are based on construction, operation, and maintenance of aqueducts, pumping stations, terminal reservoirs and related appurtenances. Land costs are included also. Overall construction costs for the regional surface water supply systems could range from ½ to 1 billion dollars.) All three options assume that the recommendations for the Tongue and Moorhead Reservoirs (subarea 3) set forth in the Yellowstone Level B report will be implemented. The Water Resources Council does not recommend or support any of these water supply options; they are presented only to indicate possible implications of using various water sources for synfuel development. Actual selection of water sources must be based on more detailed studies.

Option 1.—Option 1 involves the development of streamflows near coal conversion plants with limited development of aqueducts, reservoirs, pumping stations, etc. (see Figure 3). The water provided under option 1 would use approximately 15,000 acre-feet per year of water that, according to the Yellowstone Level B Study, would already be committed for future irrigation. The rest of the water would come from uncommitted supplies. The estimated annual cost for option 1 would be $31 million for the Base Case and $38 million for the Accelerated Case.

The greatest streamflow depletion under water supply option 1 would be in the Powder River (see Table 6). By 2000, the average annual streamflow in the upper reach of the Powder River in Wyoming would be depleted by 12 percent for the Base Case and 27 percent for the Accelerated Case. In the lower reach of the Powder River in Montana, the streamflow would be depleted by 8 percent and 20 percent for the respective synfuel cases. Because low-flow conditions are already near zero, use of further surface water would require reservoir storage under both synfuel cases. Other streams in the assessment area would be depleted by an estimated 3 percent or less for the synfuel cases in 2000.

Surface water quality degradation from synfuel development could occur from runoff from the coal conversion facilities and from coal mining areas. Synfuel-related streamflow depletion may also contribute to downstream water quality degradation by reducing the volume of water available to dilute and assimilate wastes from other beneficial uses.

The TDS loading rates expected from runoff from synfuel facilities and associated mining and land reclamation areas were estimated to determine the effects on water quality. With the exception of the Knife and Cannonball Rivers in North Dakota, which already have high levels of TDS (about 1,000 mg/1 or more during average annual flows), the effects from assessed runoff would be negligible (increases less than 2 mg/1) under both Cases in 2000. However, the Accelerated Case in 2000 will increase TDS in the Knife River by 41 mg/1 and in the Cannonball River by 14 mg/1.

The Tongue, which presently has relatively low TDS in the upstream reaches, could be measurably affected (an increase of 14 mg/1) downstream by the year 2000 under the Accelerated Case.

There was not enough information to further assess degradation of water quality caused conjunctively by streamflow depletions from synfuels development and wastewater discharges by beneficial users. Option 1 suggests a measureable flow depletion of the Powder River and implicity the Tongue and suggests corresponding increases in TDS in these rivers in line with the depletions. Because other water uses are already projected to increase TDS in the Powder and the Tongue, any synfuel-related increases are important because of their compounding effect.

The U.S. Fish and Wildlife Service evaluated six selected stream reaches in Montana to assess what effect streamflow depletion from synfuel development could have on life stages of certain "target" fish. The stream reaches were evaluated for the three water supply options in the year 2000. The potential effects were measured by how much synfuel-related streamflow depletion would change a predetermined "weighted useable area" (i.e., an optimum relationship of stream depth to stream velocity for fish life cycles in a given stream reach).

Under option 1, the reaches of the Powder, Tongue, and Bighorn Rivers would sustain some habitat changes, but the overall quality ratings for fish habitat conditions would not significantly reduced by synfuel development.

Disturbances to land area and ecosystems were also estimated. For the Accelerated Case, construction of major water works considered under option 1 would disturb about 33,000 acres of land principally in grassland and cropland ecosystems. For the Base Case, option 1 would disturb about 11,000 acres.

Option 2. —Option 2 considers a major aqueduct to use water released from the Yellowtail Reservoir but diverted downstream on the Bighorn River in Montana (see Figure 4). The aqueduct system would extend to the Gillette, Wyoming, area. Water would also be released from this aqueduct to the Powder and Tongue Rivers to support coal conversion development along these river basins. Option 2 would use no committed water. The estimated annual cost for option 2 would be $38 million for the Base Case and $51 million for the Accelerated Case.

The greatest average annual streamflow depletion under water supply option 2 would be in the Bighorn River in Montana (see Table 7). Here the streamflow by 2000 would be depleted by approximately 2 percent for the Base Case and 5 percent for the Accelerated Case. Other streams would be depleted by about 3 percent or less for both synfuel cases.

Under water supply option 2, water quality degradation from increased TDS concentrations would be similar to that under option 1. Major rivers would be modestly depleted under the Base Case and Accelerated Case; therefore, TDS concentrations probably would not be increased substantially under this option.

Aquatic habitat affected by water supply option 2 generally would be limited to the Bighorn downstream from the Little Bighorn River confluence. Channel catfish would lose a small

percentage of their optimum spawning area, but the spawning area was estimated to be comparatively small even without synfuel development.

Water works constructed under option 2 for the Accelerated Case level of development would disturb about 34,000 acres of land primarily grassland and cropland. About 14,000 acres of land would be disturbed under the Base Case.

Option 3. —Option 3 considers a major aqueduct system to use water released from the Yellowtail Reservoir but diverted from the lower reach of the Yellowstone River in Montana (see Figure 5). This aqueduct system would also extend to the Gillette, Wyoming, area. Water would be released from this aqueduct to support synfuel development in the Powder and Tongue River Basins. Option 3 would use no committed water. The estimated annual cost for option 3 would be $42 million for the Base Case and $63 million for the Accelerated Case.

The greatest streamflow depletion under option 3 would be in the Cannonball River in North Dakota (see Table 8). For the Accelerated Case, the streamflow would be depleted by an estimated 3 percent. Other streams would be depleted an estimated 2 percent or less. Depletion would be 1 percent or less under the Base Case.

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Fig. 3—Surface Water Development—Option 1

(Base and Accelerated Cases - 2000)

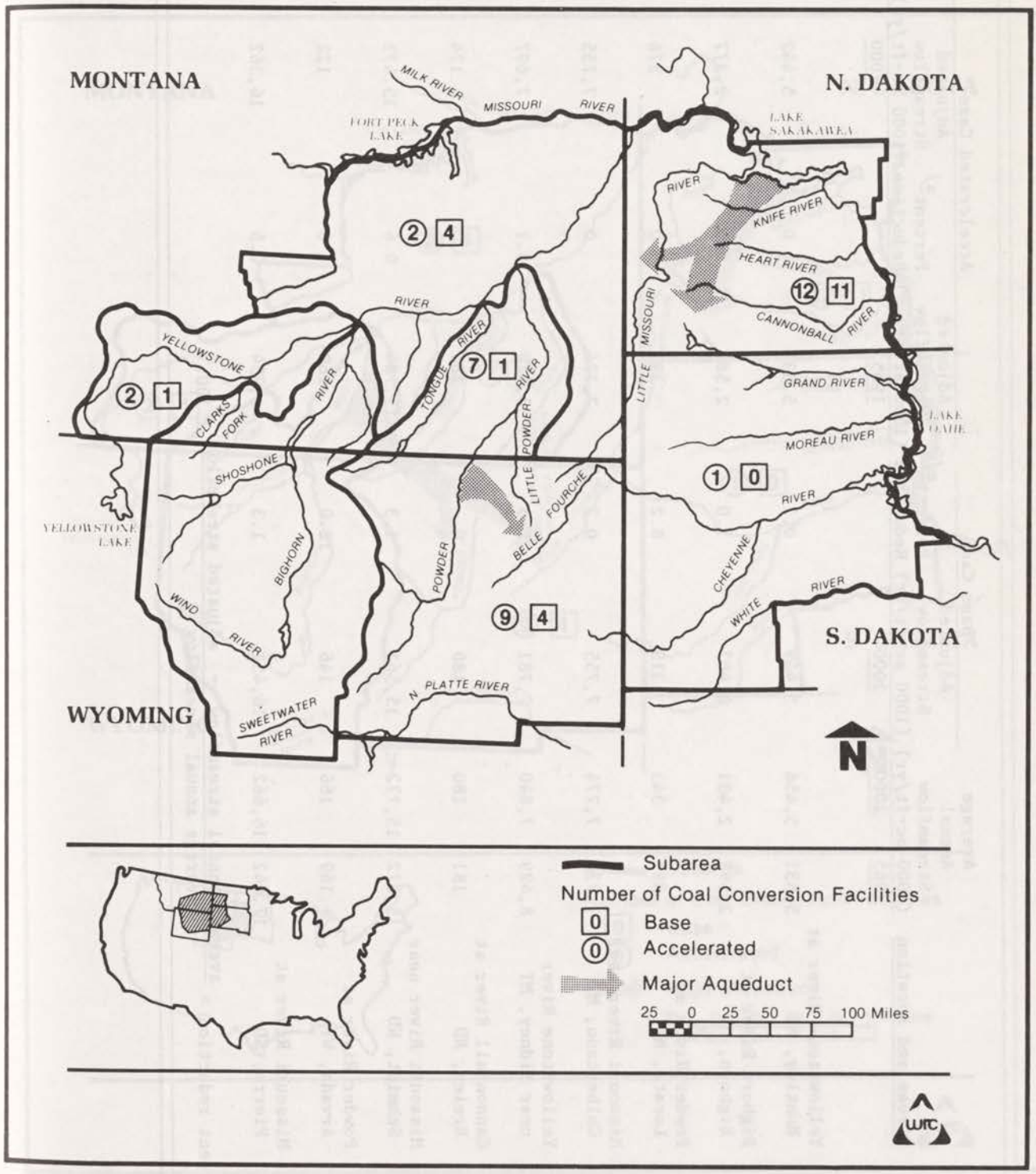


Table 6: Streamflows, Water Supply Option 1

Subarea	Stream and Location	Average Annual Streamflow (1000 ac-ft/yr) 1985	Average Annual Streamflow (1000 ac-ft/yr) 2000	Base Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Base Case Percent[a/] Reduction	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 1985	Accelerated Case Percent[a/] Reduction	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Accelerated Case Percent[a/] Reduction
1	Yellowstone River at Huntley, MT	5,531	5,456	5,449	0.1	5,531	0	5,442	0.3
2	Bighorn River at Bighorn, MT	2,597	2,431	2,407	1.0	2,588	0.3	2,377	2.2
3	Powder River at Locate, MT	393	343	315	8.2	393	0	276	19.5
4	Missouri River near Culbertson, MT	7,774	7,774	7,755	0.2	7,774	0	7,755	0.2
	Yellowstone River near Sidney, MT	8,429	7,840	7,781	0.8	8,420	0.1	7,697	1.8
5	Cannonball River at Breien, ND	181	180	180	0	181	0	174	3.3
	Missouri River near Schmidt, ND	15,872	15,772	15,561	1.3	15,784	0.6	15,472	1.9
7	Powder River at Arvada, WY	169	166	146	12.0	169	0	122	26.5
8	Missouri River at Pierre, SD	17,042	16,662	16,451	1.3	16,954	0.5	16,362	1.8

a/ $$\text{Percent reduction} = \frac{\text{average annual streamflow} - \text{adjusted streamflow}}{\text{average annual streamflow}} \times 100$$

Fig. 4—Surface Water Development—Option 2
(Base and Accelerated Cases - 2000)

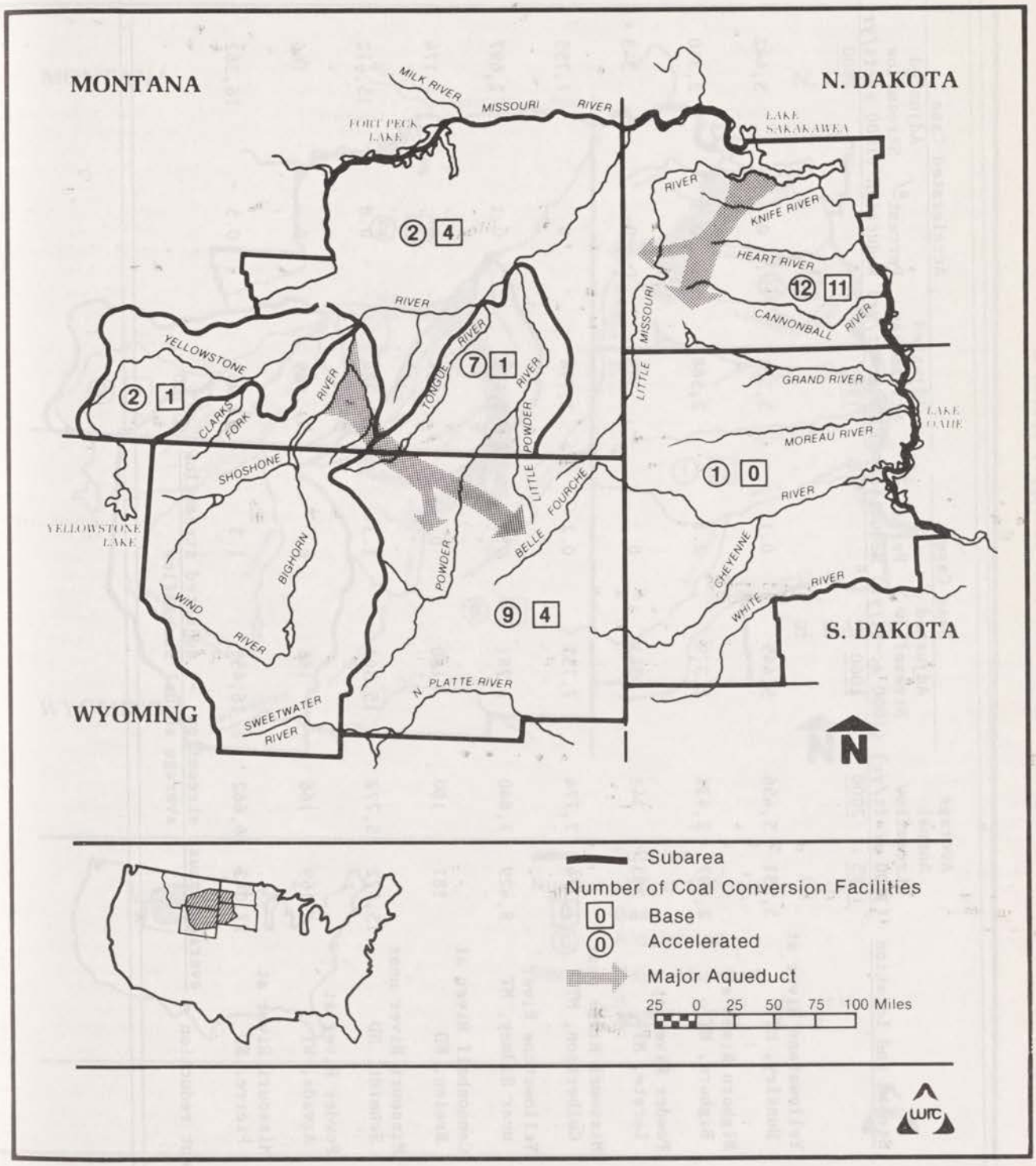


Table 7: Streamflows, Water Supply Option 2

Subarea	Stream and Location	Average Annual Streamflow (1000 ac-ft/yr) 1985	Average Annual Streamflow (1000 ac-ft/yr) 2000	Base Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Base Case Percent[a/] Reduction	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 1985	Accelerated Case Percent[a/] Reduction	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Accelerated Case Percent[a/] Reduction
1	Yellowstone River at Huntley, MT	5,531	5,456	5,449	0.1	5,531	0	5,442	0.3
2	Bighorn River at Bighorn, MT	2,597	2,431	2,379	2.1	2,588	0.3	2,310	5.0
3	Powder River at Locate, MT	393	343	343	0	393	0	343	0
4	Missouri River near Culbertson, MT	7,774	7,774	7,755	0.2	7,774	0	7,755	0.2
	Yellowstone River near Sidney, MT	8,429	7,840	7,781	0.8	8,420	0.1	7,697	1.8
5	Cannonball River at Breien, ND	181	180	180	0	181	0	174	3.3
	Missouri River near Schmidt, ND	15,872	15,772	15,561	1.3	15,784	0.6	15,472	1.9
7	Powder River at Arvada, WY	169	166	166	0	169	0	166	0
8	Missouri River at Pierre, SD	17,042	16,662	16,451	1.3	16,954	0.5	16,362	1.8

a/ Percent reduction = $\frac{\text{average annual streamflow - adjusted streamflow}}{\text{average annual streamflow}} \times 100$

Fig. 5—Surface Water Development—Option 3
(Base and Accelerated Cases - 2000)

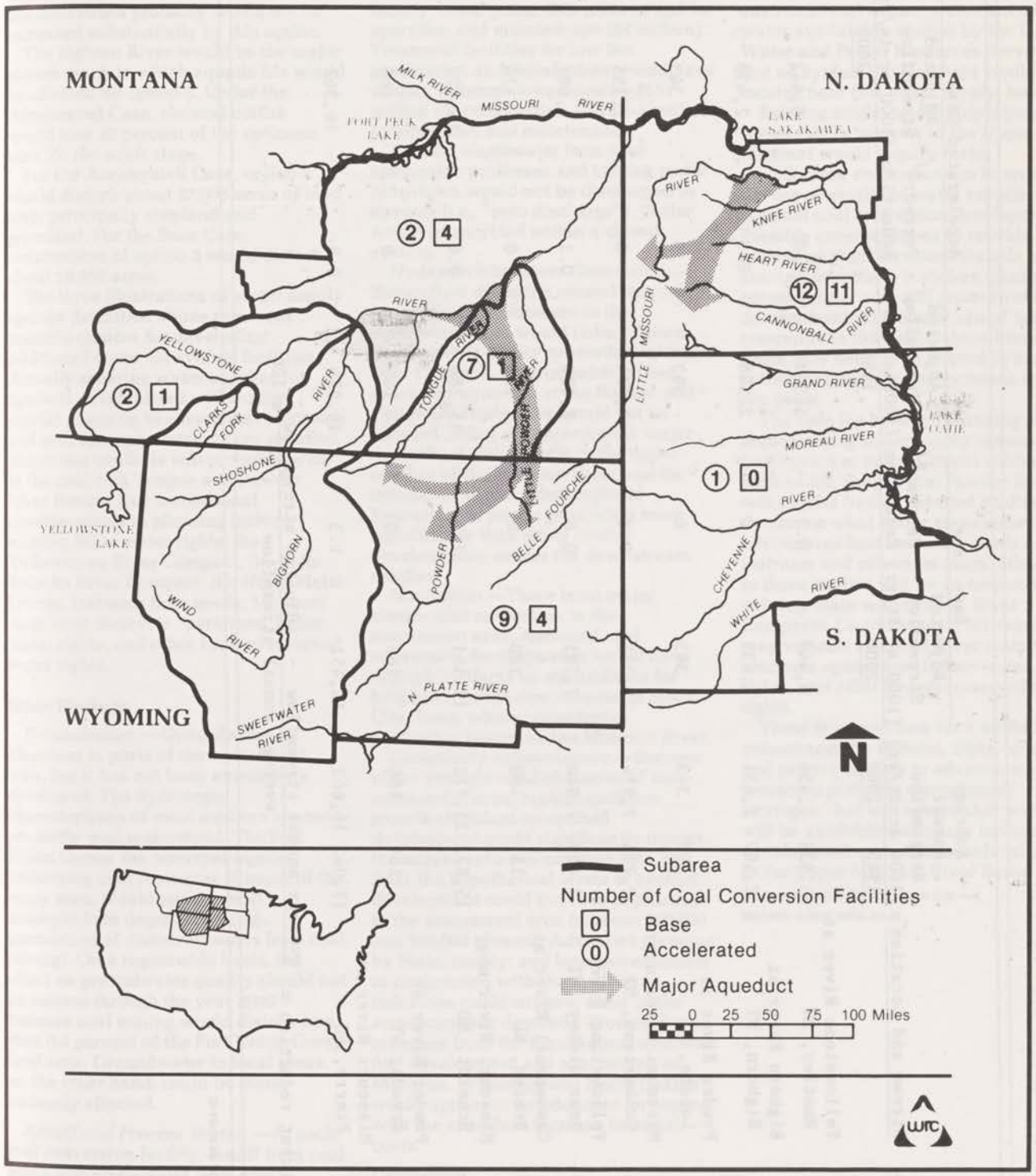


Table 8: Streamflows, Water Supply Option 3

Subarea	Stream and Location	Average Annual Streamflow (1000 ac-ft/yr)		Base Case		Accelerated Case			
		1985	2000	Adjusted Streamflow (1000 ac-ft/yr) 2000	Percent[a/] Reduction	Adjusted Streamflow (1000 ac-ft/yr) 1985	Percent[a/] Reduction	Adjusted Streamflow (1000 ac-ft/yr) 2000	Percent[a/] Reduction
1	Yellowstone River at Huntley, MT	5,531	5,456	5,449	0.1	5,531	0	5,442	0.3
2	Bighorn River at Bighorn, MT	2,597	2,431	2,431	0	2,588	0.3	2,430	0.1
3	Powder River at Locate, MT	393	343	343	0	393	0	343	0
4	Missouri River near Culbertson, MT	7,774	7,774	7,755	0.2	7,774	0	7,755	0.2
	Yellowstone River near Sidney, MT	8,429	7,840	7,781	0.8	8,420	0.1	7,697	1.8
5	Cannonball River at Breien, ND	181	180	180	0	181	0	174	3.3
	Missouri River near Schmidt, ND	15,872	15,772	15,561	1.3	15,784	0.6	15,472	1.9
7	Powder River at Arvada, WY	169	166	166	0	169	0	166	0
8	Missouri River at Pierre, SD	17,042	16,662	16,451	1.3	16,954	0.5	16,362	1.8

[a/] Percent reduction = $\frac{\text{average annual streamflow} - \text{adjusted streamflow}}{\text{average annual streamflow}} \times 100$

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Under option 3, water quality degradation from increased TDS concentrations would be similar to that under option 1. Major rivers would be modestly depleted under the Base Case and Accelerated Case; therefore, TDS concentrations probably would not be increased substantially by this option.

The Bighorn River would be the major stream reach in which aquatic life would be affected by option 3. Under the Accelerated Case, channel catfish would lose 40 percent of the optimum area for the adult stage.

For the Accelerated Case, option 3 would disturb about 37,000 acres of land area, principally cropland and grassland. For the Base Case, construction of option 3 would disturb about 16,000 acres.

The three illustrations of water supply options described above represent possible choices for developing additional water for synfuel facilities. Actually securing water supplies for synfuels development will require careful planning to ensure that offstream and instream requirements are satisfied. Water use conflicts will probably arise in the coal-rich Tongue and Powder River Basins. Key institutional considerations in planning include existing State water rights, the Yellowstone River Compact, the Belle Fourche River Compact, the North Platte Decree, instream flow needs, Missouri main stem reservoir operations, Indian water rights, and other Federal reserved water rights.

Other Findings

Groundwater. —Groundwater is abundant in parts of the assessment area, but it has not been extensively developed. The hydrologic characteristics of most aquifers are not presently well understood. The Fort Union Group, the principal aquifer underlying coal resources in much of the study area, would appear most susceptible to degradation (e.g., percolation of dissolved solids from coal mining). On a regionwide basis, the effect on groundwater quality should not be serious through the year 2000 because coal mining would disturb less than 0.2 percent of the Fort Union Group land area. Groundwater in local areas, on the other hand, could be more seriously affected.

Runoff and Process Water. —At each coal conversion facility, runoff from coal yards and wastewater from coal conversion processes and cooling water blowdown will require treatment.

Estimated construction costs (1979) for runoff treatment and disposal for a unit size facility would range from $4 to $6 million. Annual operating cost is estimated at $100,000.

For unit size facilities, high Btu coal gasification would have the highest estimated costs (1979) for treatment facility construction ($20 million) and for operation and maintenance ($4 million). Treatment facilities for low Btu gasification and liquefaction would have similar, although lower, costs—$15 million for construction and $2–3 million for operation and maintenance.

Treated wastewater from coal conversion processes and cooling water blowdown would not be discharged to streams (i.e., "zero discharge"). Water would be recycled within a closed system.

Hydroelectric Power Generation.— Streamflow depletion caused by coal conversion development in the assessment area would reduce future hydroelectric power generation by less than 1 percent. Hydroelectric power generated upstream at the Boysen and Yellowtail Reservoirs would not be affected. Siting of concentrated, water-depleting developments in the upper reaches of the Missouri River and its tributaries would affect regional hydroelectric power generation more significantly than siting similar developments nearer the downstream reaches.

Navigation.—There is no major commercial navigation in the assessment area. Assessed coal conversion developments would have negligible effects on streamflows for barge tow traffic downstream of Sioux City, Iowa, where commercial navigation begins on the Missouri River.

Community Infrastructure.—Because of the strongly rural character of the assessment area, rapid population growth attendant on synfuel development could significantly impact the infrastructure of communities. By 2000, the hypothetical levels of synfuel development could increase population in the assessment area between 100,000 and 160,000 persons. Advanced planning by State, county, and local governments in conjunction with the synfuel industries could mitigate some of the socioeconomic demands. Projected tax revenues from the hypothetical synthetic fuel development and coal mining in Montana, Wyoming, and North Dakota would appear to be adequate for coping with the attendant increase in social costs.

Conclusion

Surface water is generally available in the Upper Missouri River Basin to support coal conversion development. Regional availability of groundwater can only be assessed by further field studies.

Approximately 700,000 acre-feet of surface water are available annually in the Boysen and Yellowtail Reservoirs on the Bighorn River, pending completion of environmental impact statement and water availability studies by the U.S. Water and Power Resources Service. Not all synfuel development would be located near this water supply, however.

Existing single- and multiple-purpose water supply systems in the Upper Missouri would require major modification and expansion to enable the use of available water supplies for regional coal conversion development. Possible considerations to provide water at desired plant locations include new storage, interbasin transfers, changes in present water use, and groundwater development. The operations of some reservoirs in the Yellowstone River Basin may need to be altered to assure sufficient flows for energy needs during dry years.

The time lag between planning and implementing water supply systems may be 20 years or more. Critical subbasins, such as the Tongue and Powder River, will require further detailed studies to determine what water management alternatives best serve the needs of instream and offstream users. Inherent in these studies will be an emphasis on existing State water rights, River Compacts, Court Decrees, instream flow reservations, Missouri River main stem reservoir operations, Indian water rights, and other Federal reserved water rights.

There is a need now for a unified commitment by Federal, State, local, and private entities to advance water resources planning management strategies that will ensure that water will be available for energy technology development and other beneficial uses in the Upper Missouri River Basin.

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Wednesday
October 29, 1980

Part IV

Department of Energy

Office of Conservation and Solar Energy

Price Support Loans for Municipal Waste Energy Projects

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 485

[Docket No. CAS-RM-80-121]

Price Support Loans for Municipal Waste Energy Projects

AGENCY: Department of Energy.

ACTION: Proposed rule and request for voluntary applications.

SUMMARY: On June 30, 1980, the President signed the Biomass Energy and Alcohol Fuels Act of 1980 (the "Act") which is Title II, of the Energy Security Act ("ESA"), Pub. L. 96-294. The Act, among other things, authorizes the Department of Energy ("DOE") to provide various forms of financial assistance to municipal waste energy projects to reduce the dependence of the United States on imported petroleum and natural gas. Today's notice sets forth as a proposal the rules under which DOE will provide price support loans to assist municipal waste energy projects, requests public comments on the proposed rule, and establishes dates for public hearings on the proposed rule. This notice also requests persons to file voluntary applications for price support loans prior to promulgation of the final rule. On September 25, 1980 (45 FR 63822) DOE published proposed rules to establish the components for determining the maximum amount of price support loans. These components are the "standard support price" and the manner of determining the fuel displaced . . . and the price of the fuel displaced." That rule, when finalized, will become "Subpart B" of the rulemaking being proposed today.

DATES: Written comments must be received by January 5, 1981, 4:30 p.m., e.s.t.

Public hearing: December 11, 1980. Requests to speak at the public hearing must be received by November 28, 1980. DOE will notify by December 5, 1980, persons requesting to speak.

ADDRESSES: Written comments and requests to speak should be addressed to Carol Snipes, Department of Energy, Hearings and Dockets, Mail Stop 6B-025, Room 1F-085, 1000 Independence Avenue, SW., Washington, D.C. 20585. Telephone: (202) 252-9319. Public hearing location: Room 3000A; 9:30 a.m., 12th & Pennsylvania Ave., NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Donald K. Walter, Acting Director, Office of Energy from Municipal Waste, Room 1E-276, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9397.

Lawrence R. Oliver, Office of General Counsel, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-1202.

Carol A. Snipes, Office of Conservation and Solar Energy, 1000 Independence Avenue, S.W., Room 1F-085, Washington, D.C. 20585, (202) 252-9319.

FOR THE SUBMISSION OF VOLUNTARY APPLICATIONS: See the address specified herein.

SUPPLEMENTARY INFORMATION:

I. Background
- A. General Description of Price Support Loans
- B. Availability of Funds
- C. Formula for Determining the Maximum Loan Amount

II. Requests for Voluntary Applications
III. Discussion of the Proposed Rule
IV. Items not Included in Proposed Rule
V. National Environmental Policy Act Review
VI Regulatory Analysis
VII. Period for Public Comment
VIII. Comment and Hearing Procedures
- A. Written Comments
- B. Request Procedures
- C. Conduct of Hearings

I. Background

The Act provides the framework for a national effort to stimulate the production of energy from alcohol fuels, biomass and municipal waste projects to reduce dependence on imported petroleum and natural gas. DOE is authorized by Subtitle B of the Act to provide construction loans, loan guarantees, price guarantees and price support loans for municipal waste evergy projects. DOE is implementing the Act by issuing separate rules relating to each form of financial assistance (i.e., loan guarantees, price guarantees, construction loans and price support loans) rather than to each type of project.

The Final Rule loan guarantees was published on October 8, 1980 (10 FR 67022).

DOE today continues the rulemaking process to implement the Municipal Waste Energy Price Support Loan Program under Subtitle B of the Act. Today's notice deals with the rules required under Section 236 of the Act to establish procedures for implementing the price support loan program provided by Section 234 of the Act.

The Municipal Waste Energy Price Support Loan Program is separate from the municipal waste reprocessing demonstration program under section 237 of the Act and Section 20 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Nonnuclear Act), as amended, Pub. L. 93-577. Section 20 of the Nonnuclear Act and Section 237 of the Act authorize price supports for projects which have not been demonstrated at a commercial scale, to obtain technical, economic, and other information about innovative or under-utilized technologies. Section 234 of the Act supports waste-to-energy projects with can be operated at a commercial scale, and is intended to accelerate displacement of conventional fossil fuels.

The scope of the program covered by this proposed rule is governed in part by the definition of "municipal waste" in Section 203(14) of the Act which excludes "hazardous waste", as determined by the Secretary, but includes industrial or commercial waste. In amplifying the definition of "municipal waste" in proposed Section 485.02, DOE is proposing to exclude, as hazardous, the hazardous wastes specifically listed by the Environmental Protection Agency in 40 CFR, Part 261 under the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580), as well as other waste deemed hazardous by DOE on a case-by-case basis.

A. *General Description of Price Support Loans.* A price support loan is a lending device which enables a "municipal waste energy project" to borrow against revenue increases anticipated in future years. The loan payments can be used to offset annual operating costs including debt service and operation and maintenance. By improving the early year project economics, price support loans encourage projects which increase production and sales of waste derived energy over current levels. Inasmuch as the amount of the loan is based on the amount of waste derived energy produced and sold, and the type and cost of fuel displaced, the price support loan is a device which rewards displacement of fossil fuels.

Under Section 234 of the Act, loan funds are disbursed on an annual basis for a maximum term of five consecutive years for "existing Municipal waste energy projects" an for a maximum term of seven consecutive years for "new municipal waste energy projects. Repayment commences a year after receipt of the last price support loan payment.

B. *Availability of Funds.* Section 204(a) of the Act provides the Secretary of Energy with an authorization for appropriations for Subtitle B of $250,000,000 for carrying out the

activities of Subtitle B which contains all the provisions of the Act relating to financial assistance for municipal waste energy projects.

Section 204(c) of the Act provides that for purposes of determining the availability of appropriations, loans shall be counted at their initial face value. DOE has interpreted this section to apply to price support loans.

The Supplemental Appropriations and Recission Act, 1980 (Pub. L. 96–304), which was enacted on July 8, 1980, appropriated $220,000,000 to DOE for purposes of carrying out municipal waste energy projects under Subtitle B. These funds are available for all the activities authorized by Subtitle B, including price support loans. DOE has not yet determined what portion of appropriations will be made available for price support loans. DOE gives no assurance that it will, in fact, issue or conditionally commit to issue price support loans in any specified amounts since such decision can only be made after review and selection of applications in accordance with the provisions of this rule.

C. *Formula for Determining the Maximum Loan Amount.* Subpart B of the rule being proposed today, "Formula for Determining the Maximum Loan Amount", has been "reserved" until the rule proposed on September 25, 1980, (45 FR 63822) has been published in its final form. The earlier proposed rule complied with the statutory requirements that specific rules be promulgated within 90 days of enactment of the Act. The earlier proposed rule established the necessary components for determining the maximum amount of price support loans. These components are the "standard support price" and "the manner of determining the fuel displaced . . . and the price of the fuel displaced". When that rule is published in final form, it will become Subpart B of this rule.

The maximum amount of the loan payment in the first year under the proposed rule is based on the amount of waste derived energy produced and sold or used by a project as measured in millions of British Thermal Units (MMBtu's). This amount of energy is multiplied by the value of the price support per MMBtu, i.e., unit value of support. A particular unit value of support is set for each project and is calculated as the difference between the standard support price, established pursuant to Section 234(a)(3)(A)(1) the maximum unit value of support may not exceed $2.00 per MMBtu's. After the first year, the maximum amount of loan payment declines in each succeeding year. Each successive year the amount of the loan is calculated by multiplying the product of the unit value of support times the amount of fuel displaced by a fraction whose denominator is the number of years in the loan term, and the numerator is the number of years in the loan term minus the number of years which have elapsed since the date of the first year's payment.

Where No. 6 fuel oil or a higher grade of petroleum is displaced by biomass energy, the maximum amount of the price support payment attributable to the displaced oil will be increased by 25 percent. The adjustment will be based on the proportion of oil in the fuel mix that is displaced by biomass energy.

II. Requests for Voluntary Applications

Section 236 of the Act provides that the Secretary of Energy may use procedures not specified in the Act to the extent the Secretary finds that such procedures are necessary to carry out the Comprehensive Plan pursuant to Section 231. Based on this expression of Congressional intent, together with the need for a fast start program, DOE has determined that it will not initially issue a separate solicitation announcement for its first competition cycle for selecting proposals for award of price support loans, but will permit the immediate filing of applications for price support loans in an initial competition cycle which will remain open until at least January 15, 1981, or 15 days after this rule is finalized (whichever is later in time) as discussed below. In this context, the provisions of this paragraph constitute the equivalent of a solicitation announcement as required in 485.30(c) of the proposed rule. Therefore, DOE requests interested persons to submit their applications for price support loans so that evaluations of such applications may commence at once. A response to this request before the proposed rule becomes final is voluntary and involves some risks to early applicants. If the final rule differs from the proposed rule, it may be necessary for initial applicants to amend their applications to come into conformity with the final rule. Since few proposed rules become final without any changes, it is likely that such amendments will be necessary.

DOE anticipates, and the rule so reflects, that the final rule will be effective on its publication rather than 30 days thereafter as normally required and that no applications received after the fifteenth day of the date of the publishing of the final rule will be considered during the initial competition cycle. The competitive cycle will not end, in any event, before January 15, 1981. Thereafter, additional competition cycles may occur, subject to the availability of appropriations. Although evaluation of voluntary applications will begin immediately upon receipt, final selection from the applications received in this initial competitive cycle will occur as quickly as practicable but not before 15 days after final publication. Applications for this first competition cycle should be filed with:
Donald K. Walter, Acting Director, Office of Energy from Municipal Waste, Mail Stop 1E–276, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9397.

III. Discussion of the Proposed Rule

This proposal which sets forth the guidelines and procedures to be used for the municipal waste energy price support loan program and consists of six subparts. This discussion identifies those sections upon which DOE particularly desires the views of the public.

Subpart A of the proposed rule contains ten sections dealing with a range of preliminary items normally contained in a financial incentive regulation.

Section 485.2 set forth the definitions to be used throughout the regulation. Many of these definitions come directly from the Act while other terms are defined in accordance with their normal meaning, with specific language, where required, to make them applicable to price support loans under this regulation. A number of these definitions are discussed below. DOE has defined applicant in the broadest sense, by using the word "person" as defined in the Act. This will allow any legal form of business entity and any State, local, or special purpose governmental unit to be eligible to file applications for price support loans. DOE has included a definition of "contracting officer" to make it clear that such official is the only representative legally authorized to contractually obligate DOE and enter into agreements that are binding upon DOE. Parties dealing with DOE regarding activities covered by this rule, should inquire as to the representative's authority as a contracting officer. Finally, it should be noted that the definition of "municipal waste," in accordance with the provisions of the Act, includes, among other things industrial or commercial waste, but excludes any hazardous waste. With respect to hazardous waste, DOE is proposing a definition of "municipal waste" which excludes any hazardous waste listed by the Environmental Protection Agency in 40 CFR Part 261 pursuant to the Resource Conservation

and Recovery Act of 1976, Pub. L. 94–580, as well as any other waste determined by the Secretary to be hazardous on a case by case basis. The proposed rule specifically makes projects found by the Secretary to involve hazardous waste ineligible to receive a price support loan.

Subpart B is reserved as explained in Section I.

Subpart C, which is entitled "Solicitation, Evaluation, and Approval of Applications," is a particularly important section of the regulation for the public to review because it describes the general policies and procedures which will be utilized by DOE in receiving, evaluating, and approving applications which become eligibile for the issuance of a price support loan. DOE intends the process specified to provide for competition between price support loan applicants for the amount of price support loans that are available in each competition cycle.

The selection of applications after a competitive evaluation does not, however, necessarily mean those applications selected will receive price support loans. The Application Approving Official will identify the conditions under which DOE will execute a price support loan agreement for a particular application. Thereafter negotiation will be undertaken with the applicant to determine if the application will result in a transaction which meets DOE's conditions and complies with the provisions of the regulation. While DOE is optimistic that successful negotiations will occur in every case, it is realistic to assume that some selected applicants may ultimately fail to receive a price support loan.

After the first solicitation, the procedure by which DOE intends to notify the public of the availability of price support loans is through the publishing of a Solicitation Announcement in the **Federal Register** and the *Commerce Business Daily*. Parties interested in submitting applications, but who are unable to determine if in fact applications are being solicited, should make inquiries to the office listed above. Applications should be submitted to the Office of Energy from Municipal Waste listed above.

Applications timely received by DOE, will be comparatively evaluated with other applications received during the same competition cycle. The panel evaluating the applications will rank the applications and make recommendations to the Applications Approving Official for possible loan awards. The Application Approving Official may direct the panel to undertake competitive negotiations with one or more of the applicants prior to making a selection when the Application Approving Official determines competitive negotiations to be necessary. These negotiations will further identify for the Application Approving Official those projects most capable of achieving the objectives specified by the Secretary. The Application Approving Official shall then designate those applicants to which conditional commitments should be issued. The purpose of the conditional commitments is to identify those terms and conditions upon which DOE will issue a price support loan to the applicant. Officials of DOE will then undertake negotiations in an effort to satisfy the conditions of the conditional commitment and bring the transaction to a closing. Interested parties are specifically requested to provide comments to DOE regarding the procedures for the evaluation and selection of competing proposals.

Subpart D, entitled "Project Administration," generally deal with the mechanical administration of a price support loan project. In accordance with Section 235(6)(b)(D) of the Act, DOE will limit financial assistance to an amount which is no greater than necessary to support a particular project. DOE, therefore, particularly seeks comment on proposed paragraph 485.40(c) which provides DOE with a mechanism by which DOE can prevent a windfall in those instances where the amount of the price support loan payment exceeds what was projected to have been needed when the price support loan agreement was entered into. For instance, when the price of energy from the project increases faster than was projected it may be necessary to reduce the amount of or withdraw the price support loan subsidy. DOE will, in most cases, insert appropriate provisions in the price support loan agreement which will permit it to review, on an annual basis, the financial needs of a project (window provision).

IV. Items Not Included

When evaluating an application for a price support loan it may be useful for DOE to review and consider the amount of total governmental subsidies, including specific Federal, State and local tax provisions that an applicant may take advantage of. Usually the special Federal, State and local special tax provisions are in the form of tax credits for a range of business and energy related activities. DOE did not include tax incentives in section 485.33, entitled "Evaluation criteria and priorities", but public comments are encouraged as to whether or not the inclusion of tax subsidies would be useful in reviewing and comparing applications.

Section 235(a)(b)(c) of the Act provides that the Secretarial shall not provide price support loan assistance for any municipal waste energy project unless the Secretary determines that assurances are provided that the project will not use in substantial quantitives "waste paper which would otherwise be recycled for a use other than as a fuel and will not substantially compete with facilities in existence on the date of the financial assistance which are engaged in the separation or recovery of reuseable materials from municipal waste." Because DOE is concerned about the impact of the Municipal waste price support loan program on the recycling industry it has been suggested that "municipal waste" as used in this proposed rule contain language which would "exclude materials such as waste paper, metals and glass that are *pre-separated to be recycled* as a raw materials and not destined for disposal." DOE has elected not to include those provisions in the rule being proposed today. DOE does, however, encourage public comment on this issue.

V. National Environmental Policy Act Review

DOE published a notice of availability of an environmental assessment (EA) (DOE/CS–0095) and negative declaration in the **Federal Register** on July 18, 1979 (44 FR 42110) stating DOE's overall urban waste program (covering municipal waste other than industrial waste) would not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*

Industrial waste, which is included in the Act's definition of municipal waste, is not covered by the urban waste EA. On October 8, 1980, the Department published in the **Federal Register** (45 FR 67022) a notice of availability of an Environmental Assessment of Financial Assistance for Energy Recovery from Industrial Waste: Wood, Paper, and Food Processing (DOE/EA-0124), and a finding of no significant impact for certain types of industrial waste. Consequently, in the near term, price support loans will be available only for those types of project covered by the finding, as reflected in § 485.4(b). Following completion of a programmatic environmental impact statement (EIS) for industrial waste to energy projects, DOE may amend the rule to permit issuance of price support loans for

additional technologies covered in the EIS.

Since there could be site-specific environmental impacts of concern, site-specific environmental information will be required from the applicant, and the preparation of formal site-specific environmental assessments or environmental impact statements may be required, where appropriate. DOE will determine the nature and extent of any additional environmental review required by NEPA for individual applicants prior to issuing a price support loan for a municipal waste energy project. In addition to the environmental analyses referred to above, DOE will, or course, evaluate the environmental aspects of each proposal.

VI. Regulatory Analysis

Today's proposal was reviewed under Executive Order 12044 43 FR 12661, implementing DOE directives thereunder and OMB Circular A–116. DOE has determined that the rule will be "significant" because of its widespread impact. However, DOE has concluded that it will not be "major" because it will not have the kind or degree of effects which, under Executive Order 12044, necessitate a regulatory analysis. For the same reason, an urban and community impact analysis under OMB Circular A–116 is not necessary.

VII. Period for Public Comment

A 60 day comment period is being provided for public review and comment on this proposed rulemaking.

VIII. Comment and Hearings Procedures

A. *Written Comments.* Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to today's proposed rule. Comments should be submitted by January 5, 1981, to the address indicated in the beginning of this preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation—Price Support Loan Proposed Rule (Docket No. CAS–RM–80–121). Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 5F–180, Forrestal Building, 1000 Independence Avenue, S.W., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted by exempt from public disclosure.

B. *Request Procedures.* The time and place of the public hearings are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, must be received before November 28, 1980 and may be hand-delivered to such address, between the hours of 9:00 a.m. and 4:30 p.m.

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day.

DOE will notify each person selected to appear at the hearings before December 5, 1980. Each person selected to be heard should bring 15 copies of his or her statement to the hearing location.

C. *Conduct of Hearings.* DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearings. This will not be a judicial or evidentiary-type hearing. Questions may be asked only those conducting the hearing, and there will be no cross-examination. At the conclusion of all initial oral statements, each person who has made an oral statement will, if time permits, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be asked.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made, and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

(Energy Security Act, Pub. L. 96–294; Department of Energy Organization Act, Pub. L. 95–91.)

In consideration of the foregoing, DOE hereby proposes to add Part 485, Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., October 24, 1980.

Worth Bateman,

Acting Under Secretary.

PART 485—MUNICIPAL WASTE ENERGY PRICE SUPPORT LOAN PROGRAM

Subpart A—General Provisions

Sec.

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Subpart E—Reporting and Monitoring

485.50 Reports.
485.51 Project monitoring.
485.52 Termination of agreement.
485.53 Survival of agreement.

[1] See Subpart B, 45 FR 63827, September 25, 1980.

Subpart F—Default

Sec.

485.60 Default, demand, payment, and collateral security and surety liquidation.
485.61 Preservation of collateral security.

Authority: Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8831–8840); and Department of Energy Organization Act, Pub. L. 95–91.

Subpart A—General Provisions

§ 485.1 Purpose.

The purpose of this regulation is to set forth policies and procedures under which the Department of Energy (DOE) will issue price support loan agreements for municipal waste energy projects producing and selling biomass energy in an environmentally acceptable manner.

§ 485.2 Definitions.

Terms defined in the Act are used as so defined. For the purposes of this regulation:

(a) "Act" means Title II of the Energy Security Act, also cited as the Biomass Energy and Alcohol Fuels Act of 1980, Pub. L. 96–294.

(b) "Applicant" means any person who has filed an application for a price support loan pursuant to this regulation, and who has the authority to enter into a loan agreement under this regulation.

(c) "Application Approving Official" means the Secretary or person designated by the Secretary who is authorized to approve an application for a price support loan under this regulation, and to authorize the negotiation and award of agreements or commitments for price support loans and other contractual documents.

(d) "Application Evaluation Panel" (also referred to as "the Panel") means a team of Federal employees appointed by the Application approving Official to evaluate price support loan applications, and make approval or disapproval recommendations regarding such applications.

(e) "Base period" means any consecutive 12 months during the 18 month period that precedes a commitment to make a price support loan for a new municipal waste energy project, and the 12 consecutive month period between July 1, 1979 and June 30, 1980 for an existing municipal waste energy project.

(f) "Biomass" means any organic matter which is available on a renewable basis, including agriculture crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal waste, and aquatic plants.

(g) "Biomass energy" means biomass fuel; or energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

(h) "Biomass energy project" means any facility (or portion of a facility) located in the United States which is primarily for the production of biomass fuel (and byproducts); or the combustion of biomass for the purpose of generating industrial process heat, mechanical power, or electricity (including cogeneration).

(i) "Biomass fuel" means any gaseous, liquid, or solid fuel produced by conversion of biomass.

(j) "Borrower" means a person that has entered into a price support loan agreement with the Secretary.

(k) "Btu" means British thermal unit.

(l) "Cogeneration" means the combined generation by any facility of electrical or mechanical power, and steam or forms of useful energy (such as heat) which are used for industrial commercial heating or cooling purposes.

(m) "Competition cycle" means the period of time in which applications will be received for evaluation.

(n) "Construction" means the construction or acquisition of any municipal waste energy project, the conversion of any facility to a municipal waste energy project, or the expansion or improvement of any municipal waste energy project which increases the capacity or efficiency of that facility to produce biomass energy. Such term includes the acquisition of equipment and machinery for use in or at the site of a municipal waste energy project, and the acquisition of land and improvements thereon for the construction, expansion, or improvement of such a project, or the conversion of a facility to such a project including the capital costs necessary to meet environmental standards. Such term does not include the acquisition of any facility which was operated as a municipal waste energy project before the acquisition.

(o) "Contracting officer" means the DOE official warranted and authorized to contractually obligate DOE, and excute written agreements that are binding on DOE.

(p) "Cost of the fuel displaced" means the cost of the fuel (per million Btu's) which the purchaser of biomass energy would have purchased if the biomass energy had not been available for sale to that purchaser. Any biomass energy produced by a municipal waste energy project which may be retained for use by the owner or operator of such project will be considered to be sold at such price as the Secretary determines.

(q) "Default" means the failure of a borrower to make payments of principal or interest on a price support loan issued under this regulation within the time period specified in the loan agreement, or the failure of the borrower to comply with other material terms or conditions specified as default conditions in the loan agreement or related documents.

(r) "DOE" means the United States Department of Energy.

(s) "Enthalpy" means the internal energy of a system plus the product of the volume and pressure exerted on the system by its surroundings.

(t) "Existing municipal waste energy project" means any municipal waste energy project which is not a new municipal waste project.

(u) "Fuel displaced" means a conventional fossil fuel (i.e., oil, natural 6gas, or coal) which the purchaser or user of waste derived energy would have otherwise purchased or used to supply energy requirements which are or will be supplied by biomass energy.

(v) "Higher heating value" means the heat content of a fuel when all water vapor in combustion-produced gases is condensed.

(w) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(x) "MMBtu" abreviates million British thermal units.

(y) "Municipal waste" means any organic matter, including sewage, sewage sludge, and industrial or commercial waste, and mixtures of such matter and inorganic refuse from any publicly or privately operated municipal waste collection or similar disposal system, or from similar waste flows (other than such flows which constitute agricultural wastes or residues, or wood wastes or residues from wood harvesting activities or production of forest products). Such term does not include any hazardous waste specifically listed in 40 CFR Part 261, or which, when utilized in any municipal waste energy project would, in the opinion of DOE, endanger the public health or negatively impact the environment in a significant way.

(z) "Municipal waste energy project" means any facility (or portion of a facility) located in the United States which is primarily for the production of biomass fuel (and byproducts) from municipal waste; or the combustion of municipal waste for the purpose of generating steam or forms of useful

energy including industrial process heat, mechanical power, or electricity (including cogeneration). Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

(aa) "New municipal waste energy project" means any municipal waste energy project which is initially placed in service after June 30, 1980; or, if initially placed in service before June 30, 1980, has an increased capacity by reason of additional construction, and as such is placed in service after such date.

(bb) "Placed in service" means operated at more than 50 percent of the estimated operational capacity.

(cc) "Person" means any individual, company, cooperative, partnership, corporation, association, consortium, unincorporated organization, trust, estate, or any entity organized for a common business purpose, any State or local government (including any special purpose district or similar governmental unit) or any agency or instrumentality thereof, or any Indian tribe or tribal organization.

(dd) "Program office" means the DOE Office of Energy from Municipal Waste established under Section 239 of the Act.

(ee) "Refuse-fired boiler" means a boiler in which greater than 50 percent of the heat content of the fuel used is supplied by the direct combustion of waste or waste-derived fuel.

(ff) "Secretary" means the Secretary of Energy, or designee.

(gg) "Standard support price" means the average price (per million Btu's) for No. 6 fuel oil imported into the United States on June 30, 1980, which was determined to be $5.37 per MMBtu under Subpart B of this regulation.

(hh) "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§ 485.3 Program management.

(a) Program management responsibility is vested in the Director of the Office of Energy from Municipal Waste, U.S. Department of Energy. These responsibilities include all normal actions necessary to plan, organize, direct, and control the programmatic assignments. Specific questions regarding this regulation or municipal waste conversion technology should be directed to this office.

(b) EPA will retain responsibility for assuring that these projects are consistent with Section 1008 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580, as amended, and any applicable State or regional solid waste management plan.

§ 485.4 Eligibility.

(a) The Secretary may commit to make, or make price support loans for municipal waste energy projects that produce biomass energy according to the following provisions:

(1) Price support loans will be limited to biomass energy which is either sold, or retained for productive use;

(2) With respect to municipal waste projects producing biomass energy other than biomass fuel, price support loans under the provisions of this regulation will be available only if the Secretary finds that the project does not use petroleum or natural gas except for flame stabilization or start-up. Projects which utilize fossil fuels for standby are eligible for price support loans, but only for energy produced from municipal waste;

(3) With respect to municipal waste projects producing biomass fuel, price support loans will be available to such project only if the Secretary finds that the Btu content of the biomass fuel produced substantially exceeds the Btu content of any petroleum or natural gas used in the project to produce the biomass fuel;

(4) Financial assistance may not be provided under this regulation unless the Secretary finds that necessary municipal waste feedstocks are available and it is reasonable to expect they will continue to be available for the expected economic life of the project;

(5) The project is located in a State of the United States;

(6) The project must utilize municipal waste as the primary feedstock; and

(7) The project does not interfere substantially with materials recovery systems.

(b) Price support loans for municipal waste energy projects involving industrial waste shall be available only for wood processing waste, paper processing waste, and waste from food processing (including waste from fruit and vegetable processing, nut packing, grain milling, sugar refining, and similar materials, but excluding waste from meat processing and dairy products industries) which do not constitute the wastes or residues of agricultural activities, wood harvesting activities of production of forest products.

§ 485.5 Applicability of other laws and regulations.

(a) Nothing in this regulation may be construed as affecting the obligations of any party to comply with Federal, State, local and tribal environmental, land use, water, and health and safety, and antitrust laws and regulations, or to obtain applicable Federal, State, local and tribal permits, licenses, and certificates.

(b) The project will, at a minimum, comply with applicable Federal, State, and local environmental laws and regulations. The issuance of a price support loan agreement under this regulation is subject to, among others, the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. Section 4321 *et seq.*; Pub. L. 91–190), and applicable CEQ regulations and DOE guidelines implementing NEPA.

(c) Office of Management and Budget (OMB) Circular No. A–95 Revised, "Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects," requires that any agency of a State of local government or any organization or individual applying for a price support loan under this program notify the State and areawide planning and development clearinghouses in the jurisdiction of which the project is to be located. Applicants are encouraged to contact State and areawide clearinghouses at an early stage for possible assistance in developing applications.

§ 485.6 Other Federal assistance.

(a) The authorities in this regulation are in addition to and do not modify (except to the extent expressly provided for in this regulation) authorities and programs established under other provisions of law.

(b) Nothing in this regulation may be interpreted to deny or limit an applicant's or recipient's right to seek and obtain other Federal financial assistance (e.g., grants, loan guarantees, or cooperative agreements) for a municipal waste energy project.

§ 485.7 Deviations and contract modifications.

(a) To the extent that such requirements are not specified by the Act, relevant appropriations acts, or in other applicable statutes, the Secretary may deviate on an individual application basis from the requirements of this regulation upon a finding that a deviation is necessary and warranted in the individual case to the accomplishment of program objectives and unique circumstances in the application make a deviation clearly in the best interests of the Government.

(b) The Application Approving Official may approve, subject to

approval by other necessary parties, modifications or amendments to the terms and conditions in a price support loan agreement, collateral agreements, or other documents pertaining to the project, provided that such modifications will not deviate from provisions in this regulation.

§ 485.8 Appeals.

The price support loan agreement will include a provision which specifies that any dispute concerning a question of fact arising under the loan agreement will be decided in writing by the Contracting Officer. The borrower may request the Contracting Officer to reconsider any such decision. If not satisfied with the Contracting Officer's final decision, the borrower, upon receipt of such written decision, may appeal the decision within 30 days, in writing, to the Chairman, Financial Assistance Appeal Board (FAAB) Department of Energy, Washington, D.C. 20585. The FAAB will proceed in accordance with DOE's rules and regulations for such purpose. The decision of the FAAB with respect to such appeals will be the final decision of the Secretary.

§ 485.9 Nondiscrimination in projects receiving Federal assistance.

All applicants receiving Federal assistance under this regulation will agree:

(a) Not to discriminate against any person on the grounds of race, color, national origin, sex, handicap, or age in the carrying out or completion of any project where Federal assistance is issued under this regulation, and to comply with the DOE "Nondiscrimination in Federally Assisted Programs" regulations implementing the Civil Rights Requirements of Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974; Section 401 of the Energy Reorganization Act of 1974; Title IX of the Higher Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and the Civil Rights Requirements administered pursuant to the DOE Organization Act;

(b) To take positive efforts to maximize the utilization of small and disadvantaged business concerns, and Indian tribes in connection with the assistance received.

§ 485.10 Other information.

(a) All amounts received by the Secretary as fees, interest, repayment of principal, and any other moneys received by the Secretary from operations will be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(b) All contracts and instruments of the Secretary to provide, or providing, for financial assistance will be general obligations of the United States backed by its full faith and credit.

(c) Subject to the conditions of any price support loan agreement, such agreement will be incontestable, except as to fraud or material misrepresentation on the part of the borrower.

(d) No price support loan agreement may be committed to or made under this regulation after September 30, 1984. This section shall not be construed to affect the authority of the Secretary to spend funds after such date pursuant to any price support loan agreement made on or before that date.

Subpart B—Formula for Determining the Maximum Loan Amount

§ 485.20–29 [Reserved]

Subpart C—Solicitation, Evaluation, and Selection of Applications

§ 485.30 General information.

(a) *Competition.* It is DOE policy to solicit and evaluate applications on a competitive basis, as provided herein. Each application received in accordance with the provisions of this regulation will be considered within the competition cycle in which it is received.

(b) *Application process.* The Application Process will consist of the following:

(1) The continuing solicitation of applications during the competition cycle, or otherwise, as provided in paragraph (c) of this section;

(2) Submission of an application which complies with § 485.31 of this regulation;

(3) Preliminary review and screening of applications;

(4) Comparative evaluation;

(5) Selection of applications, to the extent that appropriations are available and OMB Circular A–95 has been complied with, by the Application Approving Official for a conditional commitment to loan, subject to appropriate terms and conditions as determined by the Application Approving Official in his or her sole discretion;

(6) Issuance of a conditional commitment to selected applicants;

(7) Negotiation of unresolved terms and conditions; and

(8) Execution of a price support loan agreement upon satisfaction of the conditional commitment.

(c) *Solicitation Announcement.*

(1) The Secretary will, after the beginning of each competition cycle, issue a Solicitation Announcement, which will at a minimum, be published in the **Federal Register** and the Commerce Business Daily. A Solicitation Announcement will indicate some or all of the following:

(i) A brief description of the types of projects for which applications are solicited;

(ii) Identification of the issuing office;

(iii) Identification of statutory authority and relevant regulation;

(iv) Any special requirements not contained in the regulation;

(v) Application receipt deadline, and location to which application must be delivered if different from that specified in the regulation;

(vi) The extent to which appropriations are currently available for price support loans; and

(vii) Date of presubmission conference, if any, open to all interested parties.

(2) Prospective applicants may request in writing that the Application Evaluation Panel clarify any provision of this rule or any solicitation issued pursuant to this rule at any time prior to the close of the competition cycle.

(d) *Receipt and handling of applications.*

(1) Applications for price support loans will be filed at the address specified in this regulation, or the Solicitation Announcement, as appropriate. Applicants will be notified of DOE's determination within the time specified in the solicitation.

(2) An application received after 4:30 p.m. at the location of filing on the last day of the competition cycle will not be considered in that competition cycle unless:

(i) It was sent by registered or certified mail not later than the fifth claendar day prior to the date specified for receipt of the application; or

(ii) It was sent by mail and is determined by the contracting officer that the late receipt was due solely to mishandling by the Department of Energy; or

(iii) The Application Evaluation Panel determines that the application offers significant advantages to the Government if it is considered immediately as part of the most recent group of applications under evaluation.

(3) Late applications, unless excepted in paragraph (d)(2) of this section, will be considered in the next competition cycle, if any.

(4) Subject to requirements of law and applicable regulations, information of a privileged or confidential nature that an applicant submits to DOE pursuant to

obtaining a price support loan under this regulation may not be publicly disclosed without prior written consent of the applicant. Information asserted by the applicant to be privileged or confidential will be appropriately identified.

(e) *Evaluation and ranking of applications.*

(1) Evaluation and ranking of applications will be accomplished by an appointed Application Evaluation Panel or other appropriate officials designated by the Application Approving Official for the purpose of determining eligibility of applications and identifying those best suited for selection to accomplish the purpose of the Act. The application evaluation process is intended to provide the Application Approving Official sufficient information to permit an optimal selection from among competing applications. The Panel will be appointed by the Appplication Approving Official. The Panel is responsible for preliminary review and screening, comparative evaluations, and presentation of its findings and recommendations to the Application Approving Offical.

(2) Applicants will not be permitted to modify applications after the close of the competition cycle, except as provided herein.

(3) Preliminary review and screening of all applications received will be conducted to determine which applications should be considered in comparative evaluations. The Panel will review that applications to determine whether each application:

(i) Complies with statutory requirements for project eligibility;

(ii) Complies with programmatic eligibility requirements stated in this regulation and the Solicitation Announcement, if any;

(iii) Contains sufficient information to enable the Panel to perform a comparative evaluation; and

(iv) Is signed by an authorized official of the applicant's organization.

(4) The Panel will consider the following in comparatively ranking applications in accordance with § 485.33:

(i) Commercial viability and technical project feasibility and likelihood of success;

(ii) Market potential and economic feasibility;

(iii) Financial considerations:

(A) Reasonableness of cost estimates;

(B) Extent of capitalization, cash flow projections, working capital allowances, reasonableness of revenue and expense estimates, etc.; and

(C) Financial condition of the applicant and other principals to the project;

(iv) Financing structure:

(A) Financial commitment of the applicant and other principals to the project;

(B) The overall debt financing plan; and

(C) Other factors which are relevant to a full description of the particular financing structure of the proposed project;

(v) Management plan:

(A) Corporate and personnel experience;

(B) Management organization and interrelationships; and

(C) Key personnel and associated responsibilities;

(vi) Environmental, health, safety, and socio-economic impacts of the proposed project;

(vii) Probability that the system will become operational; and

(viii) Ability of applicant to comply with requirements of this regulation.

(5) In developing its recommendations, the Panel will also utilize the policy considerations specified in § 485.32 and the policy considerations specified in the solicitation, if any.

(6) The Panel may request clarifying, or additional information of the applicant that may be necessary to complete its evaluation. Upon such a request, the applicant may be afforded the opportunity to revise its application to incorporate any clarifying, or additional information.

(7) The Panel will present to the application approving official its ranking of the applications together with its findings and recommendations in a comprehensive report, which represents internal evaluations and judgements prior to final decision making.

(f) Selection of Applications.

(1) The Application Approving Official may, in his or her sole discretion, select any number of the competing applications, subject to the requirement that appropriations be available for the total loan amount of the applications selected.

(2) Prior to making a decision, the Application Approving Official may determine that additional project specific information is required. Such additional information requirements will be communicated in writing directly to all applicants still competing.

(3) The Application Approving Official will consider the report of the Panel and such other information as the Application Approving Official determines to be relevant pursuant to the provisions of this regulation in selecting applications for conditional commitments or competitive negotiations, as appropriate.

(4) When the Application Approving Official determines that competitive negotiations are appropriate, the Panel will negotiate with all or a subset of competing applicants identified for the purpose of clearly defining the degree and extent of the competitive issues related to the applications prior to the selection of applications for conditional commitments. The Panel will revise its report to the Application Approving Official to reflect the results of negotiations.

(5) Upon, or, in some cases, subject to, the satisfactory completion of the requirements contained in this section, the Application Approving Official may authorize a contracting officer to issue a conditional commitment to provide the loan proposed by the application. The conditional commitment will identify the terms and conditions under which the loan would be issued, and any additional requirements to be placed upon the applicant as a condition of the loan.

(6) Decisions by the Application Approving Official will be made as specified in the Solicitation Announcement. For the purpose of beginning this 120 day period, all applications received during a competition cycle will be considered as received on the last day of the competition cycle. Those applications not approved for issuance of a conditional commitment will receive an immediate notification of such disapproval and reasons therefor from the contracting officer.

(g) *Post selection negotiation and closing.*

(1) Subsequent to execution of a conditional commitment, the Application Approving Official will designate an appropriate DOE official to ensure that the conditions of the conditional commitment are met, and negotiate such terms and conditions of the loan agreement and related documents as may be required to comply with the Act and this regulation.

(2) In performing the functions under paragraph (g)(1) of this section, the Application Approving Official, or designated DOE official, may request necessary additional information from any relevant party.

(3) If, within a reasonable period of time, the Application Approving Official is unable to negotiate satisfactory terms and conditions, or conditions of the conditional commitment cannot be met, on a timely basis, the Application Approving Official will determine whether to continue negotiations, authorize modification of the commitment, or take other appropriate action. A condition of the conditional

commitment will be unsatisfied unless the Contracting Officer certifies in writing that the condition has been met, or, in the alternative, the loan agreement is executed.

(4) If the Application Approving Official can negotiate satisfactory terms and conditions in the instruments to be used in the closing of the loan, and the conditions of the conditional commitment are met, a closing will be scheduled, subsequent to obtaining the approval of the Application Approving Official, for the purpose of signing the price support loan agreement. The date, time and place for closing will be fixed by agreement with the applicant and DOE. Nothing contained in the conditional commitment will in any way constrain or restrict the ability of the Application Approving Official to require additional documentation, or the insertion of additional terms and conditions which, in his or her sole discretion, are reasonable and necessary for the protection of the interests of the United States. Issuance of the loan will be conclusive evidence that the loan and related agreements comply with the Act and this regulation, and that the loan has been approved by the Secretary.

(h) *Unsolicited applications.* Because applications will be evaluated on a competitive basis, unsolicited applications for a price support loan under the Act will not be considered. Applications not submitted pursuant to a specific solicitation announcement will be returned to the applicant with a recommendation to refile in accordance with the current Solicitation Announcement.

(i) *Discussion with unsuccessful applicants.* Upon the written request by an applicant whose application did not result in a price support loan, representatives of the Application Approving Official will explain in detail why the application was disapproved.

(j) *Non-written representations.* No representation will be binding on DOE unless written and duly signed by a Contracting Officer, and all instruments and modifications thereof may not be considered as approved by DOE unless signed by a Contracting Officer.

§ 485.31 Applications.

(a) The applicant will be asked to provide information in support of the application in the form and with the content prescribed in the Solicitation Announcement. The type of information requested will generally be similar to that required by an investment banking, or other financial, institution which might consider the project for financing. The application must contain the most current data available, and be adequate for DOE to properly evaluate the project. The following items are an example of the type of information that may be requested by the Solicitation Announcement. This information, as available and as appropriate to either a new or existing project, should be submitted in a brief but precise manner:

(1) Any preapplication information considered appropriate by the Secretary;

(2) A description or the scope, nature, extent, and location of the proposed project, including specification of the technology and site;

(3) Estimates of income relating to that project (including the sale of any byproducts from that project);

(4) A description of prior operating experience with the technology;

(5) Mass and energy balances for the project, to include energy data on the projected imputs and outputs from the plant;

(6) Project construction costs, operating and maintenance costs, and annual debt service requirements;

(7) An analysis of the market for the product(s) to be produced, and the relevant economics justifying the analysis;

(8) Construction and operation schedules, including major milestones;

(9) An analysis of the project's technical and economic feasibility, including the feasibility and effect of source separation techniques, if applicable;

(10) A description of the applicant's management concept and plan of operation to be employed in carrying out the project;

(11) Amount of loan or commitment requested, including preliminary cash flow projections;

(12) Identification of other sources of capital, and proposed risk allocation among project participants;

(13) A written affirmation from the applicant supporting the need for a price support loan;

(14) Proposed terms and conditions of the loan, as appropriate;

(15) Other data, such as social, employment, and economic factors;

(16) An environmental report containing a detailed analysis of the potential environmental, health, safety and socio-economic (EHSS) impacts of the project and any necessary or proposed mitigation measures and other relevant data that may be available to the applicant to enable DOE to assess the probable EHSS impacts and provide DOE with information for any documents required by the National Environmental Policy Act.

(17) The past financial history of the applicant, financial statements and projections as to the applicant's future financial status;

(18) Details of escrow account, sinking fund account or other provisions to limit the need for, or to pay, the price support loan;

(19) Assurance that waste resource will be available.

(20) If the waste required for commercial operation of the system is generated from within more than one municipality, a description of the cooperative agreements, or other contractual arrangements, assuring control and disposal of each municipality's waste at the project site will be documented and their legality established;

(21) If a State or regional solid waste management plan exists, then documentation will be required which will stipulate that the municipal waste energy project is compatible with that plan;

(22) A discription, and certification, if requested, of other Federal financial assistance available (e.g., construction loans, loan agreements, price agreements, etc.), or expected to be made available in connection with the project;

(23) A comparison of the break-even product cost with the existing prices for the biomass energy marketed. The level of waste disposal costs and estimated delivered energy prices for each product will also be calculated and compared;

(24) The agreements, arrangements, or contracts which must be made in order to properly market the biomass energy derived from the waste. There should be evidence of long term contractual commitments of an energy buyer who is suitably located and whose energy requirements can be technically satisfied at an economically attractive price, and evidence of processing a technology which can reliably produce a product to the buyer's specification and reduce the volume of waste for ultimate landfilling to stipulated levels;

(25) A list of all permit applications filed or to be filed, and permit approvals issued or to be issued by Federal, state, and local government agencies for all required permits and authorizations to undertake construction and begin operations associated with the project. If these approvals have not been obtained, or applications not filed, the estimated date of such filings and approvals should be provided. Explain any past, present or anticipated problems in obtaining any approvals;

(26) A copy of the third party engineering report to support the financing package; and

(b) Any additional information requested by the Secretary.

§ 485.32 Policy considerations.

In evaluating applications for price support loans the Application Evaluation Official shall consider the following policy objectives:

(a) The acceleration of the production of energy from municipal waste, and bringing biomass energy production technologies on stream as soon as practicable to displace conventional fossil fuels, and, to the extent practicable, aid in municipal solid waste management;

(b) To diversify energy capability by assisting energy recovery projects to convert municipal waste into biomass energy, thereby conserving diminishing supplies of fossil fuels and reducing oil imports;

(c) The acceleration of the commercialization of municipal waste as a source of biomass energy;

(d) The conservation of energy through the commercialization of new, improved, or underutilized reprocessing technologies that will permit the economical recovery of energy from municipal waste in an environmentally acceptable manner;

(e) The encouragement of private capital investment and activities in the development of facilities to convert municipal waste into biomass energy and to recover materials which by their use will conserve significant quantities of energy derived from scarce fossil fuels; and

(f) The minimization of adverse interference with, and encouragement of the recycling of energy intensive materials.

§ 485.33 Evaluation criteria and priorities.

(a) Unless solicitations issued under § 485.30(c) specify otherwise, the following critiera will be used as the basis for evaluation of applications (The order of listing is no indication or reflection of priorities):

(1) Commercial viability of the project.

(2) The net energy that can be recovered or conserved by the project, per dollar of Federal financial exposure, taking into account relative energy effciencies, the extent of the economic and energy conservation potential of alternative uses of source separated components of the municipal waste feedstock, the utility of the energy form to the area, and the net amount and type of fossil fuels displaced.

(3) Potential applicability of the project to other parties or other geographic areas. This includes the extent to which the technology is adaptable to or repeatable in, other locations, or the extent to which the project deomonstrates how institutional barriers can be overcome.

(4) Adequancy of the management plan for the project, and qualifications and experience of key personnel with all aspects of similar operations.

(5) Technical probability of success and advances in the state-of-the-art. This includes the extent to which there are performance agreements on the technology.

(6) Potential environmental, and health and safety impacts, as well as socioeconomic and competitive impacts. This includes the regional labor market impact, the marketability of all the desirable forms of energy produced or conserved, the degree of need that a proposed project would have in relation to the present system in use, the level of support of the community, and the degree to which the project assists in attaining the goals of other Federal programs in the area. This also includes the extent of coordination with local or regional planning activities, and the extent to which the project minimizes unnecessary disruption of existing municipal waste collection and disposal services.

(7) The arrangements for and extent to which risk will be shared by the parties to the project other than the United States. This includes equity invested, extent to which the equity reflects sunk costs, and types of collateral security and surety that would be pledged.

(b) Priority for price support loans under the provisions of this regulation and the most favorable financial terms available, will be provided for any municipal waste energy project that will produce a liquid fuel from municipal waste; or will displace petroleum or natural gas as a fuel.

(c) In determining the amount of financial assistance for any municipal waste energy project which will yield byproducts in addition to biomass energy, the Secretary will consider the value of such byproducts and the costs attributable to their production.

§ 485.34 Required findings and determinations.

(a) In addition to meeting the requirements set forth in other applicable sections of this regulation, a price support loan will be issued only after the Secretary is satisfied, in the sole discretion of the Secretary, that the following requirements have been met:

(1) The project is technically feasible and economically viable;

(2) The financial assistance provided encourages and supplements, but does not compete with nor supplant, any private capital investment which otherwise would be available to the municipal waste energy project on reasonable terms and conditions which would permit such project to be undertaken;

(3) Assurances are provided that the project will not use, in any substantial quantities, waste paper which would otherwise be recycled for a use other than as a fuel and will not substantially compete with facilities in existence on the date of the financial assistance which are engaged in the separation or recovery of reusable materials from municipal waste;

(4) The amount of financial assistance provided for the project is not greater than is necessary to achieve the purposes of this program;

(5) The terms, conditions, maturity, security, schedule and amounts of repayments are reasonable and consistent with the standards set forth in this regulation, and are sufficient to protect the interests of the United States;

(6) The person receiving the financial assistance will bear a reasonable degree of risk with respect to the project;

(7) The necessary municipal waste feedstocks are available for the expected economic life of the project;

(8) With respect to projects producing biomass energy other than biomass fuel, the project does not use petroleum or natural gas except for flame stabilization or start-up;

(9) With respect to projects producing biomass fuel, the Btu content of the biomass fuel exceeds the Btu content of any petroleum and natural gas used in the project to produce the biomass fuel; and

(10) The project will be in conformance with established environmental statutes, regulations, and Executive Orders, which will include, but are not limited to, the following: Completing any environmental analysis required pursuant to the National Environmental Policy Actof 1969 (NEPA) (42 U.S.C. 4321 et seq., Pub. L. 91–190); conformance with Executive Order 11988—Floodplain Management, and Executive Order 11990—Protection of Wetlands, and DOE regulations thereunder (10 CFR Part 1022); and receiving, or anticipated receipt of, all necessary environmental permits and approvals;

(b) The Secretary, in evaluating applications will also be required to determine:

(1) The extent of energy that can be recovered or conserved economically by the project including, but not limited to, energy savings resulting from recycling of source separated and otherwise recovered material and from displacement of petroleum or natural gas.

(2) The extent of the economic and energy conservation potential of alternative uses of source separated components of the municipal waste feedstock.

(3) The extent to which there are performance guarantees on the technology;

(4) The extent of coordination with local or regional planning activities; and

(5) The extent to which the project minimizes unnecessary disruption of existing municipal waste collection and disposal services.

Subpart D—Project Administration

§ 485.40 Price support loan agreements.

(a) The price support loan agreement will include detailed terms and conditions necessary to assure that no material change in ownership or operation of the facility may occur without the prior written approval of the Secretary;

(b) Disbursements to the recipient may be made up to an amount calculated pursuant to Subpart B of this regulation.

(c) Pursuant to Section 235(a)(6)(D) of the Act, the Secretary may limit the amount of financial assistance necessary to support a project to an amount less than the maximum amount calculated pursuant to Subpart B. Accordingly, the Secretary may require, on a case by case basis, that the price support loan agreement contain provisions specifying that the price support loan payment may not exceed project requirements in those instances where the energy revenues from the project increase faster than was projected at the time of the entering into of a price support loan agreement. The price support loan agreement will contain terms and conditions reflecting the formula to be used in determining when price support disbursements are no longer needed for a project.

§ 485.41 Interest rate.

Commenting at the end of the last loan disbursement, the loan will bear interest at a rate determined by the Secretary (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remining periods to maturity comparable to the average maturities of such loans) plus not to exceed one per cent, as determined by the Secretary, and adjusted to the nearest one-eighth of one per cent. The interest rate will normally be determined at the end of the last disbursement period. Such rate will reasonably reflect the cost of borrowing over the disbursement period.

§ 485.42 Repayments.

(a) The terms of the price support loan agreement between the Secretary and the recipient will require full repayment of the cumulative total, including interest, of the amounts disbursed by the Secretary. The price support loan agreement will provide for a repayment schedule as mutually agreed upon by the Secretary and the recipient taking into amount of annual repayment on the financial and economic stability of the project, and the integrity of project financing agreements.

(b) Repayment of the loan will be secured by such assets and other collateral security or surety that the Secretary, pursuant to consultation with the borrower, considers necessary and appropriate, after taking into consideration how such security or surety arrangements will affect private capital investment and participation in a project, and existing security and surety interests of other parties. All pledged security or surety will be specifically listed in in agreement or related documents, as will any other recourse of the Government.

(c) The agreement will include acceptable provisions for prepayment and acceleration of the loan, after appropriate negotiation with the recipient.

(d) With respect to any agreement issued pursuant to this regulation, the Secretary may modify or adjust the loan repayment schedule, thereby allowing the recipient to defer, in part or in full, the principal or interest charges, or both, that become due and payable on the unpaid balance of the loan, if the Secretary finds that:

(1) The recipient is unable to meet principal, or interest payments, or both;

(2) It is in the public interest to permit the operator to continue to pursue the purposes of the project;

(3) The probable net benefit to the Federal Government in deferring such principal or interest will be greater than that which would result in the event of a default for the nonpayment of principal or interest;

(4) The recipient agrees to make the deferred payments (including interest on such deferred payments) to the Secretary on such terms and conditions which are satisfactory to the Secretary, and executes all written contracts required by the Secretary for such purpose;

(5) The recipient has agreed to such other terms and conditions as the Secretary determines to be necessary.

Subpart E—Reporting and Monitoring

§ 485.50 Reports.

(a) The recipient will be required to submit to the Secretary periodic reports on the status and condition of each project receiving financial assistance under this program. The Secretary will prescribe the frequency, format, and content of these reports. However, a report on each project must, as a minimum, be submitted to the Secretary annually.

(b) Information requested for the report may include, but is not limited to:

(1) A discussion of the status of the project and related facilities, including the expected and actual production from each project and associated byproduct production, and the distribution of these products and byproducts;

(2) A statement of the financial condition of each project facility;

(3) Data concerning the environmental, community, and health and safety impacts of each project, and the actions taken or planned to prevent or mitigate these impacts; and

(4) Other current data that may be helpful in keeping the Sercretary and the public fully informed about the project.

§ 485.51 Project monitoring.

(a) The agreement may provide that authorized employees and representatives of DOE and EPA will, with the Secretary's approval, have access to the project site at all reasonable times. The borrower and project operator will be required to keep and, to extent lawful and within their control, assure availability of information related to the project that is necessary to permit the Secretary to determine technical progress, soundness of financial condition, management stability, compliance with environmental protection requirements, and other matters pertinent to the agreement and to the project.

(b) Recordkeeping will be in accordance with generally accepted accounting principles and practices, consistently applied, or that system required by law, and further requirements which may be established by DOE and stipulated in the agreement. The information required includes, but is not limited to, records which fully disclose the disposition of the products of the project, the cost of these products, and the revenues received from their sale, and those other records the Secretary may require to facilitate an effective audit.

(c) The recipient will be required to submit to the Secretary, when appropriate or with such frequency as the Secretary prescribes, a detailed

written statement in support of a loan disbursement that is supported by documentation that the Secretary may require. That statement will be signed by a person authorized to order the expenditure of the recipient's funds.

§ 485.52 Termination of agreement.

(a) DOE may reserve the right to terminate any price support loan agreement, in whole or in part, at any time before the date of completion, whenever it is determined by DOE that the recipient has failed to comply with any of the material terms and conditions of the agreement. DOE will promptly notify the recipient in writing of the determination, and the reasons for the termination, together with the effective date. Loan disbursements made to recipients under agreements terminated for cause will be repaid in accordance with the terms and conditions stated in the agreement.

(b) DOE and the recipient may terminate any price support loan agreement, in whole or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. In accordance with DOE policy, the two parties will agree upon the termination conditions, including the effective date.

§ 485.53 Survival of agreement.

The agreement will be binding upon the parties, including the Secretary, and upon their successors and assignees. No delay or failure of the Secretary in the exercise of any right or remedy, and no single or partial exercise of any right or remedy, will preclude any further exercise, and no action taken or omitted by the Secretary may be considered a waiver of any right or remedy.

Subpart F—Default

§ 486.60 Default, demand, payment, and collateral security and surety liquidation.

(a) In the event that the borrower has defaulted in the making of required payments of principal or interest on any portion of a loan disbursed in accordance with this regulation, and such default has not been cured within the period of grace provided in the loan agreement, or other collateral security or surety agreement, the borrower will be in default and the Secretary will have the right, at the Secretary's option, to accelerate the indebtedness and demand full payment of all amounts outstanding, both principal and interest, under the loan;

(b) In the event that the borrower is in default as a result of a breach of one or more of the terms and conditions of the agreement, or other contractual obligation related to the debt transaction, other than the borrower's obligation to pay principal or interest, as provided in subsection (a) of this Section, default may not be declared unless the agreement provides that such default is a material breach entitling the Secretary to make demand, or unless the Secretary determines that such default has materially affected the rights of the Federal government.

(c) In the event that the failure on the part of the borrower to perform the terms and conditions of the agreement, or related document, does not constitute an intentional act, but is brought about as a result of circumstances largely beyond their control, the Secretary may elect, at the Secretary's option, to waive such failure, or restructure the repayment required by the agreement in any manner the Secretary determines;

(d) No failure on the part of the Secretary to make demand at any time will constitute a waiver of the rights held by the Secretary;

(e) Upon demand by the Secretary, the borrower will have a period of not more than 30 days from the date of receipt of the Secretary's demand to make payment in full;

(f) Should the borrower fail to pay after demand, the Secretary will institute foreclosure proceedings on the collateral security pledged and take such other legal action as necessary for the protection of the Government.

(g) If the Secretary is awarded title and rights to collateral security pledged pursuant to foreclosure proceedings, the Secretary may take action to complete, maintain, operate, or lease the project facilities, or take any other necessary action which the Secretary deems appropriate in order that the original goals and objectives of the project will, to the extent possible, be realized.

(h) In addition to foreclosure and sale of collateral security the Secretary will take appropriate action in accordance with rights contained in the agreement to recover losses and expenses incurred by the Government as a result of the default. Any recovery so received by the U.S. Attorney General on behalf of the Government will be applied in the following manner: first, to the expenses incurred by DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE; and third, to any other lawful claims held by the Government on such proceeds. Any sums remaining after full payment of the above will be available for the benefit of other parties lawfully entitled to claim them.

(i) No action taken in the liquidation of any collateral security pledged will affect the rights of any party, including the Secretary, having an interest in the loan to pursue, jointly or severally, to the extent provided in the loan agreement, legal action against the borrower, or other liable parties, for any deficiencies owing on the debt after application of the proceeds received upon liquidation.

§ 486.61 Preservation of collateral security.

(a) Upon default, the holder of pledged collateral security will take those actions that the Secretary may reasonably require to provide for the care, preservation, protection, and maintenance of the collateral security so as to enable the United States to achieve maximum recovery upon default of the loan. The Secretary may reimburse the holder of collateral security for reasonable and appropriate expenses incurred in taking actions required by the Secretary.

(b) No party may waive or relinquish, without the consent of the Secretary, right to any pledged collateral security for the price support loan.

(c) In the event of a default, the Secretary may enter into contracts as required to preserve the collateral security for the price support loan.

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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

TRANSPORTATION DEPARTMENT

Coast Guard—

64185 9–29–80 / Suspension and revocation proceedings

TREASURY DEPARTMENT

Customs Service—

64172 9–29–80 / Discrepancies in manifests of vehicles and certain vessels arriving from Canada or Mexico

WATER RESOURCES COUNCIL

64402 9–29–80 / Environmental quality evaluation procedures for Level C water resources planning

64448 9–29–80 / Procedures for evaluation of National Economic Development (NED) benefits and costs and other Social Effects (SOE) in water resources planning Level C

64366 9–29–80 / Principles and standards for water and related land resources planning—Level C

Deadlines for Comments On Proposed Rules for the Week of November 2 through November 8, 1980

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

68998 10–17–80 / Draft recommendations on intragovermental communications in informal rulemaking proceedings; comments by 11–5–80

68949 10–17–80 / Draft recommendation on separation of functions in agency proceedings; comments by 11–5–80

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

68951 10–17–80 / Oranges and grapefruit grown in lower Rio Grande Valley, Tex.; import regulations and proposed grade and size requirements; comments by 11–3–80

Farmers Home Administration—

58557 9–4–80 / Implementation of Interagency Agreement regarding employment of Comprehensive Employment and Training Act (CETA) eligible persons in jobs created by certain FmHA programs; comments by 11–3–80

Food Safety and Quality Service—

53002 8–8–80 / Net weight labeling of meat and poultry products; comments by 11–6–80

44317 7–1–80 / Prohibition of PCB containing equipment or machinery and liquid polychlorinated biphenyls (PCB's) in Federally inspected meat establishments, poultry product establishments, and egg product plants; comments by 11–4–80

[*See also* 45 FR 30980–30983, 5–9–80]

CIVIL AERONAUTICS BOARD

66474 10–7–80 / Service mail rates for nonsubsidized carriers; flight equipment depreciation; statement of general policy; comments by 11–6–80

COMMERCE DEPARTMENT

International Trade Administration—

58562 9–4–80 / Effects of foreign policy export controls; comments by 11–3–80

National Oceanic and Atmospheric Administration—

65264 10–2–80 / Fishermen's Contingency Fund provisions; comments by 11–3–80

DEFENSE DEPARTMENT

Army Department—

66476 10–7–80 / Visitors rules for the Arlington National Cemetery; comments by 11–6–80

EDUCATION DEPARTMENT

61950 9–17–80 / Asbestos detection and control; Asbestos detection and State Plan: State Educational Agencies; comments by 11–3–80

ENERGY DEPARTMENT

Economic Regulatory Administration—

58871 9–5–80 / Mandatory Petroleum Price Regulations; retroactive amendments to "V" factor of refiner cost allocation formulae; comments by 11–4–80

53368 8–11–80 / Power plant and Industrial Fuel Use Act of 1978; cogeneration exemption; comments by 11–7–80

Federal Energy Regulatory Commission—

65170 10–1–80 / Authority delegation to Director, Office of Pipeline and Producer Regulation, to grant exemptions to incremental pricing regulations; comments by 11–3–80

ENVIRONMENTAL PROTECTION AGENCY

65628 10–3–80 / Air quality implementation plan, Maryland; revision; comments by 11–3–80

65631 10–3–80 / Air quality; ozone; California and Nevada attainment status designations; comments by 11–3–80

59177 9–8–80 / Approval and promulgation of implementation plans; Nevada; comments by 11–7–80

64219 9–29–80 / Benzene emissions from maleic anhydride plants; National emissions standards for hazardous air pollutants; comments by 11–6–80

66484 10–7–80 / Carbaryl; proposed tolerance; comments by 11–6–80

61966 9–17–80 / Friable asbestos-containing materials in schools; comments by 11–3–80

63888 9–26–80 / Hazardous waste management; North Carolina's application for Phase I interim authorization; comments by 11–4–80

62506 9–9–80 / Kentucky air quality implementation plans; federal assistance limitation; comments by 11–3–80

52628 8–7–80 / Pesticide programs; registration denial or cancellation and change of use classification; issuance and hearing procedures; comments by 11–5–80

[Corrected at 45 FR 57461, 8–28–80]

62170 9–18–80 / Policy and guidance on implementation of Clean Air Act requirement for meeting "basic transportation needs"; comments by 11–3–80

47168 7–14–80 / Proposed restrictions on use of PCB's at agricultural pesticide and fertilizer facilities; comments by 11–5–80

[*See also* 45 FR 30989, 5–9–80]

66816 10–8–80 / Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities; comments by 11–7–80

FEDERAL COMMUNICATIONS COMMISSION

47445 7–15–80 / Cable television systems and postponement of divestiture requirement relative to prohibited cross ownership in existence on or before July 1, 1970; reply comments by 11–5–80

58611 9–4–80 / FM Broadcast Station in Hampton, Ark.; Proposed Changes in Table of Assignments; reply comments by 11–6–80

63302 9–24–80 / FM Broadcast Station in Hudson, Mich.; proposed changes in table of assignments; comments by 11–7–80

58621 9–4–80 / FM Broadcast Station in Irmo, S.C.; Proposed Changes in Table of Assignments; reply comments by 11–6–80

58618 9–4–80 / FM Broadcast Station in North Mankato, Minn.; Proposed Changes in Table of Assignments; reply comments by 11–6–80

58612 9–4–80 / FM Broadcast Station in Oildale, Calif.; Proposed Changes in Table of Assignments; reply comments by 11–6–80

58619 9–4–80 / FM Broadcast Station in Olivia, Minn.; Proposed Changes in Table of Assignments; reply comments by 11–6–80

62517 9–19–80 / FM Broadcast Station in Roy and Clearfield, Utah; Proposed Changes in Table of Assignments; comments by 11–7–80

58616 9–4–80 / FM Broadcast Station in Smith Center, Kans.; Proposed Changes in Table of Assignments; reply comments by 11–6–80

58613 9–4–80 / FM Broadcast Station in South Lake Tahoe, Calif.; Proposed Changes in Table of Assignments; reply comments by 11–6–80

58622 9–4–80 / FM Broadcast Station in Tremonton, Utah; Proposed Changes in Table of Assignments; reply comments by 11–6–80

58610 9–4–80 / FM Broadcast Stations in Tucson and Nogales, Arizona; Proposed Changes in Table of Assignments; reply comments by 11–6–80

58150 9–2–80 / 9 kHz channel separation for AM broadcasting; comments by 11–3–80

47444 7–15–80 / Revision of applications for renewal of license of commercial and noncommercial AM, FM and television licensees; reply comments by 11–3–80

58608 9–4–80 / TV Broadcast Station in Fort Walton Beach, Florida; Proposed Changes in Table of Assignments; reply comments by 11–6–80

55244 8–19–80 / TV Broadcast Stations in Jacksonville, Lumberton, Roanoke Rapids and Rockingham, N.C.; Farmville and Kenbridge, Va.; Table of Assignments; comments by 11–3–80

58627 9–4–80 / TV Broadcast Stations in Sanger, Clovis, Visalia, and Fresno, Calif.; Proposed Changes in Table of Assignments; reply comments by 11–6–80

55246 8–19–80 / Use of digital voice modulation in the Power Radio Service; reply comments by 11–7–80

69504 10–21–80 / Use of 12.5 kHz offset assignments in the 450–470 MHz band in the private land mobile radio services; comments by 11–5–80

FEDERAL DEPOSIT INSURANCE CORPORATION

58876 9–5–80 / Employee responsibilities and conduct; comments by 11–4–80

FEDERAL MARITIME COMMISSION

66485 10–7–80 / Enlargement of time for filing and commenting on certain agreements; comments by 11–3–80

[*See also* 45 FR 58923, 9–5–80]

58385 9–3–80 / Temporary tariff filing regulations applicable to carriers and conferences of such carriers in the foreign commerce of the United States; consideration of petitions by several conferences; comments by 11–3–80

FEDERAL RESERVE SYSTEM

66348 10–6–80 / Electronic fund transfers; exemptions; comments by 11–5–80

FEDERAL TRADE COMMISSION

68399 10–15–80 / Possible rescission of the Guides against deceptive advertising of guarantees; comments period extended to 11–6–80

[*See also* 45 FR 51838, 8–5–80]

66810 10–8–80 / Sale of used motor vehicles; disclosure and other regulation; comments by 11–7–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

52821 8–8–80 / Blood and blood components; error and accident reports; comments by 11–6–80

58880 9–5–80 / Exemptions from food labeling requirements for food labeling experiments; comments by 11–4–80

53023 8–8–80 / Food labeling; net weight labeling requirements; comments by 11–6–80

44325 7–1–80 / Polychlorinated biphenyls (PCB's) in sealed electrical transformers and capacitors used or stored in or around food, feed, and food- and feed-packaging materials manufacturing and storage facilities; comments by 11–4–80

[*See also* 45 FR 30984, 5–9–80]

Health Care Financing Administration—

58123 9–2–80 / Medicare; extension of time periods for end stage renal disease facilities to achieve conditional and unconditional status; comments by 11–3–80

Public Health Service—

59132 9–5–80 / Grants to health systems agencies, discretionary funding; comments by 11–4–80

Social Security Administration—

58563 9–4–80 / Supplemental security income for the aged, blind, and disabled; eligibility, amount of benefits, residence, and citizenship provision; comments by 11–3–80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of the Assistant Secretary for Housing—

58374 9–3–80 / Polyethylene (PE), Acrylonitrile—butadiene—Styrene (ABS), Poly (Vinyl Chloride) (PVC) and Polybutylene (PB) plastic piping for cold water; comments by 11–3–80

59147 9–8–80 / Mortgage insurance and interest reduction payment for rental projects; comments by 11–7–80

59145 9–8–80 / Rent supplement payments; redefinition of "income"; comments by 11–7–80

Office of the Secretary—

59149 9–8–80 / Low-income housing; additional assistance program for projects with HUD-insured or HUD-held mortgages; comments by 11–7–80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

58168 9–2–80 / *Phacelia formosulae;* proposed endangered species status; comments by 11–3–80

58166 9–2–80 / Proposed endangered status for 'Ewa Plains 'akoko (Euphorbia skottsbergii var. kalaeloana); comments by 11–3–80

Surface Mining and Reclamation Office—

65626 10–3–80 / Abandoned mine lands reclamation program; comments by 11–3–80

58377 9–3–80 / Surface coal mining and reclamation operations on Federal lands under permanent program State-Federal Cooperative Agreements; Montana; comments by 11–3–80

64971 10–1–80 / Surafce coal mining and reclamation operations on Federal lands under the Permanent Program; Wyoming cooperative agreement; comments by 11–7–80

[Originally published at 45 FR 45927, 7–8–80]

LABOR DEPARTMENT

Occupational Safety and Health Administration—

66475 10–7–80 / Proposed supplement to Conn. State Plan for public employees only; comments by 11–6–80

NUCLEAR REGULATORY COMMISSION

65466 10–2–80 / Domestic licensing of production and utilization facilities; interim requirements related to hydrogren control and certain degraded core considerations; comments by 11–3–80

SMALL BUSINESS ADMINISTRATION

66807 10–8–80 / Pollution control guarantee program; interest rate at which small concerns repay SBA; comments by 11–7–80

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

59256 9–8–80 / Non-federal navigation facilities; microwave landing system; comments by 11–7–80

Federal Highway Administration—

51720 8–4–80 / Design and construction criteria for bikeway construction; comments by 11–3–80

Office of the Secretary—

62170 9–18–80 / Policy and guidance on implementation of Clean Air Act requirement for meeting "basic transportation needs"; comments by 11–3–80

TREASURY DEPARTMENT

Internal Revenue Service—

64603 9–30–80 / Qualified disclaimers of property conferred by gift or inheritance; comments by 11–4–80

VETERANS ADMINISTRATION

66185 10–8–80 / Exclusions from countable income under Improved Pension Program; comments by 11–7–80

WAGE AND PRICE STABILITY COUNCIL

65502 10–3–80 / Anti-inflationary price standards; procedural rules and data requests; comments by 11–3–80

65995 10–6–80 / Anti-inflationary pay and price standards; questions and answers on the pay standard; comments by 11–3–80

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AGRCULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

67669 10–14–80 / Harry S. Truman Import Center, Procedures to be used for the allotment of quarantine space for cattle to be imported; comments by 11–13–80

60402 9–12–80 / Plant pests; Mediterranean fruit fly expansion of regulated area in Calif; comments by 11–12–80

Federal Grain Inspection Service—

60407 9–12–80 / Barley standards inquiry to determine effectiveness and responsiveness to current marketing needs; comments by 11–12–80

60448 9–12–80 / Humane handling of livestock, witholding of water from animals for not more than 24 hours; comments by 11–12–80

[Republished with corrections at 45 FR 62477, 9–19–80]

COMMERCE DEPARTMENT

International Trade Administration—

59302 9–9–80 / Short supply controls; extension of deadline for applications to participate in the allocation of the export quota for unprocessed Western Red Cedar for FY 1981 and thereafter; comments by 11–10–80

National Oceanic and Atmospheric Administration—

68412 10–15–80 / Atlantic tuna fisheries; conservation recommendations; comments by 11–14–80

COMMODITY FUTURES TRADING COMMISSION

69248 10–20–80 / Commodity pool operator and trading advisor regulations; comment period extended to 11–14–80

[*See also* 45 FR 51600 8–4–80 and 45 FR 65257, 10–2–80]

COMMUNITY SERVICES ADMINISTRATION

60954 9–15–80 / Civil Rights Program Requirements of CSA grantees; civil rights regulations; comments by 11–14–80

EDUCATION DEPARTMENT

59349 9–9–80 / Education Division General Administrative Regulations (EDGAR); Grant programs without specific regulations; comments by 11–10–80

ENERGY DEPARTMENT

Economic Regulatory Administration—

59818 9–10–80 / Modification of the entitlement benefit accorded naphtha imported into Puerto Rico and used as a petrochemical feedstock; comments by 11–10–80

61268 9–15–80 / Treatment of Alaska North Slope Crude Oil under the entitlement program; comments by 11–12–80

[*See also* 45 FR 46752, 7–10–80 and 45 FR 31682, 5–13–80]

Federal Energy Regulatory Commission—

69929 10–22–80 / Ceiling prices; high-cost gas produced from tight formations; comments by 11–10–80

69930 10–22–80 / Ceiling prices; high-cost gas produced from tight formations; comments by 11–14–80

68389 10–15–80 / Incremental pricing; revised alternative fuel price ceilings for Rhode Island (interim rule); comments by 11–10–80

ENVIRONMENTAL PROTECTION AGENCY

68406 10–15–80 / Administrative Order to VEPCO's Chesterfield Generating Station requiring its Unit 4 Chesterfield Co., Va., to achieve compliance with air pollution requirements under Virginia State Implementation Plan by 6–1–82; comments by 11–14–80

67683 10–14–80 / Approval and Promulgation of Indiana State Implementation Plan; comments by 11–13–80

67397 10–10–80 / Arkansas Air Quality Implementation Plan; malfunctions upsets and continuous emission monitoring; comments by 11–10–80

65263 10–2–80 / Availability of Kentucky application for phase I interim authorization; comments by 11–10–80

68979 10–17–80 / Availability for review of Utah's application for interim authorization, phase I, hazardous waste management program; comments by 11–14–80

68980 10–17–80 / Availability for review of North Dakota's application for interim authorization, plan I, hazardous waste management program; comments by 11–14–80

60941 9–15–80 / Designation of areas for air quality planning purposes; Section 107 attainment status designations; comments by 11–14–80

65632 10–3–80 / Hazardous waste management; Mississippi application for interim authorization; comments by 11–11–80

67396 10–10–80 / Historical and cultural resources implementation of procedures for identification, protection and maintenance; comments by 11–10–80

67397 10–10–80 / Massachusetts Air Quality Implementation Plan; increase in sulfur-in-fuel content; comments by 11–10–80

64876 9–30–80 / Noise emission standards for transportation equipment interstate rail carriers; comments by 11–14–80

67686 10–14–80 / Oregon, Implementation Plan; comments by 11–13–80

67399 10–10–80 / Pesticide chemicals; malathion, proposed tolerance on flax seed and flax straw; comments by 11–10–80

60942 9–15–80 / Proposed removal of bis(chloromethyl) ether (BCME) from the Toxic Pollutant List; comments by 11–14–80

55066 8–18–80 / Proposed revisions to the National Ambient Air quality standards for carbon monoxide; comments by 11–10–80

55083 8–18–80 / Proposed revision of the National Ambient Air quality standards for carbon monoxide, comments by 11–10–80

68405 10–15–80 / Revision to the New York State Implementation Plan; comment period extended to 11–14–80

[*See also* 45 FR 54372; 8–15–80]

60930 9–15–80 / Submittal to satisfy condition on approval of the New York State implementation plans; comments by 11–14–80

FEDERAL COMMUNICATIONS COMMISSION

54786 8–18–80 / Amendment of Form 324, Annual Financial Report of Broadcast Stations; reply comments period extended to 11–14–80

35370 5–27–80 / FCC Form 324 Annual Financial Report of Broadcast Stations; reply comments by 11–14–80

58620 9–4–84 / FM Broadcast Stations in Columbia and Monroe City, Mo.; proposed changes in table of assignments; reply comments by 11–10–80

59908 9–11–80 / FM Broadcast Stations in Kennewick and Richland, Wash.; changes in table of assignments; reply comments by 11–13–80

58617 9–4–84 / FM Broadcast Station in Owingsville, Ky.; proposed changes in table of assignments; reply comments by 11–10–80

58626 9–4–80 / FM Broadcast Station in Orem, Utah; proposed changes in table of assignments; reply comments by 11–10–80

58615 9–4–80 / FM Broadcast Station in Rifle, Colo.; proposed changes in table of assignments; reply comments by 11–10–80

59361 9–9–80 / FM Broadcast Station in Walker, Minn.; table of assignments; reply comments by 11–13–80

55491 8–20–80 / FM quadraphonic broadcasting; comments by 11–10–80

54778 8–18–80 / Inquiring relating to radio operator licensing program; comments by 11–14–80

[*See also* 41 FR 22981, June 7, 1976; 42 FR 40939, Aug. 4, 1977]

64981 10–1–80 / TV Broadcast Station in Santa Barbara, Calif.; changes in table of assignments; comments by 11–14–80

69504 10–21–80 / Use of 12.5 kHz offset assignments in the 450–470 mHz band in the private land mobile radio services; reply comments by 11–15–80

FEDERAL MARITIME COMMISSION

67711 10–14–80 / Status of Bulk Commodities; comments by 11–13–80

FEDERAL RESERVE SYSTEM

66349 10–6–80 / Electronic fund transfers; proposed Official Staff Commentary; comments by 11–14–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

67320 10–10–80 / Food additives; emulsifiers and/or surface active agents; objections by 11–10–80

60449 9–12–80 / Public hearings before advisory committees; annual report requirements; comments by 11–12–80

Health Care Financing Administration—

59734 9–10–80 / Prospective payment method for Medicare and Medicaid reimbursement of independent rural health clinics; comments by 11–10–80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community Planning and Development, Office of the Assistant Secretary—

59496 9–9–80 / Community development block grants; Innovative grants programs; clarification of program objectives and requirements for unsolicited proposals, solicited preapplications; interim rule; comments by 11–10–80

59306 9–9–80 / Community Development Block Grants and Urban Development Action Grants; comments by 11–10–80

Federal Housing Commission—Office of Assistant Secretary for Housing and Office of Assistant Secretary for Policy Development and Research—

60390 9–11–80 / Condominium ownership mortgage insurance—existing multifamily housing demonstration; interim rule; comments by 11–10–80

59561 9–10–80 / Mutual mortgage insurance and insured home improvement loans; delivery of one-to-four family properties occupied by tenants or former mortgagors; revised criteria; interim rule; comments by 11–10–80

59589 9–10–80 / Prohibition of prepayment of mortgage which are assisted by way of Housing Asssistance Payments Contracts during the term of the mortgage without the prior consent of the Commissioner; comments by 11–10–80

59502 9–9–80 / PHA-owned projects; uniform standards and procedures for determining the amounts of utility allowances and surcharges applicable to tenants of dwellings owned; interim rule; comments by 11–10–80

59309 9–9–80 / Section 8 Housing Assistance Payments Program, computation of gross family contribution; comments by 11–10–80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

59909 9–11–80 / Endangered and threatened wildlife and plants; proprosal to determine "isotria medeoloides" (small whorled pogonia) to be an endangered species; comments by 11–10–80

54682 8–15–80 / Determining hedeoma apicalatum (McKittrick pennyroyal) to be a threatened species with critical habitat; comments by 11–13–80

54685 8–15–80 / Review of 18 species of foreign reptiles for proposed listing as endangered or threatened; comments by 11–13–80

Indian Affairs Bureau—

60923 9–15–80 / Heritage preservation; comments by 11–14–80

JUSTICE DEPARTMENT

Parole Commission—

60427 9–12–80 / Federal prisoners, parole supervision termination guidelines; comments by 11–14–80

SMALL BUSINESS ADMINISTRATION

68399 10–15–80 / Economic opportunity loans; interest rate; comments by 11–14–80

68398 10–15–80 / Handicapped assistance loans; interest rate; comments by 11–14–80

TRANSPORTATION DEPARTMENT

Coast Guard—

54095 8–14–80 / Great Lakes Bulk Dry Cargo Vessels, damage stability standards; comments by 11–12–80

Federal Aviation Administration—

59897 9–11–80 / Petitions for rulemaking; National and Dulles International Airports; solicitation and leafletting procedures; comments by 11–10–80

Federal Railroad Administration—

64191 9–29–80 / National Railroad Passenger Corporation (Amtrak); Informal rules of practice for passenger service; comments by 11–13–80

TREASURY DEPARTMENT

Internal Revenue Service—

60450 9–12–80 / Income taxes; nonresident aliens; election to be treated as a resident and U.S. income tax treaties; comments by 11–11–80

Office of the Secretary—

68686 10–16–80 / Regulations governing practice before the Internal Revenue Service to set standards for providing of opinions used in promotion of tax shelters; comment period extended to 11–14–80

[*See also* 45 FR 58594, 9–4–80]

VETERANS ADMINISTRATION

68403 10–15–80 / Disaffirmation of election of improved pension by certain medicaid recipients; comments by 11–14–80

WAGE AND PRICE STABILITY COUNCIL

69207 10–20–80 / Anti-inflationary pay standards; questions and answers on extrapolation of the second-year standard; comments by 11–10–80

Next Week's Meetings

ARTS AND HUMANITIES, NATIONAL FOUNDATION

69317 10–20–80 / Arts and Artifacts Indemnity Panel Advisory Committee, Washington, D.C. (closed), 11–5–80

68812 10–16–80 / Humanities Panel, Wash., D.C. (closed), 11–3, 11–6 and 11–7–80

69602 10–21–80 / Music Panel (Chorus Section), Washington, D.C. (partially open), 11–5 through 11–8–80

CIVIL RIGHTS COMMISSION

70036 10–22–80 / California Advisory Committee, San Francisco, Calif. (open), 11–8–80

70036 10–22–80 / Indiana Advisory Committee, Gary, Ind. (open), 11–6–80

70036 10–22–80 / Minnesota Advisory Committee, Duluth, Minn. (open), 11–7–80

67712 10–14–80 / Nebraska Advisory Committee, Omaha, Nebr. (open), 11–6 and 11–7–80

67713 10–14–80 / New York Advisory Committee, New York, N.Y. (open), 11–6–80

67118 10–9–80 / North Carolina Advisory Committee, Greensboro, North Carolina, (open), 11–5–80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

68994 10–17–80 / Coastal Zone Management Advisory Committee, New York, N.Y. (open), 11–6 and 11–7–80

66489 10–7–80 / Gulf of Mexico Fishery Management Council, Scientific and Statistical Committee, Tampa, Fla. (open), 11–5–80

[Relocated at 45 FR 69277, 10–20–80]

69277 10–20–80 / Mid-Atlantic Fishery Management Council, Scientific and Statistical Committee, Philadelphia, Penn. (open), 11–5–80

65646 10–3–80 / Western Pacific Fishery Management Council, Advisory Panel and Scientific and Statistical Committee, Honolulu, Hawaii (open), 11–5 through 11–7–80

DEFENSE DEPARTMENT

Air Force Department—

68703 10–16–80 / Scientific Advisory Board, Hawthorne, Calif. (closed), 11–5 and 11–6–80

Army Department—

68703 10–16–80 / Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Surgery, San Francisco, Calif. (partially open), 11–3–80

Navy Department—

69001 10–17–80 / Chief of Naval Operations Executive Panel Advisory Committee, Camp Smith, Hawaii (closed), 11–3 and 11–4–80

Office of the Secretary—

62177 9–18–80 / DOD Wage Committee, Washington, D.C. (closed), 11–4–80

EDUCATION DEPARTMENT

69540 10–21–80 / Bilingual Education National Advisory Council, Brownsville, Tex. (open), 11–8 through 11–10–80

70305 10–23–80 / Career Education, National Advisory Council, Washington, D.C. (open), 11–6 and 11–7–80

66495 10–7–80 / Commission on the Review of the Federal Impact Aid Program, Washington, D.C. (open), 11–6 and 11–7–80

67406 10–10–80 / Education Statistics Advisory Council, Hyattsville, Md. (open), 11–5 and 11–6–80

69541 10–21–80 / Financing Elementary and Secondary Education Advisory Panel, Washington, D.C. (open), 11–6 through 11–8–80

70040 10–22–80 / Fund for the Improvement of Postsecondary Education, Washington, D.C. (open), 11–7 and 11–8–80

ENERGY DEPARTMENT

70077 10–22–80 / Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Review of Hearing Procedures, Washington, D.C. (open), 11–6–80

70041 10–22–80 / Land Use Task Group of Committee on Environmental Conservation, National Petroleum Council, Washington, D.C. (open), 11–5–80

69542 10–21–80 / National Petroleum Council, Environmental Conservation Committee, Coordinating Subcommittee, Washington, D.C. (open), 11–6–80

69288 10–20–80 / National Petroleum Council, Refinery Flexibility Subcommittee, New York, N.Y. (open), 11–5–80

Economic Regulatory Administration—

68421 10–15–80 / Fuel Oil Marketing Advisory Committee, Boston, Mass. (open), 11–6 and 11–7–80

67355 10–10–80 / Motor gasoline; retailer price rule and fixed cents per gallon markups, San Francisco, Calif., 11–6–80

Energy Research Office—

69286 10–20–80 / Energy Research Advisory Board, Washington, D.C. (open), 11–6 and 11–7–80

Federal Energy Regulatory Commission—

67276 10–9–80 / Agricultural uses exemption; comments by 11–7–80

ENVIRONMENTAL PROTECTION AGENCY

67453 10–10–80 / National Drinking Water Advisory Council, Santa Fe, N. Mex. (open), 11–7–80

69294 10–20–80 / Science Advisory Board, Ecology Committee, Marine Eco-System Task Group, Washington, D.C. (open), 11–6 and 11–7–80

67458 10–10–80 / Science Advisory Board, Technology Assessment and Pollution Control Committee, Washington, D.C. (open), 11–7 and 11–8–80

66506 10–7–80 / Toxic Substances Control Act Interagency Testing Committee; chemicals to be reviewed, Washington, D.C. (open), 11–6–80

ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, PRESIDENT'S COMMISSION FOR THE STUDY OF

69610 10–21–80 / Fifth meeting, Washington, D.C. (open), 11–7–80

FINE ARTS COMMISSION

64863 11–8–79 / Meeting, Washington, D.C. (open) 11–4–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

68760 10–16–80 / Manpower and Training Work Group of the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism, Rockville, Md. (open), 11–6–80

67156 10–9–80 / Basic Sociocultural Research Review Committee, Chevy Chase, Md. (partially open), 11–6 and 11–7–80

67156 10–9–80 / Cognition, Emotion, and Personality Research Review Committee, Washington, D.C. (partially open), 11–7–80

67156 10–9–80 / Epidemiologic and Services Research Review Committee, Washington, D.C. (partially open), 11–3 through 11–6–80

67156 10–9–80 / Life Course Review Committee, Chevy Chase, Md. (partially open), 11–5 through 11–7–80

Food and Drug Administration—

63929 9–26–80 / Institutional Review Board's compliance activity workshop, Washington, D.C. (open), 11–7–80

69556 10–21–80 / Miscellaneous External Drug Products Panel, Bethesda, Md. (open), 11–7–80

69556 10–21–80 / Oncologic Drugs Advisory Committee, Rockville, Md. (open), 11–7–80

69556 10–21–80 / Psychopharmacologic Drugs Advisory Committee, Rockville, Md. (open), 11–6–80

Health Care Financing Administration—

69045 10–17–80 / National Professional Standards Review Council, Washington, D.C. (open), 11–3 and 11–4–80

National Institutes of Health—

58206 9–2–80 / Allergy and Clinical Immunology Research Committee, Bethesda, Md. (partially open), 11–6 and 11–7–80

59205 9–8–80 / Bio-Psychology Study Section, Annapolis, Md. (partially open), 11–2 through 11–5–80

68464 10–15–80 / Bladder and Prostatic Cancer Review Committee, Atlanta, Ga. (partially open) 11–6–80

61371 9–16–80 / Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, Bethesda, Md., (partially open), 11–6 and 11–7–80

63146 9–23–80 / Cancer Special Program Advisory Committee, Bethesda, Md. (partially open), 11–6 and 11–7–80

64270 9–29–80 / Clinical Applications and Prevention Advisory Committee, Bethesda, Md. (partially open), 11–6 and 11–7–80

62561 9–19–80 / Clinical Cancer Education Committee, Bethesda, Md. (partially open) 11–5–80, (closed) 11–6–80

62561 9–19–80 / Clinical Cancer Education Committee, Bethesda, Md. (partially open) 11–5–80, (closed) 11–6–80

68465 10–15–80 / Clinical Trials Review Committee, Bethesda, Md. (open), 11–7–80

65317 10–2–80 / Diet, Nutrition and Cancer Forum, Washington, D.C. (open), 11–6–80

59205 9–8–80 / Epidemiology and Disease Control Study Section, Washington, D.C. (partially open), 11–6 through 11–8–80

59205 9–8–80 / Human Development Study Section, Washington, D.C. (partially open), 11–6 through 11–8–80

59205 9–8–80 / Immunobiology Study Section, Silver Spring, Md. (partially open), 11–5 through 11–7–80

63146 9–23–80 / Large Bowel and Pancreatic Cancer Review Committee (Pancreatic Cancer Review Subcommittee), Chicago, Ill. (partially open), 11–5–80

59205 9–8–80 / Metabolism Study Section, Bethesda, Md. (partially open) 11–6 through 11–8–80

62562 9–19–80 / National Institute of Dental Research Programs Advisory Committee, Dental Caries Subcommittee, Bethesda, Md. (partially open) 11–6 and 11–7–80

64271 9–29–80 / Neurological Disorders Program—Project Review B Committee, Cincinnati, Ohio (partially open), 11–7 through 11–9–80

59205 9–8–80 / Radiation Study Section, Chevy Chase, Md. (partially open), 11–3 through 11–5–80

59205 9–8–80 / Tropical Medicine and Parasitology, Washington, D.C. (partially open), 11–2 through 11–4–80

Public Health Service—

67156 10–6–80 / Health Care Technology, National Council, New York, N.Y. (open), 11–7–80

65046 10–1–80 / Health Care Technology National Council, Grants and Contracts Subcommittee, New York, N.Y. (closed), 11–6–80

HISTORIC PRESERVATION ADVISORY COUNCIL

70033 10–22–80 / Meeting, Washington, D.C. (open), 11–5 and 11–6–80

INTERIOR DEPARTMENT

Land Management Bureau—

69052 10–17–80 / Burns District Advisory Council, Burns, Oreg. (open), 11–6–80

65322 10–2–80 / Colorado Craig District Advisory Committee, Craig, Colo. (open), 11–6–80

65682 10–3–80 / Idaho Falls District Advisory Council, Idaho Falls, Idaho (open), 11–7–80

67472 10–10–80 / Kingman Resource Area (Phoenix District) Grazing Advisory Board, Kingman, Ariz. (open), 11–5–80

68761 10–16–80 / Montana and Wyoming Powder River Regional Coal Team, Billings, Mont. (open), 11–6 and 11–7–80

65323 10–2–80 / Shoshone District Grazing Advisory Board, Shoshone, Idaho (open), 11–6–80

68761 10–16–80 / Susanville District Advisory Council, Cedarville, Calif. (open), 11–6–80

62216 9–18–80 / Ukiah District Advisory Council, Ukiah, Calif. (open), 11–6 and 11–7–80

Fish and Wildlife Service—

70031 10–22–80 / Hardrock and placer mining on units of National Wildlife System, scoping meeting, Washington, D.C. (open), 11–5–80

Office of the Secretary—

66879 10–8–80 / Geographic Names Board, Domestic Names Committee, Salt Lake City, Utah (open), 11–5–80

LABOR DEPARTMENT

Occupational Safety and Health Administration—

63883 9–26–80 / Health and safety standards, general and construction industries; machines and equipment, locking out and tagging; requirements, standards, and procedures; New Orleans, La. (open), 11–5 through 11–7–80

Office of the Secretary—

70161 10–22–80 / Tripartite Advisory Panel on International Labor Standards, Washington, D.C. (closed), 11–6–80

MANAGEMENT AND BUDGET OFFICE

67808 10–14–80 / President's Commission for a National Agenda for the Eighties, Washington, D.C. (open), 11–7–80

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

67803 10–14–80 / NASA Advisory Council, Space Systems and Technology Advisory Committee, Greenbelt, Md. (open), 11–6 and 11–7–80

NATIONAL SCIENCE FOUNDATION

68486 10–15–80 / Advisory Committee for Chemistry, Washington, D.C. (open and closed), 11–06 and 11–7–80

68487 10–15–80 / Advisory Committee for Earth Sciences, Geology, Geophysics, Geochemistry and Petrology Subcommittees, Washington, D.C. (closed), 11–6 and 11–7–80

63400 9–24–80 / DOE/NSF Nuclear Science Advisory Committee, Germantown, Md. (open), 11–6–80

68813 10–16–80 / Engineering and Applied Science Advisory Committee, Washington, D.C. (open), 11–3–80

67490 10–10–80 / Engineering and Applied Science Advisory Committee, Electrical Computer, and Systems Engineering Subcommittee, Washington, D.C. (open), 11–2–80

63399 9–24–80 / NSF Advisory Council, Washington, D.C. (open), 11–6 and 11–7–80

61052 9–15–80 / Physiology, Cellular and Molecular Biology Advisory Committee, Cellular Physiology Subcommittee, Washington, D.C. (closed), 11–3 through 11–5–80

63401 9–24–80 / Social and Economic Science Advisory Committee, Subcommittee on History and Philosophy of Science, Washington, D.C. (closed), 11–6 through 11–8–80

65706 10–3–80 / Social Sciences Advisory Committee, Economics Subcommittee, Washington, D.C. (closed), 11–7 and 11–8–80

63399 9–24–80 / Special Research Equipment Advisory Committee, Biology Subcommittee, Washington, D.C. (closed), 11–3 and 11–4–80

NUCLEAR REGULATORY COMMISSION

69320 10–20–80 / Reactor Safeguards Advisory Committee, General Electric Test Reactor Subcommittee, Washington, D.C. (open), 11–4–80

[*See also* 45 FR 62237, 9–18–80]

69607 10–21–80 / Reactor Safeguards Advisory Committee, Procedures and Administration Subcommittee, Washington D.C. (open), 11–5–80

69608 10–21–80 / Reactor Safeguards Advisory Committee, Regulatory Activities Subcommittee, Washington, D.C. (open), 11–5–80

SMALL BUSINESS ADMINISTRATION

65101 10–1–80 / Region III Advisory Council, Philadelphia, Pa. (open), 11–6–80

66938 10–8–80 / Region VI Advisory Council, Houston, Tex. (open), 11–3–80

65378 10–2–80 / Region VI Advisory Council, Tulsa, Okla. (open), 11–7–80

STATE DEPARTMENT

59469 9–9–80 / Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, Washington, D.C., (open), 11–5–80

69621 10–21–80 / Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, Washington, D.C. (open), 11–6–80

VETERANS ADMINISTRATION

68823 10–16–80 / Health-Related Effects of Herbicides Advisory Committee, Washington, D.C. (open), 11–6–80

61845 9–17–80 / Medical Research Service Merit Review Board, Chicago, Ill. (partially open), 11–5–80

Next Week's Public Hearings

AGRICULTURE DEPARTMENT

Agricultural Stabilization and Conservation Service—

64504 9–30–80 / Conservation and environmental programs, Washington, D.C., 11–5–80

Forest Service—

56850 8–26–80 / Mount Henry, Taylor-Hilgard, and West Pioneer Wilderness Study Areas; Beaverhead, Gallatin, and Kootenai National Forests, Beaverhead, Gallatin, Madison, and Lincoln Counties, Mont.; Dillion and Helena, Mont., 11–5 and 11–6–80

CIVIL AERONAUTICS BOARD

66824 10–8–80 / Competitive marketing of air transportation, Washington, D.C., 11–4–80

[Originally scheduled for October 14, 1980. *See* 45 FR 51865, 8–5–80]

DEFENSE DEPARTMENT

Navy Department—

41691 6–20–80 / Naval Discharge Review Board, Dallas, Tex., Kansas City, Mo., and Memphis, Tenn., 10–27 through 11–7–80

DELAWARE RIVER BASIN COMMISSION

69001 10–17–80 / Consideration of proposed amendment to Commission's ground water management policy, West Trenton, N.J., 11–3–80

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

66632 10–7–80 / Federal Energy Management and Planning Programs; Methodology and Procedures for Life Cycle Cost Analyses (Average Fuel Costs), Washington, D.C., 11–6–80

Western Area Power Administration—

69289 10–20–80 / Public Utility Regulatory Policies Act, compliance with Title I standards, Denver, Colo., 11–6–80

ENVIRONMENTAL PROTECTION AGENCY

65632 10–3–80 / Hazardous Waste Management; Mississippi, application for interim authorization, Jackson, Miss., 11–5–80

62851 9–22–80 / Importation of motor vehicles and motor vehicles engines, Washington, D.C., 11–3–80

68514 10–15–80 / National Emission Standards for Hazardous Air Pollutants; test methods; revisions and addition; Triangle Park, N.C., 11–6–80

EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES COMMISSION

70038 10–22–80 / Public Hearing, Washington, D.C., 11–6 and 11–7–80

INTERNATIONAL TRADE COMMISSION

66924 10–8–80 / Airtight cast-iron stoves, Washington, D.C., 11–3–80

LABOR DEPARTMENT

Occupational Safety and Health Administration—

63476 9–24–80 / Lead exposure; reopening of rulemaking record, Washington, D.C., 11–5 through 11–7–80

TRADE REPRESENTATIVE, OFFICE OF UNITED STATES

57636 8–28–80 / Generalized System of Preferences; articles considered in trade negotiations or eligible for duty-free treatment; Washington, D.C., 11–5 through 11–7–80

68497 10–15–80 / Trade Policy Staff Committee; additional articles being considered for possible duty modification, Washington, D.C., 11–5–80

TREASURY DEPARTMENT

Internal Revenue Service—

57744 8–29–80 / Generation—Skipping transfer tax regulations under the Tax Reform Act of 1976, return requirements, Washington, D.C., 11–5–80

63296 9–24–80 / Withholding of tax under Chapter 3 of the Internal Revenue Code of 1954 with respect to Virgin Islands inhabitants, Washington, D.C., 11–7–80

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing October 24, 1980

Documents Relating to Federal Grant Programs From the Week of October 20 through October 24, 1980

This is a list of documents relating to Federal grant programs which were published in the Federal Register during the previous week.

RULES GOING INTO EFFECT

69244 10–20–80 / CSA—Cost principles, grantee financial management; effective 10–31–80; corrections

[*See also* 45 FR 64940, 10–1–80, and 45 FR 65233, 10–2–80]

69437 10–21–80 / State/Sec'y—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance; effective 11–20–80

DEADLINES FOR COMMENTS ON PROPOSED RULES

70282 10–23–80 / DOT/NHTSA—Highway safety innovative project grants program; comments by 12–1–80

70412 10–23–80 / DOT/UMTA—Urban initiatives program; comments by 12–8–80

69382–69384 10–20–80 / ED—Education of the handicapped; assessment; nonverbal communication; and technology utilization research projects; comments by 1–9–81 (3 documents)

69378 10–20–80 / ED—Research in Education of the Handicapped; comments by 12–19–80

70313 10–23–80 / EPA—Clean Air Act program grant to the State of Oregon; comments by 11–24–80

APPLICATIONS DEADLINES

69386 10–20–80 / ED—Education of the handicapped; Handicapped Children's Model Program, continuation projects; apply by 3–12–81

69385 10–20–80 / ED—Education of the handicapped; field initiated research projects; apply by 2–6–81

69384 10–20–80 / ED—Education of the handicapped; youth employment, and minority educational problems research projects; apply by 1–23–81 (2 documents)

69381 10–20–80 / ED—Education of the handicapped; Handicapped Children's Model Program demonstration projects; apply by 1–5–81

69380 10–20–80 / ED—Education of the handicapped; school based research and research integration projects; apply by 12–19–80 (2 documents)

70352 10–23–80 / Justice/NIC—Training and consulting project (resolicitation); apply by 11–21–80

MEETINGS

69540 10–21–80 / ED—Bilingual Education National Advisory Council, Brownsville, Tex. (open), 11–8–80

69541 10–21–80 / ED—Elementary and Secondary Education, Advisory Panel on Financing, Washington, D.C. (partially open), 11–6 through 11–8–80

70040 10–22–80 / ED—Fund for the Improvement of Postsecondary Education, Washington, D.C., 11–7 and 11–8–80

70040 10–22–80 / ED—Women's Educational Programs, National Advisory Council, Washington, D.C. (open), 11–10 through 11–12–80

70313 10–23–80 / EPA—Clean Air Act program grant to the State of Oregon, Portland, Oreg., 11–24–80

69611 10–21–80 / Ethical Problems in Medicine and Biomedical and Behavioral Research, President's Commission for the Study of—Fifth meeting, Washington, D.C. (open), 11–7–80

70319 10–23–80 / HHS/ADAMHA—Alcohol Abuse Prevention Review Committee, Rockville, Md. (partially open), 10–27–80

[*See* also 62550, 9–19–80]

70133 10–22–80 / HHS/CDC—Safety and Occupational Health Study Section (partially open), Rockville, Md. 11–12 through 11–14–80

70584 10–20–80 / HHS/HRA—National Advisory Council on Health Professions Education, Washington, D.C. (partially open), 11–17 and 11–18–80

69317 10–20–80 / NFAH—Arts and Artifacts Indemnity Panel, Washington, D.C. (closed), 11–5–80

69602 10–21–80 / NFAH—Museum Panel, San Francisco, Calif. (partially open), 11–2 and 11–3–80

69602 10–21–80 / NFAH—Music Panel (Chorus Section), Washington, D.C. (partially open), 11–5 through 11–8–80

69602 10–21–80 / NFAH—Music Panel (Orchestra Section), Washington, D.C. (closed), 11–17 through 11–19–80

69318 10–20–80 / NSF—Mathematical and Computer Sciences Advisory Committee, Mathematical Sciences Subcommittee, Washington, D.C. (open), 11–14 and 11–15–80

70354 10–23–80 / NSF—Ocean Sciences Advisory Committee, Executive Committee, Washington, D.C. (open), 11–13 and 11–14–80

OTHER ITEMS OF INTEREST

70040 10–22–80 / ED Renewal of Board of Advisors to Fund for Improvement of Postsecondary Education

70597 10–24–80 / Labor/ETA—List of organizations applying to Secretary of Agriculture for grants, loans or loan guarantees to establish or improve certain agricultural facilities

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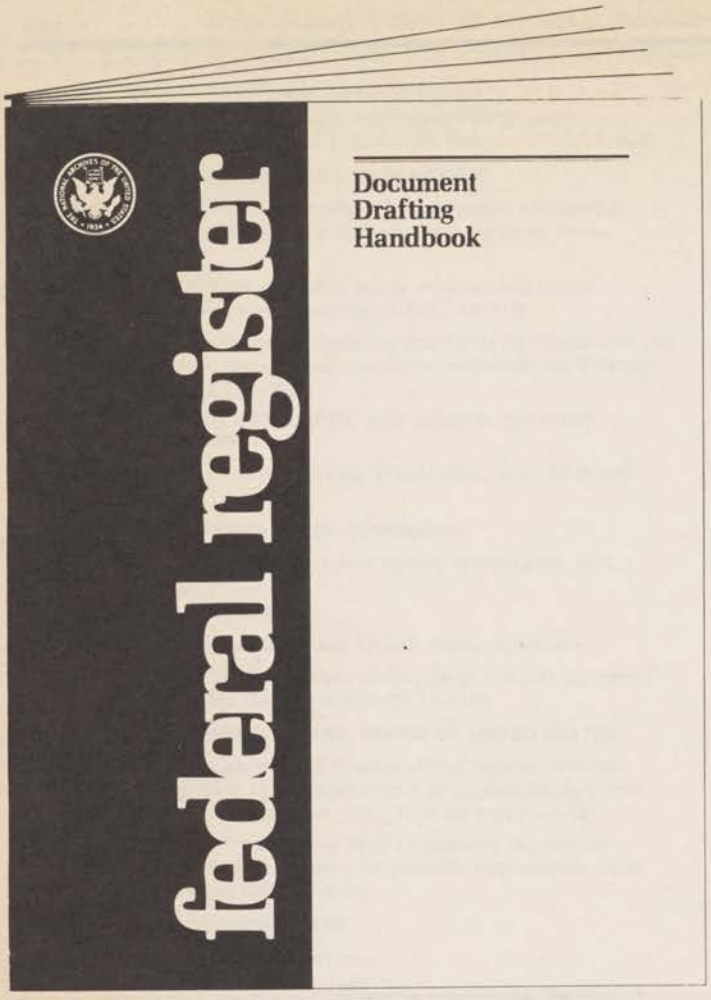
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