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Title 3—

The President

Proclamation 4905 of March 1, 1982

National Construction Industry Week, 1982

By the President of the United States of America

A Proclamation

The construction industry is one of the largest sectors of the economy of this nation, providing jobs for five percent of our workforce. Over the decades, this industry has played a vital role in our lives, helping us meet the need for more homes, schools, hospitals, roads, subways, factories, and recreation facilities. The American construction industry has always met the challenge, supplying us with the highest quality craftsmanship in the world and pioneering countless advances in the field.

Construction labor and management alike have historically taken pride in their spirit of rugged individualism, a spirit that has enabled them to overcome the adversities imposed upon a seasonal and cyclical industry.

Because of its unique nature, however, the construction industry is also unusually affected by downturns in the economy. It is with pride that I salute the hearty individuals who persevere in the face of tough obstacles, and I reiterate my commitment to revitalize the construction industry and bring it back to an environment of prosperity.

The Congress has, by Senate Joint Resolution 122, demonstrated its commitment by requesting me to designate February 28 through March 6, 1982, as National Construction Industry Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim February 28 through March 6, 1982, as National Construction Industry Week. I call upon the people of the United States and all Government agencies to observe the week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereby set my hand this first day of March, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

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Rules and Regulations

Federal Register
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Wednesday, March 3, 1982

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco: Nonquota Tobaccos Produced in Quota Areas; Identification and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: The purpose of this interim rule is to implement the provisions of Section 320 of the Agricultural Adjustment Act of 1938, as amended by Section 1108 of the Agriculture and Food Act of 1981 (Pub. L. 97–98), as amended, with respect to nonquota tobacco. Nonquota tobacco which is produced in a State where marketing quotas are in effect for that kind of tobacco, will be subject to the marketing quota for such kind of tobacco. These regulations, applicable beginning with the 1982 crop of tobacco, set out procedures for obtaining through permissive inspection the certification to qualify for exemption under the Act.

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Comments should be sent to J. T. Bunn, Acting Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 (202) 447–7235.

FOR FURTHER INFORMATION CONTACT: J. T. Bunn, (202) 447–7235.

SUPPLEMENTARY INFORMATION: This interim final rule has been issued in accordance with Executive Order 12291 and has been determined to be a nonmajor rule because it does not meet any of the criteria established for major rule under the executive order. The Department's indepth review of these regulations contained in 7 CFR Part 29, Subpart F, for need, currrency, clarity, and effectiveness has been accomplished.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. All tobacco warehousemen and producers fall within the confines of "small business," as defined in the Regulatory Flexibility Act. It has been determined that the economic impact upon small entities would not be adverse and would in no way affect normal competition in the market place.

All persons who desire to submit written data, views, or arguments for consideration in connection with this interim final rule may file the same with J. T. Bunn, Acting Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502 Annex Building, Washington, D.C. 20250 not later than April 2, 1982.

All written submissions made pursuant to this notice will be made available for public inspection at the above location during regular business hours.

J. T. Bunn, Acting Director, Tobacco Division, Agricultural Marketing Service, has determined that an emergency situation exists which requires that the interim final rule be made effective upon publication and which warrants less than a 60-day comment period on this interim final rule because tobacco producers affected by this amendment need sufficient lead time to make plans for the 1982 crop—such as purchasing tobacco seed and preparing seed beds. All segments of the tobacco industry must be informed of any rule change affecting the marketing process to continue orderly marketing of their product. Accordingly, this action is being implemented as an interim final rule, effective on March 3, 1982. Under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this action are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this action effective on the date of publication. The Department will, after evaluating the comments received, issue a final rule concerning Subpart F of 7 CFR Part 29.

Subpart F—Policy Statement and Regulations Governing the Identification and Certification of Nonquota Maryland Broadleaf Tobacco, U.S. Type 32, on June 24, 1975 (40 FR 26528). Past certifications of nonquota Maryland tobacco produced in quota areas showed the need for establishing procedures to be followed in certifying such tobacco as to type and for use in distinguishing nonquota Maryland Type 32 tobacco from quota tobacco. In certifying nonquota Maryland Type 32 tobacco produced in quota areas it was necessary to determine whether the nonquota was readily and distinguishably different from the quota tobacco grown in the area as determined through the application of the official tobacco standards for the quota tobacco grown in the area. However, Pub. L. 97–98 enacted December 22, 1981, amended Section 320 of the Agricultural Adjustment Act of 1938, required that the Department, in making such certification for nonquota tobacco, determine whether the tobacco is readily and distinguishably different from all kinds of quota tobacco wherever grown. Further, while Section 320 refers to tobacco produced in an "area" when identifying different kinds of tobacco, the Conference Report which accompanied S. 884, the bill which became the Agriculture and Food Act of 1981, stated as follows:

> The conferees intend that the Secretary, in implementing Section 320, construe the term "area" to mean the entire State in which any kind of quota tobacco is produced. This construction will avoid the disruption caused by the production of nonquota tobacco in States where producers have approved marketing quotas and will help ensure the effectiveness of the tobacco program in those States (See Senate Report No. 97–377, 97th Cong., 1st Sess., p. 192 (1981)).

Thus, Subpart F has been amended to provide that the term "area" means the entire State in which any kind of quota tobacco is produced. Also, the 1981 amendments specify that certain tobacco is not subject to the provisions of Section 320 and include the following: (1) Maryland (type 32) tobacco when it is nonquota and produced in a quota State on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for that kind of tobacco were last in effect (1965); and (2) certain types of cigar-filler and cigar-wrapper tobaccos that have never been under quota but are produced within a State where

marketing quotas for other kinds of tobacco are in effect.

Therefore, Subpart F of the Department's regulations is amended in its entirety to conform to the provisions of Pub. L. 97–98. All reference to nonquota Maryland Type 32 tobacco is eliminated and Subpart F is expanded to cover identification and certification procedures to be followed for all nonquota tobaccos produced in quota areas.

PART 29—TOBACCO INSPECTION

Accordingly, the regulations contained in 7 CFR, Part 29, Subpart F, are revised to read as follows:

Subpart F—Policy Statement and Regulations Governing the Identification and Certification of Nonquota Tobacco Produced and Marketed in a Quota Area

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Preclusion

29.9281 Preclusion.

Authority: Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 et seq.) Agricultural Adjustment Act of 1938, as amended 95 Stat. 1266; 7 U.S.C. 1314f.)

Subpart F—Policy Statement and Regulations Governing the Identification and Certification of Nonquota Tobacco Produced and Marketed in a Quota Area

Definitions

§ 29.9201 Terms defined.

As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases hereinafter defined shall have the indicated meanings so assigned.

§ 29.9202 Approved receiving station.

Points approved by the Director at which tobacco is offered for marketing or shipment into commerce including tobacco auction warehouses, packing houses, prizeries, or places where tobacco is handled or stored.

§ 29.9203 Certification.

The documentation of class or type, weight, or other tobacco characteristics as required in § 29.9263.

§ 29.9204 Crop-lot.

The assemblage of individual lots representing the season's production of each kind or type of nonquota tobacco produced on an individual farm.

§ 29.9205 Identification number (farm serial number).

The serial number assigned to an individual farm by the appropriate office of the Agricultural Stabilization and Conservation Service.

§ 29.9206 Inspection.

The examination by an inspector of a lot or crop-lot of tobacco to make determinations necessary for proper certification.

§ 29.9207 Nonquota tobacco.

Any kind or type of tobacco not subject to production and/or marketing limitations or restrictions under regulations issued by the Agricultural Stabilization and Conservation Service.

§ 29.9208 Permissive inspection.

Permissive inspection consists of inspecting and certificating tobacco, upon the request of an interested party.

§ 29.9209 Lot.

A pile, basket, bulk, package, or other definite unit.

§ 29.9210 Office of inspection.

A field office of the inspection service of the Tobacco Division.

Policy Statement

§ 29.9221 Policy statement.

Pub. L. 97–98 enacted on December 22, 1981, amended Section 320 of the Agricultural Adjustment Act of 1938, to preserve the effectiveness of the tobacco program by discouraging the production of tobacco not under quota in states where tobacco farmers have elected to comply with marketing quotas. Under the amendment, any tobacco represented by the producer as nonquota which is produced in a state where producers have approved marketing quotas shall be determined to be subject to marketing quotas for the quota tobacco produced in that state having the highest price support, with the specific exemptions provided for in Section 320(b) and set out in 7 CFR Parts 724, 725, and 726 of these regulations. The regulations in this subpart set out procedures for requesting a Tobacco Classification Certificate which would certify that the inspected tobacco is readily and distinguishably different from all kinds of quota tobacco, as determined through application of the standards for inspection and identification of tobacco.

Administration

§ 29.9231 Administration.

The Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., 20250, is charged with the supervision of the Division and the performance of all duties assigned thereto in the administration of the act. The conduct of all services and the licensing or employment of inspection/grading/sampling personnel under these regulations shall be accomplished without discrimination as to race, color, creed, sex, or national origin. Information concerning such administration may be obtained from the Director.

§ 29.9232 Where certification is available.

Nonquota tobacco may be inspected and certified by class or type, upon request of an interested party, when the tobacco is displayed at an approved receiving station where the tobacco is accessible to the inspector.

§ 29.9233 When certification will be made.

Certification services for the nonquota tobacco shall be made when inspectors are available and such sales will not interfere with scheduled sales on designated auction markets.

§ 29.9234 Who may obtain certification.

Certification of nonquota tobacco may be requested by an interested party (applicant) by filing an application in accordance with §§ 29.9236 and 29.9237.

§ 29.9235 How to make application.

Application for certification by class or type of nonquota tobacco shall be made to the office of inspection, not less than 14 days before the date of requested certification. The application shall be in writing and signed by the applicant.

§ 29.9236 Form of application.

Application for inspection and certification of class or type of nonquota tobacco shall include the following information; (a) The date of the application; (b) the producer's certification of the type of the tobacco, the crop year when produced, and where produced; (c) the name and post office address of the applicant; (d) the financial interest of the applicant in the tobacco; (e) the exact nature of the service desired; (f) a statement that the tobacco is (1) in commerce, as defined in the act, or (2) entering such commerce; and (g) such other necessary information as the Director may require.

§ 29.9237 When application deemed filed.

An application shall be deemed filed when delivered to the office of inspection. When an application is filed, the date and time of filing shall be recorded by the official receiving it.

§ 29.9238 When application may be rejected.

An application may be rejected (a) for noncompliance with the act or the regulations in this subpart, or (b) when it is not practicable to provide the service. All expenses incurred in connection with an application rejected for noncompliance with the act or the regulations in this subpart shall be paid by the applicant as provided in § 29.124 of Subpart B of this part.

§ 29.9239 When application may be withdrawn.

An application may be withdrawn at any time before the requested service is rendered. Payment of expenses incurred in connection therewith shall be paid by the applicant as provided in § 29.124 and Subpart B of this part.

§ 29.9240 Responsibilities of applicant.

Any applicant requesting class or type certification on nonquota tobacco produced in a quota area, shall obtain from the appropriate county office of the Agricultural Stabilization and Conservation Service a certificate showing the acreage of nonquota tobacco grown on each affected farm and the identification number. It shall also be the responsibility of the applicant to: (a) Make available to the inspector any or all information required by the inspector for completion of the Tobacco Classification Certificate, (b) make the tobacco accessible to the inspector, and (c) surrender to the inspector at time of certification a copy of the ASCS certificate and sale bill.

§ 29.9241 Accessibility of tobacco.

All tobacco to be inspected and certified by class or type upon application shall be made accessible by the applicant for proper examination, including any necessary display in proper light for determination of grade, class, type, or other characteristics or for drawing of samples. Each croplot shall be displayed at an approved receiving station in a continuous and orderly sequence with no other quota, nonquota, or other producer's tobacco in between. The lots shall be arranged in rows 18 inches apart with the leaves of adjacent lots not touching within the rows. Coverings shall be removed by the applicant in such manner as may be prescribed by the inspector.

Fees and Charges

§ 29.9251 Fees and charges.

Fees and charges for inspection and certification services shall comprise the cost of salaries, travel, per diem, and related expenses to cover the cost of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The base hourly salary rate shall be $17.80. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $21.30. The rate of $26.70 shall be charged for work performed on Sundays or holidays.

Certifying Procedures

§ 29.9261 Procedure to be followed.

In certifications based on permissive inspection of nonquota tobacco produced in a state where any quota tobacco is produced, the inspector shall use the Official Standard Grades for all types of quota tobacco. The inspector shall determine by inspecting each lot in the crop-lot whether the crop-lot can be certified as the nonquota tobacco requested by the applicant. If the inspector determines upon inspection that any individual *lot* in the crop-lot meets the specifications of any grade of any quota tobacco, no certificate will be issued on any tobacco in the crop-lot.

§ 29.9262 Issuance of certificates.

A "Tobacco Classification Certificate" may be issued upon request of an applicant for nonquota tobacco certified in accordance with § 29.9261. The Tobacco Classification Certificate will be supplied by the inspection office.

§ 29.9263 Tobacco classification certificate.

Each tobacco classification certificate shall show (a) the caption "Tobacco Classification Certificate", (b) whether it is an original, first, second, or other copy; (c) the number of the certificate; (d) the sale bill identification number; (e) the location of the tobacco at the time of inspection and certification; (f) the date of certification; (g) the class or type of tobacco; (h) the number of lots in the crop-lot; (i) the weight of each lot; (j) the signature of the inspector and, (k) such additional information as may be required by the Director.

§ 29.9264 Forms.

Each certificate issued under this regulation shall (a) show that it was issued under the Tobacco Inspection Act; (b) be in a form approved for the purpose by the Director, and (c) embody within it, written or printed terms with respect to the particular kind of service, all applicable information required by § 29.9263. Each certificate may also contain any information, not inconsistent with the act and the regulations in this subpart, as may be approved or required by the Director. The Director may, in his discretion, specify or limit the period in which a certificate shall be valid.

§ 29.9265 Disposition of certificate.

Distribution of the Tobacco Classification Certificate shall be limited to the provisions of this section. The original certificate and one copy shall be delivered or mailed to the applicant or his agent. One copy and the copy of the ASCS certificate shall be forwarded by the inspector to the Division or office of inspection.

§ 29.9266 Changes or alterations.

No change or alteration shall be made in the weight or other identification of a lot on the Tobacco Classification Certificate after the certification of class or type, and any such change or alteration shall constitute and be construed as a change or alteration in the certificate issued or authorized under the act.

Preclusion

§ 29.9281 Preclusion.

The provisions of this subpart shall not preclude the application of other administrative remedies or the institution of criminal proceedings in appropriate cases as provided by the act.

Dated: February 25, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-5701 Filed 3-2-82; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 301

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of regulated areas (regulated areas are divided into suppressive areas and generally infested areas) under the pink bollworm quarantine and regulations by deleting Craighead County in Arkansas from the list of suppressive areas. The quarantine and regulations restricts the interstate movement of regulated articles from suppressive areas and generally infested areas. The amendment is necessary as an emergency measure to delete Craighead County from the list of suppressive areas in Arkansas in order to delete unnecessary restrictions on the movement of regulated articles.

DATES: Effective date of this interim rule March 3, 1982. Written comments concerning this interim rule must be received on or before May 3, 1982.

ADDRESSES: Written comments concerning this interim rule should be submitted to Thomas J. Lanier, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 635 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lanier, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This interim rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an estimated annual effect on the economy of less than $1,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim rule. Due to the finding that unnecessary restrictions are imposed concerning the regulation of articles, a situation exists requiring immediate action, to delete such unnecessary restrictions.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document (May 3, 1982), and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action involves removing restrictions on the interstate movement of regulated articles from Craighead County in Arkansas. There are hundreds of small entities that move such articles interstate from other States. However, based on information compiled by the Department, it has been determined that fewer than five small entities move such articles interstate from the regulated area in Craighead County. Further, the overall economic impact from this action is estimated to be less than $1,000.

Background

The pink bollworm (*Pectinophora gossypiella* (Saunders)) is one of the most destructive and widespread insect pests of cotton in the world. This insect spread to the United States from Mexico in 1917 and now occurs throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm quarantine and regulations (7 CFR 301.52 through 301.52-10) quarantine the States of Arizona, Arkansas, California, Louisiana, New Mexico, Nevada, Oklahoma, and Texas; and restricts the interstate movement of regulated articles from regulated areas in these States in order to prevent the artificial spread of the pink bollworm.

Under the quarantine and regulations an area may be designated as a regulated area if it is an area in which the pink bollworm has been found, or in which there is reason to believe that the pink bollworm is present, or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Regulated areas are divided into suppressive areas and generally infested areas. Suppressive areas are regulated areas in which eradication of the pink bollworm is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from both generally infested areas and suppressive areas in order to prevent the artificial movement of the pink bollworm into noninfested areas, and to prevent the reinfestation of suppressive areas after the pink bollworm has been eradicated.

Surveys conducted by inspectors of the U.S. Department of Agriculture and officials of State agencies of Arkansas establish that pink bollworm no longer occurs in Craighead County in Arkansas, and that there is no basis to continue listing Craighead County as a regulated area for the purpose of preventing the artificial spread of pink bollworm. Therefore, as an emergency measure, it is necessary to delete Craighead County from the list of suppressive areas in Arkansas in order to delete unnecessary restrictions on the movement of pink bollworm regulated articles.

PART 301—DOMESTIC QUARANTINE NOTICES.

Accordingly, the list of regulated areas for Arkansas in § 301.52–2a of the Pink Bollworm Quarantine and Regulations (7 CFR 301.52–2a) is revised to read as follows:

§ 301.52–2a Regulated areas; suppressive and generally infested areas.

* * * * *

Arkansas

(1) *Generally infested area.* None.
(2) *Suppressive area.*
Clark County. The entire county.
Dallas County. The entire county.
Jefferson County. The entire county *except* that area south of U.S. Highway 65.
Lafayette County. The entire county.
Lonoke County. That area of the county lying south of interstate 40.
Miller County. The entire county.
Ouachita County. The entire county.
Pulaski County. That area of the county lying east of the Arkansas River and south of Interstate 40.

* * * * *

(Secs. 8, 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 37 FR 28464, 28477, as amended; 38 FR 19141; 7 CFR 301.52–2, as amended)

Done at Washington, D.C., this 24th day of February.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82–5677 Filed 3–2–82; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 14

Administrative Claims Under Federal Tort Claims Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Tort Claims Act authorizes each Federal agency, in accordance with regulations prescribed by the Attorney General, to administratively settle any claim for damages against the United States caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his or her employment. The Nuclear Regulatory Commission is amending its regulation on administrative claims under the Federal Tort Claims Act to make it current and consistent with regulation of the Attorney General, 28 CFR Part 14, to change the office where claims are filed and the NRC officials who are authorized to act on claims, and to provide procedures when NRC emloyee drivers are sued in State courts.

EFFECTIVE DATE: March 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Clarke, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone 301–492–7241).

SUPPLEMENTARY INFORMATION: The amended regulation, in addition to the matters stated in the Summary above, primarily—

(1) Requires claimants, to the extent reasonably practicable, to furnish evidence and information of specified types when the claim is initially presented;

(2) Informs claimants that if such evidence and information is not furnished within 6 months, the claim will be considered a nullity;

(3) Adopts 28 CFR 14.10 regarding the funds from which claims are paid;

(4) Provides that when an NRC employee driver was acting within the scope of his or her employment, the remedy against the United States is exclusive; and

(5) Provides limits on attorney fees and provides penalties for exceeding the limits.

Comment Received

Only one comment was received. The commenter observed that since the reorganization of the Civil Division, Department of Justice, the title and organization should be changed from "Chief of Torts Section" to "Director of the Torts Branch." This change was made.

Environmental Impact Statement

This final rule does not significantly affect the environment. An environment impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

Although the final rule may require the "collection of information" as that term is defined in the Paperwork Reduction Act, the exemption provided by the Act applies to this final rule. The filing of an administrative claim is a statutory prerequisite to the commencement of a civil action against the United States. 28 U.S.C. 2675(a). The furnishing of evidence and information in support of a claim may be required during the conduct of an administrative action involving the NRC against an individual claimant. The collection of such evidence and information is therefore exempt under 44 U.S.C. 3518. The final rule imposes no requirement on persons or entities to maintain specified information, except to the extent necessary to furnish evidence and information in support of a claim.

Regulatory Flexibility Certification Statement

In accordance with sec. 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

During the past 4 years, approximately 48 claims were filed with the NRC under the Federal Tort Claims Act. Of these, 22 were filed by car rental agencies and were allowed in the average amount of $242.00; 18 were filed by individuals and were allowed in the average amount of $1,562.00; 6 were for personal injuries alleged to have resulted from radiation accidents or at testing sites and were transferred to other agencies; and 2 were for losses alleged to have resulted from the shut down of nuclear power plants. One of the 2 was filed by the Commonwealth of Massachusetts which asserted losses of $7,740,000.00. The owners of Three Mile Island filed the other claim and asserted losses of $4,010,000,000.00. Both of those claims were denied. NRC's disposition of claims filed under the Federal Tort Claims Act indicates that these requirements do not have an adverse economic impact on small entities. In addition, the final rule is limited to procedural and conforming amendments that do not have an economic impact on any potential claimant. It appears, therefore, that the final rule will not have a significant economic impact on a substantial number of small entities.

The Final Rule

For the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, section 553 of Title 5, United States Code, the Federal Tort Claims Act, as amended (28 U.S.C. 1346b and 2671–2680) and the regulations of the Department of Justice, as amended (28 CFR Parts 14 and 15), notice is hereby given that the Commission hereby adopts the following amendment to 10 CFR Part 14.

1. Part 14 is revised to read as follows:

PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Subpart A—General

Sec.
14.1 Scope of regulations.
14.3 Limit on attorney fees; penalty.

Subpart B—Filing Procedures and Requirements

Sec.
14.11 Who may file a claim.
14.13 When is a claim presented to NRC.
14.15 Where to present a claim to NRC.
14.17 A claim must be presented to the appropriate agency.
14.19 When a claim is filed with more than one agency.
14.21 Filing a claim after an agency final denial.
14.23 Evidence and information to be submitted.
14.25 Amending a claim.
14.27 Time limit.

Subpart C—Commission Action and Authority

14.31 Investigation.
14.33 Officials authorized to act.
14.35 Limitation on NRC's authority.
14.37 Final denial of claim.
14.39 Reconsideration of a claim.
14.41 Payment of approved claims.
14.43 Acceptance of payment constitutes release.

Subpart D—Employee Drivers

14.51 Procedures when employee drivers are sued.
14.53 Scope of employment report.
14.55 Removal of state court proceedings.
14.57 Suit against the United States exclusive remedy.

Authority: Sec. 1, 80 Stat. 306 (28 U.S.C. 2672); sec. 2679, 62 Stat. 984 as amended (28 U.S.C. 2679); sec. 161, 68 Stat. 951 as amended (42 U.S.C. 2201); 28 CFR 14.11.

Subpart A—General

§ 14.1 Scope of regulations.

(a) The terms "Nuclear Regulatory Commission" and "NRC" as used in this part mean the agency established by section 201(a) of the Energy Reorganization Act of 1974, but do not include any contractor with the Nuclear Regulatory Commission.

(b) The regulations in this part supplement the Department of Justice's regulations in 28 CFR Parts 14 and 15.

(c) These regulations apply to administrative claims under the Federal Tort Claims Act, as amended, asserted on or after the effective date of this rule, for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the NRC while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(d) These regulations also set forth the procedures when lawsuits are commenced against an employee of the NRC resulting from the operation of a motor vehicle while acting within the scope of his or her employment.

§ 14.3 Limit on attorney fees; penalty.

(a) An attorney may not charge or receive fees in excess of—

(1) 25 percent of any judgment rendered under 28 U.S.C. 1346(b);

(2) 25 percent of any settlement made under 28 U.S.C. 2677; or

(3) 20 percent of any award, compromise, or settlement made under 28 U.S.C. 2672.

(b) Any attorney who charges or receives any amount in excess of that allowed under this section is subject to a fine of not more than $2,000 or imprisonment for not more than one year, or both. (28 U.S.C. 2678)

Subpart B—Filing Procedures and Requirements

§ 14.11 Who may file a claim.

(a) A claim for damage to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his or her duly authorized agent, or his or her legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her duly authorized agent, or his or her legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert the claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, to the extent of their respective interests, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, the insurer shall present with the claim appropriate evidence that the insurer has the rights of a subrogee.

(e) If a claim is presented by an agent or legal representative that person shall—

(1) Present the claim in the name of the claimant;

(2) Sign the claim;

(3) Show the title or legal capacity of the person signing the claim; and

(4) Include with the claim evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 14.13 When is a claim presented to NRC.

For purposes of the provisions of 28 U.S.C. 2672, a claim is presented when NRC receives from a claimant, or the claimant's duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident. An executed Standard Form 95 or written notification must be accompanied by a claim for money damages in a sum certain for damage to or loss of property, personal injury, or death alleged to have occurred by reason of the incident.

§ 14.15 Where to present a claim to NRC.

A claimant shall mail or deliver the claim to the office of employment of the NRC employee whose negligent or wrongful act or omission is alleged to have caused the loss or injury. If the office of employment is not known, the claimant shall file the claim with the Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

§ 14.17 A claim must be presented to the appropriate agency.

A claimant shall present the claim to the Federal agency whose activities gave rise to the claim. If a claim is erroneously presented to the NRC, the NRC shall transfer it to the appropriate agency, if the proper agency can be identified from the claim, and shall advise the claimant of the transfer. If transfer is not feasible, the NRC shall return the claim to the claimant. The fact of transfer does not, in itself, preclude further transfer, return of the claim to the claimant, or other appropriate disposition of the claim. A claim shall be presented, as required by 28 U.S.C. 2401(b), as of the date it is received by the appropriate agency.

§ 14.19 When a claim is filed with more than one agency.

(a) If the NRC and one or more other Federal agencies is or may be involved in the events giving rise to the claim, and if the claim is filed with the NRC, the NRC shall contact all other affected agencies in order to designate the single agency which will investigate and decide the merits of the claim.

(1) In the event that an agreed upon designation cannot be made by the affected agencies, the Department of Justice will be consulted and will designate a primary agency to investigate and decide the merits of the claim. If the NRC is designated as the primary agency, it shall notify the claimant that all future correspondence concerning the claim shall be directed to the NRC.

(2) All involved Federal agencies can agree either to conduct their own administrative reviews and to coordinate the results or to have the investigations conducted by the primary agency. In either event, the primary agency is responsible for the final determination of the claim.

(b) A claimant presenting a claim arising from an incident to more than one agency should identify each agency to which the claim is submitted at the time each claim is presented. If a claim arising from an incident is presented to more than one Federal agency without any indication that more than one agency is involved, and any one of the concerned Federal agencies takes final action on that claim, the final action is conclusive on the claims presented to the other agencies in regard to the time required for filing suit set forth in 28 U.S.C. 2401(b). However, if NRC, as a subsequently involved Federal agency, desires to take further action with a view towards settling the claim, the NRC may treat the matter as a request for reconsideration of the final denial under 10 CFR 14.39, unless suit has been filed in the interim, and advise the claimant of the action.

§ 14.21 Filing a claim after an agency final denial.

If, after a final denial by another agency, the claimant files with the NRC a claim arising out of the same incident on which the claim filed with the other agency was based, the submission of the claim to NRC will not toll the requirement of 28 U.S.C. 2401(b) that suit must be filed within six months of the final denial by the other agency, unless the other agency specifically and explicitly treats the submission to NRC as a request for reconsideration under 10 CFR 14.39 and advises the claimant of the action.

§ 14.23 Evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for these expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability and prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the NRC or another Federal agency. The claimant may request in writing a copy of the report of the examining physician if the claimant has—

(i) Furnished the report referred to in paragraph (a)(1) of this section on request; and

(ii) Made or agrees to make available to the NRC all other reports of the claimant's physical or mental condition which have been or are made by any physician.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for these expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for the treatment.

(4) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of these repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 14.25 Amending a claim.

The claimant may amend a claim presented in compliance with 10 CFR 14.13 at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). The claimant or his or her duly authorized agent or legal representative shall sign each amendment and submit it in writing. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) does not accrue until six months after the filing of an amendment.

§ 14.27 Time limit.

The claimant shall furnish evidence and information of the types described in 10 CFR 14.23, to the extent reasonably practicable, when the claim is initially presented. If the claimant fails to furnish sufficient evidence and information within six months after the claim was initially presented to enable NRC to adjust, determine, compromise and settle the claim, NRC may consider the claim a nullity.

Subpart C—Commission Action and Authority

§ 14.31 Investigation.

The NRC may—

(a) Require the claimant to furnish any evidence or information which is

relevant to its consideration of the claim;

(b) Examine the claimant; or

(c) Investigate, or request any other Federal agency to investigate, a claim filed under this part.

§ 14.33 Officials authorized to act.

The Executive Legal Director or the Executive Legal Director's designee shall exercise the authority to adjust, determine, compromise and settle a claim under the provisions of 28 U.S.C. 2672.

§ 14.35 Limitation on NRC's authority.

(a) The NRC shall effect an award, compromise, or settlement of a claim hereunder in excess of $25,000 only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim are treated as a single claim.

(b) The NRC may adjust, determine, compromise, or settle a claim under this part only after consultation with the Department of Justice if, in the opinion of the Office of the Executive Legal Director—

(1) A new precedent or a new point of law is involved;

(2) A question of policy is or may be involved;

(3) The United States is or may be entitled to indemnity or contribution from a third party and the NRC is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) The NRC may adjust, determine, compromise, or settle a claim under this part only after consultation with the Department of Justice if the NRC is informed or is otherwise aware that the United States, or an employee, agent, or cost-plus contractor of the United States, is involved in litigation based on a claim arising out of the same incident or transaction.

(d) When Department of Justice approval or consultation is required under this section or the advice of the Department of Justice is otherwise requested, the NRC shall direct the referral or request to the Assistant Attorney General, Civil Division, Department of Justice, in writing. The NRC shall ensure that the referral or request contains—

(1) A short and concise statement of the facts and the reasons for the referral or request;

(2) Copies of relevant portions of NRC's claim file; and

(3) A statement of the recommendations or views of the NRC.

A referral or request to the Department of Justice may be made at any time after presentment of a claim to the NRC.

§ 14.37 Final denial of claim.

The NRC shall send notice of a final denial of a claim in writing to the claimant, his or her attorney or legal representative, by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial. The NRC shall include a statement in the notification of final denial that, if the claimant is dissatisfied with NRC's action, he or she may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 14.39 Reconsideration of a claim.

Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b), a claimant, or his or her duly authorized agent, or legal representative, may file a written request with the NRC for reconsideration of a final denial of a claim. Upon the timely filing of a request for reconsideration, the NRC shall have 6 months from the date of filing in which to make a final disposition of the claim, and the claimant's option under 28 U.S.C. 2675(a) does not accrue until 6 months after the filing of a request for reconsideration. Final NRC action on a request for reconsideration shall be effected in accordance with the provisions of 10 CFR 14.37.

§ 14.41 Payment of approved claims.

(a) The NRC shall pay any award, compromise, or settlement in an amount of $2,500 or less made under the provisions of 28 U.S.C. 2672 out of the appropriations available to it. The NRC shall obtain payment of any award, compromise, or settlement in excess of $2,500 from the Department of the Treasury by forwarding Standard Form 1145 to the Payment Branch, Claims Group, General Accounting Office. If an award, compromise, or settlement is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or the Attorney General's designee. When the use of Standard Form 1145 is required, it must be executed by the claimant or it must be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant.

(b) If a claimant is represented by an attorney, the voucher for payment must designate both the claimant and his or her attorney as payees, and the check must be delivered to the attorney whose address appears on the voucher.

§ 14.43 Acceptance of payment constitutes release.

Acceptance by the claimant, his agent, or legal representative, of any award, compromise, or settlement made under the provisions of 28 U.S.C. 2672 or 2677, is final and conclusive on the claimant, his or her agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented. Acceptance constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim.

Subpart D—Employee Drivers

§ 14.51 Procedures when employee drivers are sued.

(a) Any NRC employee against whom a civil action or proceeding is brought for damage to property, or for personal injury or death, on account of the employee's operation of a motor vehicle in the scope of his or her office or employment with the NRC, shall promptly deliver all process and pleadings served upon the employee, or an attested true copy, to the Office of the Executive Legal Director. If the action is brought against an employee's estate, this procedure applies to the employee's personal representative.

(b) In addition, upon the employee's receipt of any process or pleadings, or any prior information regarding the commencement of a civil action or proceeding, the employee shall immediately advise the Office of the Executive Legal Director by telephone or telegraph.

(c) The Executive Legal Director or designee shall promptly inform the General Counsel of NRC concerning the commencement of the action and furnish to the General Counsel:

(1) Copies of all process and pleadings, and

(2) Copies of all accident, police, and investigation reports and other evidence relating to the action or proceeding.

§ 14.53 Scope of employment report.

Copies of the documents received by the General Counsel from the Executive Legal Director and a report containing all data bearing upon the question whether the employee was acting within the scope of his or her office or employment will be furnished by the General Counsel or designee to the United States Attorney for the district encompassing the place where the civil action or proceeding is brought. A copy

of such documents and the report also will be furnished to the Director of the Torts Branch, Civil Division, Department of Justice, at the earliest possible date, or within the time specified by the United States Attorney.

§ 14.55 Removal of state court proceedings.

Upon a certification by the United States Attorney that the defendant employee was acting within the scope of his or her office or employment at the time of the incident out of which the suit arose, any civil action or proceeding commenced in a State court may be removed to the district court of the United States for the district and division encompassing the place where the action or proceeding is pending in accordance with 28 U.S.C. 2679.

§ 14.57 Suit against United States exclusive remedy.

The remedy against the United States provided by 28 U.S.C. 1346(b) and 2672 for damage to or loss of property or personal injury or death, resulting from the operation by an employee of the Government of any motor vehicle while acting within the scope of his or her office or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his or her estate whose act or omission gave rise to the claim.

Dated at Bethesda, Maryland the 17th day of February 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-5775 Filed 3-2-82; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 204 and 217

[Docket No. R-0387; Regs. D and Q]

Eligibility of Investment Companies and Trusts in Which the Entire Beneficial Interest Is Held Exclusively by Depository Institutions To Sell Federal Funds

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: The Board of Governors has issued an interpretation of the definition of deposit in Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) and Regulation Q—Interest on Deposits (12 CFR Part 217) to permit investment companies and trusts in which the entire beneficial interest is held exclusively by depository institutions to sell Federal funds.

DATE: February 25, 1982.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Paul S. Pilecki, Senior Attorney (202/452-3281), or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Effective February 25, 1982, pursuant to its authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.*), the Board amends Regulation D (12 CFR Part 204), and Regulation Q (12 CFR Part 217) as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. Regulation D (12 CFR Part 204) is amended by adding a new § 204.123 as follows:

§ 204.123 Sale of Federal funds by investment companies or trusts in which the entire beneficial interest is held exclusively by depository institutions.

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221) imposes Federal Reserve requirements on transaction accounts and nonpersonnel time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit. Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of "deposit" those obligations of a depository institution that are issued or undertaken and held for the account of a domestic office of another depository institution (12 CFR 204.2(a)(1)(vii)(A)(1)). A parallel exemption in Regulation Q—Interest on Deposits exempts from the definition of "deposit" obligations issued to (or undertaken with respect to) and held for the account of a bank (12 CFR 217.1(f)(1)). These exemptions from the definition of "deposit" are known collectively as the "Federal funds" or "interbank" exemption.

(b) Title IV of the Depository Institutions Deregulation and Monetary Control Act of 1980 authorizes Federal savings and loan associations to invest in open-ended management investment companies provided the funds' investment portfolios are limited to the types of investments that a Federal savings and loan association could hold without limit as to percentage of assets (12 U.S.C. 1464(c)(1)(Q)). Such investments include mortgages, U.S. Government and agency securities, securities of states and political subdivisions, sales of Federal funds and deposits held at banks insured by the Federal Deposit Insurance Corporation. The Federal Credit Union Act authorizes Federal credit unions to aggregate their funds in trusts provided the trust is limited to such investments that Federal credit unions could otherwise make. Such investments include loans to credit union members, obligations of the U.S. government or secured by the U.S. government, loans to other credit unions, shares or accounts held at savings and loan associations or mutual savings banks insured by FSLIC or FDIC, sales of Federal funds and shares of any central credit union whose investments are specifically authorized by the board of directors of the Federal credit union making the investment (12 U.S.C. 1757(7)).

(c) The Board has considered whether an investment company or trust whose entire beneficial interest is held by depository institutions, as defined in Regulation D, would be eligible for the Federal funds exemption from Reserve requirements and interest rate limitations. The Board has determined that such investment companies or trusts are eligible to participate in the Federal funds market because, in effect, they act as mere conduits for the holders of their beneficial interest. To be regarded by the Board as acting as a conduit and, thus, be eligible for participation in the Federal funds market, an investment company or trust must meet each of the following conditions:

(1) The entire beneficial interest in the investment company or trust must be held by depository institutions, as defined in Regulation D. These institutions presently may participate directly in the Federal funds market. If the entire beneficial interest in the investment company or trust is held only by depository institutions, the Board will regard the investment company or trust as a mere conduit for the holders of its beneficial interest.

(2) The assets of the investment company or trust must be limited to investments that *all* of the holders of the beneficial interest could make directly without limit.

(3) Holders of the beneficial interest in the investment company or trust must not be allowed to make third party payments from their accounts with the investment company or trust. The Board does not regard an investment company or trust that offers third party payment capabilities or other similar services which actively transform the nature of the funds passing between the holders

of the beneficial interest and the Federal funds market as mere conduits.

The Board expects that the above conditions will be included in materials filed by an investment company or trust with the appropriate regulatory agencies.

(d) The Board believes that permitting sales of Federal funds by investment companies or trusts whose beneficial interests are held exclusively by depository institutions, that invest solely in assets that the holders of their beneficial interests can otherwise invest in without limit, and do not provide third party payment capabilities offer the potential for an increased yield for thrifts. This is consistent with Congressional intent to provide thrifts with convenient liquidity vehicles.

PART 217—INTEREST ON DEPOSITS

2. Regulation Q (12 CFR Part 217) is amended by adding a new § 217.158 as follows:

§ 217.158 Sale of Federal funds by investment companies or trusts in which the entire beneficial interest is held exclusively by depository institutions.

For text of this interpretation see § 204.123 of this subchapter.

By order of the Board of Governors, February 25, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-5666 Filed 3-2-82; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Parts 207, 220, 221 and 224

[Reg. G, T, U and X]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The List of OTC Margin Stocks is comprised of stocks traded over the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. As announced in the **Federal Register** on November 24, 1981, the Board has decided to revise the List three times a year. This will be accomplished by publishing a complete List once a year and two Supplements of additions to and deletions from the List twice a year, at approximately four month intervals. This document sets forth additions to or deletions from the previously published List on October 5, 1981 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: March 1, 1982.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202–452–2781.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of stocks traded over-the-counter on file at the Office of the Federal Register as of October 5, 1981. The List, as amended, includes those stocks that the Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U, and X. Copies of the current List and the Supplement of changes thereto may be obtained from any Federal Reserve Bank. Such copies are also on file at the Office of the Federal Register.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion on the List specified in 12 CFR 207.5 (d) and (e), 220.8 (h) and (i), and 221.4 (d) and (e). No additional useful information would be gained by public participation. The requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to faciliate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exhange Act of 1934 (15 U.S.C. 78g and 78w) and in accordance with § 207.2(f)(2) of Regulation G, § 220.2(e)(2) of Regulation T, and § 221.3(d)(2) of Regulation U, there are set forth below additions to and deletions from the Board's List:

Board of Governors of the Federal Reserve System, Supplement to List of OTC Margin Stocks, March 1, 1982

Additions to the List

Adage, Inc., $.10 par common
Advest Group, Inc., The, $1.00 par common
Aero Services International, Inc., No par common
Allegheny & Western Energy Corporation, $.01 par common
Alpha Microsystems, No par common
American Recreation Centers, Inc., No par common
Amicon Corporation, $.33⅓ par common
Analysts International Corporation, $.10 par common
Apple Computer, Inc., No par common
Austin Bancshares Corporation, $1.00 par common
Autoclave Engineers, Inc., $.15 par common
Avatar Holdings, Inc., $1.00 par common
BSD Medical Corporation, $.0005 par common
BSN Corporation, $.01 par common
Bank Securities, Inc., $5.00 par common
Barringer Resources, Inc., $.01 par common
Barton Valve Company, Inc., $.01 par common
Base Ten Systems, Inc., Class A, $1.00 par common
Beefsteak Charlie's, Inc., $.10 par common
Biospherics, Inc., $.01 par common
Biotech Research Laboratories, Inc., $.01 par common
Birtcher Corporation, The, $1.00 par capital
Bliss, A. T., and Company, Inc., $.01 par common
Blue Ridge Real Estate Company, Big Boulder Corporation, Unit, no par common
Bogert Oil Company, $.01 par common
Bonray Drilling Corporation, $.10 par common
Brady Energy Corporation, $.01 par common
C-Cor Electronics, Inc., $.10 par common
CPAC, Inc., $.01 par common
C3, Inc., $.01 par common
Cable TV Industries, No par common
Centuri, Inc., $.05 par common
Cetus Corporation, $.01 par common
Chem-Tronics, Inc., No par common
Cibola Energy Corporation, $.01 par common
Commonwealth Realty Trust, Class A, No par common
Computer Entry Systems Corporation, $.05 par common
Computer Microfilm Corporation, $.25 par common
Computer Task Group, Inc., $.01 par common
Consolidated Capital Income Trust, No par shares of beneficial interest
Consolidated Petroleum Industries, Inc., $.10 par common
County Tower Bancorporation, $5.00 par common
Cymaticolor Corporation, $.01 par common

DBA Systems, Inc., $.10 par common
Data I/O Corporation, No par common
Datavision, Inc., $.01 par common
Dawson Geophysical Company, $.33⅓ par common
Delmed, Inc., $.10 par common
Delta Drilling Company, $.10 par common
Delta Petroleum & Energy Corporation, $.01 par common
Delta Queen Steamboat Co., The, $.25 par common
Deltak Corporation, $.01 par common
Detector Electronics Corporation, $.10 par common
Diagnostic/Retrieval Systems, Inc., $.01 par common
Digital Products Corporation, $.01 par common
Digital Switch Corporation, $.01 par common
Dorado Micro Systems, No par common
Drew National Corporation, $.01 par common
Dreyer's Grand Ice Cream, Inc., No par common
Duralith Corporation, No par common
Dysan Corporation, No par common
Econo-Therm Energy Systems Corporation, $.15 par common
Eldorado Bancorp (California), $1.25 par common
Electro-Biology, Inc., $1.00 par common
Electro-Catheter Corporation, $.05 par common
Electronics, Missiles & Communications, Inc., $.01⅔ par common
Emulex Corporation, $.10 par common
Fabri-Tek, Inc., $.10 par common
Fafco, Inc., $.125 par common
Federated Investors, Inc., Class B, $.05 par common
First American Bank of Palm Beach County, Class A, $1.00 par common
First City Federal Savings and Loan Association (Florida), $.01 par common
First Financial Savings and Loan Association (Wisconsin), $1.00 par common
Foster, L. B., Company, $.01 par common
Frequency Control Products, Inc., $.01 par common
G & K Services, Inc., $.50 par common
GTS Corporation, $.01 par common
Geophysical Systems Corporation, $1.00 par common
Gibraltar Exploration, Ltd., $.01 par common
Griffin Petroleum Corporation, No par common
HBO & Company, $.05 par common
Heritage Communications, Inc., No par convertible preferred
IPL Systems, Inc., Class A, $.01 par common
ISSC Industrial Solid State Controls, Inc., $1.00 par common
Ike Lovelady, Inc., $1.00 par common
Immuno Nuclear Corporation, $.01 par common
Infotron Systems Corporation, $.01 par common
Intelligent Systems Corp., $.05 par common
Inter-Tel, Inc., No par common
Intergraph Corporation, $.10 par common
Intermagnetics General Corporation, $.10 par common
International Income Property, Inc., $.01 par common
Interstate Motor Freight System, $1.00 par common
Isomet Corporation, $1.00 par common
Jamaica Water Properties, Inc., $.10 par common
Jones Intercable, Inc., Class A, $.01 par common
K-Tron International, Inc., $.01 par common
Kelly-Johnston Enterprises, Inc., $1.00 par common
Kencope Energy Companies, $.10 par common
Kyle Technology Corporation, No par common
Liebert Corporation, No par common
Liz Claiborne, Inc., $1.00 par common
Management Science America, Inc., $.0025 par common
Matrix Science Corporation, $.01 par common
Medical Graphics Corporation, $.05 par common
Micom Systems, Inc., No par common
Midway Airlines, Inc., $.01 par common
Mizel Petro Resources, Inc., No par common
Monarch Avalon, Inc., $.25 par common
Nahama & Weagant Energy Company, No par common
National Bancshares Corporation of Texas, $5.00 par common
National City Bancorporation (Minnesota), $1.25 par common
Nautilus Fund, Inc., $1.00 par common
Nelson Research & Development Company, No par common
Nike, Inc., Class B, No par common
Norpac Exploration Services, Inc., $.20 par common
North East Insurance Company, $1.00 par common
Northeast Energy Development Corporation, No par common
Northeastern Bancorp, Inc. (Pennsylvania), $10.00 par common
Novametrix Medical Systems, Inc., $.01 par common
Numerax, Inc., $.01 par common
Nutri/System, Inc., $.01 par common
Object Recognition Systems, Inc., $.01 par common
Ocilla Industries, Inc., $.01 par common
Oglebay Norton Company, $1.00 par common
Olson Farms, Inc., $3.00 par common
Orbit Instrument Corporation, Warrants (expire 03/09/86)
Originala Petroleum Corp., $.10 par common
Oxygen Enrichment Company, Ltd., $.01 par common
Partners Oil Company, $.01 par common
Pennbancorp, $5.00 par common
Permeator Corporation, $.10 par common
Petroleum Helicopters, Inc., Non-voting, $.08⅓ par common
Pizza Time Theatre, Inc., No par common
Prairie Producing Company, $.01 par common
Production Operators Corporation, 9.25% convertible subordinated debentures
Quixote Corporation, $.01⅔ par common
Republic Resources Corporation, $.01 par common
Rio Verde Energy Corporation, $.10 par common
Sei Corporation, $.01 par common
Satellite Television & Associated Resources, Inc., $.01 par common
Saxon Oil Company, $.10 par common
Scan-Optics, Inc., $.02 par common
Scientific Radio Systems, Inc., $.01 par common
Scott Instruments Corporation, $.01 par common
Sea Galley Stores, Inc., $.05 par common
Seven Oaks International, Inc., $.10 par common
Silicon Systems, Inc., No par common
Skipper's, Inc., $.10 par common
Software AG Systems Group, Inc., $.01 par common
Specialized Systems, Inc., No par common
Steiger Tractor, Inc., $1.00 par common
Sterling Pipe & Supply Company, $.01 par common
Summit Bancorporation, The, No par common
Survival Technology, Inc., $.10 par common
Swanton Corporation, $.10 par common
Syncor International Corporation, $.01 par common
Syntech International, Inc., $.10 par common
Tandon Corporation, $.01 par common
Teeco Properties, Ltd., Units of limited partnership interest
Texas Energies, Inc., $.10 par common
Times Fiber Communications, Inc., $1.00 par common
Transducer Systems, Inc., No par common
Transnet Corporation, $.01 par common
Ultrasystems, Inc., No par common
United Television, Inc., $.10 par common
Velo-Bind, Inc., $1.00 par common

Ventrex Laboratories, Inc., $.01 par common
Viratek, Inc., $.10 par common
Waterman Marine Corporation, $1.00 par common
Westlands Bank (California), $1.25 par common
Wometco Cable TV, Inc., $1.00 par common
XRG International, Inc., $.001 par common
Zentec Corporation, No par common

Deletions from the List

*API Trust, $1.00 par shares of beneficial interest
Acme Electric Corporation, $1.00 par common
Alexander & Alexander Services, Inc., $1.00 par common
Allied Telephone Company, $2.00 par common
Alton Packaging Corporation, $5.00 par common
Anderson, Greenwood & Co., No par common
Anta Corporation, $1.00 par common
Applicon, Inc., $.05 par common
Bally's Park Place, Inc., $.10 par common
Beard Oil Company, $.05 par common
Beehive International, Paired certificates, $.02 par common
Bentley Laboratories, Inc., $.10 par common
Boston Company, The, Class B, $1.00 par common
Brock Hotel Corporation, $.10 par common
Central Vermont Public Service Corporation, $6.00 par common
*Coastal Industries, Inc., $.25 par common
Commerce Southwest, Inc., $1.00 par common
Dataram Corporation, $1.00 par common
Dean Foods Company, $1.00 par common
Drum Financial Corporation, $1.00 par common
*Eaton Corporation, Series A, no par convertible preferred
*First Executive Corporation, $1.00 par convertible preferred
First Newport Corporation, $1.00 par common
First Savings and Loan Association (California), No par common
First State Banking Corporation, $5.00 par common
Floating Point Systems, Inc., No par common
GNC Energy Corporation, $.40 par common
Galaxy Oil Company, 9% convertible subordinated debentures
*Gold Medallion Corporation, $.10 par common
Government Employees Life Insurance Company, $1.50 par common
*Graphic Scanning Corporation, 10% convertible subordinated debentures
Green Mountain Power Corporation, $3.33⅓ par common
Gulfstream Banks, Inc., $1.00 par common
Hyatt International Corporation, Class A, $.10 par common
Integrity Entertainment Corporation, $.01 par common
KDI Corporation, $.35 par common
*Keldon Oil Company, No par common
Kent-Moore Corporation, $1.00 par common
Kinnard Companies, Inc., $.10 par common
*MCI Communications Corporation, $1.84 par cumulative convertible preferred
Marcade Group, Inc., $.10 par common
Mayflower Corporation, No par common
*Mercantile Bankshares Corporation (Maryland), No par cumulative convertible preferred
*Meyer, Fred, Inc., No par common
Mid-America Industries, Inc., $1.00 par common
NBI, Inc., $.10 par common
National Old Line Insurance Company, Class BB, $1.00 par common
Nevada Savings and Loan Association. $.3277 par capital
*New Virginia Bancorporation, $1.00 par common
North European Oil Royalty Trust, No par units of beneficial interest
Northern States Bancorporation, Inc., $5.00 par common
Olsten Corporation, The, $.10 par common
Payless Cashways, Inc., $.50 par common
Postal Instant Press, No par common
Premier Resources, Ltd., No par common
Presidio Oil Company, $.10 par common
*Q1 Corporation, $.01 par common
Rapidata, Inc., $.01 par common
Russell Stover Candies, Inc., $1.00 par common
*Southland Bancorporation, $2.50 par common
Southwestern Energy Company, $2.50 par common
*Strother Drug Company, $2.00 par common
T G Bancshares Company, $5.00 par common
T.I.M.E.–DC, Inc., *$2.00 par common; *Series A, $10.00 par cumulative convertible preferred
UA-Columbia Cablevision, Inc., $.05 par common
Unit Drilling & Exploration Company, $.20 par common
United Bank Corporation of New York, $5.00 par common
United Cable Television Corporation, $.10 par common
*Walter Realty Investors, Inc., $.10 par common
Western Gear Corporation, $1.00 par common

*Removed for failing continued listing requirement.

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)), February 23, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-5721 Filed 2-26-82; 3:53 pm]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Rev. 6, Amdt. 28]

Business Loan Policy

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: A proposed amendment to § 120.2(d)(9) was published on February 17, 1981 (46 FR 12500). The amendment would make any concern engaged in any degree in the production, servicing, distribution or selling of items related to the unlawful use of drugs and controlled substances ineligible for financial assistance. The present regulation allows applicants to receive up to 30 percent of their gross receipts from such sources and still retain eligibility. This policy change was proposed, in part, because many local jurisdictions were making trade in such items illegal and the business would not have repayment ability. Also, the SBA does not believe it is necessary and appropriate to use the taxpayers' money to support or encourage trade in items whose sole or principal function involves activities prohibited by law. SBA believes that the impact of this amendment will be minor.

DATE: Effective March 3, 1982.

SUPPLEMENTARY INFORMATION:

SBA received two written comments on the proposed amendment. One was from a participating lender and one was from within the Agency.

The participating lender identified three areas of concern: (1) With the complex structure of business it can be

virtually impossible to determine, in every case, whether the applicant gets some income, directly or indirectly, from an illegal activity, (2) the need for a definition of what constitutes an illegal product or service, and (3) whether SBA's guarantee would be voided, in whole or in part, if a borrower enters an illegal activity after a loan is disbursed. The comment from within SBA expressed the concern that the wording of the proposed regulation was too limiting, making the only illegal activity one related to controlled substances or drugs.

The SBA recognizes that, in some instances, an affiliate of an applicant could have one product out of many being sold that is ineligible. SBA expects its participants to make a good-faith effort to determine the eligibility of applicants. In the absence of fraud or misrepresentation by the participant, an error or failure to discover such a situation would not invalidate the SBA guarantee.

Defining specific illegal products is not possible. As new methods of using drugs and controlled substances are devised, someone will produce a new product or service. Examples of the types of services or products SBA intends to exclude from eligibility include a lab that produces, either on contract or for sale, uppers, downers or other drugs for unlawful use; a product that has no purpose except for the unlawful use of drugs; or a boat or airplane operator that provides a service to smugglers. A manufacturer, distributor or seller of syringes to be used in the lawful injection of prescription drugs would not be ineligible under this regulation.

If a participant and SBA first learn after a loan is disbursed that a borrower engages in, or the borrower starts to engage in, an illegal activity, the loan guarantee would remain valid. The circumstances of the loan would determine whether the participant and SBA would take legal action against the borrower, accelerate the loan or take some other action.

The concern voiced from within SBA was resolved by rewording the regulation. The final regulation clearly shows that drug related activities are merely an example of an illegal activity and that all illegal activities make an applicant ineligible for consideration.

For the purpose of Executive Order 12291, effective February 17, 1981, SBA hereby determines that this final rule does not constitute a major rule. In addition, it is hereby certified for the purpose of section 604 of the Regulatory Flexibility Act (Pub. L. 96-354, Sept. 19, 1980, 5 U.S.C. 604), that this final rule will not have significant economic impact on a substantial number of small entities. In this regard, SBA has historically received few applications for assistance from the type of entity this rule is intended to cover. Further, if the entity is conducting illegal activities in the jurisdiction in which it is located it would be per se ineligible for SBA assistance.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 631 et seq.) § 120.2(d)(9), Part 120, Chapter I, Title 13 of the Code of Federal Regulations is revised to read as follows:

§ 120.2 Financial assistance will not be granted by SBA.

* * * * *

(d) * * * (9) If an applicant is engaged in an illegal activity or is engaged in the production, servicing, or distribution by sale or otherwise of products or services used in connection with an illegal activity. This includes, but is not limited to, the production, servicing, distribution of paraphernalia, products or services that are used or intended to be used primarily or exclusively in connection with the unlawful use of drugs or controlled substances.

* * * * *

Dated: February 18, 1982.

Donald R. Templeman,

Acting Administrator.

[FR Doc. 82-5724 Filed 3-2-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM80-42, R-424, R-446; Order No. 144-A]

Order Denying Rehearing, Lifting Stay and Clarifying Order

Correction

In FR Doc. 82-5269, appearing at page 8329, in the issue of Friday, February 26, 1982, make the following change:

On page 8342, in the first column, the section heading should be changed to "§ 35.24 [Reserved]"

On page 8342, in the first column, the amendatory language in paragraph "1." should read "1. Section 35.24 of Part 35 is reserved."

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 111

[Docket No. R-82-796]

Fair Housing Assistance Program; Program Description and Eligibility Criteria

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity; HUD.

ACTION: Final rule.

SUMMARY: This final regulation describes the program components for State and local fair housing agencies and sets forth the threshold eligibility criteria for their participation in the Fair Housing Assistance Program (FHAP), as well as the specific criteria which proposals must meet in order to qualify for consideration under the various components of the program.

EFFECTIVE DATE: April 2, 1982, except §§ 111.106 and 111.108(c), which contain information collection requirements to be reviewed by OMB.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Ramadass, Acting Director, Federal, State, and Local Programs Division, Office of Fair Housing Enforcement and Section 3 Compliance, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 5220, Washington, D.C. 20410, (202) 426-3500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 14, 1980, the Department of Housing and Urban Development published in the **Federal Register** (95 FR 31880) an interim rule setting forth the eligibility criteria for participation in the Fair Housing Assistance Program (FHAP) and the minimum standards which specific project proposals had to meet in order to qualify for consideration under the various components of the program. All interested persons and organizations were invited to submit written comments on or before July 28, 1980.

Comments were received from four organizations, and were carefully reviewed. One organization expressed concern that the threshold eligibility criterion of "substantial equivalency" recognition would be too stringent for localities to meet, and financial assistance would therefore not reach the grass roots level. This criterion, however, has been retained, inasmuch as the Congressional appropriation is specifically earmarked for substantially equivalent agencies. The Department

notes that 10 of the 32 agencies to which FY–80 monies were obligated were in fact localities, and eight additional localities became eligible and applied for funding in FY–81. The same organization commented that professional private fair housing organizations should be able to receive monies to sponsor training workshops. The Congressional authorization is reserved for State and local government agencies. However, within this limitation, nothing precludes private organizations from proposing joint fair housing activities to eligible agencies. A number of the projects funded with FY–80 funds include cooperative activities with State or local agencies and such private groups.

Another organization commented that HUD should target future assistance to local agencies that are not currently determined to be substantially equivalent, in order to encourage the expansion of the number of such agencies. While this comment is being considered in the context of future planning, the funding as presently authorized by Congress is limited to substantially equivalent agencies, and the rule must reflect this authorization. The same organization commented that HUD should consider delineating the relationship between FHEO funded agencies and Office of Neighborhoods, Voluntary Associations and Consumer Protection (NVACP) funded agencies, as housing counseling agencies have contact with potential victims of discrimination. While the responsibility for housing counseling agencies has been transferred to the Assistant Secretary for Housing, the comment highlights an important coordination issue between the Offices of FHEO and other Offices having responsibilities that interface with the program. The Department is addressing this issue internally rather than in the context of FHAP eligibility.

Another organization commented that by basing contributions funding on the number of complaints adequately processed, HUD may be encouraging agencies to "find" cases that do not exist. The Department will be contributing toward the cost of processing only those complaints that are cognizable under Title VIII, and all such complaints must be dual-filed with HUD to ensure that the complaints, in fact, allege a violation of the Federal Fair Housing Law. The same organization commented that the Department needs a more stringent monitoring system, rather than concentrating efforts solely on the eligibility criteria. In fact, one of the threshold eligibility criteria contained in this final rule is that the agency must enter into a complaint handling Memorandum of Understanding with HUD. In the Memorandum which HUD negotiates with equivalent agencies, there is a provision on reporting of complaint processing activity which is designed to facilitate meaningful monitoring of referrals.

Another comment in this submission was that proposals for new data systems should be encouraged, but instituted uniformly with funding made available for its institution as necessary. HUD is revising its internal ADP system to provide for expanded recording of data on State and local agency complaint processing, in order to be able to advise agencies more specifically on HUD data systems requirements. We have also instituted a change in the FHAP to allow for noncompetitive funding of agency complaint management data systems, thereby ensuring that agencies needing assistance in this area receive it. The last suggestion in the comments from this organization was that efforts should be made to educate the housing industry so there would be a decreasing need for policing agencies. This is one of the Department's objectives for the FHAP. Numerous State and local agencies already participating in the FHAP have indicated in their applications an intent to expend substantial portions of their funding on efforts to educate and work cooperatively with the housing industry. These proposals have been very favorably received by the Department. The greater flexibility given to applicant agencies by the less rigid nature of the competitive component is designed to further this goal in future years.

The final organization which commented on this interim rule was a national fair housing organization which suggested that the section on Threshold Agency Eligibility Criteria be amended by including provisions requiring citizen and private fair housing group participation in the planning and design of project proposals by eligible agencies, and by allowing subcontracting to private fair housing groups and organizations. The Department is of the view that citizen participation is important in framing appropriate project proposals. However, all agencies eligible to participate in this program are, by virtue of their Substantial Equivalency recognition, deemed to be responsive to their constitutent populations. Given the extremely limited time frames provided to agencies to apply under this program (normally 45–60 days), and considering the overall objective of the Federal government to provide State and local governments with more discretion and less regulatory oversight, the Department believes that such a requirement should not be a threshold criterion for FHAP participation. Departmental notices of availability of funds contain adequate and timely information concerning the amount of funds available, the range of activities eligible for funding, the allocation of funds for capacity building activities and other important requirements. We have modified the application section to include that for all proposals involving competitive funds, citizens and private organizations may participate in the development of proposals from the recognized agencies in their jurisdiction, by submitting suggested proposals to the agencies. Eligible agencies shall consider the views and any project proposals submitted.

With regard to the suggestion that a statement is needed that agencies may provide compensation to private organizations from program funds, we do not consider such authorization to be an appropriate eligibility criterion. Specific Notices of Fund Availability (NOFA) provide for the use of subcontractors, including private fair housing groups. A substantial number of the proposals approved thus far have involved using private fair housing organizations as subcontractors and consultants, and therefore the Department does not feel there is a lack of clarity on this matter.

The Fair Housing Assistance Program involves two types of funding support for State and local fair housing agencies; Type I, Non-competitive, and Type II, Competitive. All funding support under the Type I component is based on the actual level of housing discrimination complaints within a jurisdiction, and is directed at improving an agencie's ability to deal with such complaints. The Department believes that all agencies initially entering into a cooperative complaint processing relationship with HUD need a firm commitment indicating that HUD would provide a reasonable level of financial support in the short term, unrelated to the actual number of complaints processed by the agency, to enable the agency to develop or enhance its complaint processing resources, and to firmly establish its working relationship with HUD Regional Offices. Monies are allocated to agencies according to a formula (periodically published in NOFA in the **Federal Register** (FR)), and are used to provide resources for actual complaint processing efforts, to establish or

improve complaint monitoring, reporting and related data management systems, and to train agency staff in fair housing compliance techniques. Subsequent to two years of capacity building, support will be based on the number of complaints actually processed by the agency. These funds are, by definition, cyclical in nature, with each year's funding level being dependent on complaint activity in a prior twelve month period.

Type II funding is designed to lend support to an agency' non-complaint driven fair housing activity. Funds in this component are available on a competitive basis based upon the submission of viable project proposals aimed at eliminating housing discrimination by a variety of means. These may include, but are not limited to fair housing educational campaigns, programs of assistance and advice to the housing industry, projects designed to gather information through data-based research into specific aspects of the housing market place related to Title VIII enforcement, proposals to modify or streamline an agency's internal practices or procedures, and projects geared toward identifying and eliminating widespread patterns and practices of housing discrimination.

Agencies meeting the Threshold Eligibility Criteria set forth at § 111.104 may apply under either or both of these program components. The additional criteria which agencies must meet under each component are detailed in this regulation.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 19, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying (at a charge of 10 cents per page) during regular business hours in the Office of the Rules Docket Clerk, Room 5218, 451–7th Street, SW., Washington, D.C. 20410.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed as item (B)2 FH&EO–1–80 under the Office of Fair Housing and Equal Opportunity in the Department's Semi-Annual Agenda of Regulations published on August 17, 1981 (46 FR 41708), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance numbers are: 14.400, Equal Opportunity in Housing and 14.401, Fair Housing Assistance Program.

OMB Control Number

Approval by OMB is pending.

Accordingly, 24 CFR Part 111 is revised to read as follows:

PART 111—FAIR HOUSING ASSISTANCE PROGRAM

Sec.

111.101 Purpose.
111.102 Program description for type I—non-competitive funding.
111.103 program description for type II—competitive funding.
111.104 Threshold eligibility criteria.
111.105 Criteria for type I—non-competitive funding.
111.106 Criteria for type II—competitive funding.
111.107 Application.
111.108 Program administration.

Authority: Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601).

§ 111.101 Purpose.

The purpose of the Fair Housing Assistance Program is to provide assistance to State and local agencies charged with the administration of fair housing laws which have been recognized by the Department as substantially equivalent to Title VIII of the Civil Rights Act of 1968. This assistance is designed to encompass support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The intent of the program is to build a coordinated intergovernmental enforcement effort to further fair housing and to provide incentives for States and localities to assume a greater share of the responsibility for administering fair housing laws.

§ 111.102 Program description for type I—non-competitive funding.

The non-competitive component of the program supports agencies in all aspects of their housing discrimination complaint processing efforts. This component is divided into the following categories:

(a) Capacity Building. HUD will provide all first and second year agencies participating in the Fair Housing Assistance Program with a level of funding bearing a reasonable relationship to the number of complaints of housing discrimination filed with HUD during a fixed 12 month period. Provided, however, that any agency participating in its second year of the FHAP which can demonstrate that it would be entitled to a greater level of funding based upon direct reimbursement, may apply pursuant to the provisions of paragraph (b) of this section, in lieu of the provisions of this paragraph.

(b) Contributions. All agencies participating in their third year of the FHAP and beyond will be provided with support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by the agency. A dual-filed complaint is a complaint which has been docketed at both HUD and a substantially equivalent agency. The agency's prior year complaint processing performance will be used in determining the total amount of funding for the agency, in accordance with specific unit reimbursement levels.

(c) Training. Funding will be available to support training designed to provide skills and technical knowledge in the administration of fair housing laws and programs. HUD sponsored training support funds will be available on a non-competitive basis to first and second year participating agencies as a fixed percentage of their levels of funding under capacity building, not to exceed a set maximum. Any agency otherwise eligible to receive funding for capacity building, but electing not to apply for same, may apply for training support funds up to the level the agency would have been entitled to had it applied for capacity building support.

(d) Complaint Monitoring and Reporting Systems. Any agency

participating in either its first or second year of FHAP, and receiving support pursuant to paragraph (a) of this section, will be entitled to additional financial support designed to create, modify or improve an agency's complaint information and monitoring capacity, to result in a system compatible with that of HUD, for internal monitoring of fair housing complaint activity. A fixed funding amount will be available non-competitively on a one-time only basis.

§ 111.103 Program description for type II—competitive funding.

(a) Types of projects. Funding will be available to support specialized project proposals developed by State and local agencies to enhance the agencies' fair housing programs. Such proposals may include, but are not limited to:

(1) Education and outreach projects designed to provide information to the public about the agency's fair housing programs;

(2) Technical assistance projects to enable the agency to work with the real estate industry, private fair housing groups, educational institutions, other government entities and similar constituents;

(3) Projects designed to create, modify or improve local, regional, or national data/information systems; and

(4) Projects designed to improve an agency's capability to ensure fair housing through new or re-directed approaches to the agency's internal structure or compliance techniques.

(b) Classes of competition. Competitive funding under the program will be divided into classes, based on size of jurisdiction and level of complaint processing activity, to enable agencies to compete with other agencies in jurisdictions of similar size and level of complaint processing activity.

§ 111.104 Threshold agency eligibility criteria.

(a) In order to be eligible to participate in funded programs under any of the categories described above, an agency must first meet the following criteria:

(1) It must be certified as a substantially equivalent agency pursuant to the standards enunciated at 24 CFR Part 115; and

(2) It must have executed a written Memorandum of Understanding with the Department. At a minimum, such a Memorandum must describe the working relationship to be in force between the agency and the appropriate HUD Regional Office of Fair Housing.

(b) Notwithstanding the provisions of paragraph (a)(1) of this section, in the event that an agency has been found by the Department to have both statutory authority equivalent to Title VIII and an equivalent operational capability to that of the Department, the fact that the agency has not yet been listed in the **Federal Register** as a recognized agency shall not prevent the agency from submitting funding proposals pursuant to the Fair Housing Assistance Program. Evidence of such a Department finding shall consist of Secretarial approval to publish such a jurisdiction as a *proposed* addition to the list of recognized equivalent jurisdictions. In such circumstances, the agency may enter into negotiations with the Regional Office of Fair Housing in order to develop a Memorandum of Understanding and may, at the same time, submit funding proposals. However, no funds will be obligated to any agency which has not been recognized as substantially equivalent.

(c) All proposals under all categories must address or have ultimate relevance to matters affecting fair housing which are cognizable under Title VIII.

§ 111.105 Criteria for type I—non-competitive funding.

(a) As detailed in § 111.102, the level of funds to be provided to each agency under this component of the program will be based upon specific complaint levels in that agency's jurisdiction. In order to be eligible to receive these funds, however, an agency must:

(1) Have entered or be prepared to enter into a formal written Memorandum of Understanding with the Department, negotiated with the appropriate Regional Office of Fair Housing, which provides for the dual-filing of all complaints of housing discrimination cognizable under both Title VIII and State or local law;

(2) Be prepared to develop procedures accepable to HUD for cooperating with other substantially equivalent agencies having concurrent jurisdiction; and

(3) Not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing. Budget and staff reductions occasioned by legislative action outside the control of the agency will not result in a per se determination of ineligibility. HUD will, however, take such actions into consideration in assessing the ongoing viability of an agency's fair housing program.

(b) In addition, all first and second year program participants seeking capability building support must:

(1) Have within the geographic jurisdiction of the agency, a sufficient volume of current or potential complaint activity to justify the requested allocation of funds.

(2) Participate in training sponsored by HUD and designed in consultation between HUD staff and agency representatives to provide uniform skills and technical knowledge.

§ 111.106 Criteria for Type II—competitive funding.

All competitive project proposals must:

(a) Describe purpose and objectives of the proposal;

(b) Specify a fixed time period in which the project will be completed;

(c) Describe the final product or products in which the project is expected to result;

(d) Detail the benefits which successful completion of the project will produce to enhance the overall fair housing goals of the agency, and the indicators by which these benefits are to be measured;

(e) Identify the current or potential availability of any data or information necessary to successfully complete the project; and

(f) Describe the expected long-term viability of the project results. Projects will be most favorably considered which are replicable by other agencies and have a high degree of recurring utility.

§ 111.107 Application.

Complete information on all application requirements will be included in the periodic "Notices of Availability of Fair Housing Assistance Program Funds." Application kits will be available from the designated HUD Office upon request at the time of the notices. Citizens and organizations wishing to participate in the development of proposals for competitive funds should contact the recognized fair housing enforcement agency in their jurisdiction. Such agencies shall provide, upon request, information regarding their intent to apply for funds, the uses they intend to propose, and any deadline for submission of comments. Eligible agencies shall allow citizens and organizations to submit views and alternative project proposals and shall consider views and proposals submitted.

§ 111.108 Program administration.

(a) The Fair Housing Assistance Program shall be administered by the Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) Notices of Availability of Funds under this program will be periodically published in the **Federal Register**. Such notices will announce types and amounts of funds available, specific

program totals and agency maximums, formulas for capacity building support, levels of reimbursement for complaint processing, amounts of support for training and data systems, classifications of agencies for competitive funding and maximums available by classification and the factors for award which HUD will use in selecting projects for competitive funding.

(c) All agencies which receive support under this program must conform to reporting and record maintenance requirements determined appropriate by the administering office. Procedures for monitoring funding instruments will be established by the Office of the Assistant Secretary for Fair Housing and Equal Opportunity. Funding instruments will include terms by which HUD may recapture funds if the agencies receiving funding do not conform to these requirements.

Dated: February 25, 1982.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 82-5652 Filed 3-2-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[T.D. 7812; LR-338-81]

Generation-Skipping Transfer Tax Regulations; Effective Date Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: This document modifies portions of the existing regulations relating to the generation-skipping transfer tax by extending the effective date to January 1, 1983. The regulations reflect the change made by the Economic Recovery Tax Act of 1981 and affect those persons subject to the transitional rules under section 2601 of the Internal Revenue Code of 1954 (Code).

DATE: The regulations are effective for certain generation-skipping transfers (as defined in section 2611(a) of the Code) made after June 11, 1976.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Attention CC:LR:T 202-566-3287, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Under Chapter 13 of the Code, a tax is imposed on every generation-skipping transfer occurring after June 11, 1976. However, section 2006(c) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1889, as amended by section 702(n) of the Tax Reform Act of 1978 (Pub. L. 95-600, 92 Stat. 2035)) provided a transitional rule whereby certain trusts in existence on that date (or created under wills in existence on that date) were excluded from the application of the tax if the grantor (or testator) died before January 1, 1982. Section 428 of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 319) extended that date to January 1, 1983.

The purpose of this regulation is to amend the existing regulation to reflect the new transition rule date.

Because this regulation is liberalizing in nature, it is found unnecessary to issue this Treasury decision with notice and public procedure.

Drafting Information

The principal author of these regulations is Fred E. Grundeman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 26 is amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS

§ 26.2601-1 [Amended]

Section 26.2601-1 is amended as follows:

a. By removing the year "1982" and inserting, in its place, the year "1983" in the following places:

1. Section 26.2601-1(b) (1)(ii), and (2);
2. Section 26.2601-1(e) (2), (3), (4), and
3. Section 26.2601-1(e)(7), examples (3), (7), (8), (9), (10), (11), (12) and (13); and

b. By removing the year "1981" and inserting, in its place, the year "1982" in the following places:

1. Section 26.2601-1(b)(3), example (3); and
2. Section 26.2601-1(e)(7), examples (7), (8), (10) and (11).

Because this regulation is liberalizing in nature it is found unnecessary to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

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

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 24, 1982.

John E. Chapeton,

Assistant Secretary of the Treasury.

[FR Doc. 82-5720 Filed 3-2-82; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 150

[T.D. 7811]

Temporary Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980; Exempt Royalty Oil

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of temporary regulations.

SUMMARY: This document amends temporary excise tax regulations relating to the windfall profit tax on domestic crude oil. Changes to the applicable tax law were made by the Economic Recovery Tax Act of 1981. The new temporary regulations relate to exempt royalty oil and the procedure for executing an exempt royalty owner's certificate. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**.

DATE: The regulations apply to oil removed after December 31, 1981.

FOR FURTHER INFORMATION CONTACT: David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

On April 4, 1980, the **Federal Register** published temporary regulations (45 FR 23384) under sections 4986, 4987, 4988, 4989, 4991, 4992, 4993, 4994, 4995, 4996, 4997, 6050C, 6076, and 6402 of the Internal Revenue Code of 1954. The temporary regulations were required to implement various sections of the Crude

Oil Windfall Profit Tax Act of 1980. Certain amendments to the temporary regulations have since been published. This document contains further amendments to several sections of those temporary regulations to reflect the changes made by section 601(b) of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 336).

Section 601(b) of the Economic Recovery Tax Act of 1981 amends sections 4991, 4994 and 4995 to provide for an exemption for a qualified royalty owner's qualified royalty production. The amendment to section 4995 added subsection (a)(9) to provide the Secretary with authority to prescribe regulations for adjusting the withholding of the tax imposed by section 4986 to take into account the royalty owner's exemption. A procedure for the adjustment of the withholding of the tax imposed by section 4986 is provided in the regulations. The temporary regulations provided by this document remain in effect until superseded by final regulations on this subject.

Section 4986 of the Code imposes a tax on the windfall profit from taxable crude oil. Section 4991 defines taxable crude oil to include all domestic crude oil other than exempt oil. Section 601(b) of the Economic Recovery Tax Act of 1981 adds "exempt royalty oil" to the class of exempt oils under section 4991(b). Section 4994(f) defines the term "exempt royalty oil" to mean that portion of the qualified royalty owner's qualified royalty production (as defined in section 6429(d)(2)) for the quarter which does not exceed the royalty limit for such quarter. For oil removed during 1982 through 1984 the royalty limit is 2 barrels per day per quarter. For oil removed after 1984 the royalty limit is 3 barrels per day per quarter.

Royalty Owner's Exemption Certificate

Form 6783 is to be used by an exempt royalty owner (as defined in section 6429(d)(1)) for certifying that the entire amount of production from certain property attributable to his interest is exempt royalty oil as defined in section 4994(f). There must be reasonable belief that the production from the property to be certified plus the production from all other properties previously certified will not exceed the applicable royalty owner's exemption limit under section 4994(f)(2). The royalty owner may not certify a portion of his production from a property. For example, an exempt royalty owner with qualified production of 1½ barrels per day from property A executes an exemption certificate with respect to that property. The royalty owner also owns a royalty interest in property B with a production level of ¾ of a barrel per day. The royalty owner may not issue an exemption certificate with respect to property B since the total production, taking into account the production from both properties A and B, is more than the 2 barrels per day royalty limit. Neither can the royalty owner certify that ½ of a barrel from property B is exempt. The exempt royalty owner's certificate does not need to be filed with the Internal Revenue Service.

Other Provisions

Where an exempt royalty owner's certificate has been furnished to the purchaser, the monthly statement to the producer required by § 150.4997-2(b) shall include the number of barrels of oil for the month as if the oil had been taxable crude oil. An exempt royalty owner may also request the detailed statement under § 150.4997-2(d) as if the oil removed had been taxable crude oil.

Drafting Information

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

Adoption of amendments to the regulations

PART 150—TEMPORARY EXCISE TAX REGULATIONS UNDER THE CRUDE OIL WINDFALL PROFIT TAX ACT OF 1980

Accordingly, 26 CFR Part 150 is amended as follows:

1. Section 150.4994-1 is revised to read as follows:

§ 150.4994-1 Exemptions.

Section 4994 defines the terms "qualified governmental interest", "qualified charitable interest", "exempt front-end oil", "exempt Indian oil", "exempt Alaskan oil", and "exempt royalty oil", the categories of oil that are exempt from the tax imposed by section 4986.

2. Section 150.4995-2 is amended as follows:

1. The first and eighth sentences in paragraph (a) are revised to read as set forth below.

2. Paragraph (b) is revised to read as set forth below.

§ 150.4995-2 Producer's certificate.

(a) *In general.* The producer of "exempt front-end oil" (as defined in section 4994(c)), "exempt Indian oil" (as defined in section 4994(d)) or "exempt royalty oil" (as defined in section 4994 (f)), or the holder of any interest in crude oil that is a "qualified governmental interest" (as defined in section 4994(a)) or is a "qualified charitable interest" (as defined in section 4994(b)), may execute an exemption certificate with respect to such oil. * * * Forms 6458 and 6783 are provided for this purpose. * * *

(b) *Exemption certificate*—(1) *In general.* For purposes of this section, an exemption certificate is a written statement certifying that the producer's oil is exempt from the tax imposed by section 4986 because the oil constitutes exempt Indian oil, exempt front-end oil or exempt royalty oil or the oil is from a qualified governmental interest or a qualified charitable interest. Any producer who furnishes an exemption certificate (other than an exempt royalty owner's certificate) to an operator, purchaser, partnership, or other disburser shall also file an exemption certificate with the Internal Revenue Service Center, Austin, Texas (unless the producer filed the certificate with a different service center prior to January 19, 1981). Only one such certificate need be filed even though the producer may furnish certificates to more than one operator, purchaser, partnership, or other disburser.

(2) *Exempt royalty owner's certificate.* An exempt royalty owner's certificate shall certify that the producer is a qualified royalty owner (as defined in section 6429(d)(1)) and that the entire amount of production from certain property attributable to his interest is qualified royalty production (as defined in section 6429(d)(2)). No certificate may be furnished with respect to oil if it is reasonable to believe that the number of barrels attributable to the interest to be certified, taken together with all other oil with respect to which an exempt royalty owner's certificate has been furnished by the producer to any operator, purchaser, partnership, or other disburser, will exceed the producer's royalty limit amount (see section 4994(f)(2)). Allocation rules similar to the rules of section 6429(c) (2), (3), and (4) shall apply to the royalty limit amount. A certificate may be furnished with respect to oil removed after December 31, 1981.

3. Paragraphs (b)(1) and (d)(1) of § 150.4997-2 are revised to read as follows:

§ 150.4997-2 Certain information to be furnished by purchaser and others.

* * * * *

(b) *Monthly statement*—(1) *In general.* The purchaser shall furnish statements for each calendar month showing the total amount of windfall profit tax withheld by the purchaser from payments made to the producer, operator, partnership, or disburser with respect to oil removed during that month. If the purchaser did not withhold tax from payments to that person because of the receipt of an exemption certificate, the monthly statement need only state the reason for the absence of withholding. Where an exempt royalty owner's certificate has been furnished to the pruchaser, the monthly statement to the producer shall also include the number of barrels of oil removed during the month on a property-by-property basis as if the oil had been taxable crude oil.

* * * * *

(d) *Detailed statement to be furnished upon request.* (1) Any producer, operator, partnership, or disburser receiving sales proceeds from which windfall profit tax has been withheld or an exempt royalty certificate has been given may furnish the person from whom the proceeds are received a written request for some or all of the following information: The quantity of oil in each tax tier and the removal price, severance tax adjustment, adjusted base price, and tax rate applicable to that quantity. The information request may specify that the information is requested either on a property-by-property basis or in the aggregate. If an exempt royalty certificate has been given to the person receiving such a request, such person shall provide the information requested as if the oil removed had been taxable crude oil. Any person receiving such a request who has made payments to the person making the request shall provide the requested information for the period and at the time specified in paragraph (d)(2).

* * * * *

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

This Treasury decision is issued under the authority contained in sections 4995 and 7805 of title 26 of the United States Code (95 Stat. 337 and 68A Stat. 917; 26 U.S.C. 4995 and 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 17, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 82-5712 Filed 2-26-82; 2:40 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH-FRL 2025-5]

Interim Primary Drinking Water Regulations, Amendment

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: This regulation amends the National Interim Primary Drinking Water Regulations (NIPDWR) promulgated pursuant to section 1412 of the Safe Drinking Water Act (SDWA). This gives public water systems the option to use an analytical technique for turbidity which uses the turbidity standard "Nephelometric Method with Styrene Divinylbenzene Polymer Standard," as well as the currently prescribed formazin standard for the calibration of the turbidimeter. Neither the monitoring frequency in determining compliance with the turbidity maximum contaminant level (MCL) nor the references cited in § 141.22(a) of the NIPDWR are affected by this ruling.

EFFECTIVE DATE: March 3, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph. D., Director, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 202/472-5016.

SUPPLEMENTARY INFORMATION: The National Interim Primary Drinking Water Regulations state that compliance with a MCL is to be determined pursuant to the applicable monitoring and analytical requirements set forth in Subpart C of the NIPDWR. Section 141.22(a) of this subpart specifies the use of the Nephelometric Method for compliance monitoring with the turbidity MCL. The Nephelometric Method requires the use of a formazin standard for calibration of the turbidimeter. Today's amendment permits the use of a Styrene Divinylbenzene Polymer Standard as well as the formazin standard for calibration of the turbidimeter.

Amco Standards International submitted an application and obtained initial approval for the nationwide use of its analytical technique for turbidity measurements "Nephelometric Method with Styrene Divinylbenzene Polymer Standard." This technique was proposed in the July 19, 1979, **Federal Register** along with other analytical techniques which had also received initial approval. As a result of issues raised during the comment period to the proposed amendments, EPA decided to postpone final approval of the turbidity technique and requested from the manufacturer additional information related to the preparation and use of the standard. Specifically, EPA requested the following information:

1. A technical reference containing a documented step-wise procedure for the preparation and use of the standard.
2. Adequacy of the present supply of the standard.
3. Reproducibility of the standard.
4. Stability of the standard.

The manufacturer supplied additional information requested by the EPA including supporting materials from a patent application and estimates which indicate a supply of the standard sufficient to meet the anticipated demand.

Additionally, EPA's Environmental Monitoring and Support Laboratory has conducted stability studies of the Amco standard which indicate that the Amco standard is equivalent to the formazin standard in terms of stability. The stability studies were carried out over a two-week period. This time period was considered adequate because the EPA prescribed standard, formazin, must be prepared weekly, as recommended in Method [1] 180.1—Nephelometric Method.

Executive Order 12291 (46 FR 13193, February 19, 1981), requires a regulatory impact analysis if it is determined that the regulations are considered to be "major rules." EPA has determined that this regulation is not a "major rule," and thus a regulatory impact analysis has not been prepared.

Section 1412 of the SDWA, 42 U.S.C. 300g-1, provides that EPA's National Primary Drinking Water Regulations take effect 18 months after their promulgation. The purpose of this requirement is to allow public water systems sufficient lead time to prepare to comply with major new regulatory requirements. However, the purpose and effect of the amendment promulgated

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA 600/4-79-020), March 1979. Available from ORD Publications, CERI, EPA Cincinnati, Ohio 45268.

today is to provide greater flexibility to public water systems in meeting the turbidity monitoring requirements. Consequently, the 18 month delay is unnecessary, and the Agency is setting an effective date of March 3, 1982, for this amendment.

Dated: February 23, 1982.

Anne M. Gorsuch,

Administrator.

PART 141—NATIONAL INTERIM PRIMARY DRINKING WATER REGULATIONS

Accordingly, 40 CFR, in § 141.22 paragraph (a) is revised to read as follows:

§ 141.22 Turbidity sampling and analytical requirements.

(a) Samples shall be taken by suppliers of water for both community and non-community water systems at a representative entry point(s) to the water distribution system at least once per day, for the purposes of making turbidity measurements to determine compliance with § 141.13. If the State determines that a reduced sampling frequency in a non-community will not pose a risk to public health, it can reduce the required sampling frequency. The option of reducing the turbidity frequency shall be permitted only in those public water systems that practice disinfection and which maintain an active residual disinfectant in the distribution system, and in those cases where the State has indicated in writing that no unreasonable risk to health existed under the circumstances of this option. The turbidity measurements shall be made by the Nephelometric Method in accordance with the recommendations set forth in "Standard Methods for Examination of Water and Wastewater," American Public Health Association, 14th Edition, pp. 132–134; or "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, March 1979, Method 180.1—Nephelometric Method. Calibration of the turbidimeter shall be made either by the use of a formazin standard as specified in the cited references or a styrene divinylbenzene polymer standard (Amco-AEPA–1 Polymer) commercially available from Amco Standards International, Inc., 230 Polaris Avenue, No. C, Mountain View, California 94043.

* * * * *

[FR Doc. 82–5695 Filed 3–2–82; 8:45 am]

BILLING CODE 6560–29–M

40 CFR Part 180

[PP 9E2263/R402; PH-FRL-2059-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Thiabendazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the fungicide thiabendazole in or on papayas. This regulation to establish a maximum permissible level for residues of thiabendazole in or on the above commodity resulting from postharvest application of the fungicide was submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Emergency Response Section, Registration Division (TS–767C), Environmental Protection Agency, Rm. 502B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7123).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking in the **Federal Register** of January 6, 1982 (47 FR 654) which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition number 9E2263 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the fungicide thiabendazole (2-(4-thiazolyl)benzimidazole) (TBZ) in or on papayas at 5 parts per million (ppm) resulting from postharvest application to the raw agricultural commodity. The petition was later amended to limit pesticide use to spray applications of a TBZ-water mixture only.

No comments or request for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR 180.242 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before April 2, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Effective on: March 3, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.242 is amended by adding and alphabetically inserting the raw agricultural commodity papayas (post-H) to paragraph (a) to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Papayas (post-H)	5
* * * * *	

[FR Doc. 82–5384 Filed 3–2–82; 8:45 am]

BILLING CODE 6560–32–M

40 CFR Part 180

[PP 9F2238/R407; PH-FRL-2060-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxamyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide/nematocide oxamyl in or on certain raw agricultural commodities. This regulation to establish a maximum permissible level for residues of oxamyl in or on these commodities was requested by E. I. duPont de Nemours and Co.

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Wriften objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (Ts–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2368).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of August 24, 1979 (44 FR 49789) which announced that E. I. duPont de Nemours and Co., Wilmington, DE 19898, had submitted pesticide petition 9F2238 to the EPA proposing that tolerances be established for residues of the insecticide/nematocide oxamyl (methyl *N'N'*-dimethyl-*N*- [(methylcarbamoyl) oxyl-1-thiooxamimidate) in or on the raw agricultural commodities peanuts and peanut hulls at 0.2 part per million (ppm) and peanut hay at 10.0 ppm.

The petition was subsequently amended by adding the commodity peanut forage at a level of 2.0 ppm and decreasing the tolerance for peanut hay from 10.0 ppm to 2.0 ppm.

No comments were received in response to this notice of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the tolerances included: a 2-year rat feeding/oncogenicity study and a 2-year dog feeding study with no-observed-effect levels (NOEL) of 50 ppm and 100 ppm, respectively; a mouse oncogenicity study which was negative at dietary levels up to 75 ppm for 2 years; a three-generation rat reproduction study with a NOEL of 50 ppm; a rat teratogenicity study which was negative; and a rabbit teratogenicity study which was negative at up to 4 milligrams (mg)/kilogram (kg)/day with a NOEL of 2 mg/kg/day for fetoxicity. Based on the 2-year chronic rat feeding/oncogenicity study with a NOEL of 500 ppm and using a safety factor of 100, the acceptable daily intake (ADI) for humans is calculated to be 0.025 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) in the human diet from previously established tolerances, at levels ranging from 0.1 ppm to 10.0 ppm, and the proposed tolerances do not exceed the ADI.

The metabolism of oxamyl is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. No regulatory actions are currently pending against continued registration of oxamyl nor are there any relevant considerations involved in the establishment of these tolerances. There is no expectation of secondary residues in eggs, meat, milk, or poultry; therefore, § 180.6(a)(3) applies.

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, on or before April 2, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: March 3, 1982.

(Sec 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: February 17, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.303 is amended by adding and alphabetically inserting the raw agricultural commodities peanuts, peanut forage, peanut hay, and peanut hulls to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peanuts	0.2
Peanut, forage	2.0
Peanut, hay	2.0
Peanut, hulls	0.2
* * * * *	

[FR Doc. 82–5386 Filed 3–2–82; 8:45 am]

BILLING CODE 6560–32–M

40 CFR Part 180

[PP 1E2462/R403; PH–FRL–2059–4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Bromoxynil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for negligible residues of the herbicide bromoxynil from application of its octanoic acid ester. This regulation to establish a maximum permissible level for residues of bromoxynil in or on dry bulb onions was requested by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708 (A–110), 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Emergency Response Section, Registration Division (TS–767C), Environmental Protection Agency, Rm. 502 CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–7123).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking in the **Federal Register** of January 6, 1982

(47 FR 651) which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition number 1E2462 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of California and Texas.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance at 0.1 part per million (ppm) for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic acid ester on the raw agricultural commodity onions. The petitioner subsequently amended the petition by requesting a tolerance on dry bulb onions only.

No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

Since this commodity is not a feed item, there is no reasonable expectation of finite residues in meat, milk, poultry or eggs from the proposed use. There are presently no actions pending against the continued registration of this chemical.

Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR 180.324 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before April 2, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Effective on: March 3, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.324 is amended by adding and alphabetically inserting the raw agricultural commodity onions (dry bulb) to read as follows:

§ 180.324 Bromoxynil; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * *	*
Onions (dry bulb)	0.1(N)
* * * *	*

[FR Doc. 82-5382 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PP OE2283/R404; PH-FRL-2059-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on strawberries. This regulation to establish a maximum permissible level for residues of the insecticide and its metabolite in or on strawberries was submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, Rm. 502B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking in the Federal Register of January 6, 1982 (47 FR 653) which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition number OE2283 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of New Hampshire, New York, and Michigan.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol (TCP) in or on the raw agricultural commodity strawberries at 0.3 part per million (ppm). The petition was later amended increasing the tolerance to 0.5 ppm.

No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR 180.342 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before April 2, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Effective on: March 3, 1982.

(Sec. 408(e), 68 Stat 514 (21 U.S.C. 346(a)(e)))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.342 is amended by adding and alphabetically inserting

the raw agricultural commodity strawberries to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Strawberries	0.5
* * * * *	

[FR Doc. 82-5383 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[OPP-300055A; PH-FRL-2062-8]

Alpha-[P-(1,1,3,3-Tetramethylbutyl) Phenyl]-omega-Hydroxypoly (Oxyethylene); Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule broadens the lower range of the pesticide alpha-[*p*-(1,1,3,3-tetramethylbutyl) phenyl]-*omega*-hydroxypoly (oxyethylene) presently listed in paragraphs (c) and (e) of 40 CFR 180.1001, exemptions from requirement of a tolerance to include a lower range of 1–14 moles ethylene oxide. This exemption is granted in response to a petition by Rohm and Haas Co.

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter Gray, Emergency Response Section, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 514D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7110).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of December 8, 1981 (46 FR 60020) that Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19015, had requested that the Administrator amend 40 CFR 180.1001 (c) and (e) by revising the entry for alpha-[*p*-(1,1,3,3-tetramethylbutyl) phenyl]-*omega*-hydroxypoly (oxyethylene) to broaden the range from 4–14 moles of ethylene oxide to a lower range of 1–14 moles.

No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

Therefore, it is concluded that the amendment to 40 CFR 180.1001 (c) and (e) will protect the public health, and the regulation is amended as set forth below.

Any person adversely affected by this regulation may, on or before April 2, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: March 3, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: February 18, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1001 (c) and (e) are amended by alphabetically inserting the inert ingredient "alpha-[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-*omega*-hydroxypoly (oxyethylene)" in the tables to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Intert ingredient	Limits	Uses
* * * * *		
Alpha-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-*omega*-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of *p*(1,1,3,3-tetramethylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1–14 or 30–70.	.....	Surfactants, related adjuvants or surfactants.
* * * * *		

* * * * * (e)* * *

Inert ingredient	Limits	Uses
* * * * *		
Alpha-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-*omega*-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetra-methylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1–14 or 30–70.	.....	Surfactants, related adjuvants of surfactants.
* * * * *		

[FR Doc. 82-5490 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PP 1E2478/R401; PH-FRL-2059-8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Methyl Eugenol/Malathion Combination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insect attractant methyl eugenol and the insecticide malathion in or on all raw agricultural commodities when used in combination in Oriental fruit fly eradication programs under the authority of the U.S. Department of Agriculture. This regulation was submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Emergency Response Section, Registration Division (TS–767), Environmental Protection Agency, Rm. 502B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7123).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking in the **Federal Register** of January 6, 1982 (47 FR 652) which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition number 1E2478 to EPA on behalf of the IR–4 Technical Committee and the U.S. Department of Agriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of an exemption from the requirement of a tolerance for residues of the insect attractant methyl eugenol and the insecticide malathion in or on all raw agricultural commodities when used in combination in Oriental fruit fly eradication programs under the authority of the U.S. Department of Agriculture.

No requests for referral to an advisory committee were received in response to this notice of proposed rulemaking; however, one favorable comment was received from the Agricultural Commissioner of the County of San Diego, CA, Department of Agriculture, Weights, and Measures. The Commissioner stated that: "When used as a bait in a trap, this material is the best known lure for the Oriental Fruit Fly."

The data submitted in the petition and all other relevant material have been evaluated. The attractant-insecticide combination is considered useful for the purpose for which the exemption is sought. There are presently no actions pending against the continued registration of these chemicals.

Because of the methods of application and the extremely low application rates involved, it is highly unlikely that detectable residues would result in or on any raw agricultural commodity or in meat or milk. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, on or before April 2, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Effective on: March 3, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR Part 180 is amended by establishing a new § 180.1067 to read as follows:

§ 180.1067 Methyl eugenol and malathion combination; exemption from the requirement of a tolerance.

The insect attractant methyl eugenol and the insecticide malathion are exempt from the requirement of tolerances on all raw agricultural commodities when used in combination in Oriental fruit fly eradication programs under the authority of the U.S. Department of Agriculture, in accordance with the following directions and specifications:

(a) The combination shall be at the ratio of three parts methyl eugenol to one part technical malathion (3:1).

(b) This combination is to be impregnated on a carrier (cigarette filter tips (cellulose acetate); cotton strings; fiberboard squares) or mixed with a jel cleared under 40 CFR 180.1001(d).

(c) The maximum actual dosage per application per acre shall be 28.35 grams (one ounce avoirdupois) methyl eugenol and 9.45 grams (one-third (0.33) ounce avoirdupois) technical malathion.

[FR Doc. 82–5385 Filed 3–2–82; 8:45 am]

BILLING CODE 6560–32–M

40 CFR Part 256

[SW–1–FRL–2061–6]

Approval of Connecticut Solid Waste Management Plan

AGENCY: Environmental Protection Agency, Region 1.

ACTION: Final rule.

SUMMARY: As provided by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), the State of Connecticut has received Federal financial assistance for development of a State solid waste management plan. The State of Connecticut has submitted to the U.S. Environmental Protection Agency (EPA or the Agency) its adopted State solid waste management plan. Today, EPA is announcing its approval of the Connecticut solid waste management plan. Approval of the plan indicates that it meets the requirements set forth in RCRA, which provides for the identification of State, local and regional responsibilities for solid waste management; the encouragement of resource conservation and recovery; and the development and application of State controls to provide for environmentally sound solid waste disposal practices.

The purpose of this notice is to inform the public that the Agency is approving the Connecticut solid waste management plan.

EFFECTIVE DATE: March 3, 1982.

FOR FURTHER INFORMATION CONTACT: Conrad O. Desrosiers, Chief, Solid Waste Section, U.S. EPA, Region I, JFK Federal Building, Boston, Mass. 02203 (617) 223–5775.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1979, (44 *FR* 45066) EPA published Guidelines for the Development and Implementation of State Solid Waste Management Plans. These guidelines were required by section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA).

The guidelines reflect the minimum statutory requirements for the State plans and recommend methods and procedures to meet those requirements. Under section 4007 of RCRA, the

Administrator approves State plans which meet the requirements of paragraphs (1), (2), (3), and (5) of section 4003 of RCRA and which contain provisions for revision. Briefly, these requirements are:

1. The plan shall identify the responsibilities of State, local and regional authorities in the implementation of the State plan; the distribution of Federal funds to the authorities responsible for development and implementation of the State plan; and the means for coordinating regional planning and implementation under the State plan;

2. The plan shall prohibit the establishment of new open dumps within the State and contain requirements that all solid waste be utilized for resource recovery or disposed of in sanitary landfills, as defined by Section 4004(a) of RCRA, or otherwise disposed of in an environmentally sound manner. The State prohibition must be effective as of the date on which EPA approves the plan;

3. The plan shall provide for the closing or upgrading of all existing open dumps within the State;

4. The plan shall provide that no local government within the State shall be prohibited under State or local law from entering into long-term contracts for supply of solid waste to resource recovery facilities; and

5. The plan must contain specific provisions for revision.

The guidelines also addressed Section 4005 of RCRA which requires a mechanism in the State plan for establishment of compliance schedules for entities engaged in the prohibited act of open dumping. The plan must provide that, in attempting to obtain such compliance schedules, entities must demonstrate their inability to utilize other public or private alternatives to comply with the prohibition.

Response to Comments

On November 4, 1981, at (46 FR 54772) the Connecticut solid waste management plan was noticed for public review and comment. No substantive comments were received during the 30-day review period.

Finding

I have reviewed the solid waste managment plan submitted by the State of Connecticut for approval.

I find that the plan meets the requirements of RCRA for approval. Under authority of Section 4007 of RCRA, I approve the Connecticut solid waste management plan.

The plan prohibits the establishment of open dumps, and the State prohibition was in effect on March 3, 1982.

Also, the plan provides for compliance schedules for entities engaged in open dumping where those entities can demonstrate that they are unable to utilize other public or private alternatives for solid waste management to comply with the RCRA prohibition of open dumping. As of this date entities engaged in open dumping may, pursuant to the plan, approach the State for further information on compliance schedules and necessary demonstrations. Parties that receive compliance schedules satisfying Section 4005 from EPA approved States and that are in compliance with these schedules are not in violation of the open dumping prohibition in Section 4005. Such compliance schedules cannot extend beyond September 13, 1984.

Compliance With Executive order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority

(Section 4007(a), Pub. L. 94–580, 90 Stat. 2817 (42 U.S.C. 6947))

Dated: January 28, 1982.

Lester A. Sutton,

Regional Administrator.

Subject: Approval of Connecticut Solid Waste Management Plan, Certification Under the Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the approval of the Connecticut solid waste management plan will not have a significant economic impact on a substantial number of small entities. This Approval will reduce burdens on small entities by establishing a mechanism to insulate them from citizen suits to enforce the open dumping prohibition. This rule, therefore, does not require a regulatory flexibility analysis.

Dated: February 23, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82–5707 Filed 3–2–82; 8:45 am]

BILLING CODE 6560–38–M

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40 CFR Part 256

[SW–4–FRL–2061–7]

Approval of the Georgia Solid Waste Management Plan

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Final rule.

SUMMARY: As provided by the Resource Conservation and Recovery Act (RCRA), the State of Georgia has submitted to the Environmental Protection Agency (EPA) its adopted State Solid Waste Management Plan. Today, EPA is announcing its approval of the Georgia Solid Waste Management Plan. Approval of the Georgia plan indicates that the plan meets the requirements set forth in the RCRA, which provides for the identification of State, local and regional responsibilities for Solid Waste Management; the encouragement of resource conservation and recovery; and the development and application of State controls to provide for environmentally sound solid waste disposal practices.

The purpose of this notice is to inform the public that the Agency is approving the Georgia Solid Waste Management Plan.

EFFECTIVE DATE: March 3, 1982.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 1979, (44 FR 45066) EPA published "Guidelines for the Development of State Solid Waste Management Plans." These guidelines were required by Section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA).

The guidelines reflected the statutory requirements for State plans and recommended methods and procedures to meet these requirements. Under Section 4007 of RCRA, the Administrator approves State plans which meet the requirements of paragraphs (1), (2), (3), and (5) of Section 4003 of RCRA and which contain provisions for revisions. For additional background information on the plan approval process, refer to 46 FR 34802 (July 6, 1981), Approval of the Iowa Solid Waste Management Plan.

On March 2, 1981, the Georgia Department of Natural Resources, Environmental Protection Division, submitted the final, officially adopted, Solid Waste Management Plan for the State of Georgia. Among EPA concerns regarding the Georgia plan were coverage of coal mining wastes and livestock feeding facilities. Mining wastes are regulated in the State by the Georgia Surface Mining Act. EPA has determined that mining wastes subject to RCRA Subtitle D criteria fall under the purview of the Georgia Division of Waste Management and are regulated by the State in a manner equivalent to

the Federal criteria. Livestock feeding facilities are also covered by the Division if they present a health hazard or public nuisance. Thus, these wastes will be disposed of in an environmentally sound manner as required by Section 4003 of RCRA.

Another consideration concerned use of the State's permitting system to prohibit establishment of new open dumps. The State considers that their standards for sanitary landfills are equivalent to Federal Part 257 criteria. The State possesses broad authority to set specific requirements in permit conditions in their regulations.

The State assured EPA that their on-site disposal exemption applied only to residential wastes, thus, preventing the creation of new open dumps.

The State also confirmed that constitutional revisions have removed any restrictions on any local government or county from entering into long-term contracts for resource recovery.

The State assured EPA that consent agreements would be issued to non-complying facilities to bring them into compliance. These consent agreements will be used only where alternative public or private disposal methods cannot be utilized.

II. Summary of Comments

On November 4, 1981, at 46 FR 54772, the Georgia Solid Waste Management Plan was noticed for public review and comment for 30 days. On December 3, 1981, EPA received a request from the Pea Ridge–Mud Creek–Level Grove Association, Inc. to withhold approval of the Plan until final resolution of a State Administrative proceeding involving the association. EPA's response to the association indicated that the scope of the Agency's approval/disapproval authority is limited to the sufficiency of the Plan and that final rulemaking should not be deferred.

III. Finding

The authority to approve State plans under Section 4007 of RCRA has been delegated to the Regional Administrator.

I have reviewed the Solid Waste Management Plan submitted by the State of Georgia for approval. I find that the Georgia plan meets the requirements of RCRA for approval. Under authority of Section 4007 of RCRA I approve the Georgia Solid Waste Management Plan.

IV. Compliance with Executive Order 12291

The Office of Management and budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(90 Stat. 2817, 42 U.S.C. 6947)

Charles R. Jeter,

Regional Administrator.

Subject: Approval of the Georgia Solid Waste Management Plan, Certification Under the Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the approval of the Georgia Solid Waste Management Plan will not have a significant economic impact on a substantial number of small entities. This approval will reduce burdens on small entities by establishing a mechanism to insulate them from citizen suits to enforce the open dumping prohibition. This rule, therefore, does not require a regulatory flexibility analysis.

Dated: February 23, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-5700 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 256

[SW-5-FRL-2061-8]

Approval of Illinois, Michigan, and Minnesota Solid Waste Management Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Section 4008(a)(1) of the Solid Waste Disposal Act of 1976, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA) authorized financial assistance for the development and implementation of State Solid Waste Management Plans (State Plans). The following States submitted adopted State Plans to the U.S. Environmental Protection Agency (EPA), as required under 40 CFR Part 256: Illinois (submitted February 9, 1981); Michigan (submitted January 28, 1981); and Minnesota (submitted January 28, 1981). Under Section 4007 of RCRA, EPA shall approve State Plans which meet the requirements of paragraphs (1), (2), (3), and (5) of Section 4003 and which contain provisions for revision. Under the guidelines published in the July 31, 1979, **Federal Register** (44 FR 45066), and the September 23, 1981, **Federal Register** (46 FR 47048), EPA shall approve, partially approve or disapprove a State Plan within six months of submittal. The purpose of this notice is to announce EPA's approval of the Illinois, Michigan, and Minnesota State Plans.

EFFECTIVE DATE: March 3, 1982.

FOR FURTHER INFORMATION CONTACT: Lillian Bagus, Regulatory Analysis & Information Section Waste Management Branch (5AHWM), U.S. Environmental Protection Agency, 111 West Jackson Boulevard, Chicago, Illinois 60604 (312) 886–6142.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 1979 (44 FR 45066), EPA published Guidelines for the Development and Implementation of State Solid Waste Management Plans. These guidelines were required by Section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA). The guidelines establish the requirements for State Plans and recommend methods and procedures to meet those requirements. On September 23, 1981 (46 FR 47048) EPA published amendments to the Guidelines for Development and Implementation of State Solid Waste Management Plans and Criteria for the Classification of Solid Waste Disposal Facilities and Practices, 40 CFR Parts 256 and 257. In part, these amendments allow EPA to give partial approval for that portion of the adopted State Plan that covers State issuance of compliance timetables while the State is developing the other parts of the State Plan. The completion of the remaining parts of the State Plan will be conducted in a timely and orderly manner as set forth in a schedule mutually agreed upon by the State and EPA. Under Section 4007 of RCRA, EPA shall approve State Plans which meet the requirements of paragraphs (1), (2), (3) and (5) of Section 4003 and which contain provisions for revision. These requirements were summarized in the notice of availability and request for public comment published for each State Plan. Approval of the State Plan indicates that the State Plan meets the requirements set forth in RCRA, which provides for the identification of State, local and regional responsibilities for solid waste management; the encouragement of resource conservation and recovery; and the development and application of State controls to provide for environmentally sound solid waste disposal practices.

II. State Specific Background and Response to Public Comments

A. Illinois

On February 9, 1981, the State of Illinois submitted its adopted State Plan to EPA. In response to EPA's comments on the plan, Illinois submitted additions and revisions on June 18, 1981, and July 7, 1981, which provided additional information and clarifications in several areas. These additions and revisions were attached as part of the State Plan.

On October 15, 1981, EPA published a notice of availability and request for public comments on the Illinois State Plan (46 FR 50810). Comments were due by November 16, 1981. In response to several requests, EPA agreed to extend the public comment period, and on November 30, 1981, EPA published a notice in the Federal Register (46 FR 58108) announcing the extension of the comment period until December 4, 1981. EPA received three comments during the public comment period. Two Commenters supported approval of the Illinois State Plan. The third comment and EPA's response is summarized below.

Comment: One commenter felt the Illinois State Plan was inadequate because it did not address more than the minimum Federal requirements. Specifically, the commenter felt that the State should have addressed in more detail the areas of siting, data collection, and public participation.

Response: EPA cannot require a State to address more than the minimum Federal requirements in its State Plan. Under Section 4007 of RCRA, EPA shall approve State Plans which meet the requirements of paragraphs (1), (2), (3), and (5) of Section 4003 and which contain provisions for revision.

Although addressing the siting issue was not a specific Federal requirement, the State of Illinois addressed this area under the portions of the State Plan meeting the requirements of paragraph (1) of Section 4003 and the guidelines published July 31, 1979, (44 FR 45066) by: (a) Identifying the responsibilities of State, local, and regional authorities in the implementation of the State Plan; and (b) providing for adequate resource conservation, recovery, storage, treatment and disposal facilities and practices necessary to use or dispose of solid and hazardous waste in an environmentally sound manner.

The Federal guidelines do not require that State Plans provide for data collection and analysis and specific schedules for dealing with on-site disposal problems although Illinois does address these items in its State Plan.

Subpart G of the Federal guidelines (44 FR 45085) requires a State Plan to develop and implement specific public participation provisions in the following areas: (a) State and substate plans; (b) the annual State work program; (c) State regulatory development; and (d) the permitting of facilities. The Illinois State Plan addresses public participation in these four areas in Part 6 of the State Plan (pages 75 to 83). EPA believes Illinois has met the requirements of the guidelines.

B. Michigan

On January 28, 1981, the State of Michigan submitted its adopted State Plan to EPA. In response to EPA's comments on the plan, Michigan submitted additions and revisions on July 9, 1981, and September 1, 1981, which provided additional information and clarifications in several areas. These additions and revisions were attached as part of the State Plan.

On November 4, 1981, EPA published a notice of availability and request for public comments on the Michigan State Plan (46 FR 54775). Comments were due by December 4, 1981. EPA received no comments on the plan.

C. Minnesota

On January 28, 1981, the State of Minnesota submitted its adopted State Plan to EPA. In response to EPA's comments, Minnesota submitted additions and revisions on July 31, 1981, and October 15, 1981, which provided additional information and clarifications in several areas. These additions and revisions were attached as part of the State Plan.

On November 17, 1981, EPA published a notice of availability and request for public comments on the Minnesota State Plan (46 FR 56465). Comments were due by December 17, 1981. EPA received no comments on the plan.

III. Finding

Section 4007 of RCRA contains the statutory policy for approval of State Plans. The authority to approve State Plans under Section 4007 of RCRA has been delegated to the Regional Administrator. I have reviewed the State Plans submitted by the States of Illinois, Michigan, and Minnesota. I find that the Illinois State Plan, the Michigan State Plan and the Minnesota State Plan meet the requirements of RCRA for approval. Under authority of Section 4007 of RCRA, I approve the Illinois State Plan, the Michigan State Plan, and the Minnesota State Plan.

Each of the three State Plans provide for compliance schedules for entities engaged in open dumping where those entities can demonstrate that they are unable to utilize other public or private alternatives for solid waste management to comply with the RCRA prohibition of open dumping. As of the date of publication of this notice, entities engaged in open dumping may, pursuant to the State Plans listed above, approach the respective States for further information on compliance schedules and necessary demonstrations. This approval should be of special interest because of two provisions of RCRA. First, RCRA requires that effective with the date of approval, State Plans prohibit the establishment of open dumps in the State. Second, only States with approved State Plans can establish compliance schedules for purposes of RCRA for entities engaged in open dumping. Parties that receive compliance schedules satisfying Section 4005 from EPA approved States and that are in compliance with these schedules are not in violation of open dumping prohibition in Section 4005. Such compliance schedules cannot extend beyond September 13, 1984.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

(Sec. 4007 (a), Pub. L. 94–580, 90 Stat. 2817, (42 U.S.C. 6947))

Dated: January 25, 1982.

David Kee,

Regional Administrator.

Approval of Illinois, Michigan, and Minnesota Solid Waste Management Plans; Certification Under the Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the approval of the Illinois, Michigan, and Minnesota Solid Waste Management Plans will not have a significant economic impact on a substantial number of small entities. This approval will reduce burdens on small entities by establishing a mechanism to insulate them from citizen suits to enforce the open dumping prohibition. This rule, therefore, does not require a regulatory flexibility analysis.

Dated: February 23, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82–5706 Filed 3–2–82; 8:45 am]

BILLING CODE 6560–38–M

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40 CFR Part 256

[WMB–5–FRL 2034–8]

Partial Approval of Wisconsin Solid Waste Management Plan

AGENCY: Environmental Protection Agency, Region V.

ACTION: Final rule; partial approval.

SUMMARY: On February 2, 1981, the State of Wisconsin submitted to the Environmental Protection Agency (EPA) its adopted State Solid Waste Management Plan (State Plan), as required under 40 CFR Part 256. Section 4008(a)(1) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), authorized financial assistance for the development and implementation

of State Plans. Today, EPA is announcing its partial approval of the Wisconsin State Plan. Partial approval of the Wisconsin Plan indicates that the EPA is approving the portion of that plan that provides for State issuance of compliance schedules with regard to the open dumping prohibition. In obtaining partial approval of its plan, the State has committed to completing the plan in a timely and orderly manner.

EFFECTIVE DATE: March 3, 1982.

FOR FURTHER INFORMATION CONTACT:
Ms. Judy Stone, Regulatory Analysis and Information Section, Waste Management Branch, U.S. Environmental Protection Agency, Region V, 111 West Jackson Blvd., Chicago, Illinois 60604, (312) 886–4179.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 1979, (44 FR 45066) EPA published Guidelines for the Development and Implementation of State Solid Waste Management Plans. These guidelines were required by section 4002(b) of RCRA. The guidelines establish the requirements for State Plans and recommend methods and procedures to meet those requirements. Under section 4007 of RCRA, EPA must approve State Plans which meet the requirements of paragraphs (1), (2), (3) and (5) of section 4003 and which contain provisions for revision. These requirements are summarized in the notice of availability and request for public comment published in the Federal Register on November 4, 1981 (46 FR 54772). On September 23, 1981, (46 FR 47048) EPA published amendments to the Guidelines for the Development and Implementation of State Solid Waste Management Plans and Criteria for the Classification of Solid Waste Disposal Facilities and Practices (40 CFR Parts 256 and 257). In part, these amendments allow EPA to give partial approval for that part of the adopted State plan that covers State issuance of compliance timetables while the State is developing the other parts of the plan. The completion of the remaining parts of the plan will be conducted in a timely and orderly manner as set forth in a schedule mutually agreed upon by the State and EPA. To grant a partial plan approval, EPA must determine that: (1) The portion submitted satisfies 40 CFR 256.26; (2) The State has authority to issue and enforce compliance schedules; and (3) The State will complete the remainder of the State Plan within a reasonable period of time.

II. Responses to Public Comments

On February 2, 1981, Wisconsin submitted to EPA its adopted State Plan. On November 4, 1981, EPA published a notice of availability and request for public comments on the Wisconsin State Plan (46 FR 54776). Comments were due by December 4, 1981. EPA received no comments during the public comment period.

III. Finding

Section 4005 of RCRA prohibits the open dumping of solid waste. However, the prohibition does not extend to any practice or disposal of solid waste under a compliance schedule which: (1) Includes an enforceable sequence of actions leading to compliance with the prohibition on open dumping; (2) does not extend beyond September 13, 1984; (3) is preceded by a determination that the recipient of the compliance schedule was unable to utilize other public or private alternatives for solid waste management to comply with the prohibition on open dumping; and (4) is issued by a State having an approved State Plan.

The State Plan as submitted satisfies 40 CFR 256.26. The State Plan prohibits the establishment of open dumps effective on March 1, 1980. The State has authority to issue and enforce compliance schedules to entities engaged in open dumping where those entities can demonstrate that they are unable to utilize other public or private alternatives for solid waste management to comply with the RCRA prohibition of open dumping. Entities engaged in open dumping may, pursuant to the State Plan, approach the State for further information on compliance schedules and neccessary demonstrations. Wisconsin has the authority to issue and enforce compliance schedules for all types of facilities and all waste types. Wisconsin can enforce compliance with all criteria established in 40 CFR Part 257, except for 40 CFR 257.3–7 (Air). Thus, the Wisconsin State Plan meets all requirements for full approval with the following exception. Chapter 144 of the Wisconsin Statutes allows open burning at certain licensed solid waste disposal sites if the operation meets the requirements listed in 144.436(2) (a) through (g), including the requirement for compliance with all Federal air pollution control rules and any State air pollution control rules required to be adopted under applicable laws or regulations.

In accordance with § 256.04(f), Wisconsin has submitted a schedule outlining the steps which will be taken in completing the plan to meet the remaining requirements of Section 4007(a) of RCRA for approval of the complete plan. Under this schedule, Wisconsin plans to complete the remainder of the Plan within 2 years.

IV. Decision

Section 4007 of RCRA contains the statutory policy for approval of State Plans. The authority to approve State Plans under Section 4007 of RCRA has been delegated to the Regional Administrator. I have reviewed the State Plan submitted by the State of Wisconsin, and have found that the Wisconsin State Plan meets the requirements of RCRA for partial approval. I am today approving that part of the State Plan that provides for the issuance of compliance schedules for the wastes, facilities and criteria described above. Therefore, under authority of Section 4007 of RCRA, the guidelines published in the July 31, 1979, Federal Register (44 FR 45066) and the September 23, 1981, Federal Register (46 FR 47048), I grant partial approval to the Wisconsin State Plan. As of this date, those entities engaged in open dumping in Wisconsin may receive compliance schedules from the State that will, to the extent of the State's legal authority described above, protect them from open dumping suits as long as they remain in compliance with such schedules.

Compliance With Executive Order 12291

Under Executive Order 12291 effective February 17, 1981, EPA must judge whether a rule is "Major" and, therefore, subject to the requirement for a Regulatory Impact Analysis. Partial approval of the Wisconsin Solid Waste Management Plan is not a "Major rule" because it does not result in an annual effect on the economy of $100 million or more; result in increases in costs or prices; or pose significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Any costs which the State or the regulated community must incur to satisfy the State Plan arise, not from EPA's partial approval, but because the plan complies with earlier requirements issued by EPA. (Guidelines, 40 CFR Part 256, and the "Criteria for Classification of Solid Waste Disposal Facilities and Practices," 40 CFR Part 257, as amended.) Today's action neither alters these earlier regulatory requirements nor imposes new or additional costs.

This notice of approval was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291.

(Sec. 4007(a), Pub. L. 94–580, 90 Stat. 2817 (42 U.S.C. 6947))

Valdas V. Adamkus,

Regional Administrator.

Subject: Partial Approval of Wisconsin Solid Waste Management Plan, Certification Under the Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the partial plan approval of the Wisconsin Solid Waste Management Plan will not have a significant economic impact on a substantial number of small entities. This approval reduces burdens on small entities by establishing a mechanism to insulate them from citizen suits to enforce the open dumping prohibition. This rule, therefore, does not require a regulatory flexibility analysis.

Dated: February 23, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82–5697 Filed 3–2–82; 8:45 am]

BILLING CODE 6560–38–M

40 CFR Part 260

[SWH–FRL–2064–4]

Hazardous Waste Management System; Summary of Rulemaking Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public notice of rulemaking petitions filed with EPA concerning the Resource Conservation and Recovery Act.

SUMMARY: This notice sets forth a list of petitions received in response to the regulations implementing the hazardous waste management system established by the Resource Conservation and Recovery Act (RCRA). Petitions cover both requests to make general changes to the regulations and specific requests to exclude, on a site-specific basis, wastes from regulation as hazardous. This notice updates the **Federal Register** of Monday, December 7, 1981 (46 FR 59537) and provides a list of all petitions received by the Agency subsequent to that publication as of January 31, 1982. This notice informs of the receipt and purpose of each petition and thereby allows interested parties to comment or respond on appropriate petitions.

FOR FURTHER INFORMATION CONTACT: For information on any of these petitions, the reader should contact Matt Straus at (202) 755–9187.

SUPPLEMENTARY INFORMATION: On May 19, 1980, EPA promulgated the first phase of regulations implementing the hazardous waste management system established by Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") by publishing 40 CFR Parts 260 to 265 and 122 to 124. Among other things, these regulations set forth informal rulemaking procedures whereby persons may (1) petition the Administrator to modify or revoke any provision in 40 CFR Parts 260 through 265 (see § 260.20); (2) petition the Administrator to add new testing or analytical methods to Parts 261, 264 or 265 if the person demonstrates that the proposed method is equal to or superior to the corresponding method prescribed in Parts 261, 264 or 265 (see § 260.21); or (3) petition the Administrator to obtain, on a site-specific basis, an exclusion of his listed waste from regulation as hazardous (see § 260.22).

Some commenters have indicated that they are prejudiced because the Agency does not publish any notice of receipt of a RCRA rulemaking petition (although the petitions are immediately available in the docket). EPA agrees that publication in the **Federal Register** noticing receipt of petitions could better serve the legitimate interests of potential commenters and of the Agency. Accordingly, the Agency began publishing in the **Federal Register** on December 7, 1981 a list of all petitions filed with the Agency under either § 260.20, 260.21 or 260.22. This notice is the second and updates that **Federal Register** notice by providing a list of all petitions received by the Agency subsequent to that publication as of January 31, 1982 and provides a brief summary of the substance of the petitions.

Dated: February 24, 1982.

Christopher J. Capper,

Acting Assistant Administrator, Solid Waste and Emergency Response.

I. Petitions Filed Under 40 CFR 260.20 and 40 CFR 260.21

[General Rulemaking and Petitions for Equivalent Testing or Analytical Methods]

Log No.	Company	Address	Brief summary of petition
R 022	Olin Water Services	51 Corporate Woods, 9393 W. 110th St., Overland Park, KN 66210.	Requests that § 265.176 be modified to allow containers holding ignitable or reactive waste within 50 ft. of the property line.
R 023	Engelhard, Engelhard Industries Division.	70 Wood Avenue, on 770, Iselin, NJ 08830.	Requests that § 262.34 be amended that would allow generators to store hazardous waste on-site in emergency surface impoundments for 90 days or less on the same or similar conditions as now apply for on-site storage in tanks.
R 024	Stablex Corporation	2 Radnor Corporate Center, Radnor, PA 19087.	Requests EPA to exclude the residue generated from the Stablex treatment process from being considered a hazardous waste at each and every permanent facility to be constructed by Stablex.

II. Petitions Filed Under 40 CFR 260.22

[Petitions to Amend Part 261 to Exclude a Waste Produced at a Particular Facility]

Log No.	Company	Address	Waste listings to be excluded
0248 A	R.R. Donnelley & Sons Co., Mattoon Manufacturing Division.	U.S. Rt. 45 N., Box 189, Mattoon, IL 61938	Chromium bearing waste.
0248 B	Hercofina	P.O. Box 327, Wilmington, NC 20402	F003.
0248 C	Olin Chemical Group	Doe Run Plant, P.O. Box 547, Brandenburg, KY 40108	F003.
0249	Monsanto Chemical Intermediates Co.	800 N. Lindbergh Blvd., St. Louis, MO 63166	K071.
0250	McLouth Steel Corp.	Trenton Plant, 1491 W. Jefferson, Trenton, MI 48183	K061.
0251	Western Processing Co.	7215 S. 196th St., Kent, WA 98031	F003 & other solvent bearing waste.
0252	Hercules, Inc.	P.O. Box 656, Franklin, VA 23851	F003.
0253	Brown Boveri Electric, Inc.	I–4 Industrial Park, 201 Hickman Dr., P.O. Box 1978, Sanford, FL 32771	F006.
0254	Celanese Fibers Co.	Box 1000, Narrows, VA 24124	F003, F005, F007 Lab waste U002, U019, U080, U112, U159.
0255	SK & F Lab. Co. Chemical Division	P.O. Box 2700, Guayama, PR 00654	Spent solvents.
0256	GMC Truck & Coach	660 S. Blvd. E., Pontiac, MI 48053	F006, F019.
0257	Hercules, Inc.	P.O. Box 249, Neck Road, Burlington, NJ 08016	F003.
0258	Teledyne Allvac	P.O. Box 759, 2020 Ashcraft Ave., Monroe, NC 28110	K063.

II. PETITIONS FILED UNDER 40 CFR 260.22—Continued

[Petitions to Amend Part 261 to Exclude a Waste Produced at a Particular Facility]

Log No.	Company	Address	Waste listings to be excluded
0259	General Electric Co.	P.O. Box 2188, Hickory, NC 28601	F006, F008, F017, F018.
0260	Heekin Can/Diamond International	8200 Broadwell Road, Cincinnati, OH 45244	chromium bearing waste.
0261	Texaco U.S.A.	P.O. Box 787, Port Neches, TX 77651	K051.
0262	Celanese Fibers Co.	Cherry Road Station, Rock Hill, SC 29730	F002, F003, F005.
0263	Qualitron Corp.	Box 410, Finance Drive, Danbury, CT 06810	F006.
0264	Diamond Shamrock Corp.	P.O. Box 631, Amarillo, TX 79173	K048, K049 F051.
0265	Uniroyal, Inc.	501 S. Water St., Stoughton, WI 53589	F003, F005.
0266	General Cable	P.O. Box 2647, 2000 E. Jackson St., Muncie, IN 47302	F012, F062.
0267	Welsh Co. of the South	Route 1, Box 1, Union Springs, AL 36089	F006.
0268	Tri-City Platers, Inc.	U.S. Highway 35, South, P.O. Box 20, Walton, IN 46994	F006.
0269	General Motors Corp., Delco Moraine Div.	1420 Wisconsin Blvd., Dayton, Ohio 45401	F006.
0270	Quaker State Oil Refinery Co.	Congo Plant, P.O. Box 336, Newell, WV 26050	K048, K051.
0271	Union Carbide Corp.	Plant 826, P.O. Box 710, Ashtabula, OH 44004	F007, K062.
0272	Ramsey Corp.	300 Ramsey St., Sullivan, Mo 63080	F006.
0273	Bethlehem Steel Corp.	Sparrows Point Plant, Baltimore, MD 21219	F006, K062.
0274	Hytec, Inc.	Rt. 13, 711 Airdustrial Way, Tumwater, WA 98502	Acetone Still Bottoms (F003).
0275	Whirlpool, Corp.	119 Birdseye St., Clyde, OH 43410	F006.
0276	Texas Instrument, Inc.	P.O. Box 225621, Dallas, TX 75265	F006.
0277	National Lock Washer Co.	Industrial Parkway, P.O. Box 5115, North Branch, NJ 08876	F006.
0278	Texaco	P.O. Box 712, Port Arthur, TX 77640	P106, P120, U019, U056, U135, U147, U154, U162, U169, U188, U220, U239, D002.
0279	Republic Steel Corp., Enduro Division	410 Oberlin Avenue, S.W., Massillon, OH 44646	K062.
0280	Ball Metal Container Group	9300 W. 108th Circle, P.O. Box 589, Westminster, CO 80020	F019.
0281	Gould, Inc.	100 Relay Road, Plantsville, CT 06479	F006.
0282	Ireco Chemicals	Seventh Floor, Kennecott Building, Salt Lake City, UT 84133	K047.
0283	MP & P, Inc.	346 Huntingdon Ave., P.O. Box 1484, Waterbury, CT 06708	F006.
0284	Ashland Petroleum Co.	P.O. Box 391, Ashland, KY 41114	K051.
0285	Rockwell International	Fourth & Park, P.O. Box 188, Atchinson, KS 66002	K061.
0286	Bell Helicopter (Textron)	P.O. Box 482, Fort Worth, TX 76101	F006.
0287	Aluminum Company of America	Warrick County Plant, P.O. Box 10, Highway 66, Newburgh, IN 47630	F019.
0288	Aluminum Company of America	Tifton Plant, Southwell Blvd., P.O. Box E8, Tifton, GA 31793	F019.

[FR Doc. 82-5702 Filed 3-2-82; 8:45 am]
BILLING CODE 6560-30-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3420

[Circular No. 2498]

Amendments to Competitive Leasing Regulations of Coal Management Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends those provisions of the Federal Coal Management regulations that establish deadlines for the submission of surface owner consents or written evidence thereof prior to coal lease sales for lands to which the consents apply and that describe the availability of information concerning the purchase price, financial obligations and terms and conditions of such consents. These amendments will clarify the procedures on surface owner consents and written evidence thereof.

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Any suggestions of inquiries should be sent to: Director (540), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Monte Jordan, (202) 343-4636 or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: On December 16, 1981, a proposed rulemaking making amendments to the Federal Coal Management program, 43 CFR Part 3400, was published in **Federal Register** (46 FR 61390). Contained in that proposed rulemaking was a proposal to change the deadline for filing qualified surface owner consents with the Bureau of Land Management prior to a coal lease sale for lands to which the consents apply. This final rulemaking clarifies the method of establishing the deadline for filing of qualified surface owner consents and eliminates inconsistencies within the proposed rulemaking regarding the availability to the public of the purchase price, financial obligations and terms and conditions of such consents.

The proposed rulemaking contained a revision to § 3427.1 that would require consents to be filed only prior to a lease sale for lands to which consents apply rather than prior to the issuance of a lease sale notice for the lands as specified in the existing regulations. This proposed change reflects the Department of the Interior's intention to provide industry with as much time as possible to obtain and file consents before a regional lease sale while retaining the existing policy of requiring consents to be obtained and filed before a lease sale is held for lands to which consents apply. By the term "lease sale", the Department means, and has always meant, the public opening of sealed bids and subsequent oral bidding, if any, on the lease tracts. This final rulemaking promulgates the proposed change and makes other minor revisions to the regulations that were overlooked in the proposed rulemaking but are necessary to maintain consistency with the change in § 3427.1.

More than 60 comments were received on the proposed rulemaking, but only a few of them addressed the method of establishing the deadline for filing qualified surface owner consents. Those specific comments are discussed below.

Section 3422.2(c)(10), renumbered § 3422.2(c)(6) in the proposed rulemaking, has been revised further to indicate that the detailed statement of the lease sale will contain the terms and conditions of consents that have been filed and verified prior to posting of the lease sale notice. Consents filed after the sale notice has been posted and the detailed statement made available to the public will become part of the official file for the lease tract and will be available for inspection by the public at the appropriate Bureau of Land Management State office. This change, even though not made in the proposed rulemaking, is consistent with other revisions made in the proposed rulemaking allowing consents to be filed after posting and publication of the lease sale notice. As a result of these revisions in the proposed rulemaking, it is evident that the detailed statement cannot contain the terms and conditions of consents that have yet to be filed. The consents filed after the posting of the lease sale notice will be available for

public inspection upon receipt and verification to allow potential bidders to consider the purchase price, financial obligation and terms and conditions of the consents in formulating their bids.

No comments were received on § 3427.1 of the proposed rulemaking. This section requires consents to be filed before a lease sale is held for lands to which the consents apply. This will allow lands subject to consent to be listed in a lease sale notice even though consents have not been filed, providing more time for obtaining and filing consents before a lease sale. Lands for which consents are required but not received by the filing deadline will be withdrawn from the lease sale.

Several comments were received on § 3427.2(a)(1). All but one of the comments advocated establishment of a filing deadline for consents that is after, not before, the posting of the lease sale notice for lands to which consents apply. One comment advocated retention of the existing regulations establishing the filing deadline as 30 working days prior to publilcation of the lease sale notice. After consideration of these comments and the way current regulations would operate in the Powder River Region, § 3427.2(a)(1) of the proposed rulemaking has been further amended to specify that the deadline for filing consents for lands to be offered in regional lease sales will be established on a sale-by-sale basis. This will eliminate the uncertainty about the filing deadlines that can occur under the existing regulations, where the actual filing deadline has passed by the time the date of publication of the lease sale notice is definitely known. This provision in the existing regulations amounts to a retroactive deadline. Also, the establishment of a deadline for filing consents that predates the lease sale by two months or more serves no useful purpose and might have caused delays in lease sales if consents have not been filed before this early deadline passes.

Section 3427.2(a)(1) of this final rulemaking also requires consents for lands offered for lease sale pursuant to lease applications under Subpart 3425 to be filed prior to posting of the lease sale notice. This change puts the burden of obtaining and filing consents for these lands on the applicants requesting the lease sale before the lease sale is scheduled and the sale notice posted.

Section 3427.2(f), renumbered § 3427.2(e) in the proposed rulemaking, has been amended by deletion of the word "transferable" from the section. This deletion is being made to clarify that this section applies to nontransferable consents obtained prior to August 4, 1977, as set out in the discussion of § 3427.4, as well as consents obtained on or after August 4, 1977.

Section 3427.2(g), renumbered § 3427.2(f) in the proposed rulemaking, is being amended to state that the authorized officer must confirm that the consents or written evidence thereof comply with the applicable provisions of § 3427.2 (e) and (f) before the lease sale for the lands to which the consents apply is held. If consents filed prior to the filing deadline are subsequently found to not comply with the requirements for such consents, or if verification has not been made for any reason, the lands for which the consents are required will be withdrawn from the lease sale and bids will be returned unopened. This revision makes this rulemaking consistent with the other provisions contained in this final rulemaking by acknowledging that the deadline for filing consents may, or in some cases will, be after the posting of the sale notice, and that consents obtained prior to August 4, 1977, need not meet the provisions of § 3427.2(e)(1).

Section 3427.2(h), renumbered § 3427.2(g) in the proposed rulemaking, is being amended in this final rulemaking to state that the purchase price and the terms and conditions of consents will appear in the lease sale notice and detailed statement, respectively, only if the consents have been filed and verified prior to posting of the lease sale notice. All other comments will be available for inspection by the public in the official lease tract files in the appropriate Bureau of Land Management State office. This amendment will bring this section into conformance with other changes made in the proposed rulemaking.

Section 3427.4 will be amended to state that consents given prior to August 4, 1977, specifically do not have to meet the transferability provisions of § 3427.2(e)(1). This change, which was not a part of the proposed rulemaking, will clarify the purpose and intent of § 3427.4.

Section 714(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304(c)), specifically validates consents granted prior to its enactment. The purpose of § 3427.4 is to acknowledge as valid pre-Surface Mining Control and Reclamation Act consents that are not now transferable within the meaning of § 3427.2(e)(1). Lease sales may be held for lands covered by such consents with no further obligation on the part of the grantor and grantee to amend the consent to meet the transferability requirement of § 3427.1(e)(1). However, § 3427.4 does not absolve persons filing pre-Surface Mining Control and Reclamation Act consents from meeting the other reporting and validation requirements of § 3427.2, especially the requirement to disclose the purchase price and terms and conditions of such pre-Surface Mining Control and Reclamation Act consents. Even though pre-Surface Mining Control and Reclamation Act consents need not be automatically transferable to the high bidder for a coal lease covering the lands to which the consents apply, it is in the public interest for potential bidders to be aware of the cost and terms and conditions of the consent to its present holders so that bids may be formulated with full knowledge of the existing conditions on the lease tract. Disclosure of the costs and the terms and conditions of pre-Surface Mining Control and Reclamation Act non-transferable consents does not constitute an obligation on the part of the consent holders to transfer the consents to the high bidder at the same or any price; disclosure is intended only to promote competition by allowing all potential bidders access to the same surface owner consent information. It will be the responsibility of the high bidder, if other than the consent holder, to negotiate with the consent holder for the acquisition of the consent.

The Department of the Interior recently adopted a new policy regarding lease sale methods for lands covered by pre-Surface Mining Control and Reclamation Act non-transferable consents. Under the previous policy, such lands could be offered only by intertract sale procedures. The new policy permits such lands to be sold by standard single-tract sale procedures described in § 3422.3–1, as well as by intertract sale procedures.

The changes made in this final rulemaking will be repeated in the finalization of the proposed rulemaking that was published on December 16, 1981, in order to conform them to the new section and paragraph numbers of that document.

This final rulemaking is being made effective upon publication because it relieves both the public and the Bureau of Land Management of self-imposed, non-statutory restrictions and thus meets the provision of 5 U.S.C. 553(d)(1) related to making final rulemakings effective less than 30 days after their publication date.

The provisions in this final rulemaking will have their most immediate effect on the first Powder River regional lease sale in April 1982. Under the existing regulations, the filing deadline for

consents would have been approximately February 25, 1982. In accordance with the provisions in this final rulemaking, the deadline for filing consents for tracts to be offered in this sale will be April 5, 1982. A separate notice will be published in the **Federal Register** announcing the new filing deadline. Any consents filed with the appropriate Bureau of Land Management State office on or before this new date will receive consideration. Consents filed after April 5, 1982, will be accepted but will not be acted upon before the lease sale, and tracts containing lands covered by consents filed after April 5, 1982, will be withdrawn from the lease sale. The Bureau retains the discretion to reoffer such tracts for lease sale or to reconsider the lands for coal leasing in the next round of activity planning in that region.

The principal author of this final rulemaking is Walter Rewinski, Division of Coal, Tar Sands and Oil Shale, Bureau of Land Management, assisted by Larry McBride, Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in this amendment to 43 CFR Part 3420 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0073.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 et seq.), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) and the Multiple Mineral Development Act (30 U.S.C. 521–531), Part 3420, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

David C. Russell,

Assistant Secretary of the Interior.

February 24, 1982.

PART 3420—COMPETITIVE LEASING

1. Section 3422.2(c)(10) is revised to read:

§ 3422.2 [Amended]

* * * * *

(c) * * *

(10) If appropriate, contain (i) a copy of any written qualified surface owner consent, including purchase price, financial obligations and terms and conditions, filed and verified prior to the posting of the notice of lease sale in the appropriate Bureau of Land Management State office; or (ii) a listing of lands for which qualified surface owner consent is required prior to lease sale but has not yet been filed, along with a statement that any consent for those lands filed prior to the deadline for such filings shall be made a part of the official file and shall be available for inspection by the public;

2. Section 3427.1 is revised to read:

§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0–5) where the surface is owned by a qualified surface owner, coal deposits that will be mined by methods other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0–5) allowing entry and commencement of surface mining operations.

3. Section 3427.2 is amended by:

a. Revising paragraph (a)(1) to read:

§ 3427.2 [Amended]

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State office (43 CFR Subpart 1821). For lands offered for lease sale pursuant to Subpart 3420 of this title, consents or written evidence thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the **Federal Register**. For lands offered for lease sale pursuant to Subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice.

* * * * *

(b) Amending paragraph (f) by removing the word "transferable";

(c) Revising paragraph (g) to read:

* * * * *

(g) The applicable conditions of paragraphs (e) and (f) of this section shall be met prior to the lease sale for the lands to which the consents apply.

* * * * *

(d) Revising paragraph (i) to read:

* * * * *

(i) The purchase price of any applicable written consent from a qualified surface owner submitted and verified prior to posting of the notice of lease sale shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement of the tract sale. Any consent filed after posting of the notice of lease sale shall be placed in the official file for the lease tract(s) to which the consent applies and shall be available for inspection by the public in the appropriate Bureau of Land Management State office (43 CFR Subpart 1821).

* * * * *

4. Section 3427.4 is revised to read:

§ 3427.4 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 4, 1977, shall not be required to meet the transferability provisions of § 3427.2(e)(1) of this part.

[FR Doc. 82-5670 Filed 3-1-82; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Amdt. No. 12 to Service Order No. 1493]

Escanaba and Lake Superior Railroad Company Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 12 to Service Order No. 1493.

SUMMARY: Amendment No. 12 extends the expiration date of Service Order No. 1493, which authorizes Escanaba and Lake Superior Railroad Company to use tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee) (MILW). The MILW Trustee has indicated that sufficient progress has been made in negotiations on compensation and that he concurs with this extension.

EFFECTIVE: 11:59 p.m., February 28, 1982, and continuing in effect until 11:59 p.m., March 30, 1982, unless modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:
M. F. Clemens, Jr. (202) 275–7840 or 275–1559.

SUPPLEMENTARY INFORMATION:

Decided: February 25, 1982.

Upon further consideration of Service Order No. 1493 (46 FR 10742, 14896, 19822, 25311, 34593, 39148, 44190, 49127, 54562, 58491; 47 FR 624 and 4690), and good cause appearing therefor:

§ 1033.149 [Amended]

It is ordered, § 1033.1493 *Escanaba and Lake Superior Railroad Company Authorized to use Tracks and/or Facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee).* Service Order No. 1493 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended to permit an additional (30) thirty days for the Escanaba and Lake Superior Railroad Company to complete compensation negotiations, and shall expire at 11:59 p.m., March 30, 1982, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1982.

(49 U.S.C. 10304–10305 and sec. 122, Pub. L. 96–254)

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-5694 Filed 3-2-82; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1100

[Docket No. 37130 (Sub-No. 1)]

Special Docket Proceedings; Waiver of Insignificant Amounts and Simplification of Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting new rules which will (1) implement section 207(c) of the Staggers Rail Act of 1980 (Pub. L. 96–448) by expanding its Special Docket regulations to establish standards and procedures whereby rail carriers can waive collection of insignificant amounts due from shippers in connection with rate increases which are suspended and later found reasonable; and (2) simplify and streamline the Special Docket process itself to eliminate delay and paperwork and to open up the process to public scrutiny.

EFFECTIVE DATE: This notice will be effective on June 1, 1982.

FOR FURTHER INFORMATION CONTACT:
Martin E. Foley, (202) 275–7348, or Donald W. Simmons, (202) 275–6883.

SUPPLEMENTARY INFORMATION: In our notice in this rulemaking (46 FR 8601, January 27, 1981) we proposed to revise our entire Special Docket process and, in so doing, to implement the Congressional mandate contained in section 207(c) of the Staggers Act of 1980. This section requires carriers to collect from the shipper the difference between the original rate and the portion of the suspended rate found to be reasonable, plus interest, in those instances where a rail rate increase is suspended by the Commission but later is found to be reasonable in whole or in part. It also requires the Commission to establish standards and procedures permitting a rail carrier to waive the collection of those amounts which are not significant. These requirements are now codified at 49 U.S.C. 10707(d) (2) and (4).

We have considered all comments filed. We have analyzed the issues and arguments not discussed here and found them either unpersuasive or unnecessary. We have decided to adopt the proposed rules with minor modifications—some of which were suggested in the comments and others which are being made for clarification purposes only.

The adopted rules will eliminate the Special Docket application form (except for a brief transition period) in favor of a simple letter-petition system. Basically, it will consist of a three-letter process:

(1) A Letter of Registration (if necessary to toll the Statute of Limitations);

(2) A letter of Intent (to pay reparations, to waive the collection of undercharges, or to waive the collection of insignificant amounts); and

(3) A Letter of Disposition (advising the Commission of the action taken).

The registration process presently in use will be essentially unchanged. Carriers will still be able to toll the statute of limitations by filing a letter of registration setting forth the essential facts when they are unable to file a Letter of Intent within the statutory period and the claim is not already protected from the operation of the statute by informal complaint. The Commission will continue to assign a Special Docket number to the case at that time and acknowledge receipt of the letter. However, we will no longer continue the practice of tracing the carrier for submission of the application (Letter of Intent), but we will require that Letters of Registration be followed by a Letter of Intent within one year or they will be dismissed for lack of prosecution (subject, of course, to the Six-Months' rule described at 49 CFR 1100.23(f)).

Letters of Intent will no longer be checked automatically for technical accuracy or conformity to precedent established on the formal docket, as they are at present. They will be checked only for compliance with the statute of limitations. Instead, all Letters of Intent will be made available within five days of receipt for public inspection for 25 days in the Board of Suspension Public File, Room No. 4339, at our office at 12th and Constitution Avenue NW., Washington, DC 20423.

If no letters of objection are filed, carriers will be permitted, after the passage of 45 days (from the date of our receipt of the Letter of Intent), to take the intended action without further Commission order—subject only to the requirement that a Letter of Disposition (advising us of the action taken, the date of the action and the amount paid or waived) be filed with the Commission within 30 days after the expiration of the 45-day period.

If a Letter of Intent is contested, carriers will not be allowed to take any action until the case is reviewed by the Special Docket Board and an appropriate order either granting or denying the petition is issued. No letter of disposition to the Commission will be required in cases decided by an order of the Board, and all Board decisions will continue to be subject to appeal to a Division of the Commission.

In traditional Special Docket cases—i.e., those involving requests to pay reparations or to waive undercharges—a Letter of Intent must always be filed with the Commission, regardless of the amount of money involved. This will not be the case, however, in connection with waiving the collection of amounts due from shippers when a suspended rate increase is later found to be reasonable. In these cases, amounts due which total $2,000.00 or less may be waived on the carrier's own volition, subject only to the requirement that a Letter of Disposition be filed informing the Commission of the action taken. For all requests for waiver of amounts due that are above the threshold figure of $2,000.00, however, a Letter of Intent must always be filed.

Specific Issues

The level of this threshold figure emerged as the central issue in the comments. Although the $2,000.00 figure was proposed in our NPR as the most logical level, we specifically invited comments on its appropriateness. This figure was attacked by various commenters both as too high and too low, but the comments on balance supported our view that it was a practical reflection of the average costs of recovering additional freight charges when instituting and pursuing litigation. As we pointed out in our NPR, this does not mean that amounts *over* the threshold figure will necessarily be deemed "significant" and cannot be waived. This will depend, for example, on the relative size of the shipper and carrier, patterns of business, etc.—information which should be included as part of the justification statement in the Letter of Intent.

The threshold figure is to be applied per "person" as that term is defined at 49 U.S.C. 10102(16). That is, the $2,000.00 threshold may be invoked by a carrier only once for any person who uses the suspended rate during the suspension period. Thus, a carrier would measure the $2,000.00 figure against billing for the total number of separate shipments moving for the same "person" under the same rate during the period of suspension. This precludes for example, splitting a $10,000.00 claim into five $2,000.00 claims to avoid exceeding the threshold level. It does not, however, preclude more than one $2,000.00 waiver for the same person when there are different movements of traffic moving under different rates.

Two commenters asked that the threshold feature be extended to apply to *all* Special Docket cases—that is, to allow payment of reparations and waiver of undercharges to be handled between the parties (subject only to the Letter of Disposition requirements) when the amounts are $2,000.00 or less. Other individual carrier commenters oppose this proposal, expressing concern that the more prosperous carriers would use the covert return, or waiver, of sums up to $2,000.00 per shipment as a "marketing tool".

We believe there may merit in the proposition that the $2,000.00 threshold feature be extended to all Special Docket cases and therefore the matter will be furthered considered in a forthcoming rulemaking proceeding.

Two comments express concern over the requirement (§ 1100.23(e)(1)(viii)) that the Letter of Intent contain an admission that the assailed rate was "unreasonable". One party suggests an admission of "inapplicability" as an alternative to the admission of unreasonableness. A second party is apprehensive that an admission of unreasonableness "may well have adverse consequences for the carrier in other proceedings". These concerns are misplaced, and likely reflect some confusion on the part of the commenters.

It would be inappropriate to offer an admission of "inapplicability" in a Special Docket setting because the very purpose of Special Dockets is to allow non-collection or reparation of *applicable* tariff rates. Thus, the Special Docket is a mechanism whereby applicable rates are deemed to be unreasonable under the particular circumstances attendant to the establishment or maintenance of the assailed rate as applied against specific movements of traffic. An admission of unreasonableness in a Special Docket carries no implication or assumption that the assailed rate would be unreasonable as applied at any other time, or under any other circumstances.

Regarding the issue of equal treatment we have been implored by the Commission's Office of Special Counsel and others to require that carriers include a certification in their Letters of Intent that all shippers similarly affected will be treated in a like manner. We believe, however, that such a requirement would be meaningless and unnecessary. Unlike the former process, the rules adopted here permit full public awareness of situations where carriers voluntarily offer lessened freight charges. The enhanced public awareness, made possible by public access to Letters of Intent and likely publication in trade journals, offers the best deterrent to discriminatory treatment. While we do not anticipate that carriers would utilize the new process as a device for conferring unlawful discrimination or favoritism, we shall investigate any pattern of unlawful activity that may emerge. Thus, the inclusion of a *pro forma* statement in Letters of Intent would hold no protections not already available.

We have been persuaded, however, as a result of the comments, to modify the adopted rules in connection with the information proposed to be required in the Letter of Intent for reparation and waiver of undercharge cases. Proposed section 1100.23(e)(1)(v), for example, would have required carriers to show the dates when the shipments involved were delivered or tendered for delivery. Several comments pointed out that in many cases, where compliance with the statute of limitations is clearly not at issue, such information is superfluous. Moreover, this information is generally not available at carriers' general offices, where the petitions are prepared, and must be obtained—at no little time and expense—from destination terminal and demurrage records. We are therefore revising this requirement to read as follows:

(v) The dates on which, or within which, the shipments moved and, when necessary to show compliance with the statute of limitations, the dates when the shipments were delivered or tendered for delivery.

If delivery dates are not shown, and our review of the Letter of Intent indicates that compliance with the statute is questionable, the petition will be returned to the filing carrier for insertion of the delivery information before being made available for public inspection.

We have also been persuaded to delete proposed § 1100.23(e)(1)(viii), which would have required carriers to show the dates the charges were paid, by whom paid, and by whom borne. As several commenters pointed out, this information is rarely called into question on the informal docket. Carriers are already required to keep adequate records to satisfy any question regarding the payment of charges, however, and should be prepared to provide that information upon request in connection with any individual petition that is contested.

We are allowing 90 days from the date of publication of this decision in the **Federal Register** for compliance with the adopted regulations. All petitions filed with the Commission before the compliance date are to be submitted on the present Special Docket form and will be reviewed by the Special Docket Board in the traditional manner. The Board will also act upon all applications presently on hand.

All petitions filed with the Commission after June 1, 1982, however, shall be prepared and submitted in accordance with the adopted rules contained in the Appendix to this decision. This 90-day period is necessary to accommodate those petitions which have already been prepared and are now being circulated to concurring carriers for verification and signature. In the interests of simplicity and uniformity, petitions submitted on the old form that are received on or after June 1, 1982, will not be accepted.

In our NPR, we certified, as required by 5 U.S.C. 603, that we anticipated no adverse economic impact on small businesses or organizations as a result of the rules proposed in this proceeding. Although we specifically invited comments on this issue, none were received. We have concluded that the adopted rules, which are essentially a relaxation of present requirements, will have no adverse economic impact on small businesses or organizations.

This decision will not significantly affect the quality of the human environment or conservation of energy resources.

(Sec. 207, Staggers Rail Act of 1980, 49 U.S.C. 10321, 49 U.S.C. 10707, 5 U.S.C. 553)

Dated: February 22, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham and Clapp.

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1100—GENERAL RULES OF PRACTICE

Chapter X of Title 49 of the Code of Federal Regulations is amended as follows:

1. By revising § 1100.23(e) as follows:

§ 1100.23 Informal complaints seeking damages (Rule 23).

* * * * *

(e) *Special-Docket Proceedings.*—(1) *Petitions based on damages.* Where the act provides for an award of damages for a violation, and a carrier is willing to pay them, or to waive collection of undercharges, petitions for appropriate authority should be filed by the carrier on the special docket by submitting either a Letter of Intent to Pay Reparations, a Letter of Intent to Pay Reparations and Waive Undercharges, or a Letter of Intent to Waive Undercharges. Such petitions, when not filed in connection with an Informal Complaint pending before the Commission, must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer admitting the matters stated in the petition. These petitions shall contain, as a minimum, the following information:

(i) The names and addresses of the complainants seeking damages.

(ii) The names of the defendants against which the claim is filed.

(iii) The amount of the claim.

(iv) The tariff authority for both the assailed and the sought rate.

(v) The dates on which, or within which, the shipments moved and, when necessary to show compliance with the statute of limitations, the dates when the shipments were delivered or tendered for delivery.

(vi) The points of origin and destination of the shipments and the routes of movement.

(vii) The commodity.

(viii) An admission by the carrier that the assailed rate was unreasonable, and a showing, where appropriate, that it has been moved from the tariff.

(ix) A statement certifying that all defendants against which the claim is lodged concur in the intent to pay reparations or waive undercharges.

(x) Evidence to show compliance with the statute of limitations.

(xi) A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.

If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a Letter of Registration setting forth the facts may be submitted by the carrier within the statutory period. This letter will also be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute. However, an appropriate Letter of Intent must be filed within one year following receipt by the Commission of the Letter of Registration.

(2) *Petitions to waive collection of insignificant amounts.* If a rail carrier wishes to waive the collection of amounts due under 49 U.S.C. 10707(d)(2), when such amounts are more than $2,000.00, a petition for appropriate authority should be filed by the carrier on the special docket by submitting a Letter of Intent to Waive Insignificant Amounts. These petitions should contain the following information:

(i) The name and address of the customer for whom the carrier wishes to waive collection.

(ii) The name and addresses of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the action.

(iii) The amount intended to be waived.

(iv) The number of the investigation and suspension case involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.

(v) The points of origin and destination of the shipments and the routes of movement, if relevant.

(vi) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.

If the amount to be waived is $2,000.00 or less, no petition need be filed prior to waiver, provided that this exemption may be invoked by a carrier only once for any person (as defined at 49 U.S.C. 10102(16)) who uses the suspended rate during the suspension period. However, a Letter of Disposition informing the Commission of the action taken, the date of the action, and the amount waived shall be submitted to the Special Docket Board, Interstate Commerce Commission, Washington, D.C., 20423, within 30 days of the waiver.

(3) *Public Notice and Protest.* Petitions on the Special Docket to pay reparations, waive the collection of undercharges or waive the collection of insignificant amounts shall be made available by the Commission for public inspection five (5) days after receipt, in the Board of Suspension Public File Room, Room 4339, 12th & Constitution Avenue, NW., Washington, D.C., 20423 and remain available for 25 days. Any interested person may protest the granting of a petition by filing a Letter of Objection with the Special Docket Board within 30 days of Commission receipt of the petition. Letters of Objection shall identify the Special Docket number, shall clearly state the reasons for the objection, and shall certify that a copy of the Letter of Objection has been served on all parties named in the petition. A period of 15 days will be allowed for reply.

(4) *Uncontested petitions.* A petition which is not contested will be considered an order of the Commission authorizing the action contemplated in the petition 45 days after Commission receipt of the petition. Within 30 days after the expiration of the 45-day period, the carrier filing the petition shall file a Letter of Disposition informing the Special Docket Board of the action taken, the date of the action, and the amount paid or waived.

2. By adding the word "contested" between the words "a" and "Special" in the first sentence of § 1100.23(f).

3. By adding the word "Contested" before the word "Special" at the beginning of the second sentence of § 1100.23(f).

[FR Doc. 82-5676 Filed 3-2-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF ENERGY

10 CFR Part 440

[Docket Number CAS-RM-80-514]

Weatherization Assistance for Low-Income Persons; Administrative Requirement

AGENCY: Energy Department.

ACTION: Amendment to the interim rule.

SUMMARY: The Department of Energy issues an amendment to the interim rule for the program for Weatherization Assistance for Low-Income Persons in order to implement a change to the program mandated by the Energy Security Act. Section 573 of the Energy Security Act changes the criteria and procedures which States participating in the program must use to select local agencies which receive Federal funds to perform weatherization work.

The Department believes that this particular program is unnecessary. State and local governments should be responsible for decisions concerning public assistance, including weatherization assistance. There are, moreover, Federal funds available through other programs to assist States and localities in weatherization work.

Although the Administration requested no funds for the program in fiscal year 1982, Congress did appropriate $144 million for it. As a result, the Department intends to implement the program through the 1982 grant cycle to the best of its ability. Today's amendment will enable the Department to award 1982 grants without delay and in full accordance with the requirements of the Energy Security Act. (The Department has requested that the program not be funded for fiscal year 1983).

EFFECTIVE DATE: March 3, 1982.

ADDRESS: Send comments to Department of Energy, Hearings and Dockets, Mail Stop 6B-025, 1000 Independence Ave., SW., Washington, D.C. 20585. Attention: CAS-RM-80-514.

FOR FURTHER INFORMATION CONTACT:

Sandra S. Monje, Division of Weatherization Assistance Programs, Department of Energy, Mail Stop 6A-045, Room 5G-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2207

Catherine Edgerton, Ofice of General Counsel, Department of Energy, Mail Stop 6E-087, Room 6B-144, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9513

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

II. Comments on Proposed Amendment and Content of Final Amendment

III. Regulatory Impact, Regulatory Flexibility Act, and Environmental Reviews; Effective Date

I. Introduction and Background

In order to comply with a statutory mandate, the Department of Energy (DOE or Department) today issues an amendment to the interim rule for the program for Weatherization Assistance for Low-Income Persons (program or Weatherization Assistance Program), 10 CFR Part 440, 45 FR 13028, February 27, 1980, under the Energy Conservation in Existing Buildings Act of 1976, as amended (Act), 42 U.S.C. 6851 *et seq.*

Today's issuance makes final and effective a proposed amendment to the interim rule published on January 12, 1982, 47 FR 1299. This amendment implements a change to the program mandated by section 573, 42 U.S.C. 6865, of the Energy Security Act (ESA), Pub. L. 96-294, 94 Stat. 611.

Section 573 of the ESA makes changes in the procedures and criteria which must be used to select local agencies which receive sub-grants from the States to conduct weatherization activities. Before amendment, paragraph 415(b)(2)(B) of the Act effectively operated to allocate virtually all funds for weatherization projects in the geographic area served by a community action agency (CAA) to the CAA. This advantage is referred to as the CAA "priority" in this notice. Section 573 of the ESA removes this priority and provides, in new paragraph 414(b)(4) of the Act, that in selecting a subgrantee, "preference" is to be given to any CAA, as well as any other public or nonprofit entity, which is carrying out or has conducted effective weatherization activities under the DOE or Community Services Administration (CSA) programs.

Section 573 reemphasizes that public comment is to be taken into account in the selection of sub-grantees which, as stated, may be CAA's or other public or nonprofit entities. Section 573 additionally specifies selection on the basis of each agency's experience and performance in weatherization or housing renovation activities, its experience in assisting low-income persons, and the agency's capacity to undertake a weatherization program in a timely and effective manner.

The Department believes that its Weatherization Assistance Program is unnecessary. State and local governments should be responsible for decisions concerning public assistance, including low-income weatherization assistance. State and local governments are much better able to assess individual needs and to provide an effective and efficient response.

There is no need for the program at DOE, moreover, because there are other Federal programs through which funds are available to assist States and localities with weatherization work. For fiscal year 1982, the Department of Health and Human Services (HHS) is allowing up to 15 percent of the Low-Income Home Energy Assistance Program funds to be allocated by the States for weatherization activities. This will provide up to $210 million from HHS (in addition to the $144 million Congress appropriated to DOE) in weatherization funds. The HHS program has the additional benefit of simple application and reporting processes and established channels to assist the needy. Weatherization funding can also be obtained through other Federal programs, such as the Community Development Block Grant Program administered by the Department of Housing and Urban Development.

Although the Administration requested zero funds for the DOE program in fiscal year 1982, Congress did appropriate $144 million for it. On December 23, 1981, the day the President signed legislation including this appropriation, DOE field staff was directed to notify all State grantees immediately of their tentative allocations and urge the preparation of State plans/applications. State grantees were advised to assume administration of the 1982 grant cycle in full accordance with the requirements of the ESA. Formal guidance on the 1982 grant cycle was issued on January 15, 1982.

Currently States are continuing to spend 1981 funds under a budget period extension through March 31, 1982. DOE field offices are now receiving and beginning to process 1982 grant applications from the States. The Department's plan is to award grants during the month of March. Final award, of course, has had to await the effectiveness of today's amendment in the program rule and at least brief final review of State applications against the final amendment.

II. Comments on Proposed Amendment and Content of Final Amendment

DOE received 25 written comments on the proposed amendment, and five speakers testified at the public hearing held on January 28, 1982. The majority of commenters expressed concern with the amendment in concept. They generally felt it would be a detriment to the program and should be abandoned.

The ESA imposes certain program changes which the Department does not have the discretion to reject. Moreover, the Department has no reason to believe that the minimum program changes mandated by the amendment need have any undue disruptive effect on the program. As the conference report to the ESA noted:

> It is not the intention of the Conferees to replace an agency currently operating a program under this title unless it can be shown that an alternative agency can provide superior program administration. Further, it is intended that changes in the administration of the program at the local level be undertaken as seldom as possible so that disruptions in service can be cut to an absolute minimum. S. REP. NO. 96-824, 96th Cong., 2d Sess. 306 (1980).

Other commenters suggested that the amendment should contain elements not specified in the language of the proposal, such as appeal rights for local agencies not selected, alternative or additional qualification tests, and credit for weatherization activities under programs other than DOE or CSA programs.

In proposing the amendment, the Department intended, and still intends, to provide States with as much flexibility in selecting sub-grantees as is permissible under the ESA. It would appear that neither the ESA nor the amendment, which closely tracks the statute, would preclude States, if they wished, from granting appeal rights. Moreover, credit for all weatherization work could be relevant in determining a local agency's weatherization experience and performance and its capacity to undertake a timely and effective weatherization program. The preference, however, is limited to weatherization work under the DOE and CSA programs. Any "qualification test" would be appropriate so long as it relates to the terms of the ESA, which are followed in the amendment.

The final amendment is the proposed amendment with only slight changes. The changes are not substantive, but are made either to track the ESA in certain respects even more closely than the proposal or as technical improvements. In accordance with the ESA provisions on sub-grantee selection, "CAA" is changed to "sub-grantee" in subparagraph (b)(2)(i) of section 440.14 of the program rule. Additionally, paragraphs (c), (d), (e), and (f) of this section are revised to delete the CAA priority, to incorporate the preference for certain weatherization work by CAA's and other public or nonprofit agencies, and to set forth three specific bases for local agency selection. Paragraphs (e) and (f) relate or conform provisions in the program rule on removal of unsatisfactory sub-grantees and addition of new sub-grantees to the ESA changes.

III. Regulatory Impact, Regulatory Flexibility Act, and Environmental Reviews; Effective Date

Today's issuance was reviewed under Executive Order 12291, 46 FR 13193, February 17, 1981. DOE has concluded that the rule is not a "major rule" under the Executive Order because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, this rule was submitted to the Director of OMB for a 10-day review.

The regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires, in part, an agency prepare a final regulatory flexibility analysis for any final rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register.** The discussion citing the conference report, above, is to the effect that the amendment should not be expected to have a significant impact on a substantial number of local agencies administering the program. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, DOE published a Notice of Availability of an Environmental Assessment (EA) (DOE/EA-0085) of the Grants Program for Weatherization Assistance for Low-Income Persons on April 10, 1979, in the **Federal Register,** 44 FR 21323. At the same time, DOE published notice of its negative determination, based on the EA, that the proposed action would not constitute a major Federal action significantly affecting the quality of the human environment, and that therefore no Environmental Imact Statement (EIS) was required.

DOE has reviewed the environmental impacts of the program amendment issued today. It is DOE's judgment that no new or additional environmental impacts are associated with DOE's amendment. The program amendment required by ESA does not require the addition of any new measures beyond those already contained in the program. It is, accordingly, DOE's determination that the environmental impacts of today's amendment have been adequately analyzed in the April 1979 EA; and that these impacts are not significant. Hence, the previous negative determination is still applicable, and no additional EA or EIS is required.

Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, provides that a substantive rule not become effective less than thirty days after its publication, unless the agency promulgating the rule finds goods cause to waive this delay and publishes this finding together with the rule. DOE finds good cause for immediate effectiveness of this amendment, in that this is the only way to award 1982 grants without delaying the program and in full accordance with the requirements of the ESA. As discussed above, DOE is prepared to award fiscal year 1982 funds during the month of March 1982.

(Energy Conservation in Existing Building Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*)

In consideration of the foregoing and effective immediately, DOE amends Part 440 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., March 1, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

10 CFR Part 440 is amended (1) by removing "CAA" in paragraph (b)(2)(i) of § 440.14 and inserting "sub-grantee" in its place and (2) by revising paragraphs (c), (d), (e), and (f) of § 440.14 to read as follows:

§ 440.14 Administrative requirements.

* * * * *

(c) The plan shall insure that—

(1) Each sub-grantee is a CAA or other public or nonprofit entity;

(2) Each sub-grantee is selected on the basis of public comment received during a public hearing conducted pursuant to paragraph (a) of this section and other appropriate findings regarding—

(i) The sub-grantee's experience and performance in weatherization or housing renovation activities;

(ii) The sub-grantee's experience in assisting low-income persons in the area to be served; and

(iii) The sub-grantee's capacity to undertake a timely and effective weatherization program; and

(3) In selecting a sub-grantee, preference is given to any CAA or other public or nonprofit entity which has, or is currently administering, an effective program under this part or under Title II of the Economic Opportunity Act of 1964, with program effectiveness evaluated by consideration of factors including, but not necessarily limited to, the following—

(i) The extent to which the past or current program achieved or is achieving weatherization goals in a timely fashion;

(ii) The quality of work performed by the sub-grantee;

(iii) The number, qualifications, and experience of the staff members of the sub-grantee; and

(iv) The ability of the sub-grantee to secure volunteers, training participants, and public service employment workers, pursuant to CETA.

(d) The plan shall insure that the funds received under this part will be allocated to the entities selected in accordance with paragraph (c) of this section such that funds will be allocated to areas on the basis of the relative need for a weatherization project by low-income persons, taking into account the factors referred to in paragraph (b)(1) of this section.

(e) If DOE finds that a sub-grantee selected to undertake weatherization activities under this part has failed to comply substantially with the provisions of the Act or this part and should be replaced, such finding shall be treated as a finding under § 440.30(d) for purposes of § 440.30.

(f) Any new or additional sub-grantee shall be selected at a hearing in accordance with paragraph (a) of this section and upon the basis of the criteria in paragraph (c) of this section.

[FR Doc. 82-5922 Filed 3-2-82; 11:21 am]

BILLING CODE 6450-01-M

Proposed Rules

Federal Register
Vol. 47, No. 42
Wednesday, March 3, 1982

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 ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 794

[Docket No. CAS-RM-81-406]

Loans for Wind Energy Systems and Small Hydroelectric Power Projects; Cancellation of Public Hearing

AGENCY: Energy Department.

ACTION: Notice of proposed rulemaking; cancellation of public hearing.

SUMMARY: The Department of Energy hereby cancels the public hearing on Loans for Wind Energy Systems and Small Hydroelectric Power Projects scheduled for Tuesday, March 9, 1982, in Washington, D.C. The public hearing is cancelled due to lack of public interest in making oral presentations at the hearing.

DATES: As stated in the notice of proposed rulemaking issued on February 3, 1982 (47 FR 6776, February 16, 1982), written comments on Loans for Wind Energy Systems and Small Hydroelectric Power Projects must be received by the Department on or before 4:30 p.m., April 19, 1982.

ADDRESS: Send comments to Department of Energy, Hearings and Dockets Mail Stop 6B-025, 1000 Independence Ave., S.W., Washington, D.C. 20585, Attention: CA5-RM-81-406.

FOR FURTHER INFORMATION CONTACT: Peter R. Goldman, Wind Energy Technology Division, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 5F-081, Washington, D.C. 20585, (202) 252-1995.

Issued in Washington, D.C., March 1, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 82-5921 Filed 3-2-82; 10:35 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

[Docket No. R-0386]

Statement of Policy on Bank Acquisitions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed policy statement.

SUMMARY: In the interest of simplifying and expediting the processing of applications for bank acquisitions requiring Board approval and in the interest of providing guidance to the public concerning the competitive analysis applied by the Board of Governors of the Federal Reserve System ("Board") in passing upon bank acquisitions, mergers or consolidations, the Board is issuing for public comment a policy statement setting forth proposed guidelines. The guidelines describe the circumstances under which market extension proposals may be subject to an in-depth inquiry by the Board or the relevant Federal Reserve Bank before a determination is made regarding the competitive effects, and should lead to a substantial reduction in the number of cases requiring such an inquiry.

The proposed guidelines do not deal with the issue of horizontal acquisitions, that is, acquisitions between direct competitors. The Board has incorporated the current Department of Justice Merger Guidelines into competitive analysis involving the elimination of existing competition; and the Board intends to issue guidelines in this area. Since the Department of Justice is revising its guidelines, however, the Board believes it more appropriate to defer issuing its own guidelines until the new Department of Justice guidelines are available.

DATE: Comments must be received on or before April 9, 1982.

ADDRESS: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All materials submitted should include the Docket Number R-0386.

FOR FURTHER INFORMATION CONTACT: Joe M. Cleaver, Assistant Director, Division of Research and Statistics (202/452-3906); or Anthony S. Winer, Attorney, Legal Division (202/452-2418), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Policy Statement of the Board of Governors of the Federal Reserve System for Assessing Competitive Factors under the Bank Merger Act and Bank Holding Company Act

The Board is required under the Bank Merger Act (12 U.S.C. 1828(c)) and the Bank Holding Company Act (12 U.S.C. 1842(c)) to pass upon the competitive effects of: (1) A merger, consolidation, or acquisition of assets or assumption of liabilities, if the acquiring, assuming, or resulting bank is to be a State member bank; (2) a proposal to become a bank holding company, to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company. The Board believes it can most effectively meet its statutory responsibilities and simplify and expedite the applications process by establishing criteria that identify more serious competitive questions and thus warrant the type of intensive scrutiny that could produce more detailed factual findings. Accordingly, the Board proposes to promulgate guidelines for market extension applications.

The following criteria will apply generally to the consideration of applications coming before the Board of Governors. The criteria will not ordinarily apply to a proposal in which the applicant is not a probable future entrant, as defined in the guidelines. It is important, however, to note the status of these criteria as "guidelines." The Board may, when necessary, require a greater or lesser degree of analysis in a particular case than would otherwise be indicated by the guidelines.

The Board will make an intensive examination of those situations that meet all four of the following criteria:

A. *The Market of the Firm To Be Acquired*[1] *is Highly Concentrated.* The market will be considered highly concentrated if the three-firm deposit[2] concentration ratio is 75 per cent or greater.[3]

B. *There are Relatively Few Probable Future Entrants Into the Market.* For the purpose of determining whether there are "relatively few" probable future

[1] Hereafter referred to as "the market."

[2] The term "deposit" refers to domestic commercial bank deposits.

[3] The Board believes that the competitive impact of thrifts and other suppliers of banking type services should be taken into account, although the weight of this factor will vary according to the facts of the individual case.

entrants, this term is deemed to mean six or fewer, excluding the applicant.[4]

For the purpose of these guidelines, "probable future entrant" is defined as a commercial banking organization that is not already located in the market and is either:

(1) One of the State's four largest, or

(2) A lower ranking organization with:

(a) Assets of $1 billion or more, or

(b) Assets of $500 million or more in States where there are no lower ranking commercial banking organizations with assets of $1 billion or more.

C. *The Market of the Firm To Be Acquired Is in an SMSA and Is Attractive for Entry.* The market will be considered attractive for entry if:

(1) The market has total deposits greater than $250 million, and

(2) The average growth rate of deposits during the last two calendar years: [5]

(a) Is equal to or greater than the growth rate of deposits in the State during that period, or

(b) Is equal to or greater than the growth rate of deposits nationwide during that period.

D. *The Firm To Be Acquired Is Among the Market Leaders.* A firm is a market leader if it is among the three largest in a market and accounts for 10 per cent or more of deposits in the market.

Board of Governors of the Federal Reserve System, February 26, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-5667 Filed 3-2-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

Exempt Royalty Oil

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rulemaking by cross-reference.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary excise tax regulations relating to exempt royalty oil. The Economic Recovery Tax Act of 1981 added exempt royalty oil to the class of oils which are exempt from the crude oil windfall profit tax. The exemption applies to oil removed after December 31, 1981. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed by May 3, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-313-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3459).

SUPPLEMENTARY INFORMATION: The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend 26 CFR Part 150. The final regulations, which are proposed to be based on the temporary regulations, would amend 26 CFR Part 51. For the text of the temporary regulations, see FR Doc. (T. D. 7811) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

These regulations are proposed to be issued under the authority contained in sections 4995 and 7805 of the Internal Revenue Code (95 Stat. 337 and 68A Stat. 917; and 26 U.S.C. 4995 and 7805).

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Treasury has certified that the requirements of the Regulatory Flexibility Act do not apply to this notice of proposed rulemaking as it will not have a significant economic impact on a substantial number of small entities. The regulations affect primarily individual royalty owners and do not significantly alter the recordkeeping duties of small entities. The exemption certificate procedure is beneficial to qualified royalty owners since they do not have to wait until the end of the year to receive a refund. Purchasers are relieved of withholding the Windfall Profit Tax where a certificate is furnished to them by a qualified royalty owner.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any

[4] This number is intended to be used as a general guideline, since no single number can be used as a true indicator in all circumstances.

[5] For which data are available.

person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82-5713 Filed 2-26-82; 2:41 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-5-FRL-1936-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes rulemaking on a revision to the Indiana State Implementation Plan (SIP) for total suspended particulates (TSP) pursuant to Part D of the Clean Air Act (Act) as amended in 1977 and other general provisions. The purpose of this notice is to discuss EPA's evaluation of the revision and to solicit public comments on the revision and on EPA's proposed action.

DATE: Comments on this revision and on the proposed EPA action must be received by April 2, 1982.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review:

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

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

and by appointment at:

File Number: B180, Air Programs Branch, Docket Room, 11th Floor, Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312-353-2211

Comments on this proposed rule should be addressed to: (Please submit an original and five copies is possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Susanne S. Karacki at 312-353-2211 or at the above EPA, Region V address.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Act, EPA designated parts of eleven counties in Indiana as nonattainment of the National Ambient Air Quality Standards (NAAQS) for TSP. These designated nonattainment areas were in Clark, Dearborn, Dubois, Howard, Lake, LaPorte, Marion, St. Joseph, Vanderburgh, Vigo, and Wayne Counties. On May 21, 1980, the State of Indiana requested that LaPorte County be redesignated from primary nonattainment to attainment. EPA approved this request on September 25, 1981 (46 FR 47220).

Part D of the Act requires each state to revise its SIP to meet specific requirements for the areas designated at nonattainment. These SIP revisions must demnstrate attainment of the primary TSP NAAQS as expeditiously as practicable, but no later than December 31, 1982. If attainment of the NAAQS by December 31, 1982 cannot be demonstrated for an area designated as nonattainment for TSP, an acceptable alternative SIP for that area must include provisions for applying reasonably available control technology (RACT) to stationary sources of particulate emissions and studying the nature and extent of the nontraditional particulate sources in the area. The study would then be used in designing a control strategy for such sources. The requirements for an approvable SIP are further described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

On June 26, 1979, pursuant to Part D of the Act, the State of Indiana submitted to EPA a proposed control strategy and regulations for TSP. EPA reviewed Indiana's submittal and proposed rulemaking on March 27, 1980 (45 FR 20432). Since March 27, 1980 Indiana has submitted new control strategies and regulations for TSP that have substantially modified many of those acted upon at that time. Based on these new submittals, EPA is reproprosing rulemaking action on the Indiana Part D TSP SIP. Accordingly, today's proposal supersedes all actions proposed in the March 27, 1980 notice for TSP except for Knauf Fiberglass. On July 3, 1980 (45 FR 45314) EPA proposed rulemaking for that portion of the Indiana Part D SIP pertaining to particulate emissions from iron and steel process sources. The

action proposed by EPA on July 3, 1980 is still relevant and, accordingly, the adequacy of the Indiana Part D SIP as it applies to the iron and steel industry (coke batteries and processes at integrated iron and steel mills) will not be addressed in this notice except to the extent that disapproval of 325 IAC 5–1 affects these sources.

The table below summarizes the regulations considered in today's proposed rulemaking on the Indiana Part D TSP SIP [1]) and other general provisions:

Regulation	Date of submittal	Proposed action
Codification of Air Pollution Control Board Regulations.	Oct. 6, 1980	Approval.
325 IAC 5–1 Opacity Limitations	Oct. 6, 1980	Disapproval.
325 IAC 6–1 Particulate Emission Limitations for Non-attainment Areas.	June 26, 1979	Approval.
Section 4 Compliance Time Schedules	Oct. 6, 1980	
Section 2(e) Foundry Melt Processes	Oct. 6, 1980	
325 IAC 6–1–17 Clark County	July 8, 1981	Approval.
325 IAC 6–1–8 Dearborn County	Oct. 6, 1980	Approval.
Amendments	Aug. 10, 1981	
325 IAC 6–1–9 Dubois County	Oct. 6, 1980	Approval.
325 IAC 6–1–15 Howard County	Jan. 29, 1981	Approval.
325 IAC 6–1–12 Marion County	Feb. 11, 1980	Approval.
Amendments	Oct. 28, 1981	
325 IAC 6–1–18 St. Joseph County	July 8, 1981	Approval.
325 IAC 6–1–16 Vanderburgh County	Jan. 29, 1981	Approval.
Amendments	Oct. 28, 1981	
325 IAC 6–1–13 Vigo County	Jan. 29, 1981	Approval.
Amendments	Oct. 28, 1981	
325 IAC 6–1–14 Wayne County	Oct. 6, 1980	Approval.
Amendments	Jan. 29, 1981	
325 IAC 1.1–3 Vigo County Redesignation:	May 26, 1981	Approval.
Schedule for development of Industrial Fugitive Dust Regulations (325 IAC 6–5).	Nov. 25, 1981	Conditional Approval. (Regulation is necessary for approvable Part D TSP SIP in Clark, Dearborn, Dubois, HOward, Marion, St. Joseph, Vanderburgh and Vigo Counties.)
Schedule for Nontraditional Dust Studies.	Jan. 29, 1981	Approval.
325 IAC 6–3 Particulate Emission Limitations for Process Operations.	Oct. 6, 1980	Approval.

In this notice EPA is specifying those portions of the proposed revisions to the Indiana SIP which it considers approvable, conditionally approvable, or disapprovable. For minor deficiencies, EPA proposes to approve the SIP on the condition that the State provides strong assurances that the deficiencies will be corrected by specified dates. The July 2, 1979 (44 FR 38583) and November 23, 1979 (44 FR 38583) **Federal Register** Notices discuss conditional approvals in more detail.

It should be noted that the measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations; or if it chooses, challenging the new regulations. In some instances, the present emission control regulations contained in the federally approved SIP are different from the regulations currently being enforced by the State. In these situations, the present federally approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally approved regulations. Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is an instance of delay or lapse of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the requirements of the new regulations and the requirements of the existing regulation such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new regulation. In this situation, the State may exempt a source from compliance with pre-existing regulation. Any exemptions granted will be reviewed and acted on by EPA either as a part of these promulgated regulations or as a future SIP revision.

The following sections of the notice discuss EPA's evaluation of the Indiana Part D TSP SIP and other general provisions. EPA solicits comments on both the proposed SIP revision and the proposed EPA action on these revisions from all interested parties. EPA also encourages residents and industries in adjoining State to comment on any interstate air quality impacts of the proposed revision.

[1] The Part D SIP Strategy for Lake County will be addressed in a subsequent notice.

II. Control Strategy Evaluation of the Indiana Part D SIP for TSP

The Indiana Part D SIP for TSP contains monitored air quality data trend analyses, point and area source emission inventories, meteorological data summaries, summaries of annual and short-term dispersion modeling studies, air pollution control regulations, economic and energy impact analyses, and reasonable further progress schedules. Indiana used dispersion modeling to develop a TSP control strategy to attempt to demonstrate attainment in all nonattainment counties. On January 29, 1981 the State submitted an "Indiana State Implementation Plan TSP Control Strategy Summary" which identified the State rule promulgation date, technical support document title and date, date of formal submittal to EPA, future amendments, and the basis of the Part D TSP SIP strategy for each nonattainment county. The January 29, 1981 strategy summary stated that the strategies for Lake,[2] Marion, and Vigo Counties demonstrated primary attainment and that the strategies for Clark, Dearborn, Dubois, Howard, St. Joseph, Vanderburgh, and Wayne Counties applied RACT but do not show attainment.

Section 172(b)(2) of the Act requires the implementation of reasonably available control measures as expeditiously as practicable. EPA has defined RACT as the lowest emission limit that is reasonably available considering technical and economic feasibility. It may require technology that has been applied to similar, but not necessarily identical source categories. In the nonattainment area control strategies RACT may mean more restrictive limitations than that required by the existing SIP regulations (i.e. existing SIP is not stringent enough to attain the standards) and generally no less restrictive than status quo (no removal of existing particulate control equipment.) It is not intended that extensive research and development be conducted before a given control technology can be applied to a source, but it does mean that in the case where

[2] As stated previously, the Lake County TSP strategy will not be addressed in this notice.

an emission limitation for a source is less stringent than a State-set generic RACT level, it should be documented on a case-by-case basis.

Indiana has defined generic RACT standards for power plants and industrial boilers, foundries, grain elevators and terminals, asphalt plants, incinerators and painting operations. These generic RACT levels, along with other information such as the existing degree of control were used to set source specific limitations for the sources in the Indiana nonattainment counties. In addition, the Indiana RACT strategy included visible emission regulations and a commitment by the State to develop industrial fugitive dust regulations.

A number of sources in the Indiana Part D SIP in counties where the strategy is based on RACT plus nontraditional particulate matter studies have emission limitations that are less stringent than RACT as defined by Indiana for that type of source. Given that these sources have annual emissions of less than 100 tons per year and/or are located in secondary nonattainment areas, EPA proposes to approve their emission limitations as RACT.

As a final part of the TSP strategy the State has submitted a schedule to complete and implement nontraditional particulate matter studies.

EPA has reviewed the TSP control strategies and regulations submitted by Indiana. A summary of EPA's findings is set forth below. A detailed discussion of EPA's evaluation can be found in the Indiana TSP SIP Rationale which is on file at the addresses above.

Nontraditional Particulate Matter Studies

Part D SIP control strategies that do not demonstate attainment despite the application of RACT for the emission sources must also contain a commitment to study the nature and extent of nontraditional particulate sources. On January 29, 1981 the State formally committed to perform a nontraditional particulate matter study and to develop a control strategy and regulations to control nontraditional sources for Marion, Dubois, Clark, Wayne, Dearborn, St. Joseph, Howard, and Vanderburgh Counties. The study will include the analysis of hi-vol filters, the identification of the sources which have contributed to the filter loading, a review of fugitive dust control demonstration projects, and the development of control strategies. EPA has reviewed the schedule of activities submitted by the State and found it to be approvable. However, the Indiana Part D TSP SIP remains deficient in this area because there is no commitment from the State to conduct nontraditional particulate matter studies in Vigo County. Accordingly, EPA proposes to approve the nontraditional fugitive dust studies portion of the Indiana Part D TSP SIP with the understanding that during the public comment period the State will commit to conduct nontraditional particulate matter studies in Vigo County and submit a schedule to do so.

325 IAC 5–1 Visible Emission Limitation

Visible emission regulations are an intergral portion of RACT for TSP sources and are a required component of a SIP for TSP pursuant to 40 CFR 51.19(c). The visible emission limitations submitted by the State on October 6, 1980 apply apply to all particulate sources in both attainment and nonattainment areas.

EPA has reviewed 325 IAC 5–1 and found it to be unapprovable for the following reasons.

1. The regulation allows greater than 60 percent opacity for a cumulative total of 15 minutes (60 readings) in a six-hour period. This limitation is a relaxation from the existing Indiana SIP opacity limitation which does not allow the exceedance of 40 percent opacity and would result in little, if any, control requirements for most sources.

2. It is unclear as to which provisions apply to stack sources and which provisions apply to non-stack sources.

3. It is internally inconsistent in that it refers to sections that do not exist.

4. The lack of a definition for "intermittent sources" make it impossible to determine which sources are subject to which provisions.

5. The lack of a definition or computation method for "continuous minutes" appears to allow almost unlimited temporary exemptions from the regulation.

6. It allows continuous emission monitoring to take precedence over opacity observations for determining compliance which precludes enforcement of opacity violations due to condensibles formed beyond the in-stack monitor and precludes an independent verification of compliance with the visible emission limitations by regulatory agencies.

Although not an approvability issue, the regulation does not contain specific procedures for correlating alternate opacity limits with stack test results. Failure to develop such a procedure will make it difficult to formulate valid alternate opacity limits for sources in compliance with mass limitations.

A detailed discussion of these deficiencies is set forth in the Rationale which is available at the addresses above.

In light of these deficiencies, EPA proposes to disapprove 325 IAC 5–1, Visible Emission Limitations for all sources in the State of Indiana. Indiana's regulation APC 3, as federally approved on October 28, 1975, will remain effective and enforceable statewide in attainment, nonattainment, and unclassified areas. EPA believes that the federally approved regulation APC 3 represents RACT for all sources including iron and steel sources and satisfies the requirement of the Act for an approvable Part D SIP for opacity.

Schedule for Development of Rule 325 IAC 6–5 Industrial Fugitive Dust Rule

An integral portion of RACT for TSP sources in nonattainment areas is industrial fugitive dust regulations. These regulations are necessary in all nonattainment areas where the Part D TSP control strategy is based on RACT and further studies of nontraditional sources and, in fact, are generally necessary in Indiana to demonstrate attainment in those nonattainment areas where the Part D TSP strategy is based on a modeled attainment demonstration.

On January 29, 1981 the State formally submitted a schedule for the development, adoption, promulgation, and submittal of its regulation to implement RACT on industrial fugitive emission sources (codified at 325 IAC 6–5) by November 15, 1981. On November 25, 1981 the State revised its projected submittal date to April 1982. EPA has reviewed this schedule and finds it approvable. However, the Indiana TSP SIP remains deficient in this area in that there are presently no approvable industrial fugitive dust RACT regulations in any of the nonattainment TSP counties covered by this notice. The proposed approval of the Indiana Part D SIP for TSP in Clark, Dearborn, Dubois, Howard, Marion, St. Joseph, Vanderburgh, and Vigo Counties is conditioned with the submittal of approvable industrial fugitive dust regulations by April 1982.

It should be noted that the present Indiana Part D SIP does not contain any short-term emission limits for some mineral aggregate operations and grain terminal operations that are specifically listed in 325 IAC 6–1–8 Dearborn County, 325 IAC 6–1–9 Dubois County and 325 IAC 6–1–15 Howard County. EPA proposes to approve the Indiana TSP regulations for the counties where these sources are located with the understanding that the State will include

regulations for the major sources without short term emission limits in its industrial fugitive dust regulations or that the State during the public comment period will submit or commit to a schedule to submit the missing short term emission limitations for the major sources in 325 IAC 6–1–8, 325 IAC 6–1–9, and 325 IAC 6–1–15.

325 IAC 6–1 Particulate Emissions for Nonattainment Areas

The TSP regulations in 325 IAC 6–1 submitted by the State on June 26, 1979, as amended on October 6, 1980, apply to particulate sources in nonattainment areas. The regulation contains general emission limitations (section 2), test methods (section 3), compliance timetables (section 4) and other general provisions (sections 5 and 6).

The general emission limitations in Section 2 are applicable to all sources with the potential to emit 100 tons or more of TSP per year or have actual emissions of 10 tons or more of TSP per year that are not specifically listed in the appendix to the rule. (The appendix to 325 IAC 6–1 (325 IAC 6–1–8 thru 325 IAC 6–1–18) contains source specific regulations for most sources in each nonattainment county. These regulations are discussed later in this notice.) Specific RACT based emission limitations are given for fuel combustion steam generators, asphalt concrete plants, grain elevators, foundries, glass container manufacturing, mineral aggregate operations and general sources.

EPA has evaluated the provisions of 325 IAC 6–1, Sections 1 through 6, and found them to be approvable. Accordingly, EPA proposes to approve 325 IAC 6–1, Sections 1 through 6, except as set forth below:

1. Section 2(d)(1)(A) which regulates grain elevators is expressed in terms of "0.03 grams per dry standard cubic foot." "0.03 grams" should be expressed in terms of "0.03 grains." This typographical error needs to be corrected. EPA proposes to approve section 2(d)(1)(A) with the understanding that the State will correct the typographical error.

2. Section 2(d)(2)(C) regulates the percent opacity from affected grain elevators as determined pursuant to 325 IAC 5–1. Since EPA is proposing to disapprove 325 IAC 5–1, EPA proposes to approve section 2(d)(2)(C) with the understanding that EPA will rely on the federally approved regulation APC 3 to determine percent opacity from affected grain elevators.

3. Section 3 specifies that the test methods to determine compliance with the regulation shall be conducted in accordance with the procedures set forth in Methods 1–5, Appendix A of 40 CFR Part 60 or other procedures approved by the Indiana Air Pollution Control Board (IAPCB). This section does not contain provisions to determine compliance with short term emission limits for process fugitive sources that do not vent through a stack such as grain elevators and mineral aggregate operations. The regulation also does not require other test procedures approved by the IAPCB to be submitted to EPA as a SIP revision. EPA proposes to approve section 3 with the understanding that alternative test methods approved by the IAPCB will be submitted to EPA as SIP revisions and during the public comment period the State will clarify the intent of this section for non-stack sources and submit the method that will be used to determine compliance for non-stack sources.

325 IAC 6–1–17 Clark County (Primary nonattainment), 325 IAC 6–1–18 St. Joseph County (Secondary nonattainment), 325 IAC 6–1–16 Vanderburgh County (Secondary nonattainment)

On the dates referenced in the summary table at the beginning of this notice the State submitted the control strategies and regulations for the nonattainment portions of Clark, St. Joseph, and Vanderburgh Counties. In the January 29, 1981 strategy summary Indiana stated that its Part D TSP SIP strategies for these counties do not show attainment, but do apply RACT and the commitment to perform the necessary nontraditional particulate matter studies. EPA has reviewed the technical support and regulations and agrees that the emission limitations for the Clark, St. Joseph, and Vanderburgh County sources represent RACT. Accordingly, EPA proposes to approve 325 IAC 6–1–17, 325 IAC 6–1–18, and 325 IAC 6–1–16 for Clark, St. Joseph, and Vanderburgh Counties. However, as discussed previously, approval of the Part D TSP SIP strategy for these three counties is conditioned on the submittal of approvable industrial fugitive dust regulations by April 1982.

325 IAC 6–1–8 Dearborn County (Primary nonattainment), 325 IAC 6–1–9 Dubois County (Primary nonattainment), 325 IAC 6–1–15 Howard County (Secondary nonattainment)

On the dates referenced in the table at the beginning of this notice the State submitted the control strategies and regulations for the nonattainment portions of Dearborn, Dubois, and Howard Counties. In the January 29, 1981 strategy summary Indiana stated that its Part D SIP strategies for these Counties do not show attainment, but do apply RACT and the commitment to perform the necessary nontraditional particulate matter studies.

EPA has reviewed the technical support and regulations and agrees that the emission limitations for the Dearborn, Dubois, and Howard County sources represent RACT with the exception of those sources with no short term emission limitations. EPA's proposed rulemaking action for these sources is discussed under industrial fugitive dust regulations. EPA proposes to approve the remainder of 325 IAC 6–1–8, 325 IAC 6–1–9, and 325 IAC 6–1–15 for Dearborn, Dubois, and Howard Counties. However, as discussed previously, approval of the Part D SIP strategy for these three counties is conditioned on the submittal of approvable industrial fugitive dust regulations by April 1982.

325 IAC 6–1–12 Marion County (Primary nonattainment)

On February 11, 1980 and October 28, 1981 the State submitted the control strategy and regulations for the nonattainment portions of Marion County. In the January 29, 1981 strategy summary Indiana stated that its Part D SIP strategy for Marion County demonstrated attainment of the primary TSP standards.

Indiana performed a dispersion modeling analysis which projects that a significant reduction in ambient TSP concentrations will occur by the application of at least RACT to major point sources. The remaining TSP reductions are projected to come from the control of area source emissions through a proposed residential open burning ban. The State utilized a modified version of the Climatological Dispersion Model (MCDM), the reference, multi-source long-term Gaussian dispersion model with five years (1960–64) of representative Indianapolis, Indiana meteorological data to predict the annual TSP air quality impacts. Larsen's transformation techniques were used to partially determine the 24-hour TSP impacts. EPA has reviewed the Marion County TSP analysis and found a number of technical deficiencies within the modeling methodology. They are as follows:

1. Inadequate receptor resolution. The State placed receptors 1.25 km apart where present guidance says that receptors should be placed 1.0 km apart with additional receptors placed approximately 0.5 km apart in maximum impact areas.

2. Although Indiana stated that five years of meteorological data were used results from only one critical year were submitted. The modeling results for the other four years should be submitted.

3. The State used Larsen's transformation model to predict the *maximum* 24-hour concentration at monitor sites based on the MCDM predictions. The State did not predict the *high, second high* 24-hour concentrations and thus did not specifically address the primary and secondary 24-hour TSP NAAQS. There are two primary TSP NAAQS, an annual geometric mean concentration of 75 $\mu g/m^3$ and a 24-hour average concentration of 260 $\mu g/m^3$ not to be exceeded more than once annually. The secondary NAAQS for TSP include an annual geometric mean concentration of 60 $\mu g/m^3$ (guideline only, not a standard) and a short term 24-hour average concentration of 150 $\mu g/m^3$ not to be exceeded more than once annually. The MCDM results for Marion County predicted a maximum annual concentration of 74.5 $\mu g/m^3$, which is just under the annual primary standard, and a maximum (not high, second high) 24-hour concentration of 326 $\mu g/m^3$, which does not address the 24-hour primary or secondary standard.

Although the State did not submit any data which specifically demonstrate that either the annual or 24-hour primary TSP NAAQS will be violated, additional receptors and the proper application of Larsen's transformation to estimate a high, second high are necessary before the primary or secondary standard attainment demonstration can be approved. It should be noted, however, that the predicted maximum 24-hour value far exceeds the 24-hour primary and secondary standards. In addition, since the Marion County residential open burning ban is an integral portion of the modeled control strategy, the ban must be adopted at the State level and submitted to EPA as part of the attainment demonstration.

However, since Indiana stated that the Marion County attainment strategy applied RACT on the point sources, since Indiana has commited to submit industrial fugitive dust regulations by April 1982, and since Indiana indicated on January 29, 1981 that Marion County was included in its nontraditional particulate matter studies, the alternate Part D TSP strategy of RACT (on both point sources and industrial fugitive dust sources) plus nontraditional fugitive dust studies rather than a rigorous attainment demonstration would apply in Marion County.

EPA has reviewed the regulations and technical support for Marion County and agrees that the emission limitations for the Marion County sources represent RACT. Therefore, EPA proposes to approve 325 IAC 6–1–12, except for those portions of the regulations which apply to RACT for the iron and steel process sources. As discussed previously, approval of the Part D SIP strategy for Marion County is conditioned on the submittal of approvable industrial fugitive dust regulations by April 1982. The approvability of the complete control strategy including the iron and steel process sources for Marion County will be addressed in a subsequent notice. It should be noted that EPA's proposed approval of the Marion County regulations does not preclude the State from resubmitting the Marion County modeled attainment demonstration with the necessary corrections and corresponding regulations.

325 IAC 6–1–13 Vigo County (Primary nonattainment)

On January 29, 1981 and October 28, 1981 the State submitted the control strategy and regulations for the nonattainment portions of Vigo County. In its submission Indiana stated that its Part D SIP strategy for Vigo County demonstated attainment of the primary particulate standard. On May 26, 1981, Indian requested that portions of Vigo County be redesignated attainment for TSP. This redesignation request is addressed later in this notice.

Indiana submitted a dispersion modeling analysis for Vigo County which was prepared by the Wabash Valley Environmental Association (WVEA) in cooperation with the Indiana Air Pollution Control Division and the Vigo County Air Pollution Control Division. WVEA utilized CDMQC, a reference, multi-source Gaussian dispersion model with five years (1974–1978) of Star J meteorological data from Terre Haute to predict a maximum annual geometric mean of 67.4 $\mu g/m3$. Although the model had the capability of predicting the high, second high 24-hour impacts through Larsen's transformations, this was not done by WVEA.

EPA has reviewed the Vigo County TSP analysis and found a number of technical deficiencies within the modeling methodology. They are as follows:

1. Inadequate receptor resolution. Receptors were placed 1.0 km apart in areas of high industrial activity and high population density and 2.0 km apart in more remote areas. Present EPA guidance says that additional receptors should be placed approximately 0.5 km apart in areas of high modeled concentrations.

2. Lack of a calibration analysis and inadequate support for background concentration. Because insufficient monitoring data were available for the base year, 1978, CDMQC was not calibrated. Nevertheless, WVEA still used the sparse 1978 monitoring data base to derive a background concentration.

To correct these deficiencies WVEA could use 1979 as the base year for calibrating the model. Sufficient 1979 data are available from 8 monitors in the county. The emission inventory could be updated to 1979 and 1979 meteorological data could be obtained. The intercept of the calibration curve can then be used as the background concentration.

3. Unacceptable 24-hour attainment demonstration. No support has been provided to support the State's claim that annual concentrations less than 69.5 $\mu g/m^3$ will protect the 24-hour standards. Larsen's transformations must be applied to the modeled annual concentrations to derive 24-hour concentrations. The conversion factor should include the appropriate standard geometric deviations based on the 1979 monitoring data.

Accordingly, although the modeling does not predict any violations of the NAAQS for TSP, deficiencies exist in the modeling which must be corrected before the attainment demonstration can be approvable.

As an alternative, the State can base its Part D TSP SIP strategy for Vigo County on RACT plus nontraditional particulate matter studies rather than a rigorous attainment demonstration. In this case, however, the State must commit to apply the industrial fugitive dust regulations and the nontraditional fugitive dust studies in Vigo County.

EPA has reviewed the technical support and regulations and agrees that the emission limitations for Vigo County represent RACT. Therefore, EPA proposes to approve 325 IAC 6–1–13, except for those portions of the regulations which apply to RACT for the iron and steel process sources. As discussed previously, approval of the Part D TSP SIP strategy for Vigo County is conditioned on the submittal of approval industrial fugitive dust regulations by April 1982. The approvability of the complete control strategy including iron and steel process sources for Vigo County will be addressed in a subsequent notice. It should be noted that EPA's proposed approval of the Vigo County regulations does not preclude the State from resubmitting the Vigo County modeled

attainment demonstration with the necessary correction and corresponding regulations.

325 IAC 6–1–14 Wayne County

On October 6, 1980 the State submitted the control strategy and regulations for the nonattainment portions of Wayne County. Amendments to the regulations and technical support document were submitted on January 29, 1981. On January 29, 1981 Indiana stated that its Part D SIP strategy for Wayne County does not show attainment, but does apply RACT and the commitment to perform the necessary nontraditional particulate matter studies. On November 20, 1980 Indiana requested that Wayne County be redesignated attainment for TSP based on the rural fugitive dust policy. EPA redesignated the nonattainment portions of Wayne County from nonattainment to unclassified on November 2, 1981 (46 FR 54340) based on uncertainties in the monitored data.

EPA has reviewed the technical support and regulations and agrees that the emission limitations for the Wayne County sources represent RACT. Accordingly, EPA proposes to approve the control strategy and regulations for Wayne County. Since EPA has redesignated Wayne County from nonattainment to unclassified, the submittal of approval industrial fugitive dust regulations for Wayne County is not a condition of EPA's approval in this notice.

III. General Provisions

The State has submitted a number of other provisions to be included in the SIP that are not specifically required by Part D of the Act. These provisions are addressed below.

Codification of the Indiana Air Pollution Control Board Regulations

On October 6, 1980 the State submitted a codification of the IAPCB Rules and Regulations to replace Appendix 8.1 which sets forth the current IAPCB regulations. The codification places the regulations into an organized framework that is consistent with the Indiana Administrative Code. This action codifies the Air Pollution Control Regulations APC 1 through APC 23 into 325 IAC 1.1–12 as set forth below:

New codification	Name	Former No.
325 IAC 1.1–1	Definitions	APC 1.
325 IAC 1.1–2	Ambient Air Quality Standards	APC 14.
325 IAC 1.1–3	Nonattainment/Attainment/Unclassifiable Designations	APC 22.
325 IAC 1.1–4	Episode Levels and Actions	APC 12.
325 IAC 1.1–5	Malfunctions	APC 11.
325 IAC 1.1–6	Stack Height Provisions	Part of APC 13, APC 23.
325 IAC 1.1–7	Miscellaneous Provisions	Part of APC 13, APC 15, APC 23.
325 IAC 2–1	Permits, PSD, Emission Offset	APC 19.
325 IAC 3–1	Continuous Monitoring of Emissions	APC 8.
325 IAC 4–1	Open Burning Limitations	APC 2.
325 IAC 4–2	Incinerator Limitations	APC 7.
325 IAC 5–1	Visible Emission Limitations	APC 3.
325 IAC 6–1	Particulate Emissions for Nonattainment Areas	APC 23.
325 IAC 6–1–8[1]	Dearborn County	APC 23, Appendix A.
325 IAC 6–1–9[1]	Dubois County	Do.
325 IAC 6–1–10[1]	Lake County TSP Point Source Strategy	Do.
325 IAC 6–1–11[1]	Lake County Fugitive Emission Strategy	Do.
325 IAC 6–1–12[1]	Marion County	Appendix A.
325 IAC 6–1–13[1]	Vigo County	Do.
325 IAC 6–1–14[1]	Wayne County	Do.
325 IAC 6–1–15[1]	Howard County	Do.
325 IAC 6–1–16[1]	Vanderburgh County	Do.
325 IAC 6–1–17[2]	Clark County	Do.
325 IAC 6–1–18[2]	St. Joseph County	Do.
325 IAC 6–2	Particulate Emission Limitations for Indirect Heating Sources	APC 4R.
325 IAC 6–3	Particulate Emission Limitations for Process Operations	APC 5.
325 IAC 6–4	Maximum Allowable Fugitive Dust	APC 20.
325 IAC 7–1	Sulfur Dioxide Emission Limitations	APC 13.
325 IAC 7–1–8	Sulfur Dioxide Emission Limitations for LaPorte, Lake, Marion, and Vigo Counties.	APC 13, Appendix A.
325 IAC 8–1	Volatile Organic Compound Emission Limitations	APC 15.
325 IAC 9–1	Carbon Monoxide Emission Limitations	APC 16.
325 IAC 10–1	Nitrogen Oxide Emission Limitations	APC 17.
325 IAC 11–1	Particulate Emission Limitations for Certain Foundries	APC 6.
325 IAC 11–2	Sulfuric Acid Plants	APC 10.
325 IAC 11–3	Coke Oven Batteries	APC 9.
325 IAC 11–4	Fiber Glass Insulation Manufacturing	Part of APC 23.
325 IAC 12–1 thru 18	New Source Performance Standards	Part of APC 23, APC 13, APC 3.

[1] October 6, 1980 Codification Numbers changed by letter dated January 29, 1981.
[2] Codification numbers assigned by letter dated March 18, 1981.

EPA proposes to approve the codification of the IAPCB Regulations from APC 1 through APC 23 to 325 IAC 1.1 through 325 IAC 12.18. It should be noted that this proposed approval is directed specifically to the codification numbering system change, not to the substance within each of the codified rules.

325 IAC 6–3 Particulate Emission Limitations for Process Operations (APC 5)

The October 6, 1980 submittal which codified APC 5 to 325 IAC 6–3 also included a substantive change to the process operation emission limitations. Section 2 of the rule has specific emission limitations for cement kilns and catalytic cracking units which commenced operation prior to December 6, 1968. Section 2(c) is a process weight table which has general applicability for all process sources. Although it is presumed that the applicable rule for catalytic cracking units or cement kilns which commenced operation after December 6, 1968 is the process weight table in section 2(c) this is not specifically stated and should be clarified. EPA proposes to approve this revision to 325 IAC 6–3 provided that the State during the public comment period confirms that catalytic cracking units or cement kilns which commenced operation after December 6, 1968 are subject to the process weight table in section 2(c).

325 IAC 1.1–3 Redesignation of Vigo County for TSP

On May 26, 1981 the State submitted Rule 325 IAC 1.1–3, Vigo County TSP Nonattainment Area Redesignation and the technical support documentation and requested that EPA redefine the primary TSP nonattainment designation boundaries in Vigo County. The State requested that Honey Creek, Fayette, Lost Creek, Otter Creek, and Sugar Creek Townships be redesignated from primary nonattainment to attainment, leaving only Harrison Township designated as primary nonattainment in Vigo County.

The State submitted eight quarters of representative quality assured monitoring data showing no violations of the NAAQS for TSP, in the areas requested to be redesignated, and a modeling analysis. Due to numerous deficiences, (See Vigo County Part D SIP discussion in this notice) the modeling data cannot be used to support the redesignation request.

However, the monitoring data submitted by the State indicates that Harrison Township is primary nonattainment and the remaining five townships can be properly reclassified as attainment. Therefore, EPA proposes to redesignate Honey Creek, Fayette, Lost Creek, Otter Creek, and Sugar Creek Townships as attainment of the primary and secondary NAAQS for TSP.

Harrison Township remains designated as primary nonattainment of the NAAQS for TSP.

Interested individuals are advised that a 30 day public comment period is being provided on this notice of proposed rulemaking. Public comments received on or before April 2, 1982 will be considered in EPA's final rulemaking.

A thirty day comment period is being provided to enable publication of final action on this submission as expeditiously as possible. Final action approving this revision would satisfy one of the requirements of a Part D SIP. Until the State has an approved Part D SIP, it is subject to the new source growth prohibitions of section 110(a)(2)(I) of the Clean Air Act. EPA believes that the thirty days will provide the public with ample time to review and comment on today's proposed rulemaking. All comments received will be available for inspection during normal business hours at the Region V Office listed at the front of this notice.

Final promulgation of this proposed action will follow analysis of the comments received and will depend on consistency with Sections 107, 110, and 172 et seq. of the Act.

Under Executive Order 12291 (Order), EPA must judge whether a regulation is "Major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. Today's action does not constitute a Major regulation because it primarily proposes to approve or conditionally approve provisions adopted by the State and submitted to EPA. Where EPA proposes to disapprove revised provisions, existing approved regulations will remain in effect and satisfy the requirements of Part D of the Act. This action, if promulgated, will remove the restrictions on industrial growth contained in Section 110(a)(2)(I) of the Act for TSP for the areas in Indiana covered by this action. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by the Order.

(Secs. 107, 110, 172, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407, 7410, 7502, and 7601(a)))

Dated: August 17, 1981.

Valdas V. Adamkus,

Regional Administrator.

Pursuant to the provisions of 5 U.S.C. section 605(b) I hereby certify that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action approves, conditionally approves and disapproves state actions. For approval and/or conditional approval it imposes no new requirements beyond those which the State has already imposed. For disapprovals the sources will remain subject to the applicable provisions of the Indiana TSP plan. Thus no additional requirements will be imposed on these sources.

Dated: February 27, 1982.

John E. Daniel,

Acting Administrator.

[FR Doc. 82-5777 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 180

[PP 9F2190/P217; PH-FRL-2060-8]

Norflurazon; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking proposes that tolerances be established for pesticide residues in rotational and follow-up crops and for other indirect or inadvertent residues for the herbicide norflurazon and its metabolite in or on certain follow-up agricultural crops from direct application to cotton. This proposed regulation to establish the maximum permissible level for residues of the herbicide in or on the raw agricultural commodities was requested by Sandoz, Inc.

DATE: Written comments must be received on or before April 2, 1982.

ADDRESS: Written comments to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of July 7, 1979 (44 FR 32737) which announced that Sandoz, Inc., 480 Camino del Rio South, Suite 204, San Diego, CA 92108, has submitted a pesticide petition (PP 9F2190) to the EPA. The petition proposed that 40 CFR 180.356 be amended by establishing tolerances for the combined residues of the herbicide norflurazon [4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3 (2*H*)-pyridazinone] and its desmethyl metabolite [4-chloro-5-amino-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3 (2*H*)-pyridazinone] in or on the raw agricultural commodities peanut plants at 0.6 part per million (ppm); soybean plants at 0.6 ppm; soybean seed, peanut seed, and peanut shells at 0.2 ppm.

These proposed tolerances would cover residues resulting in soybeans or peanuts as a follow-up crop when initial planting or cotton results in crop failure or a poor crop stand.

There were no comments received in response to this notice of filing.

On January 13, 1981, the Agency issued a final rule (46 FR 3018) with a general statement of policy, a statutory interpretation, and certain procedural rule changes, relating to the establishment of tolerances for pesticide residues under section 408(e) of the Federal Food, Drug, and Cosmetic Act in cases where residues do not result from use of the pesticide to produce, store, or transport the commodity in question.

Sandoz Inc. subsequently deleted the proposed tolerances for soybeans and reproposed tolerances for peanuts at 0.2 ppm and the hay, hulls, and vines of peanuts at 0.5 ppm.

The data submitted in the petition and other relevant material have been evaulated. The toxicology data considered in support of the proposed tolerances include: A rat acute oral LD_{50} study with an LD_{50} of 9,000 $\pm$ 1,271 milligrams (mg)/kilogram (kg); a 90-day rat feeding study with a no-observed-effect level (NOEL) of 500 ppm; a 90-day dog feeding study with a NOEL of 500 ppm; a 6-month dog feeding study with a NOEL of 150 ppm; a rat teratology study negative at 400 mg/kg/day (highest dose); a three-generation rat reproduction study with a NOEL of 375 ppm; a one-generation mouse reproduction study with a NOEL of 340 ppm; an AMES test and a reverse mutagenesis test including metabolic activation both negative for mutagenic activity; a 2-year rat chronic feeding/oncogenicity study with a NOEL of 375 ppm for chronic feeding and negative for oncogenic potential at 1,025 ppm (highest dose level); and a 2-year mouse chronic feeding/oncogenicity study discussed below. Data considered desirable, but lacking, are a teratology study in a second species and multitest mutagenicity studies.

Results of the 2-year mouse chronic feeding/oncogenicity study show a statistically significant increase in liver neoplasms in the male high dose group (1,360 ppm). The Agency has carefully evaluated the supporting data for these tolerances, and based on the following considerations, has determined that residues resulting from these tolerances will not result in a significant risk to humans.

Both rat and mouse chronic feeding/oncogenicity studies utilized *in utero* exposed or F1a generation animals. This is considered a very stringent test method for evaluating oncogenicity. Statistically significant oncogenic results did not occur in the rat oncogenic

study at any dose level tested with particular attention directed to evaluation of hepatocellular changes. There was no significant increase in carcinomas for any treatment group versus controls in the mouse test, or in the rat study.

The liver was demonstrated to be the target organ in both the rat and dog, as well as the mouse. The mouse, and particularly the male sex, is considered to be a very sensitive species to the development of proliferative and neoplastic liver lesions. However, statistically significant oncogenic effects did not occur in the mouse at comparable doses to those used in the rat study, but to a dose which was approximately four-fold greater (e.g. 50.75 mg/kg/day—rat; versus 204/mg/kg/day—mouse), than the highest doses tested in rats.

Statistically significant oncogenic effects occurred in high dose male mice surviving 18 months or longer, but particularly animals surviving to 24 months. These results may reflect geriatric effects rather than compound related responses at the high dose employed. The response was limited to effects on the liver, (e.g. hepatic proliferative changes).

The submitted mutagenicity studies showed no mutagenic activity.

The Agency has further determined that many of the tolerances requested (e.g. almonds, apples, pears) will result in no detectable residues at the level of method sensitivity of the test.

Tolerances have previously been established for apricots, cherries, cottonseed, cranberries, filberts, peaches, plums (fresh prunes), nectarines, and walnuts at 0.1 ppm. Based on a 6-month dog feeding study with a NOEL of 150 ppm and a safety factor of 1,000, the allowable daily intake (ADI) is 0.00375 mg/kg/day and the maximum permissible daily intake is 0.225 mg/day for a 60-kg human. Published tolerances utilize 1.01 percent of the ADI. The published tolerances and proposed additional tolerances utilize 38.58 percent of the ADI.

There are no regulatory actions pending against the chemical. The metabolism of norflurazon in plants and animals is adequately understood, and an analytical method (gas chromatography using an electron-capture detector) is available for enforcement purposes. The tolerances proposed under 40 CFR 180.356 by pesticide petition PP 9F2177 (Document No. [PP 9F2177/P213]), published in the **Federal Register** of February 17, 1982 (47 FR 6894), will be adequate to cover residues that would result in meat, milk, or poultry as delineated in 40 CFR 180.6(a)(2).

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the establishment of the tolerances will protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request, on or before April 2, 1982, that this proposed rulemaking be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this proposed regulation. Comments must bear a notation indicating the document control number "[PP 9F2190/P217]". All written comments filed in response to this petition will be available in the office of Richard F. Mountfort from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: February 18, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FOR TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.356 be amended by designating the existing text as paragraph (a) under the heading "Specific tolerances", and adding a new paragraph (b) under the heading "Indirect or inadvertent tolerances" to read as follows:

§ 180.356 Norflurazon; tolerances for residues.

(a) *Specific tolerances.* * * *

(b) *Indirect or inadvertent tolerances.* tolerances are established for indirect residues of norflurazon in or on the following raw agricultural commodities when present therein as a result of its application to the growing of cotton as follows:

Commodities	Parts per million
Peanuts	0.2
Peanut, hay	0.5
Peanut, hulls	0.5
Peanut, vines	0.5

[FR Doc. 82-5387 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3140

Combined Hydrocarbon Leasing; Conversion of Existing Oil and Gas Leases and Valid Mining Claims; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of date and time of filing of comments.

SUMMARY: After the publication of the proposed rulemaking covering the Conversion of Existing Oil and Gas Leases and Mining Claims, 43 CFR Part 3140, in the **Federal Register** on March 1, 1982 (47 FR 8734), it was determined that the date and time for filing of comments on the proposed rulemaking should be clarified. This correction sets forth the more specific date and time for the filing of comments on the proposed rulemaking.

DATE: In order to be considered, all comments must be received and be on hand in room 5555 of the Main Building of the Department of the Interior, 1800 C Street, NW., Washington, D.C. 20240, no later than 4:15 p.m. on April 2, 1982.

ADDRESS: Room 5555, of the Main Building of the Department of the Interior, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Edward E. Coggs (202) 343-6821.

Dated: March 1, 1982.

David C. Russell,

Deputy Assistant Secretary of the Interior.

[FR Doc. 82-5804 Filed 3-2-82; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: Regulations are proposed to implement section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, which provides a mechanism for allowing the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region. In addition, specific regulations to govern the taking of ringed seals incidental to on-ice seismic exploratory activities in the Beaufort Sea for the period 1982 to 1986 are proposed.

DATES: Comments on the proposed regulations must be received on or before April 2, 1982.

Address: Comments should be submitted to: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. R. B. Brumsted, Acting Deputy Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, Telephone (202) 634–7529.

SUPPLEMENTARY INFORMATION:

Background

Public Law No. 97–58 amended the Marine Mammal Protection Act of 1972 (MMPA), by adding, among other things, a new section 101(a)(5), (16 U.S.C. 1371(a)(5)), as shown in the attached Appendix.

The National Marine Fisheries Service (NMFS) is responsible for implementing this new section with respect to all cetaceans and all pinnipeds, except walrus. On Nobember 20, 1981 (46 FR 57098), the NMFS published a Request for Information and Advanced Notice of Proposed Rulemaking, which solicited information and suggestions from interested persons on types of activities that may be authorized under section 101(a)(5) and on the structure and content of regulations relating to permissible methods of taking, monitoring and reporting.

Information Received

The U.S. Geological Survey, Department of the Interior furnished information concerning oil and gas activities on or over the Outer Continental Shelf (OCS) and potential impacts in the following four categories: (1) Over-ice or waterborne geophysical surveys; (2) logistical support for exploration, development, and production activities; (3) OCS drilling and exploration related activities; and (4) OCS development and production related activities.

The International Association of Geophysical Contractors and the National Ocean Industries Association jointly submitted information concerning on-ice marine geophysical exploration off the North Slope of Alaska. Information included a description of the activities, potential impacts on ringed seals and their habitat, and suggested means of monitoring and reporting. ARCO Exploration Company provided information on both onshore and offshore geophysical surveys in the Beaufort and Chukchi Seas, including a discussion of potential impacts to certain whale species during open water surveys and to ringed seals during on-ice surveys, to their habitats, and on their availability for subsistence purposes.

The California Indian Legal Services submitted information concerning non-commercial Indian gillnet fishing in the Klamath River. the Department of Natural Resources, Georgia, suggested that the regulations provide for a system of accountability designed to evaluate the effects of each activity, and that the permitted activity be reevaluated annually. They also suggested that the criteria used in defining non-depleted be identified. In addition, certain States expressed interest and requested to be kept informed of any activities being considered in their areas.

All information submitted is available on request from the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235.

Summary of Proposed General Regulations

General regulations are proposed to 50 CFR Part 228, Subpart A to implement section 101(a)(5) of the Marine Mammal Protection Act of 1972, by providing a mechanism for allowing, upon request and appropriate findings, the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region.

In order for the NMFS to consider whether to allow the taking of small numbers of marine mammals under section 101(a)(5), a formal written request must be submitted in accordance with § 228.4 of these regulations. If the NMFS finds, after notice and opportunity for public comment and based on the best available information, that the total taking during the requested period will have a negligible impact on the species, their habitat, and on the availability of the species for subsistence uses, specific regulations for the specified activity and region will be prescribed setting forth permissible methods of taking, and requirements for reporting and monitoring.

Letters of Authorization will be required for any person (as defined in the MMPA) to conduct the activities pursuant to any specific regulations governing the taking, reporting, and monitoring established for a specified activity. The specific information to be submitted in requests for Letters of Authorization will be developed and made available upon the publication of regulations covering the specified activity. Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the finding of the specific regulations that the total of such taking will have a negligible impact on the species or stocks and their habitat, and on the availability of the species for subsistence uses. To insure that the purposes of section 101(a)(5) are satisfied, Letters of Authorization will specify any terms and conditions that are appropriate. Letters of Authorization may be withdrawn or suspended if the NMFS determines that the prescribed regulations are not being substantially complied with, or the allowed taking is having, or may have, more than a negligible impact on the species or stocks concerned.

Summary of Request to Allow the Taking of Ringed Seals Incidental to On-Ice Seismic Activities

The only request the NMFS has received to date containing sufficient information on which to propose regulations was from the International Association of Geophysical Contractors (IAGC) to allow the taking of ringed seals incidental to hardwater (on-ice) marine geophysical activities in the Beaufort Sea. This request was submitted based on the information

IAGC provided in response to the **Federal Register** Request for Information and Advanced Notice of Proposed Rulemaking (46 FR 57098, November 20, 1981). The following is a summary of the information provided by the IAGC:

(1) *Description of Specific Activity.* Hardwater (on-ice) marine geophysical exploration involves seismic reflection data collection with various types of equipmet, transportation vehicles, and portable camp facilities. A vibrator-type energy source is primarily used, although air guns may be used to a limited extent. Energy sources are activated at various frequencies along a "shot" line, which varies depending on the type of survey and subsurface characteristics. Survey areas will vary in size but the IAGC anticipates the maximum area covered by all geophysical activity off the North Slope of Alaska in any given year will be 1,800 square miles. Four feet of ice is the minimum thickness required for the seismic vehicles and camp facilities, however lighter survey crew vehicles may travel over 2 to 3 feet of ice but cannot conduct survey operations.

(2) *Dates and Duration of Activity and Locale.* The dates of operation are dependent upon safe ice conditions, generally between January 1 and May 31. The primary area of interest is off the North Slope of Alaska between Point Barrow and Demarcation Point and extending from the shore outward 45 miles. Studies will be in support of the proposed sales in the Outer Continental Shelf area titled "Diapir Field."

(3) *Description of the Taking of Marine Mammals.* There is concern by biologists that female seals may react to the acoustic stimulus produced by seismic activities by abandoning their pups, which could result in pup mortality. It is anticipated that there could be a potential effect in those areas where lairs of pupping females are distributed in the same area as geophysical surveys. Because the depth of ice required for survey operations (greater than 3 feet) differs from the preferred habitat of the ringed seals (ice that is 2 feet thick or less), the IAGC believes the chances of these areas coinciding are remote. Based on the maximum area covered by seismic activity and the density of seals in these areas (Burns and Harbo, 1972 and Frost, 1979), the IAGC estimates that the maximum number of seals disturbed annually would be 1,440 and the maximum number of pup mortalities annually would be 130, but also stated that the last value is unrealistically high in view of the low probability of geophysical operations occurring in coincidence with the probable ringed seal habitat. The IAGC concludes that the added mortality, if it occurred, would involve small numbers of ringed seals and result in a negligible impact on the ringed seal stock.

(4) *Status of Ringed Seals Stocks and Distribution.* The IAGC quotes the world ringed seal population estimate to be between 6 and 7 million animals and an Alaskan population of between 1 and 1.5 million (*Alaska* magazine, April 1979, p. 31). Estimates of ringed seals inhabiting the Arctic off the North Slope of Alaska range from 13,713 to 9,511 as reported by Burns and Harbo (1972). Evidence examined during an administrative law judge proceeding in early 1979 resulted in the conclusion that an annual harvest of 20,000 ringed seals in Alaska could be permitted without impacting the health of the population.

(5) *Anticipated Impact Upon the Species, Stock and Subsistence Uses.* Based on the information provided under description of taking (see (3) above), the IAGC argues that this level of taking would have a negligible impact on the ringed seals and on their availability for subsistence uses.

(6) *Description of Effect on Habitat.* The IAGC estimates that the habitat of ringed seals is negligibly impacted by seismic survey operations because ice and snow removal is minimal. According to the IAGC, since the ice thickness required by survey crew operations is greater than the ice thickness on which the ringed seals can live, it appears that the two areas would rarely coincide.

(7) *Impact of Loss or Modification of Habitat.* Because of the minimal habitat effected and since the ice and snow annually dissolve and reappear, presenting new habitat for the seals, the IAGC expects the impact on the habitat to be nearly zero.

(8) *Action to Minimize Impacts.* The IAGC states that seismic survey crews do not place energy sources over observed ringed seal lairs nor do they usually operate along pressure ridges (pressure ridges appear to be locations where seals are clumped in their distribution, as described by Smith and Stirling, 1975). Surfaced seals are avoided and hunting is prohibited

(9) *Class of Activity and Geographic Region.* The IAGC suggests that the class be "On-Ice Marine Geophysical Exploration" covering Outer Continental Shelf seismic exploration activity involving the use of land type vehicles on the surface of fast ice during the winter months (January through May) in the Alaskan Arctic.

(10) *Monitoring and Reporting.* The IAGC suggests that monitoring be conducted by Federal or State biologists complemented by observations made by the geophysical survey advance party and/or survey crews (which would require some training). These personnel would record all the observations of seals and seal habitat, and at the end of the survey year, forward a compilation of all observations to the NMFS.

(11) *Research Opportunities.* The IAGC recommends that the geophysical industry be informed of plans to conduct research preceding, during, or after geophysical surveys. To assure that the data required to answer some of the questions related to the effect of geophysical activities on seals is available, the geophysical industry should have a representative who would work with the biological researchers and who could bring to the biological study an understanding of the relevant activities of a geophysical survey.

The Ringed Seal (Phoca hispida)

The ringed seal (*Phoca hispida*) is not listed as endangered or threatened under the Endangered Species Act of 1973. Estimates of abundance of ringed seals are generally derived from aerial surveys of selected areas. General abundance estimates are difficult to determine since the relationship between counts of animals on the ice to total population size is unknown. Also, variations in density are often great even in nearby areas due to strong habitat preference by breeding animals and a tendency for non-breeders to congregate near leads. Also, data presented by Stirling *et al.* (1977) provides evidence of year to year changes in abundance within the same geographical area. Stirling and Calvert (1979) estimate the world population of all subspecies of ringed seals to be 6 to 7 million. Bychkov (1971) gives a 2.5 million as the minimum worldwide population for *Phoca hispida hispida*, the subspecies common to the Beaufort Sea area. Based on a population estimate of between 1 and 1.5 million in the Bering, Beaufort, and Chukchi Seas, an annual harvest of 20,000 ringed seals would have been allowed if management had been returned to the state of Alaska (44 FR 2547, January 11, 1979). Further, Frost and Lowry (1981) estimated there were 80,000 ringed seals during the summer and 40,000 during the winter in the Beaufort Sea.

The ringed seal is the only seal that occupies the land-fast or shore ice of the Bering, Chukchi, and Beaufort Seas during the winter months. During the rest of the year, this species migrates

with the annual advance and retreat of pack ice. Ringed seals live in and under the ice by constructing and maintaining breathing holes using their clawed flippers. They also excavate lairs in accumulated snow (subnivian lairs) in which to rest or give birth and nurse their pups. Pupping lairs must be continuously occupied for several weeks and are, therefore, most common in areas of thick, stable ice. In these lairs beneath the snow, female ringed seals give birth to a single pup between late March and mid-April and nurse them for 4 to 6 weeks. Mating occurs during late April and May. Fast ice is the optimum habitat for breeding ringed seals and the highest densities of this species occur in these areas.

Discussion of Potential Impacts of Seismic Activities on Ringed Seals, Their Habitat and on Their Availability for Subsistence

The potential impacts of on-ice seismic activities on ringed seals mainly entail harassment and displacement of the seals. However, destruction of birth lairs or disturbance of pregnant females during the pupping season could result in pregnant females abandoning the fast ice for the less suitable pack ice. If harassment and displacement of nursing females occur for as few as 24 hours, mortality of pups could occur.

Based on aerial survey data collected from 1970 through 1981, Burns *et al.* (1981) calculated ringed deal densities in the fast ice of the Beaufort Sea of 0.4 to 2.8 seals per nm^2. Burns *et al.* also found that highest densities of seals occurred in areas of low ice deformation. Seismic exploration is also conducted in areas of low ice deformation, and therefore in regions of highest ringed seal densities. Based on the IAGC's estimate of 1,800 square miles (1,357.4 nm^2) as the maximum area covered by seismic operations and the highest observed density cited by Burns *et al.* (2.8 seals per nm^2), we estimate that there could be up to about 3,800 seals in the area of seismic activity which could potentially be affected by the activities. However, we expect the number actually affected to be considerably less.

Burns *et al.* compared ringed seal densities between areas of seismic exploration and areas where no human activities occurred. Based on data collected from 1975 to 1977, these comparisons consistently showed a lower density of seals in areas where seismic exploratory activity had occurred. Estimates of comparative abundance of ringed seals in areas where seismic activity had occurred were also made based on surveys of June 3, 5, and 9, 1981. Analyses of data from seismic and control transects showed a statistically significant and lower ringed seal density along shot lines surveyed on June 3. However, no statistically signficant differences existed by June 9. Burns *et al.* stated that the ambiguity of results from surveys in June 1981 may indicate no impact of the seismic activities, or it may be due to early ice break-up which permitted transient seals to reoccupy shot lines.

Burns *et al.* concluded that if displacement is real, based on data from 1975–1977 and June 3, 1981, it accounts for approximately 0.6 ringed seals per nm^2 in the central Beaufort Sea subjected to seismic exploration, and that such an impact would probably not be significant to the ringed seal population as a whole. Based on this estimate of percentage displacement of ringed seals due to seismic activity (0.6 seals per nm^2), less than 1,000 seals may be displaced annually within the area covered by seismic activity (1,351.4 $nmmn^2$). If any of these animals are nursing females, pup mortality could also occur.

On-ice seismic activities may result in the taking of small numbers of ringed seals. Based on a review of the available data, the NMFS proposes that the taking would have a negligible impact on the subspecies which is estimated at 2.5 million animals, or on the Bering, Chukchi, and Beaufort Seas population which is estimated at 1 to 1.5 million animals.

Impact to the ringed seal habitat is localized and very limited. Seismic survey operations do involve the removal of snow and ice along survey lines, camps, and roadways. Since only a small proportion of the seal habitat is affected and since the habitat is restored annually, the NMFS proposes that the seismic activities will have a negligible impact on the ringed seal habitat.

Ringed seals are the most important of all seal species for subsistence uses by native Alaskans living in regions north of Kuskukwin Bay. The current annual harvest is estimated to be approximately 4 to 5 thousand, compared to 8 to 15 thousand during the 1960's (Burns, 1978). Although subsistence hunting of ringed seals has steadily declined in recent years, it could increase if other traditional native foods, such as moose, caribou, whales, and walrus, become less available. The small take of ringed seals due to seismic activities off the North Slope of Alaska is expected to have a negligible impact on the availability of this species for subsistence uses.

Proposed Regulations Governing the Taking of Ringed Seals Incidental to On-Ice Seismic Activities

Specific regulations are proposed to govern the incidental taking of ringed seals (*Phoca hispida*) during on-ice seismic exploratory activities in the Beaufort Sea for the period 1982–1986. These regulations would not regulate or restrict the seismic activities but rather the taking of ringed seals incidental to those activities. These regulations are proposed based on a proposed finding that on-ice seismic exploratory activities in the Beaufort Sea of Alaska over the next five years may involve the taking of small numbers of non-depleted marine mammals, specifically ringed seals, and further that the total of such taking will have a negligible impact on the species, on its habitat, and on the availability of such species for subsistance uses.

The proposed regulations in Subpart B apply only to on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from Point Barrow east to Demarcation Point which may involve the incidental taking of small numbers of ringed seals (*Phoca hispida*) for the period 1982 to 1986. It is required that all activities be conducted in a manner which minimizes adverse effects on ringed seals and their habitat. The proposed regulations require all activities to be conducted as far as practicable from any observed ringed seal or ringed seal lair and prohibits the placement of energy sources over any ringed seal lair. Holders of Letters of Authorization shall designate an individual or individuals to make observations and record the presence of ringed seals and ringed seal lairs. An annual report shall be submitted to the Assistant Administrator for Fisheries at the end of the survey year which includes information on locations of activities and numbers of ringed seals and ringed seal lairs observed.

Under the general regulations proposed (50 CFR Part 228, Subpart A), a Letter of Authorization will be required for each person to conduct activities pursuant to these regulations. At this time, persons who engage in on-ice seismic exploratory activities in the Beaufort Sea which may incidentally take ringed seals should submit a request for a Letter of Authorization. Requests should include the following information:

(1) Name, address and telephone number of requestor;

(2) A description of the activities, including methods, dates and duration,

and general locations of activities, including estimated area to be surveyed;

(3) Anticipated numbers of ringed seals which may be taken by age, sex and reproductive condition, and the type of taking (e.g., disturbance or harassment, displacement, or abandonment of pups);

(4) Anticipated impact of the activity upon the habitat and the likelihood of restoration; and

(5) Actions which will be taken to minimize potential adverse impacts on the ringed seals, their habitat, and on their availability for subsistance uses.

Applicability to Other Laws, Regulations, and Requirements

The proposed regulations implement section 101(a)(5) of the Marine Mammal Protection Act, by providing a mechanism for authorizing the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S. citizens engaged in a specified activity in a specified geographical region, for up to five years. Regulations are also proposed to authorize the taking of small numbers of ringed seals incidential to on-ice seismic operations in the Beaufort Sea for the period 1982 to 1986.

The NMFS has determined that the portion of the proposed regulations generally implementing section 101(a)(5) of the Marine Mammal Protection Act will have no impact on the human environment. The NMFS has prepared an Environmental Assessment reflecting the determination that the portion of the regulations proposing to allow the taking of ringed seals will have an insignificant impact on the human environment and, therefore, does not constitute a major action under the National Environmental Policy Act. The Environmental Assessment is available on request from the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235.

The proposed rulemaking implementing section 101(a)(5) and allowing the taking of ringed seals is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs of prices for consumers, individual industries, or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The NMFS has determined, therefore, that the proposed regulations will not constitute a major rule and require no regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce has certified that the general implementation of section 101(a)(5) will not have a significant economic impact on a substantial number of small entities. In addition, that portion of the regulations proposing to allow the taking of ringed seals will not have a major significant impact on a substantial number of small entities in that the oil companies and their contractors identified as possible applicants under the proposed regulations to allow that taking cannot be identified as small businesses under the Small Business Act. Therefore, a regulatory flexibility analysis is not required. Since the number of requests expected under the proposed regulations generally implementing section 101(a)(5) is expected to be less than ten, and the number of applicants under that portion of the regulations proposing to allow the taking of ringed seals is expected to be less then ten, the requirements of the Paperwork Reduction Act are inapplicable.

Accordingly, it is proposed to amend 50 CFR by adding a new Part 228 as follows:

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

Subpart A—General

Sec.

228.1 Purpose.
228.2 Scope.
228.3 Definitions.
228.4 Submission of requests.
228.5 Specific regulations.
228.6 Letters of authorization.

Subpart B—Taking of Marine Mammals Incidental to On-Ice Seismic Activities

228.11 Specified activity and specified Geographical area.
228.12 Effective dates.
228.13 Permissible methods.
228.14 Requirements for monitoring and reporting.

Authority: Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, (16 U.S.C. 1371(a)(5)), Pub. L. No. 97–58, unless otherwise noted.

Subpart A—General

§ 228.1 Purpose.

The regulations in this part implement section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), Pub. L. 97–58, which provides a mechanism for allowing, upon request, the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region.

§ 228.2 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the species involved are not depleted and if the National Marine Fisheries Service (a) finds that the total taking will have a negligible impact on the species and their habitat, and on the availability of the species for subsistence uses; (b) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance; and (c) prescribes regulations pertaining to the monitoring and reporting of such taking. The specific regulations governing specified activities are contained in subsequent subparts to this Part 228.

§ 228.3 Definitions.

In addition to definitions contained in the Act and in 50 CFR 216.3 and unless the context otherwise requires, in this Part 228:

"Incidental, but not intential taking" means accidental taking. It does not mean that the taking is unexpected, but rather it includes those takings which are infrequent, unavoidable or accidental. Taking, as defined in 50 CFR 216.3, includes harassing, capturing, and killing.

"Negligible impact" means an impact which can be disregarded or which is so small or unimportant, or of so little consequence as to warrant little or no attention. A finding of negligible impact cannot be made if a species or stock is depleted under 16 U.S.C. 1362(1).

"Small numbers" means a portion of a marine mammal species or stock whose removal has a negligible impact on the species or stock.

"Specified activity" means any activity, other than commercial fishing, which takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals. The specified activity and specified geographical region should be identified so that the anticipated effects on marine mammals will be substantially similar.

"Specified geographical region" means an area within which a specified activity is conducted and which has certain biogeographic characteristics.

§ 228.4 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider allowing the taking of marine mammals incidental to a specified activity, a written request must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235. Requests shall include the following information on the activity in general and cumulative impacts of the total potential taking:

(1) A description of specific activity or class of activities that can be expected to result in incidental taking of marine mammals;

(2) The dates and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be taken by age, sex and reproductive condition, and the type of taking (e.g., disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

(4) A description of the status and distribution of the affected species or stocks likely to be affected by such activities;

(5) The anticipated impact of the activity upon the species or stocks, and on the availability for taking for subsistence uses;

(6) The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;

(7) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(8) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(9) Suggested means of accomplishing the necessary monitoring and reporting and of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and

(10) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b) The Assistant Administrator shall determine the adequacy and completeness of a request, and if found to be adequate will invite information, suggestions, and comments through notice in the **Federal Register**, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity. All information and suggestions will be considered by the NMFS in developing, if appropriate, the most effective regulations.

(c) The Assistant Administrator shall evaluate each request to determine, based on the best available scientific evidence, whether the taking constitutes a negligible impact on the species or stocks of marine mammals, their habitat, and on the availability of the species for subsistence uses. Any preliminary finding of negligible impact shall be proposed for public comment before specific regulations are promulgated.

§ 228.5 Specific regulations.

(a) Specific regulations will be established for each allowed activity which set forth permissible methods of taking and requirements for monitoring and reporting.

(b) Regulations are established based on the best available information. As new information is developed, through monitoring, reporting or research, any of the regulations may be modified, in whole or part, after notice and opportunity for public review.

§ 228.6 Letters of authorization.

(a) A Letter of Authorization is required for persons conducting activities pursuant to any regulations established. Requests for Letters of Authorization shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235. The information to be submitted in a request can be obtained by writing the Assistant Administrator.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the finding that the total of such taking will have a negligible impact on the marine mammal species or stocks and their habitat, and on the availability of the species for subsistence uses.

(c) Notice of issuance of all Letters of Authorization will be published in the **Federal Register** within 30 days of issuance.

(d) Letters of Authorization are valid for one year and must be renewed annually. Letters of Authorization will specify additional terms and conditions appropriate for the specific request.

(e) Letters of Authorization may be withdrawn or suspended if, after notice and opportunity for public comment, the National Marine Fisheries Service determines that: (1) The regulations prescribed are not being substantially complied with, or (2) the taking allowed is having, or may have, more than a negligible impact on the species or stocks concerned, their habitat, or on their availability for subsistence uses.

(f) The requirement for notice and opportunity for public review in § 228.6(e) shall not apply if the National Marine Fisheries Service determines that an emergency exists which poses a significant risk to the well being of the species or stocks of marine mammals concerned.

Subpart B—Taking of Marine Mammals Incidental to On-Ice Seismic Activities

§ 228.11 Specified activity and specified geographical area.

Regulations in this subpart apply only to on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from Point Barrow east to Demarcation Point, which may involve the incidental taking of small numbers of ringed seals (*Phoca hispida*).

§ 228.12 Effective dates.

Regulations in this subpart cover activities from January 1 through May 31 for the period 1982–1986.

§ 228.13 Permissible methods.

(a) The incidental, but not intentional, taking of ringed seals by U.S. citizens holding a Letter of Authorization is permitted during the course of the following activities:

(1) On-ice geophysical seismic activities involving vibrator-type or airgun energy sources; and

(2) Operation of transportation and camp facilities associated with seismic activities.

(b) All activities identified in § 228.13(a) shall be conducted in a manner which minimizes adverse effects on ringed seals and their habitat.

(c) All activities identified in § 228.13(a) shall be conducted as far as practicable from any observed ringed seal or ringed seal lair. No energy source shall be placed over a ringed seal lair, whether or not any seal is present.

§ 228.14 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and any other Federal, State, or local agency designated to monitor the impacts on ringed seals.

(b) Holders of Letters of Authorization shall designate an individual or individuals to make observations and record the presence of ringed seals and

ringed seal lairs along shot lines and around camps, and the information required in § 228.14(c).

(c) An annual report shall be submitted to the Assistant Administrator for Fisheries at the end of the survey year which shall include the following information:

(1) Location(s) of survey activities, level of effect (e.g., total area surveyed, number of surveys), methods used, and a description of habitat (e.g., ice thickness, surface topography);

(2) Numbers of ringed seals observed and proximity to seismic or associated activities for each location;

(3) Numbers of ringed seal lairs observed and proximity to seismic or associated activities for each location.

APPENDIX [1]

Pub . L. 97-58 amended the Marine Mammal Protection Act of 1972 (MMPA), by adding, among other things, a new section 101(a)(5), (16 U.S.C. 1371(a)(5)), as follows:

"(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment--

(i) finds that the total of such taking during each 5-year (or less) period concerned will have a negligible impact on such species or stock and its habitat, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f); and

(ii) prescribes regulations setting forth--

(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(II) requirements pertaining to the monitoring and reporting of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain, (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless (C)(i) applies), that--

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well being of the species or stock concerned.

(ii) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph."

[1] This Appendix will not be shown in the Code of Federal Regulations.

Dated: February 16, 1982.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 82-5772 Filed 3-1-82; 9:28 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 47, No. 42
Wednesday, March 3, 1982

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

Rogue River National Forest Douglas, Jackson and Klamath Counties, Oregon Siskiyou County, California; Decision and Finding of No Significant Impact

An environmental assessment approved on February 16, 1982, that discusses planned control of undesirable vegetation for the purpose of site preparation and conifer release on the Rogue River National Forest is available for review in the Forest Supervisor's Office, 333 W. 8th Street, Medford, Oregon, and on the local Ranger Districts. Treatment is recommended in Douglas, Jackson and Klamath Counties, Oregon, and in Siskiyou County, California.

In the analysis, public issues, management concerns and opportunities were identified and evaluation criteria were developed. Criteria for evaluating alternatives on each site included commercial tree growth, health and safety, cost effectiveness, employment opportunities, site productivity, conflicts with range management, and effects on water, public use, and non-target plants and animals.

All feasible treatment were considered which include chemical, manual, mechanical, biological, thermal or a combination of treatments. No action was also evaluated as an alternative.

The proposed program received public review in November 1981. Some adjustments were then made to better address concerns raised by public response while still meeting basic vegetation management objectives.

Ninety-one units were evaluated in this environmental assessment. Each unit was assessed separately. Based on the analysis and evaluation described in the environmental assessment, the Forest Supervisor made a decision to adopt each particular alternative that was recommended by a Forest Interdisciplinary Team for each unit that was assessed. The evaluation and decision for each unit is contained in the environmental assessment document.

Each recommended alternative, with the specified management requirements, preventive or protective measures, and monitoring controls is considered to be environmentally preferable, as it provides the best combination of physical, biological, social and economic factors.

The decisions are summarized below:

TABLE 1.—SUMMARY OF DECISIONS—THIS ASSESSMENT

Treatment	Acres
No action	1,393
Chemical—Aerial	859
Chemical—Ground	701
Manual	34
Mechanical—Tracmac	34
Mechanical—Tractor pile & burn	120
Cutting/Chemical—ground	21
Grazing	39
Total	3,201

The acres of chemical applications are summarized below:

TABLE 2.—SUMMARY OF ACRES TREATED WITH CHEMICALS

Chemical	Acres	
	Aerial	Ground
2,4-D	388	88
Roundup	163	361
Atrazine/Dalapon	171	110
Garlon	86	
Tordon		144
2,4-D/Atrazine-Dalapon	51	19
Total	859	722

Prior to this assessment, non-chemical treatment decisions had been made for 7,800 acres. These treatments are also planned for implementation in 1982.

It was determined, based on the environmental analysis, that this was not a major Federal action that would significantly affect the quality of the human environment; therefore, an environmental impact statement is not needed. This determination was made considering the following factors: (a) The preferred alternatives, with included requirements, preventive or protective measures and monitoring controls, will protect public health and safety, and plants and animals, including Threatened and Endangered; (b) all included chemicals are approved by EPA for the proposed uses; (c) the application of these chemicals will comply with pertinent EPA labels, State and Federal law, and Forest Service policies; (d) treatment with the included chemical, manual, mechanical and thermal methods will have only a slight and temporary effect on the ecosystem of the specific project areas; (e) physical and biological effects are limited to the areas of planned treatment; (f) there is no irreversible or irretrievable resource commitments or losses; and (g) no wetlands or floodplains will be treated.

The decisions for these projects were approved on February 16, 1982. Treatment is not planned until after April 1.

The decision for each unit is subject to Administrative Review (appeal) pursuant to 36 CFR 211.19. A Notice of Appeal must be filed with the Forest Supervisor by April 1, 1982, which is 45 days from the signing of the decision.

The responsible official is Robert J. Devlin, Forest Supervisor, Rogue River National Forest, P.O. Box 520, Medford, Oregon 97501.

Dated: February 18, 1982.

Robert J. Devlin,

Forest Supervisor.

[FR Doc. 82-5658 Filed 3-2-82; 8:45 am]
BILLING CODE 3410-11-M

Siskiyou National Forest, Coos, Curry and Josephine Counties, Oregon, Del Norte County, California; Finding of No Significant Impact

An Environmental Assessment that discusses the vegetation management program for site preparation and conifer release on the Chetco, Galice, Gold Beach, Illinois Valley and Powers Ranger Districts of the Siskiyou National Forest has been prepared. The Environmental Assessment considered vegetation management on 15,826 acres, and involves the control of competing vegetation on 9,214 acres of National Forest lands within Coos, Curry and Josephine Counties, Oregon, and Del Norte County, California. The report is available for review at the Chetco Ranger Station in Brookings, Oregon, the Galice Ranger Station in Grants Pass, Oregon, the Gold Beach Ranger Station in Gold Beach, Oregon, the Illinois Valley Ranger Station in Cave Junction,

Oregon, the Powers Ranger Station in Powers, Oregon, and the Siskiyou National Forest Office in Grants Pass, Oregon.

Based on the analysis and evaluation described in the Environmental Assessment it is my decision to adopt Alternative Five for the Siskiyou National Forest vegetation management program for site preparation and conifer release. The selected alternative provides for site specific treatments determined from prescriptions which considered silvicultural opportunities, cost efficiency, program objectives, and balance of all resources needs. The use of chemicals was critically examined for efffects on adjacent land, streams, water systems, and nearness to individual homes and communities. Alternative Five includes the following control measures: aerial application of 2,4-D on 6,098 acres, glyphosate on 831 acres, triclopyr on 1,238 acres, dicamba plus 2,4-D on 67 acres, atrazine plus dalapon on 10 acres and asulam on 16 acres; ground application of 2,4-D on 124 acres, glyphosate on 145 acres, picloram plus 2,4-D on 5 acres, triclopyr on 287 acres, and atrazine plus dalapon on 26 acres; manual cutting on 173 acres; broadcast burning on 136 acres; and mechanical mowing on 58 acres. No treatment was selected on 6,863 acres.

Under Alternative Five, 317 acres are scheduled for release by aerial application of triclopyr in the fall. Registration of triclopyr for this use is currently in process, but it has not been completed. District Rangers are directed to cancel aerial application of triclopyr on these 317 acres if the registration process for this use in Oregon has not been completed by June 8, 1982.

Five other alternatives were considered in the analysis. These alternatives are:

Alternative One. "No Action"—makes no provision for vegetation management for site preparation or conifer release.

Alternative Two. "Non-Herbicide"—no chemical methods will be used. Manual methods will be maximized. Other nonchemical methods may be used where feasible, or for study where manual methods are not feasible.

Alternative Three. "None-Aerial"—no aerial herbicide application will be used. Ground herbicide application as well as other methods will be used for all areas prescribed for chemical methods where feasible or for study purposes.

Alternative Four. "Limited Herbicide"—use of chemicals will be evaluated for effects on adjacent land, streams, water systems and nearness to communities. Alternatives to chemical methods will be given preference in these sensitive areas and will be used where feasible.

Alternative Six. "Maximization of Efficiency"—to meet silvicultural objectives in the least costly manner.

Alternative Five, with specified requirements, constraints, mitigation measures and monitoring controls is considered to be environmentally preferable as it provides the best combination of physical, biological, social and economic factors. The specifed requirements, constraints, mitigation measures and monitoring described as an integral part of Alternative Five are adopted as minimums.

The analysis considered public issues, management concerns and opportunities. Evaluation citeria were developed to incorporate this input, and key criteria identified. Effects of the program on the identified criteria were considered through a range of alternatives which included no action. The greatest weight in evaluations was given the key criteria, which included effects on: health and safety; plants and animals; economic efficiency and distribution; and wood products availability. The relationship between local short-term uses of the renewable resources and maintenance of long-term productivity was considered through effects on these criteria: cultural values; soil productivity; wood products availability; and, econmic efficiency and distribution. The evaluations also considered: fossil fuel energy requirements; direct and indirect benefits and costs; effects on minority groups and civil rights; and the relationship of expected outputs to the Forest's goals. Preservation of Threatened and Endangered plants and animals, cultural resource values, biological areas, wilderness, and other sensitive environmental factors were considered. Evaluations also included consideration of effects on wetlands and floodplains, adverse environmental effects which cannot be avoided, and irreversible and irretrievable resource commitments.

I have determined, based on the environmental analysis, that this is not a major Federal action that would significantly affect the quality of the human environment; therefore, an environmental impact statement is not needed. This determination was made considering the following factors: (a) Alternative Five, within included requirements, preventative or protective measures and monitoring controls, will protect public health and safety, and plants and animals, including Threatened and Endangered; (b) Alternative Five will meet treatment cost and efficiency criteria; (c) all included chemicals are approved by EPA for the proposed uses, and the application of these chemicals will comply with pertinent EPA labels, State and Federal law, and Forest Service policies; (d) treatment with the included chemical, manual, mechanical, and thermal methods will have only a slight and temporary effect on the ecosystems of the specific project areas: (e) physical and biological effects are limited to the areas of planned treatment; (f) there are no irreversible or irretrievable resource commitments or losses; (g) a balance is achieved between local short-term uses of the renewable resources and the maintenance and enhancement of long-term productivity; (h) the proposed program is in accord with the requirements and direction contained in Final Environmental Statements for the Rogue (1975), Mt. Butler-Dry Creek (1976), Rogue-Illinois (1979), and Chetco-Grayback (1979) Land Management Planning Units; (i) the proposed program is in accord with the requirements and direction contained in the R-6 Final Environmental Statement on Methods of Managing Competing Vegetation (1981); (j) no wetlands or floodplains will be treated.

Project implementation may take place immediately after the date of this decision. Field implementation is dependent on proper vegetative conditions, which are not expected to occur prior to March 15, 1982.

This decision is subject to administrative review (appeal) pursuant to 36 CFR 211.19.

Date: February 19, 1982.

William H. Covey,

Forest Supervisor.

[FR Doc. 82-5659 Filed 3-2-82; 8:45 am]

BILLING CODE 3410-11-M

Salmon National Forest Idaho, Lemhi, and Valley Counties, Idaho; Intent To Prepare an Environmental Impact

A Noitce of Intent to Prepare an Environmental Impact Statement for the Salmon National Forest Land and Resource Management Plan was published in the Federal Register, Volume 45, No. 198, Thursday, October 9, 1980, and was later amended as published in the Federal Register, Volume 45, No. 91, Tuesday, May 12, 1981.

The estimated dates for filing the Draft and Final Environmental Impact Statements with the Environmental Protection Agency and release to the public have been further postponed. The Draft Environmental Impact Statement

is now expected in May 1982, and the Final Environmental Impact Statement is proposed for release in December 1983.

All other conditions of the original Notice of Intent remain the same.

Date: February 22, 1982.

R. E. Greffenius

Acting Regional Forester.

[FR Doc. 82-5660 Filed 3-2-82; 8:45 am]

BILLING CODE 3410-11-M

Agricultural Stabilization and Conservation Service

Emergency Conservation Program (ECP) Payments; Determination of Primary Purpose for Amounts That May Be Excluded From Income

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination.

SUMMARY: The purpose of this notice is to announce the determination by the Secretary of Agriculture that certain Federal payments made to farmers under the Emergency Conservation Program (ECP) are made primarily for purposes of conserving soil and water resources, protection or restoring the environment, improving forests, or providing a habitat for wildlife. This determination by the Secretary is made in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The effect of this determination is to make it possible for recipients of these payments to exclude some or all of them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-6221.

SUPPLEMENTARY INFORMATION: This action has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in (1) an annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regions; (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Emergency Conservation Program; Number—10.054; as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Agricultural Stabilization and Conservation Service (ASCS) is not required to publish a notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this determination.

Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments which are made to persons under programs administered by the Department of Agriculture may be eligible for exclusion from gross income if certain determinations are made. One such determination involves the Secretary of Agriculture who must determine whether certain payments issued to persons under designated programs listed in section 126(a) are "made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." In making any such determination the Secretary of Agriculture must evaluate each of those designated programs based upon criteria set forth at 7 CFR Part 14.

One of the conservation programs listed in the section 126(a) is the Emergency Conservation Program (ECP) authorized by Title IV of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 note). This program is funded annually by the agriculture appropriations acts.

The objective of the ECP is to share with eligible persons the cost of rehabilitating farmlands damaged by wind and water erosion, floods, hurricanes, or other natural disasters and undertaking, water conservation or water enhancement measures during periods of severe drought.

Except for severe drought and wind erosion, cost-sharing payments are made to eligible producers under the program for replacing or restoring farmlands or structures to a condition similar to that existing prior to the natural disaster. Cost-sharing is not offered for the solution of conservation problems existing prior to the disaster.

Emergency Conservation Program practices for which cost-sharing may be authorized to rehabilitate farmlands to pre-disaster conditions, conserve soil and water resources, or protect or restore the environment are as follows:

(a) Removing debris from farmland.

(b) Grading, shaping, releveling or similar measures.

(c) Restoring permanent fences.

(d) Restoring structures and other installations.

(e) Emergency wind control measures.

(f) Drought emergency measures.

(g) Other emergency conservation measures.

The ECP authorizing legislation, regulations, and operating procedures have been carefully examined using the criteria established by the Department of Agriculture under 7 CFR Part 14 for making "primary purpose" determinations. Based upon this examination, it has been concluded that the payments under the ECP are made for the purpose of rehabilitating farmlands damaged by wind and water erosion, floods, hurricanes and other natural disasters and to provide water conservation or enhancement measures during periods of severe drought. An "Emergency Conservation Program (ECP) Decision: Primary Purpose Determination for Federal Tax Purpose" has been prepared and is available upon request from the Conservation and Environmental Protection Division, ASCS.

Determination

Therefore, I have determined, in accordance with section 126(b)(1) of the Internal Revenue Code of 1954, as amended, that all payments made for those emergency conservation practices approved under the ECP after September 30, 1979, are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environement, improving forests, or providing a habitat for wildlife.

Signed at Washington, D.C. on February 23, 1982.

John R. Block,

Secretary U.S. Department of Agriculture.

[FR Doc. 82-5779 Filed 3-2-82; 8:45 am]

BILLING CODE 3410-05-M

Forestry Incentives Program (FIP) Payments; Determination of Primary Purpose for Amounts That May Be Excluded From Income

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination.

SUMMARY: The purpose of this notice is to announce the determination by the Secretary of Agriculture that certain Federal payments made to private nonindustrial landowners under the Forestry Incentives Program (FIP) are made primarily for purposes of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination by the Secretary is made in accordance with section 126(b) of the Internal Reveue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The effect of this determination is to make it possible for recipients of these payments to exclude some or all of them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, U.S.D.A., P.O. Box 2415, Washington, D.C. 20013, (202) 447–6221.

SUPPLEMENTARY INFORMATION: This action has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in (1) an annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regons; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of Unted States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Forestry Incentives Program; Number—10.064; as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Agricultural Stabilization and Conservation Service (ASCS) is not required to publish a notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this determination.

Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments which are made to persons under designated programs administered by the Department of Agriculture may be eligible for exclusion from gross income if certain determinations are made. One such determination involves the Secretary of Agriculture who must determine whether certain payments issued to persons under designated programs listed in section 126(a) are "made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." In making any such determination the Secretary of Agriculture must evaluate each of those designated programs based upon criteria set forth at 7 CFR Part 14.

One of the conservation programs listed in section 126(a) is the Forestry Incentives Program (FIP) authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103). This program is funded annually by agriculture appropriations acts.

FIP provides technical and financial assistance to private nonindustrial landowners through annual and long-term (3 to 10 years) agreements to increase the supply of timber from these private nonindustrial forest lands.

Cost-sharing payments are made to eligible applicants under the program for the satisfactory installation of forestry practices developed primarily to meet a definite need to accomplish one or more of the following:

(a) Increased afforestation of suitable open lands.

(b) Reforestation of cutover or other nonstocked or understocked forest lands.

(c) Timber stand improvement.

(d) Intensive multipurpose management.

(e) Protection of forest resources.

Eligible national cost-sharing practices are planting trees (FP1), improving a stand of trees (FP2), and a few special forestry practices approved at the natonal level for special situations not covered by practices FP1 and FP2.

The FIP authorizing legislation, regulations, and operating procedures have been carefully examined using the criteria established by the Department of Agriculture under 7 CFR Part 14 for making "primary purpose" determinations. Based upon this examination, it has been concluded that payments under the FIP are made for the purpose of providing financial assistance to private nonindustrial landowners for carrying out forest improvement practices. A "Forestry Incentives Program (FIP) Record Decision: Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from the Conservation Environmental Protection Division, Agricultural Stabilization and Conservation Service.

Determination

Therefore, I have determined, in accordance with section 126(b)(1) of the Internal Revenue Code of 1954, as amended, that all payments made for those forestry practices under the FIP after September 30, 1979, are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

Signed at Washington, D.C. on February 23, 1982.

John R. Block,

Secretary, U.S. Department of Agriculture.

[FR Doc. 82–5778 Filed 3–2–82; 8:45 am]

BILLING CODE 3410–05–M

Office of the Secretary

Privacy Act of 1974; Systems of Records

AGENCY: Office of Personnel, USDA.

ACTION: Notice of amendment of Privacy Act systems of records.

SUMMARY: The Department of Agriculture hereby gives notice that it is reassigning and amending a previously published system of records from one agency within the Department of Agriculture to another. The Department also hereby gives notice that it is making minor amendments to another previously published system of records.

On November 2, 1978, the Department of Agriculture, at 43 FR 51288–51289 published a Privacy Act system of records entitled USDA/OBPE–1, Committee Management Records System. Due to internal reorganizations of the Department, this system has been placed under the control of the Office of Personnel, Department of Agriculture,

and is hereby designated as USDA/OP-3. In addition, the Department is amending this system notice to include new safeguards for the records maintained in the system.

The Department of Agriculture also amends previously published Privacy Act system of records USDA/OP-1, last published in its entirety at 43 FR 51361-51365 (November 2, 1978). This amendment is necessitated by a change in addresses where files are maintained by the Department of Agriculture since that last publication. In connection with this system of records, reference is made to the Government-wide system of records published by the Office of Personnel Management as OPM/GOVT-1, General Personnel Records, 45 FR 78415-78419, November 25, 1980.

EFFECTIVE DATE: March 3, 1982.

FOR FURTHER INFORMATION CONTACT: Carolyn Wright, Security and Employee Relations Staff, Office of Personnel, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7654.

The text of both systems will be as follows:

USDA/OP-1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees, USDA/OP.

SYSTEM LOCATION:

Office of Personnel, USDA, Washington, D.C.; the National Finance Center, P.O. Box 60,000, New Orleans, Louisiana; and the personnel offices at the following locations:

ALABAMA—Soil Conservation Service State Office, Soil Conservation Building, P.O. Box 311, Auburn, Alabama 36830; Farmers Home Administration State Office, Aronov Building, Room 717, 474 S. Court Street, Montgomery, Alabama 36104; Forest Service National Forest, National Forests in Alabama, 1765 Highland Avenue, P.O. Box 40, Montgomery, Alabama 36101.

ALASKA—Forest Service Regional Office, Federal Office Building, P.O. Box 1628, Juneau, Alaska 99801; Farmers Home Administration State Office, P.O. Box 1289, Palmer, Alaska 99645; Soil Conservation Service State Office, 2221 E. Northern Lights Boulevard, Anchorage, Alaska 99802.

ARIZONA—Forest Service National Forest, Coconino National Forest, P.O. Box 1268, Flagstaff, Arizona 86002; Forest Service, RM Forest and Range Experiment Station, Forestry Sciences Laboratory, Northern Arizona University, Flagstaff, Arizona 86002; Agricultural Marketing Service Milk Market Office, 1121 E. Missouri Street, Phoenix, Arizona 85014; Farmers Home Administration State Office, Federal Building, Room 3433, 230 North First Avenue, Phoenix, Arizona 85025; Soil Conservation Service State Office, 230 North First Avenue, 6029 Federal Building, Phoenix, Arizona 85025; Forest Service National Forest, Tonto National Forest, 102 So. 28th Street, Phoenix, Arizona 85034; Forest Service National Forest, Prescott National Forest, 344 S. Cortez, Prescott, Arizona 86301; Forest Service National Forest, Apache-Sitgreaves National Forests, Federal Building, P.O. Box 640, Springerville, Arizona 85938; Forest Service, RM Forest and Range Experiment Station, Forest Hydrology Laboratory, Arizona State University, Tempe, Arizona 85281; Forest Service National Forest, Coronado National Forest, 301 W. Congress, Tucson, Arizona 85702; Forest Service, RM Forest and Range Experiment Station, Tumamoc Hill, University of Arizona, P.O. Box 4460, Tucson, Arizona 85717; Forest Service, National Forest, Kaibab National Forest, 800 S. 6th Street, Williams, Arizona 86046.

ARKANSAS—Forest Service National Forest, Ouachita National Forest, Reserve and Broadway Streets, Federal Building, P.O. Box 1270, Hot Springs, National Park, Arkansas 71901; Agricultural Marketing Service Milk Market Office, 3518 W. Roosevelt Rd., P.O. Box 4225, Little Rock, Arkansas 72204; Farmers Home Administration State Office, 5529 Federal Office Building, P.O. Box 2778, 700 W. Capitol, Little Rock, Arkansas 72203; Forest Service National Forest, Ozark-St. Francis National Forest, W. Main and Fargo, P.O. Box 1008, Russellville, Arkansas 72801; Soil Conservation Service State Office, Federal Office Building, 700 W. Capitol St., Little Rock, Arkansas 72203.

CALIFORNIA— Forest Service National Forest, Modoc National Forest, P.O. Box 611, Alturas, California 96101; Agricultural Research Service, Western Region, Regional Administrative Office 1333 Broadway, Suite 400, Oakland, California 94612; Forest Service Pacific Southwest Forest And Range Experiment Station, 1960 Addison Street, P.O. Box 245, Berkeley, California 94704; Forest Service National Forest, Inyo National Forest, 873 N. Main Street, Bishop, California 93514; Soil Conservation Service State Office, 2828 Chiles Rd., Davis, California 95616; Forest Service National Forest, Six Rivers National Forest, 507 F Street, Eureka, California 95501; Forest Service National Forest, Sierra National Forest, Federal Building, Room 3304, 1130 O Street, Fresno, California 93721; Forest Service National Forest, Los Padres National Forest, 42 Aero Camino, Goleta, California 93017; Forest Service National Forest, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, California 95959; Forest Service National Forest, Angeles National Forest, 150 South Robles, Pasadena, California 91101; Forest Service National Forest, Eldorado National Forest, 100 Forni Rd., Placerville, California 95667; Forest Service National Forest, Sequoia National Forest, 900 W. Grand Avenue, Porterville, California 93257; Forest Service National Forest, Plumas National Forest, 159 Lawrence Street, P.O. Box 1500, Quincy, California 95971; Forest Service National Forest, Shasta-Trinity National Forest, 2400 Washington, Avenue, Redding California 96001; Forest Service National Forest, San Bernardino National Forest, 144 N. Mountain View Avenue, San Bernardino, California 92408; Forest Service National Forest, Cleveland National Forest, 880 Front Street, San Diego, California 92188; Food and Nutrition Service Western Regional Office, 550 Kearny Street, Room 400, San Francisco, California 94108; Forest Service National Forest, Stanislaus National Forest, 19777 Greenley Road, Sonora, California 95370; Forest Service National Forest, Lassen National Forest, 707 Nevada Street, Susanville, California 96130; Forest Service National Forest, Mendocino National Forest, 420 E. Laurel Street, Willows, California 95988; Farmers Home Administration State Office, 459 Cleveland Street, Woodlawn, California 95695; Forest Service National Forest, Klamath National Forest, 1215 S. Main, Yreka, California 90697.

COLORADO—Forest Service National Forest, Grand Mesa-Uncompahgre Gunnison National Forests, 11th and Main, P.O. Box 138, Delta, Colorado 81416; Agricultural Marketing Service Milk Market Office, 2600 S. Parker Road, P.O. Box 440860, Aurora, Colorado 80044; Farmers Home Administration State Office, 1 Diamond Plaza, Room 231, 2490 W. 26th Avenue, Denver, Colorado 80211; Forest Service Regional Office, Federal Center, Building 85, Denver, Colorado 80225; Soil Conservation Service State Office, 1 Diamond Plaza, Room 313, 2490 W. 26th Avenue, Denver, Colorado 80211; Forest Service National Forest, San Juan National Forest, Oliger Building, P.O. Box 341, Durango, Colorado 81301; Forest Service Rocky Mountain Forest and Range Experiment Station, 240 W. Prospect Street, Fort Collins, Colorado 80521; Forest Service National Forest, Arapaho-Roosevelt National Forest,

Federal Building, 301 S. Howles, P.O. Box 1366, Ft. Collins, Colorado 80521; Forest Service National Forest, White River National Forest, P.O. Building, Box 948, Glenwood Springs, Colorado 81601; Forest Service National Forest, Rio Grande National Forest, 1803 W. Highway 10, Monte Vista, Colorado 81144; Forest Service National Forest, Pike San Isabel National Forests, 910 Highway 50 W., P.O. Box 5808, Pueblo, Colorado 81002; Forest Service National Forest, Routt National Forest, Hunt Building, P.O. Box 1198, Steamboat Springs, Colorado 80477; Food and Nutrition Service Mountain Plains Regional Office, 2420 W. 26th Avenue, Denver, Colorado 80211.

CONNECTICUT—Soil Conservation Service State Office, Mansfield Professional Park, Route 44A, Storrs, Connecticut 06268.

DELAWARE—Farmers Home Administration State Office, 151 E. Chestnut Hill Road, Suite 2, Newark, Delaware 19713.

FLORIDA—Agricultural Marketing Service Milk Market Office, 2826 E. Oakland Park Boulevard, P.O. Box 11368, Ft. Lauderdale, Florida 33339; Farmers Home Administration State Office, Federal Building, Room 214, 401 S.E. First Avenue, P.O. Box 1088, Gainesville Florida 32602; Soil Conservation Service State Office, Federal Building, P.O. Box 1208, Gainesville, Florida 32602; Forest Service National Forest, National Forests in Florida, 2856 SEA Gate, P.O. Box 32308, Tallahassee, Florida 32302.

GEORGIA—Agricultural Marketing Service Milk Market Office, 3610 Interstate 85, N.E., Suite 109, P.O. Box 49025, Atlanta, Georgia 30359; Forest Service Regional Office, Suite 806, 1720 Peachtree Road, N.W., Atlanta, Georgia 30309; Forest Service Southeastern Area, State and Private Forestry, Suite 700, 1720 Peachtree Road, N.W., Atlanta, Georgia 30309; Farmers Home Administration State Office, 355 E. Hancock, Stephens Federal Building, Athens, Georgia 30601; Soil Conservation Service State Office, Federal Building, 355 E. Hancock Avenue, P.O. Box 832, Athens, Georgia 30613; Forest Service National Forest, Chattahoochee-Oconee National Forest, 601 Broad Street, Gainesville, Georgia 30501; Food and Nutrition Service Southeast Regional Office, 1100 Spring Street, N.W., Atlanta, Georgia 30367.

HAWAII—Soil Conservation Service State Office, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850; Farmers Home Administration State Office, 345 Kekuanaoa Street, Hilo, Hawaii 96720.

IDAHO—Farmers Home Administration State Office, Federal Building, Room 429, 304 N. 8th Street, Boise, Idaho 83702; Forest Service National Forest, Boise National Forest, 1075 Park Boulevard, Boise, Idaho 83706; Soil Conservation Service State Office, 304 N. 8th Street, Boise, Idaho 83702; Forest Service National Forest, Challis National Forest, Forest Service Building, P.O. Box 247, Challis, Idaho 83226; Forest Service National Forest, Idaho Panhandle National Forest, 1201 Ironwood Drive, P.O. Box 310, Coeur d' Alene, Idaho 83814; Forest Service National Forest, Nezperce National Forest, 319 E. Main Street, Grangeville, Idaho 83530; Forest Service National Forest, Payette National Forest, Forest Service Building, P.O. 1626, McCall, Idaho 83638; Forest Service National Forest, Clearwater National Forest, Rt. 4, Ahsahka Rd., Orofino, Idaho 83544; Forest Service National Forest, Caribou National Forest, 427 N. Sixth Ave., P.O. Box 4189, Pocatello, Idaho 83201; Forest Service National Forest, Targhee National Forest, 420 N. Bridge St., St. Anthony, Idaho 83445; Forest Service National Forest, Salmon National Forest, Forest Service Building, P.O. Box 729, Salmon, Idaho 83467; Forest Service National Forest, Sawtooth National Forest, 1525 Addison Avenue, E., Twin Falls, Idaho 83301.

ILLINOIS—Farmers Home Administration State Office, 2106 W. Springfield Avenue, Champaign, Illinois 61820; Soil Conservation Service State Office, Springer Federal Building, 301 N. Randolph Street, Champaign, Illinois 61820; Agricultural Marketing Service Milk Market Office, 800 Roosevelt Rd., Building A, Glen Ellyn, Illinois 60137; Food and Nutrition Service Midwest Regional Office, 536 S. Clark St., Chicago, Illinois 60605; Forest Service National Forest, Shawnee National Forest, 317 E. Poplar, Harrisburg, Illinois 62946; Agricultural Research Service Northcentral Regional Administrative Office, 200 W. Pioneer Parkway, Peoria, Illinois 61614.

INDIANA—Forest Service National Forest, Wayne-Hoosier National Forest, 1615 J Street, Bedford, Indiana 47421; Farmers Home Administration State Office, Suite 1700, 5610 Crawfordsville Road, Indianapolis, Indiana 46224; Soil Conservation Service State Office, Corporate Square-West, 5610 Crawfordsville Road, Indianapolis, Indiana 46224.

IOWA—Farmers Home Administration State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, Iowa 50309; Soil Conservation Service State Office, Federal Building, Room 823, 210 Walnut Street, Des Moines, Iowa 50309.

KANSAS—Agricultural Marketing Service Milk Market Office, 7819 Conser Pl., P.O. Box 4606, Overland Park, Kansas 66204; Soil Conservation Service State Office, 760 S. Broadway, P.O. 600, Salina, Kansas 67401; Farmers Home Administration State Office, 444 S.E. Quincy St., Topeka, Kansas 66683.

KENTUCKY—Farmers Home Administration State Office, 333 Waller Avenue, Lexington, Kentucky 40504; Soil Conservation Service State Office, 333 Waller Avenue, Lexington, Kentucky 40504; Agricultural Marketing Service Milk Market Office, 3920 Bardstown Rd., P.O. Box 18030, Louisville, Kentucky 40218; Forest Service National Forest, Daniel Boone National Forest, 100 Vaught Rd., Winchester, Kentucky 40391.

LOUISIANA—Farmers Home Administration State Office, 3727 Government Street, Alexandria, Louisiana 71301; Soil Conservation Service State Office, 3737 Government Street, P.O. Box 1630, Alexandria, Louisiana 71301; Agricultural Marketing Service Milk Market Office, 3001 Ridgelake Drive, P.O. Box 7250, Metairie, Louisiana 70010; Agricultural Research Service Southern Regional Administrative Office, 701 Loyola Ave., P.O. Box 53326, New Orleans, Louisiana 70153; Forest Service Southern Experiment Station, T-10110 Federal Building, 701 Loyola Avenue, New Orleans, Louisiana 70113; Forest Service National Forest, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, Louisiana 71360; Forest Service, SA, State and Private Forestry, Alexandria Field Office, 2500 Shreveport Highway, Pineville, Louisiana 71360.

MAINE—Farmers Home Administration State Office, USDA Office Building, Orono, Maine 04473; Soil Conservation Service State Office, USDA Building, University of Maine, Orono, Maine 04473.

MARYLAND—Science and Education, Administrative Operations Division, Administration Building, Beltsville Agricultural Research Centerwest, Beltsville, Maryland 20705; Soil Conservation Service State Office, Hartwich Building, Room 522—4321 Hartwick Road, College Park, Maryland 20740;

MASSACHUSETTS—Soil Conservation Service State Office, 451 West Street, Amherst, Massachusetts 01002; Agricultural Marketing Service Milk Market Office, 230 Congress Street, Room 403, P.O. Box 1478, Boston, Massachusetts 02205; Farmers Home Administration State Office, 451 West Street, Amherst, Massachusetts 01002; Food and Nutrition Service, New

England Regional Office, 33 North Avenue, Burlington, Massachusetts 01803.

MICHIGAN—Agricultural Marketing Service Milk Market Office, 2684 W., 11 Mile Road, Berkley, Michigan 48072; Forest Service National Forest, Huron-Manistee National Forest, 421 S. Mitchell St., Cadillac, Michigan 49601; Farmers Home Administration State Office, 1405 S. Harrison Road, Room 209, E. Lansing, Michigan 48823; Soil Conservation Service State Office, 1405 S. Harrison Road, E. Lansing, Michigan 48823; Forest Service National Forest, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, Michigan 49829; Forest Service National Forest, Ottawa National Forest, P.O. Box 468, Ironwood, Michigan 49938.

MINNESOTA—Forest Service National Forest, Chippewa National Forest, Cass Lake, Minnesota 56633; Forest Service National Forest, Superior National Forest, Duluth, Minnesota 55801; Agricultural Marketing Service Milk Market Office, 4570 W. 77th Street, Suite 210, Minneapolis, Minnesota 55435; Animal and Plant Health Inspection Service Field Servicing Office, Butler Sq., W., 5th Fl., 100 N. 6th Street, Minneapolis, Minnesota 55403; Farmers Home Administration State Office, 252 Federal Office Building and U.S. Court House, St. Paul, Minnesota 55101; Forest Service Northcentral Forest Experiment Station, Folwell Avenue, St. Paul, Minnesota 55101; Soil Conservation Service State Office, 200 Federal Building and U.S. Courthouse, 316 N. Roberts St., St. Paul, Minnesota 55101.

MISSISSIPPI—Farmers Home Administration State Office, Federal Building, Room 831, Jackson, Mississippi 39201; Soil Conservation Service State Office, Federal Building, 100 W. Capitol St., Jackson, Mississippi 39205; Forest Service National Forest, National Forest in Mississippi, 100 W. Capitol, Suite 1141, Jackson, Mississippi 39205; Forest Service, SA, State and Private Forestry, Project Manager, Y-LT, Adams Building, P.O. Box 69, Oxford, Mississippi 38655.

MISSOURI—Farmers Home Administration State Office, 555 Vandiver Dr., Columbia, Missouri 65201; Soil Conservation Service State Office, 555 Vandiver Dr., Columbia, Missouri 65201; Agricultural Stabilization and Conservation Service Management Field Office, 8930 Ward Pky., Kansas City, Missouri 64114; Forest Service National Forest, National Forests in Missouri, Rolla, Missouri 65401; Agricultural Marketing Service Milk Market Office, 2550 Schuetz Road, P.O. Box 1485, Maryland Heights, Missouri 63043; Farmers Home Administration Finance Office, 1520 Market St., St. Louis, Missouri 63103.

MONTANA—Forest Service National Forest, Custer National Forest, P.O. Box 2556, Billings, Montana 59103; Farmers Home Administration State Office, Federal Building, P.O. Box 850, Bozeman, Montana 59715; Forest Service National Forest, Gallatin National Forest, Federal Building, Bozeman, Montana 59715; Soil Conservation Service State Office, Federal Building, P.O. Box 970, Bozeman, Montana 59715; Forest Service National Forest, Deerlodge National Forest, 107 E. Granite, Butte, Montana 59701; Forest Service National Forest, Beaverhead National Forest, State Highway 41 and Skihi Street, Dillon, Montana 59725; Forest Service National Forest, Lewis and Clark National Forest, Federal Building, Great Falls, Montana 59403; Forest Service National Forest, Helena National Forest, Federal Building, Drawer 10014, Helena, Montana 59601; Forest Service National Forest, Flathead National Forest, 290 N. Main, Kalispell, Montana 59901; Forest Service National Forest, Kootenai National Forest, 418 Mineral Ave., Libby, Montana 59923; Forest Service Regional Office, Federal Building, Missoula, Montana 59801; Forest Service National Forest, Lolo National Forest, 2801 Russell, Missoula, Montana 59801; Forest Service, Intermountain Forest and Range Experiment Station, Forestry Sciences and Northern Forest Fire Laboratories, University of Montana, Drawer G, Missoula, Montana 59801.

NEBRASKA—Forest Service National Forest, Nebraska National Forest, P.O. Box 999, Chadron, Nebraska 69337; Farmers Home Administration State Office, Federal Building, Room 308, 100 Centennial Mall North, Lincoln, Nebraska 68508; Forest Service, RM Forest and Range Experiment Station, University of Nebraska, 205 Miller Hall, E. Campus, Lincoln, Nebraska 68503; Soil Conversation Service State Office, Federal Building, 100 Centennial Mall, N., Lincoln, Nebraska 68501.

NEVADA—Forest Service National Forest, Humboldt National Forest, 976 Mountain City Highway, Elko, Nevada 89801; Soil Conservation Service State Office, U.S. Post Office Building, Room 234, P.O. Box 4850, Reno, Nevada 89505; Forest Service National Forest, Toiyabe National Forest, 111 N. Virginia, Room 601, Reno, Nevada 89501.

NEW HAMPSHIRE—Soil Conservation Service State Office, Federal Building, Durham, New Hampshire 03824.

NEW JERSEY—Food and Nutrition Service Mid-Altantic Regional Office, 1 Vahlsing Center, Robbinsville, New Jersey 08691; Soil Conservation Service State Office, 1370 Hamilton Street, P.O. Box 219, Somerset, New Jersey 08873; Farmers Home Administration State Office, 1 Vahlsing Center, Robbinsville, New Jersey 08691.

NEW MEXICO—Forest Service National Forest, Lincoln National Forest, Federal Building, 11th and New York, Alamagordo, New Mexico 88310; Farmers Home Administration State Office Federal Building, Room 3414, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102; Forest Service Regional Office, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102; Forest Service National Forest, Cibola National Forest, 10308 Candelaria, N.E., Albuquerque, New Mexico 87112; Forest Service Rocky Mountain Forest and Range Experiment Station, New Federal Building, Room 5423, 517 Gold Avenue, SW, Albuquerque, New Mexico 87101; Soil Conservation Service State Office, 517 Gold Avenue, S.W., P.O. Box 2007, Albuquerque, New Mexico 87103; Forest Service National Forest, Santa Fe National Forest, P.O. Box 1689, Santa Fe, New Mexico 87501; Forest Service National Forest, Gila National Forest, 2610 N. Silver St., Silver City, New Mexico 88061; Forest Service National Forest, Carson National Forest, Forest Service Building, P.O. Box 558, Taos, New Mexico 87571.

NEW YORK—Agricultural Research Service, Plum Island Animal Disease Center, P.O. Box 848, Greenport, Long Island, New York 11944; Agricultural Marketing Service, Milk Market Office, 205 E. 42nd Street, New York, New York 10017; Farmers Home Administration State Office, U.S. Courthouse and Federal Building, Room 871, 100 S. Clinton Street, Syracuse, New York 13260; Soil Conservation Service State Office, U.S. Courthouse and Federal Building, 100 S. Clinton Street, Syracuse, New York 13260.

NORTH CAROLINA—Forest Service Southeastern Experiment Station, P.O. Box 2570, Asheville, North Carolina 28802; Forest Service National Forest, National Forests in North Carolina, 50 S. French Broad Avenue, P.O. Box 2750, Asheville, North Carolina 28802; Farmers Home Administration State Office, Room 514, 310 New Bern Avenue, Raleigh, North Carolina 27601; Soil Conservation Service State Office, Federal Office Building, 310 New Bern Avenue, P.O. Box 27307, Raleight, North Carolina 27611.

NORTH DAKOTA—Farmers Home Administration State Office, Federal Building, Room 208, 3rd and Rosser Avenue, Bismarck, North Dakota 58501; Soil Conservation Service State Office,

Federal Building, P.O. Box 1458, Bismarck, North Dakota 58502; Forest Service, RM Forest and Range Experiment Station, Shelterbelt Laboratory, P.O. Box 25, Bottineau, North Dakota 58318.

OHIO—Agricultural Marketing Service Milk Market Office, 7851 Freeway Circle, Middleburg Heights, P.O. Box 30128, Cleveland, Ohio 44130; Agricultural Marketing Service Milk Market Office, 5950 Sharon Woods Boulevard, P.O. Box 29226, Columbus, Ohio 43229; Farmers Home Administration State Office, Federal Building Room 507, 200 N. High Street, Columbus, Ohio 43215; Soil Conservation Service State Office, 200 N. High Street, Columbus, Ohio 43215.

OKLAHOMA—Farmers Home Administration State Office, Agricultural Center Office Building, Stillwater, Oklahoma 74074; Soil Conservation Service State Office, Agricultural Center Building, Farm Rd. and Brumley Street, Stillwater, Oklahoma 74074; Agricultural Market Service Milk Market Office, 4325 E. 51st Street, P.O. Box 45563, Tulsa, Oklahoma 74145.

OREGON—Forest Service National Forest, Wallowa-Whitman National Forest, Main and Auburn, Baker, Oregon 97814; Forest Service National Forest, Deschutes National Forest, 211 E. Revere Avenue, Bend, Oregon 97701; Forest Service National Forest, Siuslaw National Forest, 545 S. 2nd Street, Corvallis, Oregon 97330; Forest Service Pacific Northwest Forest and Range Experiment Station, Forestry Sciences Laboratory, 3200 Jefferson Way, Corvallis, Oregon 97331; Forest Service National Forest, Williamette National Forest, 211 E. 7th Avenue, Eugene, Oregon 97401; Forest Service National Forest, Siskiyou National Forest, 1504 N.W. 6th Street, Grants Pass, Oregon 97526, Forest Service National Forest, Malheur National Forest, 139 N.E. Dayton Street, John Day, Oregon 97845; Forest Service National Forest, Winema National Forest, P.O. Building, Klamath Falls, Oregon 97601; Forest Service National Forest, Fremont National Forest, 34 D Street, N., Lakeview, Oregon 97630; Forest Service National Forest, Rogue River National Forest, P.O. and Federal Building, Medford, Oregon 97501; Forest Service National Forest, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, Oregon 97801; Farmers Home Administration State Office, Federal Building, Room 1590, 1220 S.W. 3rd Avenue, Portland, Oregon 97204; Forest Service Pacific Northwest Forest and Range Experiment Station, 809 N.E. 6th Avenue, Portland, Oregon 97232; Forest Service Regional Office, P.O. Box 3623, Portland, Oregon 97208; Forest Service National Forest, Mt. Hood National Forest, 19559 S.E. Division, Gresham, Oregon 97030; Soil Conservation Service State Office, Federal Building, 1220 S.W. Third Avenue, Portland, Oregon 97204; Soil Conservation Service Technical Center, 511 N.W. Broadway, Portland, Oregon 97209; Agricultural Marketing Service Milk Market Office, Tarbell Building; 9735 S.W. Shady Lane, Tigard, P.O. Box 23606, Portland, Oregon 97223; Forest Service National Forest, Ochoco National Forest, Federal Building, Prineville, Oregon 97754; Forest Service National Forest, Umpqua National Forest, Federal Office Building, Roseburg, Oregon 97470.

PENNSYLVANIA—Farmers Home Administration State Office, Federal Building, Room 728, 228 Walnut St., P.O. Box 905, Harrisburg, Pennsylvania 17108; Soil Conservation Service State Office, Federal Building and Court House, P.O. Box 985 (Federal Square Station), Harrisburg, Pennsylvania 17108; Agricultural Research Service Eastern Regional Research Center, 600 E. Mermaid Ln., Philadelphia, Pennsylvania 19118; Forest Service Northeastern Area, State and Private Forestry, 370 Reed Road, Broomall, Pennsylvania 19008; Forest Service Northeastern Experiment Station, 6816 Market Street, Upper Darby, Pennsylvania 19082; Soil Conservation Service Technical Service Center, 1974 Sproul Road, Broomall, Pennsylvania 19008; Forest Service National Forest, Allegheny National Forest, P.O. Building, Warren, Pennsylvania 16365.

SOUTH CAROLINA—Forest Service, Forest Manager, Savannah River Project, AEC, P.O. Box A, Aiken, South Carolina 29802; Farmers Home Administration State Office, Strom Thurmond Federal Building, Room 1007, 1835 Assembly Street, 2nd Floor, Columbia, South Carolina 29201; Forest Service National Forest, Francis Marion-Sumter National Forest, 1835 Assembly Street, 2nd Floor, Columbia, South Carolina 29201; Soil Conservation Service State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201.

SOUTH DAKOTA—Forest Service National Forest, Black Hills National Forest, Forest Service Office Building, P.O. Box 792, Custer, South Dakota 57730; Farmers Home Administration State Office, Huron Federal Building, Room 208, 200 4th Street, S.W., Huron, South Dakota 57350; Soil Conservation Service State Office, Federal Building, 200 4th Street, S.W., Huron, South Dakota 57350; Forest Service, RM Forest and Range Experiment Station, Forest Research Laboratory, South Dakota School of Mines and Technology, Rapid City, South Dakota 57701.

TENNESSEE—Forest Service National Forest, Cherokee National Forest, 2321 Ocoee Street, N.W., P.O. Box 400, Cleveland, Tennessee 37311; Farmers Home Administration State Office, 538 U.S. Courthouse Building, 801 Broadway Street, Nashville, Tennessee 37203; Soil Conservation Service State Office, U.S. Courthouse, 801 Broadway Street, Nashville, Tennessee 37203.

TEXAS—Agricultural Marketing Service Milk Market Office, 11117 Shady Trail, P.O. Box 29529, Dallas, Texas 75229; Food and Nutrition Service Southwest Regional Office, 1100 Commerce Street, Room 5D 22, Dallas, Texas 75242; Forest Service National Forest, National Forest in Texas, 3rd and Lufkin Avenue, P.O. Box 969, Lufkin, Texas 75901; Farmers Home Administration State Office, W.R. Poage Building, 101 S. Main Street, Temple, Texas 76501; Soil Conservation Service State Office, W.R. Poage Building, 101 S. Main Street, P.O. Box 686, Temple, Texas 76501; Soil Conservation Service Technical Service Center, P.O. Box 6567 Ft. Worth Federal Center Building 23, Felix and Hemphill Streets, Ft. Worth, Texas 76115.

UTAH—Forest Service National Forest, Dixie National Forest, 500 S. Main Street, Cedar City, Utah 84720; Forest Service Intermountain Experiment Station, Federal Building, 507 25th Street, Ogden, Utah 84401; Forest Service Regional Office, Federal Office Building, 324 25th Street, Ogden, Utah 84401; Forest Service National Forest, Manti LaSal National Forest, 350 E. Main Street, Price, Utah 84501; Forest Service National Forest, Unita National Forest, Federal Building, P.O. Box 1428, Provo, Utah 84601; Forest Service National Forest, Fishlake National Forest, 170 N. Main Street, Richfield, Utah 84701; Farmers Home Administration State Office, Federal Building, Room 5311, 125 S. State Street, Salt Lake City, Utah 84138; Forest Service National Forest, Wasatch National Forest, 4311 Federal Building, 125 S. State Street, Salt Lake City, Utah 84138; Soil Conservation Service State Office, 4012 Federal Building, 125 S. State Street, Salt Lake City, Utah 84147; Forest Service National Forest, Ashley National Forest, 437 E. Main Street, Vernal, Utah 84078.

VERMONT—Soil Conservation Service State Office, 1 Burlington Square, Burlington Square, Burlington, Vermont 05401; Farmers Home

Administration State Office, 141 W. Main Street, P.O. Box 588, Montepelier, Vermont 05602; Forest Service National Forest, Green Mountain National Forest, Federal Building, Rutland, Vermont 05701.

VIRGINIA—Agricultural Marketing Service Milk Market Office, 300 N. Lee St., Room 320, P.O. Box 710, Alexandria, Virginia 22313; Forest Service National Forest, George Washington National Forest, 210 Federal Building, P.O. Box 233, Harrisonburg, Virginia 22801; Farmers Home Administration State Office, Federal Building, Room 8213, 400 N. Eighth Street, P.O. Box 10106, Richmond, Virginia 23240; Soil Conservation Service State Offices 400 N. Eighth Street, P.O. Box 10026, Richmond, Virginia, 23240; Forest Service National Forest, Jefferson National Forest, 210 Franklin Road, S.W., Roanoke, Virginia 24002.

WASHINGTON—Forest Service National Forest, Colville National Forest, Colville, Washington 99114; Forest Service National Forest, Okanogan National Forest, 219 2nd Avenue, S., Okanogan, Washington 98840; Forest Service National Forest, Olympic National Forest, Federal Building, Olympia, WA 99507; Forest Service National Forest, Mt. Baker-Snoqualmie National Forests, 1022 1st Avenue, Seattle, Washington 98104; Soil Conservation Service State Office, 360 U.S. Courthouse, W. 920 Riverside Avenue, Spokane, Washington 99201; Forest Service National Forest, Gifford Pinchot National Forest, 500 W. 12th St., Vancouver, Washington 98660; Farmers Home Administration State Office, Federal Office Building, Room 319, 301 Yakima St., Wenatchee, Washington 98801; Forest Service National Forest, Wenatchee National Forest, 301 Yakima Street, Wenatchee, Washington 98801.

WEST VIRGINIA—Forest Service National Forest, Monomgahela National Forest, USDA Building, Sycamore Street, Elkins, West Virginia 26241; Farmers Home Administration State Officer, Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505; Soil Conservation Service State Office, 75 High St., Morgantown, West Virginia 26505.

WISCONSIN—Forest Service Forest Products Laboratory, N. Walnut Street, P.O. Box 5130, Madison, Wisconsin 53705; Soil Conservation Service State Office, 4601 Hammersley Road, Madison, Wisconsin 53711; Forest Service Regional Office, 633 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203; Forest Service National Forest, Chequamegon National Forest, Federal Building, Park Falls, Wisconsin 54552; Forest Service National Forest, Nicolet National Forest, Federal Building, Rhinelander, Wisconsin 54501; Farmers Home Administration State Office, 1257 Main Street, Stevens Point, Wisconsin 54481.

WYOMING—Farmers Home Administration State Office, Federal Building, Room 1005, 100 E. B Street, Casper, Wyoming 82601; Soil Conservation Service State Office, Federal Office Building, P.O. Box 2440, Casper, Wyoming 82601; Forest Service National Forest, Shoshone-Bighorn National Forests, Blair Building, No. 1, Cody, Wyoming 82414; Forest Service National Forest, Bridger-Teton National Forest, Forest Service Building, P.O. Box 1888, Jackson, Wyoming 83001; Forest Service National Forest, Medicine Bow National Forest, Box 3355, University Station, Laramie, Wyoming 82070; Forest Service, RM Forest and Range Experiment Station, Forest Range and Watershed Laboratory, University of Wyoming, Laramie, Wyoming 82071.

PUERTO RICO—Farmers Home Administration State Office, Federal Building, Carlos Chardon Street, G.P.O. Box 6106G Hato Rey, San Juan, Puerto Rico 00918; Soil Conservation Service Caribbean Office, Federal Office Building, Chardon Avenue, Hato Rey, Puerto Rico 00918.

HEADQUARTERS—Science and Education Management Staff, Personnel Division, Federal Center Building, Room 557, Hyattsville, MD 20782; Agricultural Marketing Service, Personnel Division, Room 1709–S, Washington, D.C. 20250; Agricultural Stabilization and Conservation Service, Personnel Division, Room 4752–S, Washington, D.C. 20250; Animal and Plant Health Inspection Service, Human Resources Division, Room 213, Federal Building, Hyattsville, MD 20782; Economics Management Staff, Division of Personnel, Room 1442–S, Washington, D.C. 20250; Farmers Home Administration, Personnel Division, Room 6319–S, Washington, D.C. 20250; Federal Crop Insurance Corporation, Personnel, Management and Administrative Service Division, Room 4622–S, Washington, D.C. 20250; Foreign Agricultural Service, Personnel Division, Room 5627–S, Washington, D.C. 20250; Forest Service, Division of Personnel Management, Room 910, Rosslyn Plaza E, Arlington, VA 22209; Food and Nutrition Service, Personnel Division, Park Office Center, Room 813, 3101 Park Center Drive, Alexandria, VA 22302; Office of Inspector General, Personnel Management Staff, Room 16–E, Washington, D.C. 20250; Office of Personnel, Personnel Operations, Room 149–W, Washington, D.C. 20250; Soil Conservation Service, Personnel Staff, P.O. Box 2890, Washington, D.C. 20013; Soil Conservation Service National, Office Administrative Staff, P.O. Box 2890, Washington, D.C. 20013; Rural Electrification Administration, Personnel Management Division, Room 4070–S, Washington, D.C. 20250; Food Safety and Inspection Service, Personnel Division, Room 3911–S, Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and prior employees of USDA and applicants who were not hired, as well as its permittees, cooperators and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of personnel (Official Personnel Folders, Applicant Supply Files, performance files, retention lists, appeals, grievances, complaints, disciplinary, conflict of interest, health, suggestion and incentive awards, accident, training, time and attendance, travel voucher, and classification files) and payroll data needed to conform to all applicable laws, Government regulations and procedures, and the needs of the Department and agencies in carrying out their personnel management responsibilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to (1) Office of Personnel Management for required action, records and reports; (2) Department of Treasury for issuance of checks and bonds; (3) Department of Labor for Office of Workers Compensation Program and Office of Safety and Health Administration; (4) Department of Commerce for distribution of Federal payrolls; (5) Congress for special reports; (6) White House for special reports; (7) Office of Management and Budget for special reports; (8) General Accounting Office for special reports; (9) Department of Justice; (10) General Services Administration for records retirement and/or destruction; (11) State Department for passport and foreign assignments; (12) Department of Transportation, Environmental Protection Agency and Cooperating State and local agencies for accident and safety records; (13) Internal Revenue Service and State and local governments for matters in connection with payment of income taxes; (14) Social Security Administration for social

security payment information; (15) United funds for reports and records; (16) Department of Health and Human Services for scheduling physical examinations; (17) all Government agencies and potential employers concerning employment inquiries; (18) Equal Employment Opportunity Commission for handling complaints; (19) appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigation or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or order particular program statute, or by rule, regulation or order issued pursuant thereto; and (20) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders at the applicable address listed above, except for the National Finance Center where it is maintained on computer tape and disk storage.

RETRIEVABILITY:

Records are indexed by name of employee and/or identification number.

SAFEGUARDS:

Records are kept in locked files, locked offices and/or in secured computer tape storage rooms.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until employees are separated from the Department and are then retired or transferred to a new employing agency or destroyed in conformance with appropriate General Services Administration retirement and/or destruction Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

Employees may request information from this system from the appropriate personnel office having custody of his/her records. A request for information should be addressed to the Director, Personnel Division (name of appropriate Agency), USDA at the address shown under Location and should contain:

Name of requestor, employing agency in USDA or agency to which information was furnished, address of agency and particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him by submitting a written request to the appropriate offices referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as RECORD ACCESS PROCEDURES.

RECORD SOURCE CATEGORIES:

Information in this system comes from the employee applicants, permittees, cooperators, contractors, employee's personnel offices, supervisors, references, investigative personnel, colleges and universities and former employers.

USDA/OP-3

SYSTEM NAME:

Committee Management Records System.

SYSTEM LOCATION:

Security and Employee Relations Staff, Office of Personnel, Room 16-W, Administration Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All public members of USDA Advisory Committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of keypunched cards for each advisory committee member which reflects his/her name, business or home address, date of appointment expiration, sex, ethnic affiliation and occupational category.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 92-463 and Title XVIII of Pub. L. 95-113.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used solely for administrative purposes and one report generated from the system is distributed to the Office of the Secretary and the Office of Minority Affairs on a quarterly basis.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in loose leaf binders and on computer keypunch cards.

RETRIEVABILITY:

Records are indexed into five separate reports—alphabetically by member's name, by name of committee, by State, by female members and by ethnic breakdown.

SAFEGUARDS:

Records are kept in locked rooms. All information generated, with the exception of ethnic breakdown of members is required as a part of two annual reports which is available to the public. The report by the ethnic grouping is used as an internal management tool.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual serves as a member of an advisory committee. Source documents are periodically sent to the USDA historian.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, USDA, Washington, D.C. 20250.

RECORD ACCESS PROCEDURES:

Any individual may obtain a listing of the membership of any advisory committee by submitting a written request o the address shown above.

RECORD SOURCE CATEGORIES:

All information contained in this system is obtained from the USDA Agency which is responsible for the support of each advisory committee. None is collected by the Office of Personnel.

Dated: February 25, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-5696 Filed 3-1-82; 8:45 am]

BILLING CODE 3410-96-M

CIVIL AERONAUTICS BOARD

[Order 82-2-108; Docket No. 37642]

Ticketing Service Fees; Request for Comments

AGENCY: Civil Aeronautics Board.

ACTION: Order 82-2-108, Docket 37642, Served.

SUMMARY: The CAB is considering a request by United Air Lines to allow travel agents and carriers to charge fees

for ticketing services without disclosure in tariffs. The Board requests comments from interested persons.

DATES: Comments due March 29, 1982.

FOR FURTHER INFORMATION CONTACT: Barry L. Molar, Pricing and Entry Division, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, DC 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: United Air Lines has requested the authority to permit travel agents to charge their customers service fees without filing the fees in tariffs. The Board deferred action on United's request while completing a comprehensive review of tariff filing policy in another proceeding.

Having completed that review (See ER-1246, 46 FR 46787, September 22, 1981 and Order 81-12-112, 47 FR 315, January 12, 1982) the Board is now prepared to consider United's proposal, and requests interested parties to file comments by March 29, 1982. They should consider the merits of United's request in light of the Board's recent decision on tariff policies and the sunset of domestic tariffs at the end of the year.

Interested parties should comment on the desirability of an exemption which may open this avenue of competition and enable travel agents and carriers to charge for certain services, such as ticket reissuance, revalidation or cancellation, which are not now compensated. United's asserts that customers make different demands on travel agents for ticketing-related services and impose differing costs on travel agents. Will the freedom to assess service fees permit agents and carriers to better match revenues to costs? What effect will a permissive non-tariff service fee regime have on travel agent revenues, carriers costs and ticket prices to consumers?

The Board is interested in comments in other issues as well. For example, we have historically permitted agents to assess tariff fees for acting as an advisor or consultant. However, activities such as ticket cancellation, validation or reissuance were considered to be so intimately connected with air transportation as to require tariff filing. Moreover, these services have traditionally been included in the purchase price of airline tickets. We request parties' views on fare and tariff policy of permitting charges for ticketing services formerly subsumed within the basic ticket price. Should we impose any special requirements for consumer notice as a condition of relief? Although United requested relief only for travel agents, should relief be extended to carriers as well? Should relief if it is granted, include foreign as well as domestic air transportation? Should there be any limitation on the types of services for which charges may be levied?

By the Civil Aeronautics Board: September 23, 1982

Phyllis T. Kaylor,

Secretary

[FR Doc. 82-5780 Filed 3-2-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Piher Semiconductores, S.A.; Order Temporarily Denying Export Privileges

The Department of Commerce, pursuant to the provisions of § 388.19 of the Export Administration Regulations (15 CFR Part 368, *et seq.* (1981)) (the Regulations), has requested the Hearing Commissioner to issue an order temporarily denying all export privileges to Piher Semiconductores, S.A. (Piher), Avda San Julian, s/n, Apartado Correos 177, Granallers (Barcelona), Spain.

The Department states that Piher is under investigation by the Compliance Division of the Department's Office of Export Administration. The Department states further that its investigation gives it reason to believe: (i) That Piher has negotiated a contract with the Government of Cuba whereby Piher would install, in Cuba, a factory for the production of a wide range of semiconductors; (ii) that, in carrying out the contract, Piher has reexported U.S.-orgin commodities contrary to the Regulations; and (iii) that Piher may attempt future reexports contrary to the Regulations unless appropriate action is taken to preclude such attempts.

Based upon the showing made by the Department, I find that an order temporarily denying all export privileges to Piher is required in the public interest to facilitate enforcement of the Export Administration Act of 1979 (50 U.S.C. app. 2401, *et seq.* (Supp. III 1979)) and the Regulations and to permit completion of the Department's investigation.

Accordingly, it is hereby Ordered;

I. All outstanding validated export licenses in which respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondent, its successors or assigns, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Administration Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity, (a) as a party or as a representative of a party to a validated export license application, (b) in the preparation of filing of any export license application or reexportation authorization, or of any document to be submitted therewith, (c) in the obtaining or using of any validated or general export license or other export control document, (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data in whole or in part, exported or to be exported from the United States, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent, but also to its agents and employees and to any successor and to any person, firm, corporation, or business organization with which it now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or services related thereto. Business organizations now known to be owned by or affiliated with the respondent specifically include:

Piher, S.A., Apartado 177, Granallers (Barcelona), Spain
Piher Servicos Centrales, S.A. Riera Canado s/n, Barcelona, Spain
Piher Electronic, S.A., Albala 12, Madrid 17, Spain
Piher Navarra, S.A., Tudela, Spain
Piher International Corp., 505 W. Golf Road, Arlington Heights, Illinois 60005
Piher International Corp., Post Office Box 91969, Chicago, Illinois 60680
Piher Electronic, S.A., Albala 11, Madrid 17, Spain
Fielsa Grupo-Piher, Apartado 53, Riera Canado, 1, Barcelona, Spain
Fielsa, Albala 12, Madrid 17, Spain
Fielsa, Albala 11, Madrid 17, Spain

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization

from the Office of Export Administration, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the named respondent or any named related business organization or other related party, or whereby the named respondent or any named related business organization or other related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for the named respondent or any named related business organization or other related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the Regulations, the respondent or any named business organization may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room 3886D, 14th and Constitution Avenue, NW., Washington, D.C. 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of any administrative or judicial proceeding or proceedings initiated against the named respondent as a result of the ongoing investigation. A copy of this order shall be served upon the respondent and upon each named related business organization.

Dated: February 25, 1982.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 82-5708 Filed 3-2-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Issuance of Permit

On June 23, and December 11, 1980, Notices were published in the **Federal Register** (45 FR 42003 and 81642), that applications had been filed with the National Marine Fisheries Service by Marine Animal Productions, Inc., 150 Debuys Road, Biloxi, Mississippi 39531 for permits to take a total of eight (8) California sea lions (*Zalophus californianus*) and six (6) Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that on February 25, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Public Display Permit for the above taking to Marine Animal Productions, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: February 25, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-5730 Filed 3-2-82; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council's Scientific and Statistical Committee; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The South Atlantic Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), has established a Scientific and Statistical Committee which will meet to discuss Council and Scientific and Statistical Committee interaction on Council activities; review the Billfish, Snapper/Grouper, and Swordfish Fishery Management Plans; discuss Committee membership nominations, as well as other fishery management matters, as necessary.

DATES: These public meetings will convene on Wednesday, April 21, 1982, at approximately noon, and will adjourn on Thursday, April 22, 1982, at approximately 5 p.m.

ADDRESS: The meetings will take place at the Council's Headquarters Office, One Southpark Circle, Suite 306, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571–4366.

Dated: February 25, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-5731 Filed 3-2-82; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council's Scientific and Statistical Committee and Advisory Panel; Meeting Amendment

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of Change in Dates for the Meeting of the Western Pacific Fishery Management Council's Advisory Panel.

SUMMARY: The scheduled public meeting of the Western Pacific Fishery Management Council's Advisory Panel as published in the **Federal Register**, February 22, 1982, (47 FR 7720), has been changed as follows:

From

Convening on Monday, March 15, 1982, at approximately 8:30 a.m., and adjourning on Tuesday, March 16, 1982, at approximately 3 p.m.

To

Convening on Monday, March 22, 1982, at approximately 8:30 a.m., and adjourning on Tuesday, March 23, 1982, at approximately 3 p.m.

All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1608, Honolulu, Hawaii 96813, Telephone: (808) 523–1368.

Dated: February 25, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-5732 Filed 3-2-82; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, March 9, 1982 at 10:00 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C. February 24, 1982.

Charles H. Atherton,

Secretary.

[FR Doc. 82-5716 Filed 3-2-82; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Department of Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday, March 25, 1982, Friday, March 26, 1982.

Times: 0830-1700 hours, March 25, 1982 (Closed), 0830-1600 hours, March 26, 1982 (Closed).

Place: Applied Physics Laboratory, The Johns Hopkins University, Laurel, Maryland.

Proposed Agenda: The Army Science Board Ad Hoc Subgroup on Air Defense will meet to present and receive classified briefings and to hold classified discussions of progress to date on this study effort. There will also be an executive writing session for the final report. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified an non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 697-9703 or 695-3039.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-5684 Filed 3-2-82; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Acquisition Improvement Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense Acquisition Improvement Program includes an initiative (16) to increase the use of contractor incentives to improve reliability and support of systems acquired by DoD. The Under Secretary of Defense under his memorandum of August 26, 1981, (see supplementary referencing) gave direction and guidance on this initiative to the Military Departments and affected Defense Agencies. These contractor incentives shall include a full range of approaches including appropriate source selection criteria, contract incentives on product performance, warranties and award fees, and will be tailored to the specific acquisition programs.

ADDRESS: Office of the Deputy Under Secretary of Defense (Acquisition Management), the Pentagon, Room 2A318, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Colonel Thomas A. Musson, USAF, 202-695-7915.

SUPPLEMENTARY INFORMATION: For information to those concerned, we are quoting the entire text of the August 26, 1981, memorandum:

Memorandum for the Secretaries of the Military Departments; the Director, Defense Communications Agency; the Director, National Security Agency

Subject: Contractor Incentives To Improve Reliability and Support

In his April 30, 1981 memorandum on "Improving the Acquisition Process," the Deputy Secretary of Defense approved a recommendation (Number 16) that there be increased use of incentives for contractors to attain reliability and maintainability (R&M) goals, improve support, and reduce the requirements for maintenance manpower and skill levels. This recommendation was made on the premise that attention to "cost and schedule" in DoD acquisitions has inhibited industry from placing sufficient emphasis on reliability and support. This memorandum establishes guidelines for the application and increased use of reliability and support incentives. An additional, longer term effort under Recommendation 16 will develop new approaches for projecting maintenance manpower performance criteria and its use in incentives, program management and system design.

As a normal course of action, appropriate source selection criteria and contract performance clauses should be used to incentivize contractors to deliver systems with the required R&M and support characteristics (including manpower). Program managers will use contract incentives consistent with the form of contract unless the program strategy clearly prohibits the structuring of a satisfactory incentive arrangement or the program phase makes it impractical. Each Military Department and affected defense agency will develop policies to implement this direction. The attached guidance will be used in developing these policies.

In his 30 April 1981 memorandum, the Deputy Secretary of Defense directed that the Under Secretary of Defense for Research and Engineering and the Services perform an evaluation of the application of incentives within one year. To prepare for this evaluation, each Component shall identify selected acquisitions using various types of incentive arrangements, gather factual material and evaluate the experience that has been gained using incentives, including contractor comments. The sample should include at least five procurements that followed the source selection guidelines, five procurements that applied the other guidelines for contractor incentives and other existing or completed contracts that have involved reliability incentives or warranties. A major objectives is to evaluate the adequacy of Component instructions and determine if changes are required in other documents such as the DAR or budget guidance.

R. D. DeLauer,

Under Secretary of Defense for Research and Engineering.

(Attachment: Guidance)

Incentives Program: The Military Department (or agency) will assist the individual program manager in evaluating and implementing incentives. Guides or lists of various incentive techniques (e.g., incentive clauses, award fees, reliability warranties), the criteria for use, the application method, procedures for assessing results, contraints, and limitations should be developed and provided to the program managers. Experience using incentives should be captured and evaluated. This experience information should be disseminated to affected personnel and used to revise policy and procedural documents. Adequate training and education should be developed or added to existing courses to assure that program management and contracting personnel have thorough knowledge of the incentive types and are capable of selecting and administering them.

Selection of Incentives: The application of specific incentive approaches to a particular program should be developed early in the program and documented as a portion of the program acquisition strategy. The support concept; the operating concept; and reliability, maintainability and manpower requirements should be analyzed and critical parameters identified. The list of incentive approaches should be examined and

candidate approaches selected and evaluated for each of the critical parameters. Contractors should be encouraged to submit alternative incentive approaches, particularly during the concept development phase. The program manager should document his strategy for using contract incentives to motivate the contractor to improve the level of reliability, maintainability and support for his system. Funds required to implement the incentive approach should be clearly identified, programmed and budgeted. Contractors who deliver high performance and the results of sucessful incentive programs should receive appropriate recognition.

Source Selections: The approach to conducting source selections offers a significant potential for substantially motivating contractors to improve support and Reliability and Maintainability (R&M). Source selection evaluation criteria for appropriate competitive programs should include a separate evaluation factor (separate from schedule, performance, cost, etc.) for readiness and support. Specific criteria for this factor should include R&M, manpower requirements and support requirements including deployment. These criteria should focus on design and engineering aspects that are critical to the reliability, readiness and manpower objectives for the system. The relative weighing of this readiness and support factor in the selection criteria should reflect the DoD emphasis on these subjects and the operational importance of the items being procured. The role of the criteria in the selection should be emphasized in the RFP and during debriefing of unsuccessful offerors.

Contract Clauses: The contract clauses that are selected as incentives may be based on measures of contractor performance (e.g., an award fee based upon contractor effort on a design/analysis task) or on measures of product performance (e.g., a contract incentive based upon demonstrated product reliability). When production contracts include product performance agreements for system R&M or support, these agreements should be based on system performance in the field.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

February 26, 1982.

[FR Doc. 82-5686 Filed 3-2-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Systems Management College; Board of Visitors Meeting

A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 204, Fort Belvoir, VA, on Thursday, 25 March 1982, from 11:00 a.m. until 4:30 p.m. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend the meeting should call Lieutenant Commander Judy Ray (703-664-1175) to reserve a seat.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

February 26, 1982.

[FR Doc. 82-5685 Filed 3-2-82; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Meeting Cancellation

The meeting of the Army Science Board Ad Hoc Subgroup on Robotics/Artificial Intelligence which was originally announced in the issue of the **Federal Register** of February 8, 1982 (47 FR 5756) for March 4 & 5, 1982 at Carnegie-Mellon Institute of Research in Pittsburgh, Pennsylvania (Open Meeting) and changed to March 5, 1982 only in the Pentagon (Open Meeting), published as a Notice of Meeting Changes in the **Federal Register** on February 25, 1982 (47 FR 8239), has been totally concelled. Questions may be addressed to the Army Science Board Administrative Officer, Helen M. Bowen, at (202) 697-9703 or 695-3039.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-5936 Filed 3-2-82; 10:28 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 82-CERT-004]

Jones & Laughlin Steel Corp., Division of Jones & Laughlin Steel Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Jones & Laughlin Steel Corporation, Division of Jones & Laughlin Steel Incorporated (J&L), 3 Gateway Center, 9N, Pittsburgh, Pennsylvania 15263, filed an application on Februay 11, 1982, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Aliquippa Worked located in Aliquippa, Pennsylvania, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA, Natural Gas Branch Docket Room, Room 6013, RG-631, 2000 M Street, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, J&L states that the volume of natural gas for which it requests certification is approximately 185,000 Mcf per month. This volume is estimated to displace the use of approximately 1,289,450 gallons (30,701 barrels) of No. 6 fuel oil (1.2-1.9 percent sulfur) per month.

The eligible seller is American Energy Services, Inc., 6480 Busch Boulevard, Suite 321, Columbus, Ohio 43229. The gas will be transported by Columbia Gas Transmission Corporation, Box 1273, 1700 McCorkle Avenue, SE., Charleston, West Virginia 25325. Additionally, Columbia Gas of Pennsylvania, Inc., 99 North Front Street, Columbus, Ohio 43215, will be used as a local distribution company.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6304, RG-631, 2000 M Street, NW., Washington, D.C. 20461, Attention: Paula A. Daigneault, on or before March 15, 1982.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing on or before March 15, 1982. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to J&L and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C. on February 25, 1982.

James W. Workman,

Director, Office of Fuels Programs, Enonomic Regulatory Administration.

FR Doc. 82-5662 Filed 3-2-82; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-CERT-005]

Long Island Lighting Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Long Island Lighting Company (LILCO), 250 Old Country Road, Mineola, New York 11501, filed an application on February 12, 1982, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at two of its electric generating facilities in New York: the E. F. Barrett Electric Plant in Island Park and the Glenwood Electric Plant in Glenwood Landing, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA, Natural Gas Branch Docket Room, Room 6013, 2000 M Street, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, LILCO states that the volume of natural gas for which it requests certification is approximately 50,000 dekatherms (approximately 50,000 Mcf) per day. LILCO requests certification from the date of issuance through October 31, 1982.

The volume involved is estimated to displace the use of approximately 540,000 barrels or residual fuel oil (1.5 percent sulfur) and 40,000 barrels of No. 2 fuel oil (0.3 percent sulfur) at the E. F. Barrett Plant and 155,000 barrels of residual fuel oil (1.0 percent sulfur) at the Glenwood Plant. The eligible seller of the natural gas is Equitable Gas Company, 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, and the gas will be transported by Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77001.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6304, RG-631, 2000 M Street, NW., Washington, D.C. 20461, Attention: Paula Daigneault, on or before March 15, 1982.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing on or before March 15, 1982. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to LILCO and any persons filing comments and will be published in the Federal Register.

Issued in Washington, D.C. on February 25, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-5663 Filed 3-2-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Request for Clearance of Financial Reporting System, Form EIA-28

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of a request for clearance to the Office of Management and Budget (OMB) for the Financial Reporting System, Form EIA-28.

SUMMARY: The Energy Information Administration (EIA) solicits comments concerning the collection of financial and statistical data from 26 major energy producing companies on Form EIA-28. All comments submitted directly to the EIA will be shared with the OMB.

DATES: Comments must be filed by March 26, 1982 with the EIA at the address noted below.

ADDRESS FOR FURTHER INFORMATION: Paul Bjarnason, Economics and Statistics Division, Energy Information Administration, NPO, Room 8443, 12th & Pennsylvania Ave., NW., Washington, D.C. 20461, (202) 633-8887.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the EIA has submitted a request for clearance to the OMB for the FRS Form EIA-28, under provisions of the Paperwork Reduction Act, Pub. L. No. 96-511. The approval request is made pursuant to Section 205(h) of the Department of Energy (DOE) Organization Act, which requires that data be collected to provide a "profile" of the energy industry in the United States.

Aggregate data from earlier collections of the 1977, 1978, 1979 and 1980 reporting years have been published in annual reports entitled "Performance Profiles of Major Energy Producers." These reports depict and compare the operations of 26 major energy producing companies against one another by size groups and against total industry data gathered from other data systems.

The revised Form EIA-28 has been considerably streamlined in comparison to the 1980 version. The EIA believes the new, reduced form continues to be responsive to the requirements of the DOE Act, while at the same time providing a considerable reduction in burden upon the reporting companies.

Copies of the latest available "Profiles Report" and the proposed 1981 Form are available by writing or calling the EIA as indicated above.

Dated: February 23, 1982.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 82-5668 Filed 3-2-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 3011-001]

Arctic Development Corp.; Application for License (5 MW or Less)

March 3, 1982.

Take notice that Arctic Development Corporation (Applicant) filed on January 11, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as the Arctic Project No. 3011. The project would be located on the South Branch of the Pawtuxet River at West Warwick in Kent County, Rhode Island. Correspondence with the Applicant should be directed to: Mr. Steven Krous, Holliwell Associates, Inc., 865 Waterman Avenue, East Providence, Rhode Island 02914. This application was filed pursuant to a preliminary permit issued to the Applicant for Project No. 3011-000.

Project Description—The proposed run-of-the-river project would consist of existing project facilities including: (1) A granite masonry dam, 110 feet long and 28 feet high, with 18 inch flashboards; (2) a reservoir of negligible storage at spillway crest elevation 108.4 feet m.s.l.; (3) a headrace (filled in but to be re-excavated), 115 feet long; (4) a powerhouse area in the mill building in which would be installed two turbine-generator units with a total capacity of 373 kW; (5) a tailrace, 280 feet long; and new project works to include (6) trashracks and headgates; (7) electrical facilities; and (8) other appurtenances. Average annual generation is estimated at 2,206,000 kWh.

Purpose of Project—Project energy will be sold to the Narragansett Electric Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archelogical Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. 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 May 12, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et. seq. (1981).

Comments, Protests, or Petitions to Interven—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–5740 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–330–000]

Arizona Public Service Co.; Filing

February 26, 1982.

The filing Company submits the following:

Take notice that Arizona Public Service Company (APS) on February 22, 1982, tendered for filing a proposed Letter Agreement to Amendment No. 1 to Supplement No. 9 in the Agreement between the Navajo Tribe of Indians (NTUA) and APS which Agreement has been designated FPC Rate Schedule No. 6. This Agreement for additional deliveries, near White Cone on the Indian Reservation, has no provision for a change in rate.

At the request of NTUA, APS requests an effective date of this Letter Agreement of February 12, 1982, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing was served upon NTUA and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, 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 March 17, 1982. 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. 82–5756 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–332–000]

Central Illinois Public Service Co.; Filing

February 26, 1982.

The filing Company submits the following:

Take notice that on February 22, 1982, Central Illinois Public Service Company (CIPS) tendered for filing a Letter Agreement dated February 8, 1982, canceling Appendix "L" to the Facility Use Agreement between CIPS and Illinois Power Company and Connection Point 20—Coffeen 138 to the Interconnection Agreement between CIPS, Illinois Public Service Company, Illinois Power Company and Union Electric Company.

CIPS states that Appendix "L" should be cancelled as of November 13, 1981, the date upon which the transmission line was disconnected from the switching station. CIPS further states that CIPS–IP Connection 20—Coffeen 138 should also be cancelled.

CIPS states that copies of this filing were sent to the Public Service Commission of Missouri, the Illinois Commerce Commission, Illinois Power Company and Union Electric Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 17, 1982. 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. 82–5757 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP80–499–005]

Cities Service Gas Co.; Proposed Change in FERC Gas Tariff

February 26, 1982.

Take notice that on February 12, 1982, Cities Service Gas Company (Cities Service) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, First Revised Sheet Nos. 173, 175, 176,

180 and 181, proposed to have been made effective December 23, 1981.

Cities Service states that the revised sheet incorporates changes in Rate Schedule K–18, which is a limited term gas sale agreement between Cities Service and El Paso Natural Gas Company (El Paso).

Cities Service states that pursuant to the agreement, as amended on May 29, 1981, Cities Service may sell and deliver to El Paso an average of 200,000 MMBtu per day during the term of the agreement. In its order issued December 3, 1981, the Commission conditioned its acceptance of the amendment on Cities Service's changing the price, effective December 23, 1981, that it charged El Paso to a price equal to Cities Service's I–2 rate. Subsequently, Cities Service and El Paso executed a further amendment to the agreement dated December 23, 1981, incorporating the price change.

Copies of this filing were mailed to all interested parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. 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. 82–5758 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–191–000]

Consolidated Gas Supply Corp.; Application

March 2, 1982.

Take notice that on February 4, 1982, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP82–191–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the contined sales of natural gas to Hanley and Bird, an existing jurisdictional customer of Applicant located in Bradford, Pennsylvania, under a revised service agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the continued sale of natural gas to Hanley and Bird under a revised service agreement which implements the transfer of service from Rate Schedule SCQ to Rate Schedule RQ of Applicant's FERC Gas Tariff, Third Revised Volume No. 1.

It is submitted by Applicant that Hanley and Bird notified Applicant of its exercise of the election provided by Article I of the Rate Schedule RQ entitled "Availability" by letter dated November 13, 1981, whereby a Rate Schedule SCQ customer may elect to take service under Rate Schedule RQ by submitting written notice advising Applicant of the election and agreeing to take service under Rate Schedule RQ for a primary term of no less than 36 months.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1982, 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 an 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. 82–5741 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP72–157–051, et al.]

Consolidated Gas Supply Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

February 26, 1982.

Take notice that the pipelines listed in the Appendix hereto have submitted to the commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 12, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Jan. 4, 1982	Consolidated Gas Supply Corporation	RP72–157–051	Report.
Feb. 12, 1982	Southwest Gas Corporation	RP81–3–003	Report.
Feb. 16, 1982	Cities Service Gas Company	RP81–127–001	LFUT Report.
Feb. 16, 1982	Equitable Gas Company	RP82–40–001	LFUT Report.

APPENDIX—Continued

Filing date	Company	Docket No.	Type filing
Feb. 18, 1982	Columbia Gas Transmission Corporation	RP75-106-004	Report.
Feb. 19, 1982	Cities Service Gas Company	RP81-127-002	LFUT Report.
Feb. 19, 1982	Natural Gas Pipe Line Company of America	TA81-2-26-005	Report.

[FR Doc. 82-5759 Filed 3-2-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5922-000]

Cordua Irrigation District; Application for Preliminary Permit

March 3, 1982.

Take notice that Cordua Irrigation District (Applicant) filed on January 28, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5922 to be known as the DaGuerre Point Power Project located on Yuba River in Yuba County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Charles Mathews, Director, Cordua Irrigation District, Box 110, Marysville, California 95901.

Project Description—The proposed project would consist of: (1) A gated intake structure at the exiting Corps of Engineers' DaGuerre dam; (2) a 12–foot diameter, 150-foot long penstock; (3) a powerhouse containing two generating units with a total capacity of 5.5 MW and an estimated average annual energy production of 23.5 million kWh; and (4) a 1.5-mile long transmission line. The project would be located on lands administered by the U.S. Corps of Engineers.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a 24-month permit during which time technical, economic, environmental and financial feasibility studies will be undertaken, as well as preparation of an environmental impact statement; an application for license, and obtaining agreements with the U.S. Army Corps of Engineers and other Federal, State and local agencies. The estimated cost of these activities is $100,000.

Competing Applications—This application was filed as a competing application to H-O-H Power's application for Project No. 5592 filed on November 2, 1981, and Modesto Irrigation District's application for Project No. 5808 filed on December 23, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before April 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to interven must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5742 Filed 3-2-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-136-002]

Distrigas of Massachusetts Corp.; Petition To Amend

February 25, 1982.

Take notice that on February 18, 1982, Distrigas of Massachusette Corporation (Petitioner), 125 High Street, Boston, Massachusetts 02110, filed in Docket No. CP82–136–000 a petition to amend the order issued February 1, 1982, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the sale of approximately 2,900 billion Btu equivalent of additional volumes of liquefied natural gas (LNG) to be available from a cargo expected to be received on or about March 5, 1982, at Petitioner's Everett, Massachusetts, LNG terminal, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Petitioner owns and operates facilities at Everett, Massachusetts, providing for receipt, storage, and delivery of LNG imported by its corporate affiliate, Distrigas Corporation (Distrigas). Petitioner submits that by order issued February 1, 1982, in the instant docket, it was authorized to resell approximately 1,200 billion Btu equivalent of additional LNG to be sold to Petitioner by Distrigas in February 1982. Petitioner now proposes to sell approximately 2,900 billion Btu equivalent of additional LNG to be received from Distrigas in March 1982.

It is asserted that Petitioner and its customers have agreed upon the disposition of the entire March cargo as follows:

Customer	Nominations percent	Presently estimated quantity (Million Btu)
Bay State	10.4788	303,885
Berkshire	.6545	18,981
Boston Gas	31.0235	899,682
Brooklyn Union	30.7617	892,090
Connecticut	3.2725	94,903
Fall River	1.1619	33,695
Haverhill	.7746	22,463
Middleboro	.0600	1,740

Customer	Nomina-tions percent	Presently estimated quantity (Million Btu)
New Jersey Natural	1.7241	50,000
Northern Utilities	1.7241	50,000
Providence	5.8906	170,826
South Jersey	4.6476	134,779
Southern Connecticut	6.8966	200,000
Valley	.9295	26,956
Total	100.0000	2,900,000

Petitioner avers that the March cargo would be billed under Rate Schedule TS–1 and TS–1A at rates currently effective subject to refund in Docket No. RP81–34–000. Petitioner explains that if settlement is reached in that proceeding the March cargo would be considered as being made at the last tier and treated as such in accordance with the settlement agreement. It is stated that if the rate case is litigated the revenues would be treated so as to be consistent with the Commission's final orders in that docket. In either case, Petitioner submits that the delivery of the LNG would be charged as if it were received at the end of the contract year. The March cargo would be billed for on April 2, 1982, unless earlier billing is desired by the customer, it is asserted.

Petitioner avers that the March cargo would be considered as part of deliveries applicable to the contract year commencing April 1, 1982, and would be attributed to the contract quantity in that contract year. Petitioner also states that it has granted its customers a one-time option on the anticipated August 1982 cargo.

Petitioner submits that with respect to its new customers, the Municipal Gas and Electric Department of Middleborough, Massachusetts, Southern Connecticut Gas Company, and Northern Utilities, Inc., GS–1A and TS–1A rates for sales and service associated with the additional volumes would apply to March deliveries. Petitioner explains that the contract year an option vessel provisions would not apply to these new customers for March deliveries. With respect to Petitioner's existing customers, it is stated that GS–1 and TS–1 rates for sales and service would apply to March deliveries.

To allow disposition of all the volumes in the March cargo, Petitioner requests that the Commission waive Petitioner's tariff provisions to the extent necessary to permit such disposition. Petitioner further requests that the Commission authorize it to operate its Everett, Massachusetts, LNG terminal as may be necessary to render the proposed service. Petitioner also requests that the Commission grant the authorization expressly for the term applicable only to sales of LNG and related service for the March cargo. It is explained that the sale of these additional volumes would help provide supplemental supplies to meet the requirements of Petitioner's existing and new customers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 4, 1982, 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. 82–5760 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–327–000]

Holyoke Power and Electric Co.; Filing

February 26, 1982.

The filing Company submits the following:

Take notice that Holyoke Power and Electric Company (Holyoke) on February 22, 1982, tendered for filing an Amendment No. 10 to its Electric Service Agreement with the Town of South Hadley, Massachusetts (the Company's FPC No. 4). Holyoke proposes that the amendment become effective on March 1, 1982.

Holyoke states that the rate schedule amendment provides for increased demand charges which would result in an increase of approximately $300,000 in test year revenues. Holyoke further states that South Hadley has agreed to the rate schedule amendment.

Holyoke states that it is in a weakened financial condition and the proposed rate increase is essential to maintain its ability to provide service.

Holyoke requests an effective date of March 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Holyoke states that copies of the filing were served upon South Hadley and the Department of Public Utilities of the Commonwealth of Massachusetts.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 17, 1982. 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. 82–5761 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–328–000]

Holyoke Water Power Co.; Filing

February 26, 1982.

The filing Company submits the following:

Take notice that Holyoke Water Power Company (Holyoke) on February 22, 1982, tendered for filing an Agreement Amending its Resale Rate CD–1 with the City of Chicopee Municipal Lighting Plant. Holyoke proposes that the amendment become effective on March 1, 1982.

Holyoke states that the rate schedule amendment provides for increased demand charges which would result in an increase of approximately $999,000 in the test year revenues. Holyoke further states that Chicopee has agreed to the rate schedule amendment.

Holyoke states that it is in a financially weakened condition and the proposed rate increase is essential to maintain its ability to provide service.

Holyoke proposes an effective date of March 1, 1982, and therefore requests waiver of the Commission's notice requirements.

According to Holyoke copies of the filing were served upon Chicopee and the Department of Public Utilities of the Commonwealth of Massachusetts.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 17,

1982. 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. 82-5762 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3163-001]

John M. Jordan; Notice of Application for License (5 MW or Less)

March 3, 1982.

Take notice that John M. Jordan (Applicant) filed on November 2, 1981, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Randolph Mills No. 2 Project No. 3163. The project would be located on the Deep River in Randolph County, North Carolina. Correspondence with the Applicant should be directed to: John M. Jordan, P.O. Box 128, Saxapahaw, North Carolina 27340.

Project Description—The proposed project would consist of: (1) An existing, stone masonry, overflow dam approximately 250 feet long and 10-foot high; (2) an existing canal approximately 300 feet long; (3) an existing powerhouse with a proposed installed generating capacity of 144 kW; (4) an existing reservoir having a gross storage capacity of 150 acre-feet with a maximum surface area of 15 acres; (5) an existing discharge canal approximately 130-foot long; (6) a proposed 500-foot long transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy generation will be 1,560 MWh.

Purpose of Project—The Applicant proposes to sell the power output of the project to Carolina Power and Light Company or any other interested party.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. 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 May 12, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protests, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5743 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3161-001]

John M. Jordan; Application for License (5 MW or Less)

March 3, 1982.

Take notice that John M. Jordan (Applicant) filed on November 2, 1981, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Randolph Mills No. 1 Project No. 3161. The project would be located on the Deep River in Randolph County, Franklinville Township, North Carolina. Correspondence with the Applicant should be directed to: John M. Jordan, P.O. Box 128, Saxapahaw, North Carolina, 27340.

Project Description—The proposed project would consist of: (1) An existing concrete dam approximately 400-feet long with a maximum height of 30 feet; (2) an existing canal, 300 feet long, leading to the powerhouse; (3) an existing powerhouse with a proposed installed generating capacity of 440 kW; (4) an existing reservoir with a gross storage capacity of 300 acre-feet and a maximum surface area of 30 acres; (5) an existing discharge canal approximately 270-foot long; (6) a proposed 1,500-foot long transmission line; (7) a proposed, 500-foot long access road from the site to Route 22; and (8) appurtenant facilities. The Applicant estimates the power output from the project to be 1.56 GWh.

Purpose of Project—The Applicant proposes to sell the power output of the project to Carolina Power and Light Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. 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 May 11, 1982, either the

competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 11, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5744 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5334-000]

Joint Ypsilanti Recreation Organization; Application for License (5 MW or Less)

March 3, 1982.

Take notice that Joint Ypsilanti Recreation Organization (Applicant) filed on September 4, 1981, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for continued operation of a water power project to be known as the Ford Lake Project No. 5334. The project would be located on the Huron River in Washtenaw County, Michigan. Correspondence with the Applicant should be directed to: Mr. James L. McCoy, 922 Sherman Court, Ypsilanti, Michigan 48197.

Project Description—The project would consist of: (1) An existing reservoir with a storage capacity of 17,766 acre-feet and a surface area of 987 acres at normal power pool elevation of 684.6. feet m.s.l.; (2) an existing powerhouse containing two generating units rated at 640 kW and 1280 kW, respectively; (3) an existing 45 foot-high north and south embankment; (4) an existing reinforced concrete spillway section approximately 47 feet high; (5) existing 4,800 volt transmission lines; and (6) appurtenant facilities. The estimated average annual energy output is 7,800,000 kWh.

Purpose of Project—Applicant utilizes 6,000 k/Wh of power per year for its recreational facilities. The excess power is sold to the Ford Motor Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. 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 May 12, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before, May 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5745 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-326-000]

Kansas Power and Light Co.; Filing

February 26, 1982.

The filing Company submits the following:

Take notice that on February 19, 1982, The Kansas Power and Light Company (KPL) tendered for filing a proposed cancellation of FPC Rate Schedule No. 190. Said rate schedule was dated October 7, 1976, between the City of Reserve and KPL.

KPL states that the termination of the contract was effective February 1, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 17, 1982. 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. 82-5763 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP80-141-004, RP80-4-001, RP81-108-002 (TA82-1-60)]

Locust Ridge Gas Co.; Proposed Change in FERC Gas Tariff

February 26, 1982.

Take notice that on February 11, 1982, Locust Ridge Gas Company (Locust Ridge) tendered for filing the following substitute gas tariff sheets to its FERC Gas Tariff, Original Volume No. 3:

Substitute Eighth Revised Sheet No. 1-A, to be effective December 11, 1981;

Substitute Ninth Revised Sheet No. 1-A, to be effective March 1, 1982.

Locust Ridge states that Substitute Eight Revised Sheet No. 1-A was filed in compliance with the Commission's letter order of December 11, 1981, implementing settlement rates in Docket Nos. RP80-141-004, RP81-108-002 and RP80-4-001. Furthermore, Substitute Ninth Revised Sheet No. 1-A was issued to apply those cost of service changes effective in Substitute Eighth Revised Sheet No. 1-A to the perspective revisions in Locust Ridge's PGA component, as filed with the Commission in Docket No. TA82-1-60 on January 29, 1982.

Copies of this filing were mailed to Locust Ridge's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. 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. 82-5764 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST82-147-000]

Louisiana State Gas Corp.; Application for Approval of Rates

March 2, 1982.

Take notice that on January 21, 1982, Louisiana State Gas Corporation (LSGC), 334 Carondelet Street, Suite 403, New Orleans, Louisiana 70130, filed in Docket No. ST82-147-000 an application pursuant to § 284.123(b)(2) of the Commission's Regulations for approval of rates charged for the transportation of natural gas for the account of United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that on December 21, 1981, LSGC and United entered into an agreement whereby LSGC transports up to 2,000 Mcf of gas per day owned by United. It is stated that under the transportation agreement LSGC would accept gas from United or for its account at certain points of interconnection and redeliver a volume of gas having an equal thermal content as that delivered at one or more of the points of redelivery as specified in the transportation agreement.

Applicant states that the transportation service is for a term of 2 years from initial deliveries. It is noted that the gas to be transported is owned by United and that United is receiving such natual gas into its own facilities for its system supply for resale.

Applicant states that it would charge United 26.10 cents per million Btu for proposed transportation service and that such rate is fair and equitable.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1982, 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. 82-5746 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1994-000]

Darrow R. McLeod; Application

February 26, 1982.

The filing individual submits the following:

Take notice that on February 22, 1982, Darrow R. McLeod filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

General Manager—Engineering and Power Operations, Central Vermont Public Service Corporation

Vice President, Central Vermont Public Service Corporation-Bradford Hydroelectric, Inc.

Vice President, Central Vermont Public Service Corporation-East Barnet Hydroelectric, Inc.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before March 22, 1982. Protests will be considered by the Commission 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 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. 82-5765 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-181-000]

Michigan Wisconsin Pipe Line Co.; Application

March 2, 1982.

Take notice that on January 27, 1982, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP82-181-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing

the sale of natural gas to Colorado Interstate Gas Company (CIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that in accordance with a proposed service agreement to be entered into by Applicant and CIG Applicant has agreed to make available to CIG up to 79,000 Mcf of natural gas per day on a firm basis through September 30, 1983. Applicant proposes to make deliveries of such gas at existing points of interconnection with CIG in Beaver County, Oklahoma, and Fremont County, Wyoming.

Applicant submits that as consideration for receiving the gas supplies it would charge CIG the price per dekatherm set forth in Applicant's Rate Schedule CD–1 at a 100 percent load factor. Applicant states that the service agreement mentioned provides that CIG would have the option of purchasing the gas outright or returning a like amount of gas after September 30, 1983. Applicant further states that it has informed CIG that it would be agreeable to increasing the daily quantity of natural gas delivered if CIG desires additional flexibility.

Applicant proposes that the treatment of revenues received from this sale be as determined in its pending rate case in Docket No. RP81–61.

Applicant submits that the proposed sale would obviate CIG's need for additional facilities to increase the capacity of its transmission system by 79,000 Mcf per day.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1982, 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. 82–5747 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–325–000]

Montaup Electric Co.; Filing

February 26, 1982.

The filing Company submits the following:

Take notice that on February 19, 1982, Montaup Electric Company (Montaup) tendered for filing rate schedule supplements adding a surcharge to Montaup's M–7 rate in this docket. The surcharge reflects inclusion in rate base of $18.9 million of Construction Work in Progress (CWIP), or 16% of average CWIP in the 1982 test period. The surcharge is requested to avoid an immediate danger that the bonds of Montaup's parent Eastern Edison Company (Eastern Edison), which presently carry the lowest investment grade ratings, BBB– by Standard and Poor's and Baa by Moody's, will be downgraded below investment grade.

In lowering the bond rating from BBB ot BBB– last July, Standard and Poor's warned that maintenance of investment-grade ratings is "heavily dependent" on "timely" CWIP relief from this Commission, which has ratemaking jurisdiction over 100% of Montaup's service. Eastern Edison's ratings will be reevaluated in May of this year prior to the offering of $25 million of bonds in June. A downgrading below investment grade would virtually destroy Eastern Edison's ability to raise capital and would jeopardize completion of Montaup's construction program.

Montaup requests an effective date of April 20, 1982, and therefore requests waiver of the Commission's notice requirements.

Montaup states that this filing has been served on the affected wholesale customers, the State Commissions in Massachusetts and Rhode Island and on all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 15, 1982. 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. 82–5766 Filed 3–2–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5929–000]

Murray City, Utah; Application for Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less

March 3, 1982.

Take notice that Murray City, Utah filed with the Federal Energy Regulatory Commission on January 29, 1982, an application for exemption for its Little Cottonwood Hydroelectric Project No. 5929 from all or part of Part I of the Federal Power Act pursuant to 18 CFR Part 4 subpart K (1980) implementing in part section 408 of the Energy Security Act of 1980.[1] The proposed project would be located on the Little Cottonwood Creek in Salt Lake County, Utah. Correspondence with the Applicant should be directed to: Richard M. Sharp, Esq., Shea and Gardner, 1800 Massachusetts Avenue, NW., Washington, D.C. 20036.

Project Description–Applicant owns and operates the existing Little Cottonwood Project which utilizes a 40-foot long, 15-foot high concrete diversion dam and generates 1,000 kW. It is proposed to increase the project capacity to 5,000 kW by: (1) Enlarging the existing intake structure; (2) replacing the existing penstock with a new 4-foot diameter, 17,740-foot long buried penstock; (3) constructing a new powerhouse with an installed capacity

[1] Pub. L. 96–294, 94 Stat. 611. Section 408 of the ESA amends *inter alia*, Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2705 and 2708).

of 5,000 kW; (4) constructing a new 12.5-kV buried transmission line; and (5) other appurtenances. It is estimated that the project would produce an annual generation of 14,000,000 kWh. Project energy would be used for municipal purposes.

Purpose of Exemption–An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

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 exemption. (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—any qualified license applicant desiring to file a competing application must submit to the Commission, on or before April 21, 1982, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than August 17, 1982. Applications for a preliminary permit will not be accepted. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure. 18 CFR 1.8 or 1.10 (1980). 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, protests or petition to intervene must be received on or before April 21, 1982.

Filing and Service of Responsive Documents—any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5748 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-71-001]

New England Power Co.; Compliance Filing

February 26, 1982.

The filing Company submits the following:

Take notice that on February 16, 1982, New England Power Company filed a compliance report and revised tariff sheets in accordance with the Commission's direction.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 12, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5767 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-202-000]

State of Ohio; Petition for a Declaratory Order

March 2, 1982.

Take notice that on February 16, 1982, the State of Ohio (Petitioner), William J. Brown, Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215, filed in Docket No. CP82-202-000 a petition pursuant to § 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for a declaratory order stating that the transportation of gas vas pipelines owned by Columbia Gas Transmission Coporation (Columbia Gas) wherein the production, gathering, and transmission all take place within the boundary of the State of Ohio is not subject to the Commission's jurisdiction under the Natural Gas Act, and that neither the Natural Gas Act nor the rules and regulations promulgated by the Commission prevent or prohibit the State of Ohio from establishing fair and equitable rates and access policies concerning transportation through pipelines and gathering lines wherein the entire flow from production to consumption of gas in said lines takes place within the State of Ohio, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that Columbia Gas owns and operates an extensive gathering and local pipeline system within the State of Ohio, wherein once gas has been introduced into certain portions of the pipeline network it is incapable of flowing over a state boundary. Petitioner submits that a major portion of this Ohio pipeline network came to Columbia Gas by virtue of the acquisition of The Ohio Fuel Gas Company (Ohio Fuel). Petitioner avers that Ohio Fuel was an integrated gas utility which produced, purchased, gathered, transported, and sold natural gas subject to Ohio public utility regulations.

Petitioner explains that in 1977 Columbia Gas began the transportation of industrial-owned and local utility-owned gas through its Ohio pipelines from Ohio wells to the end user. No certificates were sought or issued for this transportation from the Commission on the theory that such transportation contracts did not involve interstate transportation and thus were outside the jurisdiction of the Commission, it is asserted.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 23 1982, 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) or comments on the petition. 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. 82-5749 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-716]

Oklahoma Gas & Electric Co.; Refund Report

February 26, 1982

The filing Company submits the following:

Take notice that on February 19, 1982, Oklahoma Gas and Electric Company filed a refund report in accordance with the Commission's direction.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 16, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5768 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. E-7278]

Otter Tail Power Co.; Payment

February 26, 1982.

Take notice that on February 19, 1982, the City of Elbow Lake, Minnesota (Elbow Lake) filed a notice of payment by Elbow Lake to Otter Tail Power Company pursuant to the order on remand issued by the Commission on November 20, 1981.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before March 15, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5769 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Projects Nos. 5944-000 and 3020-000]

Pocantico Development Associates, Inc., Richard J. J. Hungerford and Kris A. Dyrland, and Richard J. J. Hungerford; Application for License (5 MW or Less) and Surrender of Preliminary Permit

March 3, 1982.

Take notice that Pocantico Development Associates, Inc., Richard J. J. Hungerford and Kris A. Dyrland (Applicants) filed on February 2, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as the Moretown #8 Project No. 5944-000. The project would be located on the Mad River in the Town of Moretown, Washington County, Vermont. Correspondence with the Applicant should be directed to: Pocantico Development Associates, Inc., Suite 760, 1230 Avenue of the Americas, New York, New York 10020.

Project Description—The proposed project would consist of: (1) An existing 333-foot long, 34-foot high concrete gravity dam with a 164-foot long spillway section to be repaired and restored with 4-foot high flashboards; (2) a 35.5 acre reservoir with a usable storage capacity of 130 acre-feet at elevation 530.6 feet m.s.l.; (3) a new 980-foot long, 6-foot diameter penstock positioned at the same location as the original; (4) a new powerhouse containing a single 800 kW turbine-generator; (5) a 300-foot long transmission line; and (6) appurtenant facilities. The project is owned by the Applicants. The project would produce up to 3,700,000 kWh annually.

Purpose of Project—Energy produced at the project would be sold to a local utility.

Richard J. J. Hungerford, Permittee for the Moretown #8 Project, FERC No. 3020 has also filed a request on February 2, 1982, to surrender its preliminary permit issued May 23, 1980. The request to surrender the permit for Project No. 3020 was made in order to avoid a conflict with the above-mentioned license application whose applicants together have a proprietary interest in the project. The surrender of the preliminary permit is effective as of the date of this notice.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. 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 May 12, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E.

Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5750 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-166-000]

Transcontinental Gas Pipe Line Corp.; Application

March 2, 1982.

Take notice that on January 20, 1982, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP82-166-000 an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction offshore Louisiana, and operation of certain pipeline and appurtenant facilities, 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 in the Eugene Island area, offshore Louisiana, approximately 28.28 miles of 20-inch pipeline which would extend from the Transco Exploration Company (TXC) production platform in Block 10 to a tie-in with Applicant's Southeast Louisiana gathering system in Block 107, approximately 0.38 mile of 16-inch pipeline extending from the General American Oil Company of Texas production platform in Block 24 to a tie-in with the above 20-inch pipeline in that block, approximately 0.89 mile of 6-inch pipeline which would extend from the TXC production platform in Block 46 to a tie-in with the above 20-inch pipeline in Block 45 and metering, regulating and appurtenant facilities on the production platforms. It is stated that such facilities would have a maximum capability of 244,899 Mcf per day.

The proposed facilities are estimated to cost $25,485,000. Such cost, it is asserted, would be financed initially through short-term loans and available cash with permanent financing to be undertaken at a later date.

It is asserted that the facilities proposed herein are required to attach new gas supplies which would be available to Applicant commencing in the 1982-83 winter season.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1982, 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. 82-5752 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-329-000]

Tucson Electric Power Co.; Filing

February 26, 1982.

The filing Company submits the following:

Take notice that Tucson Electric Power Company (Tucson) on February 22, 1982, tendered for filing an Economy Energy Interchange Agreement between Tucson and Texas-New Mexico Power Company (TNP). The primary purpose of this Agreement is to provide for economy energy interchange transactions between the power systems of the two companies.

Tucson proposes an effective date of January 26, 1982, and therefore requests waiver of the Commission's notice requirements.

Tucson states that copies of the filing were served upon TNP.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 17, 1982. 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. 82-5770 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3010-001]

Valley Industries, Inc.; Application for License (5 MW or Less)

March 3, 1982.

Take notice that Valley Industries, Inc. (Applicant) filed on January 13, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as the Centerville Project No. 3010. The project would be located on the South Branch of the Pawtuxet River in Kent County, Rhode Island. Correspondence with the Applicant should be directed to: Mr. Steve Krous, Halliwell Associates, Inc., 865 Waterman Avenue, East Providence, Rhode Island 02914. This Application was filed pursuant to a preliminary permit issued to the Applicant for Project No. 3010.

Project Description—The proposed project would consist of existing project facilities including: (1) A granite block step dam, 80 feet long and 14.5 feet high; (2) a reservoir of negligible storage capacity at spillway crest elevation 124.9 feet m.s.l.; (3) a headrace, 175 feet long; (4) a powerhouse area in the existing mill building in which would be installed two turbine-generator units with a total capacity of 155 kW; (5) a tailrace, 200 feet long; and new project

works to include; (6) trashracks and headgates; (7) electrical facilities; and (8) other appurtenances. Average annual generation is estimated at 835,000 kWh.

Purpose of Project—Project energy will be sold to the Narragansett Electric Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. 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, or before May 13, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", *"NOTICE OF INTENT TO FILE COMPETING APPLICATION"*, *"COMPETING APPLICATION"*, "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy and any *notice of intent, competing application,* or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5753 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-331-000]

Virginia Electric & Power Co.; Filing

February 26, 1982.

The filing Company submits the following:

Take notice that on February 22, 1982, Virginia Electric and Power Company (VEPCO) tendered for filing a Contract Supplement dated August 27, 1981 to the Rate Contract between VEPCO and the Prince George Electric Cooperative.

Said Supplement requests the Commission's authorization for connection of the new delivery point designated as Garysville Delivery Point, located in Prince George, Virginia.

VEPCO requests an effective date for the new delivery point of sometime in May of 1982, and therefore requests waiver of the notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 17, 1982. 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. 32-5771 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5861-000]

West Slope Power Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

March 3, 1982.

Take notice that on January 8, 1982, West Slope Power Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5861) would be located on Sand and Browns Creeks, in Sierra National Forest, Madera County, California. Correspondence with the Applicant should be directed to: Mr. John S. Hansen, President, West Slope Power Company, 59880 Cascadel Drive North, North Fork, California 93643.

Project Description—The proposed project would consist of: (1) 5-foot high concrete diversion weirs at elevation 5,080 feet on Sand and Browns Creeks; (2) concrete intake structures 4 feet and 3 feet high; (3) penstocks 13,500 feet and 6,500 feet long; (4) a powerhouse containing two turbine generators with 4.95 MW total capacity and 17.0 GWh annual energy output; and (5) a transmission line 3 miles long. Project-generated energy would be distributed through interconnections with the Pacific Gas & Electric System.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their

duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of the agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before April 19, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirement of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before April 19, 1982.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5754 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5915-000]

White Chuck Water Co.; Application for Preliminary Permit

March 3, 1982.

Take notice that White Chuck Water Company (Applicant) filed on January 22, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 5915 to be known as the Clear Creek Hydroelectric Power Project located on Clear Creek in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Keith B. Ronnholm, Project Manager, The White Chuck Water Company, 6233—39th Avenue NE, Seattle, Washington 98115.

Project Description—The proposed project would consist of: (1) A 80-foot long, 6-foot high diversion structure on Clear Creek; (2) a 1.5-mile long, 5.5-foot diameter diversion conduit; (3) a 1,100-foot long, 4-foot diameter penstock; (4) a powerhouse with an installed capacity of 3,090 kW; and (5) a 5-mile, 57-kV transmission line from the powerhouse to an existing Snohomish Public Utility District or Seattle City Light transmission line. The Applicant estimates that the average energy production would be 14.8 million kWh. The proposed project is entirely located on U.S. Federal lands owned by National Forest Service.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $125,000.

Competing Applications—This application was filed as a competing application to City of Darrington's application for Project No. 5421 filed on September 28, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before April 19, 1982.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-5755 Filed 3-2-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 0G2403/T348; PH-FRL-2059-2]

Pesticides; Carbofuran; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-N-methylcarbamate, and the phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the raw agricultural commodity sunflower seed. This temporary tolerance was requested by FMC Corporation.

DATE: This temporary tolerance expires January 11, 1983.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: FMC Corporation, 2000 Market St., Philadelphia, PA 19103, has requested the establishment of a temporary tolerance for the combined residues of the insecticide carbofuran, its carbamate metabolite and the phenolic metabolites in or on the raw agricultural commodity sunflower seed at 0.4 part per million (ppm), of which no more than 0.2 ppm is carbamates. A temporary regulation under 21 CFR 561.67 permitting the combined residues of carbofuran at 1.0 ppm, of which no more than 0.5 ppm is carbamates, has been established on sunflower seed hulls and meal.

This temporary tolerance will permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permits 279-EUP-83 and 279-EUP-84 which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. FMC Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires January 11, 1983. Residues in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerance. This tolerance may be revoked if the experimental use permits are revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: February 17, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-5390 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180601; PH-FRL-2058-8]

Crisis Exemptions for Use of Certain Chemicals To Control Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the following States and the U.S. Department of Agriculture initiated crisis exemptions for the use of various chemicals to control certain pests.

DATES: See each crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each crisis exemption for the name and room number of the contact person. The following information applies to all contact people: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: The following crisis exemptions have been initiated by the:

1. California Department of Food and Agriculture on September 22, 1981, for the use of paraquat on lettuce grown for seed, for preharvest desiccation. Since this program was not needed for more than 15 days, California did not request a specific exemption to continue it. The program ended October 6, 1981. (Jack E. Housenger, Rm. 502C, CM#2).

2. California Department of Food and Agriculture on September 4, 1981, for the use of propargite on nonbearing avocados to control six-spotted mites. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until December 31, 1981. (Libby Welch, Rm. 502, CM#2).

3. California Department of Food and Agriculture on October 2, 1981, for the use of oxamyl on cucurbits to control the leafminer. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until December 31, 1981. (Jack E. Housenger, Rm. 502C, CM#2).

4. Florida Department of Agriculture and Consumer Services on October 7, 1981, for the methamidophos on celery to control the leafminer. Since it was anticipated that this program would be needed for more than 15 days, Florida has requested a specific exemption to continue it. The need for this program is expected to last until June 30, 1982. (Jack E. Housenger, Rm. 502C, CM#2).

5. Hawaii Department of Agriculture on October 7, 1981, for the use of cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate on head cabbage, mustard cabbage, Chinese cabbage, caulifower, and broccoli to control the diamondback moth. Since it was

anticipated that this program would be needed for more than 15 days, the Hawaii Department of Agriculture has requested a specific exemption to continue it. The need for this program is expected to last one year. (Libby Welch, Rm. 500, CM#2).

6. Kansas State Board of Agriculture on September 21, 1981, for the use of O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate on winter wheat to control white grubs. Since it was anticipated that this program would be needed for more than 15 days, Kansas has requested a specific exemption to continue it. The need for this program is expected to last until December 31, 1981. (Jack E. Housenger, Rm. 502C, CM#2).

7. Oklahoma Department of Agriculture on September 24, 1981, for the use of sodium chlorate with a fire retardant on mung beans, as a desiccant. Since this program was not needed for more than 15 days, Oklahoma did not request a specific exemption to continue it. The program ended October 9, 1981. (Libby Welch, Rm. 502, CM#2).

8. Governor of Oklahoma on September 14, 1981, for the use of O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate on wheat to control white grubs. Since this program was needed for more than 15 days, Oklahoma requested a specific exemption to continue it. The program ended on November 20, 1981. (Jack E. Housenger, Rm. 502C, CM#2).

9. Texas Department of Agriculture on October 16, 1981, for the use of permethrin on head lettuce to control loopers and budworms. Since it was anticipated that this program would be needed for more than 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until October 31, 1982. (Jack E. Housenger, Rm. 502C, CM#2).

10. Texas Department of Agriculture on October 16, 1981, for the use of cyano(3-phenoxyphenyl)methly 4-chloro-alpha-(1-methylethyl)benzene-acetate on head lettuce to control loopers and budworms. Since it was anticipated that this program would be needed for more than 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until October 31, 1982. (Jack E. Housenger, Rm. 502C, CM#2).

11. U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service, on October 30, 1981, for the use of O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate on fruit and nut trees to control the Mediterranean fruit fly. Since it was anticipated that this program would be needed for more than 15 days, the USDA has requested a specific exemption to continue it. The need for this program is expected to last approximately one year. (Libby Welch, Rm. 500, CM#2).

12. U.S. Department of Agriculture (USDA) on October 30, 1981, for the use of malathion on host plants to control the Mediterranean fruit fly. Since it was anticipated that this program would be needed for more than 15 days, the USDA has requested a specific exemption to continue it. The need for this program is expected to last one year. (Jack E. Housenger, Rm. 502C, CM#2).

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-5392 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[PP 1G2467/T349; PH-FRL-2059-3]

Pesticides; Cyano (3-Phenoxyphenyl) Methyl-4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate, in or on the raw agricultural commodities melons, winter squash and pumpkins. These temporary tolerances were requested by Shell Oil Company.

DATE: These temporary tolerances expire January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Franklin D. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: Shell Oil Co., Suite 200, 1050 Connecticut Ave., NW., Washington, D.C. 20026, has requested the establishment of temporary tolerances for residues of the insecticide cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benezeneacetate, in or on the raw agricultural commodities melons, winter squash and pumpkins at 1.0 part per million (ppm).

These temporary tolerances will permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 201-EUP-69 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Shell Oil Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire January 4, 1983. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: February 17, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-5393 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180603; PH-FRL-2059-1]

Emergency Exemptions for Control of Pests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific and quarantine exemptions for the control of various pests in the States listed below. Also listed below is a crisis exemption initiated by California.

DATES: See each exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each exemption for the name and room number of the contact person. The following information applies to all contact people: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of bromoxynil on dry bulb onions to control annual weeds in California, effective from November 27, 1981, to July 1, 1982. (Libby Welch, Rm. 500, CM#2).

2. California Department of Food and Agriculture for the use of Methyl bromide on prickly pear cactus to control the Mediterranean fruit fly in California, effective from November 27, 1981, to November 1, 1982. California had initiated a crisis exemption for this use. (Libby Welch, Rm. 500, CM#2).

3. Florida Department of Agriculture and Consumer Services for the use of permethrin on chickens to control the Northern fowl mite in Florida, effective from November 18, 1981, to April 30, 1982. (Jack E. Housenger, Rm. 502-C, CM#2).

4. Governor of Louisiana for the use of methiocarb as a commerical seed treatment on rice seed to repel birds in Louisiana, effective from November 27, 1981, to July 31, 1982. (Jack E. Housenger, Rm. 502-C, CM#2).

5. New Jersey Department of Environmental Protection for the use of aldicarb on potted eggplants to be transplanted, to control the Colorado potato beetle in New Jersey, effective from March 15, 1982, to June 15, 1982. (Jack E. Housenger, Rm. 502-C, CM#2).

6. Ohio Department of Agriculture for the use of pyroxyfur on soybean seed to control *Phtophthora* root rot and damping-off in Ohio, effective from November 20, 1981, to July 31, 1982. (Jack E. Housenger, Rm. 502-C, CM#2).

7. West Virginia Department of Agriculture for the use of fenamiphos on peaches to control nematodes which cause peach stem pitting in West Virginia, effective from November 9, 1981, to April 30, 1982. (Libby Welch, Rm 500, CM#2).

EPA has granted quarantine exemptions to the:

1. California Department of Food and Agriculture for the use of malathion in the Mediterranean Fruit Fly Eradication Program in California, effective from November 27, 1981, to November 27, 1982. California had initiated a crisis exemption from this program. (Jack E. Hosenger, Rm. 502-C, CM#2).

2. California Department of Food and Agriculture for the use of diazinon on host plants and cannery waste to control the Mediterrean fruit fly in California, effective from November 27, 1981, to November 1, 1982. California had initiated a crisis exemption for this program. (Libby Welch, Rm. 500, CM#2).

3. United States Department of Agriculture (USDA) for the use of malathion in the Mediterranean Fruit Fly Eradication Program in California, effective from November 27, 1981, to November 27, 1982. USDA had initiated a crisis exemption for this program. (Jack E. Housenger, Rm. 502-C, CM#2).

4. United States Department of Agriculture (USDA) for the use of diazinon on host plants to control the Mediterranean fruit fly in California, effective from November 27, 1981, to November 1, 1982. USDA had initiated a crisis exemption for this program. (Libby Welch, Rm. 500, CM#2).

A crisis exemption was initiated by the California Department of Food and Agriculture for the use of permethrin in mushroom houses to control the adult sciarid fly. Since it was anticipated that this program would be needed for more than 15 days, California requested a specific exemption to continue it. The need for this program is expected to last until November 15, 1982. (Jack E. Housenger, Rm. 502-C, CM#2).

(Sec. 18 as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-5391 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-31055; PH-FRL-2061-1]

Great Lakes Biochemical Co., Inc.; Application To Register a Pesticide Product Involving Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register, or amend registration of, pesticide products involving changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

DATE: Comments by April 2, 1982.

ADDRESS: Written comments, identified by the document control number [OPP-31055] and the file or registration number, should be submitted to: Arturo Castillo, Product Manager (PM-32), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Arturo Castillo, (703-557-7170).

SUPPLEMENTARY INFORMATION: EPA received an application as follows to register, or amend registration of, pesticide products involving changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of application does not imply a decision by the Agency on the applications.

Application received

File Symbol: 7364-GN.

Applicant: Great Lakes Biochemical Co, Inc., 6120 West Douglas Avenue, Milwaukee, WI 53218.

Product name: Activate and Enhance.

Active ingredient: Sodium bromide 33%.

Proposed classification/Use: General. Presently registered for use as a disinfectant in swimming pools. New use will include use in spas, hot tubs, and therapeutic water.

Notice of approval or denial of an application to register, or amend registration of, a pesticide product will be announced in the **Federal Register.** except for such material protected by section 10 of FIFRA, 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.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the product manager's office between 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing such comments telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: February 18, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-5400 Filed 3-1-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180604; PH-FRL-2060-2]

Issuance of Specific Exemptions for Control of Various Pests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions to the U.S. Department of Agriculture and the States listed below for the control of various pests.

DATES: See each specific exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name and room number of the contact person. The following information applies to all contact people: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of diethatly-ethyl on spinach to control various weeds in Arkansas, effective from December 10, 1981, to June 30, 1982. (Libby Welch, Rm. 500, CM#2).

2. Kansas Department of Agriculture for the use of diazinon on winter wheat to control while grubs in Kansas, effective from December 2, 1981, to December 31, 1981. Kansas had initiated a crisis exemption for this use. (Jack E. Housenger, Rm. 502-C, CM#2).

3. Texas Department of Agriculture for the use of N-cyclopropyl-1,3,5-triazine-2,4,6-triamine in poultry houses near urban areas only, to control flies in Texas, effective from December 15, 1981, to December 11, 1982. (Libby Welch, Rm. 500, CM#2).

4. Texas Department of Agriculture for the use of oxyfluorfen on dry bulb onions to control various weeds in Texas, effective from December 15, 1981, to December 1, 1982. EPA is completing a rebuttable presumption against registration (RPAR) on this chemical. (Libby Welch, Rm. 500, CM#2).

5. Washington Department of Agriculture for the use of metalaxyl and captan on pea seed for export to the United Kingdom only, to control downy mildew in Washington, effective from December 22, 1981, to January 31, 1982. (Jack E. Housenger, Rm. 502-C, CM#2).

6. U.S. States Department of Agriculture for the use of naled on inanimate objects to control Oriental fruit flies in California, effective from December 2, 1981, to December 2, 1982. This chemical is undergoing a pre-rebuttable presumption against registration (pre-RPAR) review. (Libby Welch, Rm. 500, CM#2).

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-5395 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180602; PH-FRL-2060-1]

Issuance of Specific Exemptions for Control of Various Pests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below.

DATES: See each specific exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name and room number of the contact person. The following information applies to all contact people: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide on artichokes to control weeds in Monterey, San Mateo, Santa Barbara, and Santa Cruz Counties, California, effective from October 29, 1981, to June 30, 1982. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of October 26, 1979 (44 FR 61640). (Jack E. Housenger, Rm. 502C, CM#2).

2. California Department of Food and Agriculture for the use of paraquat on mung and other dry beans for desiccation, in California, effective from November 2, 1981, to December 31, 1981. California had initiated a crisis exemption for this use. (Jack E. Housenger, Rm. 502C, CM#2).

3. California Department of Food and Agriculture for the use of methyl bromide on raspberries grown in California to control all insects. These raspberries are grown for export to Japan. The specific exemption is effective from October 29, 1981, to October 5, 1982. California had initiated a crisis exemption for this use. (Libby Welch, Rm. 500, CM#2).

4. Florida Department of Agriculture and Consumer Services for the use of heptachlor on potting soil media to control sugarcane rootstalk borer weevil only in guarantined areas of Broward, Orange, and Seminole Counties, Florida, effective from November 1, 1981, to November 1, 1982. EPA completed a rebuttable presumption against registration (RPAR) on this pesticide. The final determination was published in the **Federal Register** of November 26, 1974 (39 FR 41298). (Libby Welch, Rm. 502, CM#2).

5. Florida Department of Agriculture and Consumer Services for the use of metolachlor on cabbage, collards, and broccoli to control weeds, in Florida, effective from November 10, 1981, to October 1, 1982. (Jack E. Housenger, Rm. 502C, CM#2).

6. Florida Department of Agriculture and Consumer Services for the use of methamidophos on bibb lettuce, Boston lettuce, Chinese cabbage, and romaine lettuce to control aphids, leafminers, and lepidopterous larvae in Orange County, Florida, effective from October 29, 1981, to June 30, 1982. (Jack E. Housenger, Rm 502C, CM#2).

7. Oregon Department of Agriculture for the use of paraquat on peppermint to control weeds, in Oregon, effective from October 31, 1981, to March 31, 1982. (Jack E. Housenger, Rm. 502C, CM#2).

8. Wisconsin Department of Agriculture for the use of paraquat on dry beans for desiccation, in Wisconsin, effective from November 2, 1981, to November 30, 1981. EPA had initiated a crisis exemption for this use. (Jack E. Housenger, Rm. 502C, CM#2).

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-5394 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50569; PH-FRL-2063-5]

Pesticides; Issuance of Experimental Use Permits; Abbott Laboratories, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275-EUP-27, Issuance. Abbott Laboratories, 14th St. and Sheridan Rd., North Chicago, IL 60064, this experimental use permit allows the use of 19 pounds of the plant growth regulator 6-benzyladine on apple trees and conifers to evaluate bud and branching effects. A total of 600 acres are involved. The program is authorized in the States of Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from February 1, 1982 to February 1, 1984. A permanent tolerance for residues of the active ingredient in or on apples has been established (40 CFR 180.376) (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

241-EUP-95. Extension. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 3,520 pounds of the herbicide pendimethalin on wheat to evalute the control of weeds. A total of 2,800 acres are involved. The program is authorized only in the States of Arizona, California, Minnesota, Montana, North Dakota, and South Dakota. The experimental use permit is effective from December 22, 1981 to December 22, 1982. Temporary tolerances for residues of the active ingredient in or on wheat grain and wheat straw have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

7969-EUP-16. Issuance. BASF Wyandotte Corporation, 100 Cherry Hill Road, Parsippany, NJ 07054. This experimental use permit allows the use of 40 pounds of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydoxy-2-cyclohexen-1-one on cotton to evaluate the control of weeds. A total of 80 acres are involved. The program is authorized only in the States of Arizona, California, New Mexico, and Texas. The experimental use permit is effective from December 22, 1981 to December 22, 1982. This permit is being issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

464-EUP-58. Extension. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 3,000 pounds of the insecticide chlorpyrifos on field corn to evaluate the control of corn insects. A total of 1,320 acres are involved. (Jay Ellenberger, PM 12, Rm. 400, CM#2, (703-557-7024))

464-EUP-59. Extension. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 1,170 pounds of the insecticide chlorpyrifos on field corn to evaluate the control of corn insects. A total of 1,200 acres are involved. This program and the one above are authorized only in the States of Kansas, Missouri, and Nebraska. The permits are effective from April 1, 1982 to April 1, 1983. Both permits are being issued with the limitation that all treated crops are destroyed or used for research purposes only. The permits will use the same active ingredient but different formulations. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

43808-EUP-1. Extension. State of Florida, Department of Citrus, P.O. Box 148, Lakeland, FL 33802. This experimental use permit allows the use of the remaining supply of 939 pounds (3000 originally authorized) of the plant growth regulator 5-chloro-3-methyl-4-nitro-1H-pyrazole on oranges to evaluate the product as an abscission agent. A total of 500 acres are involved. The program is authorized only in the State of Florida. The experimental use permit is effective from December 15, 1981 to December 15, 1982. A temporary tolerance for residues of the active ingredient in or on oranges has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

2139-EUP-27. Issuance. NOR-AM Agricultural Products, Inc., 350 West Shuman Blvd., Naperville, IL 60566. This experimental use permit allows the use of 5,000 pounds of the herbicides phenmediapham and desmedipham (2,500 each) on sunflowers to evaluate the control of weeds. A total of 5,000 acres are involved. The program is authorized only in the States of California, Idaho, Minnesota, Montana, North Dakota, South Dakota, and Texas. The experimental use permit is effective from December 29, 1981 to December 29, 1983. Temporary tolerances for residues of the active ingredients in or on sunflower seeds have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

2139-EUP-28. Issuance. NOR-AM Agricultural Products, Inc., 350 West Shuman Blvd., Naperville, IL 60566. This experimental use permit allows the use of 5,000 pounds of the herbicide desmedipham on sunflowers to evaluate the control of weeds. A total of 5,000 acres are involved. The program is authorized only in the States of California, Idaho, Minnesota, Montana, North Dakota, South Dakota, and Texas. The experimental use permit is effective from December 29, 1981 to December 29, 1983. A temporary tolerance for residues of the active ingredient in or on sunflower seeds has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

876-EUP-37. Extension. Velsicol Chemical Corporation, 341 East Ohio St., Chicago, IL 60611. This experimental use permit allows the use of 427.5 pounds of the herbicide dicamba on corn to evaluate the control of weeds. A total of 550 acres are involved. The program is authorized only in the States of Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, South Dakota, Texas, and Wisconsin. The experimental use permit is effective from February 1, 1982 to February 1, 1983. Permanent tolerances for residues of the active ingredient in or on corn (grain, fodder and forage) have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits

should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: February 22, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-5506 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180600; PH-FRL-2063-2]

Pesticides; Issuance of Specific Exemptions; California Department of Food and Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below.

DATES: See each specific exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name and room number of the contact person. The following information applies to all contact people: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of ethyl 4-(methylthio)-m-tolyl isopropyl phosphoramidate on grapes to control dagger and root-knot nematodes in California, effective from October 7, 1981 to June 30, 1982. (Libby Welch, Rm. 502, CM#2).

2. California Department of Food and Agriculture for the use of methiocarb on the crucifers, cabbage, cauliflower, broccoli, and Brussels sprouts, grown for seed, to repel birds in Monterey, Ventura, Santa Cruz, and Santa Barbara Counties, California, effective from October 5, 1981 to October 31, 1981. California had initiated a crisis exemption for this use. (Jack E. Housenger, Rm. 502C, CM#2).

3. California Department of Food and Agriculture for the use of carbofuran on grapes to control root-knot and dagger nematodes in California, effective from October 8, 1981 to June 30, 1982. (Libby Welch, Rm. 502, CM#2).

4. Florida Department of Agriculture and Consumer Services for the use of benomyl on carrots to control cottony rot in Florida, effective from October 1, 1981 to June 15, 1982. EPA has not yet made its final determination concluding the rebuttable presumption against registration (RPAR) of pesticide products containing benomyl. (Libby Welch, Rm. 502, CM#2).

5. Florida Department of Agriculture and Consumer Services for the use of 2,4-dichloro-6-(o-chloroanilino)-s-triazine on watercress to control leaf spot in Seminole County, Florida, effective from October 14, 1981 to June 30, 1982. (Jack E. Housenger, Rm. 502C, CM#2).

6. Maryland Department of Agiculture for the use of phenmedipham on spinach to control various weeds in Maryland, effective from October 1, 1981 to May 31, 1982. (Libby Welch, Rm. 502, CM#2).

7. Arizona Commission of Agriculture and Horticulture for the use of permethrin on lettuce to control *Heliothis* spp. in Arizona, effective from October 21, 1981 to March 31, 1982. (Libby Welch, Rm. 502, CM#2).

8. Arizona Commission of Agriculture and Horticulture for the use of 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione on lettuce to control *Sclerotinia* spp. in Arizona, effective from October 20, 1981 to May 1, 1982. (Libby Welch, Rm. 500, CM#2).

9. Hawaii Department of Agriculture for the use of thiabendazole on papaya to control post harvest disease in Hawaii, effective from October 20, 1981 to October 1, 1982. Hawaii had initiated a crisis exemption for this use. (Libby Welch, Rm. 500, CM#2).

10. Governor, State of Lousiana, for the use of 2,4-D on soybeans to control escaped sesbania in Louisiana, effective from October 22, 1981 to November 15, 1981. (Jack E. Housenger, Rm. 502-C, CM#2).

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: February 16, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-5508 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[PW-31; PH-FRL-2063-1]

Mobay Chemical Corp.; Withdrawal of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Chemagro Agricultural Div., has withdrawn a pesticide petition (PP 6F1688) for residues of the insecticide dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate in or on the raw agricultural commodity soybeans.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 3, 1975, (40 FR 51082), Chemagro Agricultural Div., Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120, submitted a pesticide petition (PP 6F1688) proposing the establishment of a tolerance for residues of the insecticide dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate in or on the raw agricultural commodity soybeans at 0.04 part per million (ppm).

Chemagro Agricultural Div., has withdrawn this petition without prejudice to future filing in accordance with the regulations.

(Sec. 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)))

Dated: February 22, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

FR Doc. 82-5507 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

[PF-262; PH-FRL-2063-3]

Shell Oil Co.; Pesticide and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Shell Oil Company has submitted a pesticide and a feed additive petitions proposing to increase established tolerance levels for the combined residues of the pesticide chemical hexakis in or on certain agricultural commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below. Jay Ellenberger, Product Manager (PM-12), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control

number "[PF-262]" and the specific petition number. All written comments filed in response 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, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Shell Oil Company has submitted a feed additive and a pesticide petitions proposing to increase the established tolerance levels for the pesticide chemical hexakis in or on certain agricultural commodities in accordance with the Federal Food, Drug and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

PP 2F2631. Shell Oil Co., Suite 200, 1025 Connecticut Ave. NW., Washington, DC 20036. Proposes amending 40 CFR 180.362 by increasing the established tolerance levels for the combined residues of hexakis (2-methyl-2-phenylpropyl)distanoxane and its organotin metabolite calculated as hexakis (2-methyl-2-phenylpropyl)distannoxane in or on the raw agricultural commodities applies, pears, and citrus fruits from 4.0 to 15.0 parts per million (ppm). The proposed analytical method for determining residues is gas-liquid chromatography using a tin selective flame photometric detector. (PM-12, Jay Ellenberger, 557-2386).

FAP 2H5336. Shell Oil Co. Proposes amending 21 CFR 561.255 by increasing the established tolerance levels for the combined residues of hexakis its organotin metabolites in or on the commodities dried apple pomace from 20.0 to 75.0 and dried citrus pomace from 7.0 to 30.0 ppm. ((PM-12), Jay Ellenberger, 557-2386).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: February 22, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-5504 Filed 3-2-82; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources Administration

Determination of Population of Health Service Areas

Section 1516 of the Public Health Service Act (added by the National Health Planning and Resources Development Act of 1974, Pub. L. 93-641 and the Health Planning and Resources Development Amendments of 1979, Pub. L. 96-79), authorizes the Secretary of Health and Human Services to make grants (hereinafter referred to as "planning grants") to health systems agencies to assist them in meeting their costs of operation. The amount of the planning grant to each health systems agency is determined in accordance with a formula set forth in amended section 1516, and is based in part upon a determination by the Secretary of the population of the health service area to be served by each agency. The governing regulations, at 42 CFR 122.205, provide that the Secretary will determine the population of the areas based upon the latest available estimate from the Department of Commerce, and will publish annually in the **Federal Register** a list of all health service areas and their populations. The populations of the health service areas are to be published prior to the final allocation of funds in each fiscal year.

In accordance with the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) the Governors of five States (Alabama, Louisiana, Missouri, Nebraska, and Ohio) have recently requested and received approval from the Secretary for their States to be designated under section 1536 of the Act. Therefore, the attached population figures exclude the HSAs in these States since they are being eliminated in accordance with section 1536. Additionally, pursuant to secton 1536 of the Act, certain States (Hawaii and Rhode Island), do not have health service areas established within them or health systems agencies designated for them but are nonetheless eligible to receive planning grants under section 1516 based in part upon their population. This Notice sets forth their populations as of April 1, 1980, on the same basis as for health service areas.

The Secretary of Health and Human Services has determined, for purposes of the determination of planning grants for health systems agencies for Fiscal Year 1982, that the population of the health service areas and the areas designated under section 1536, based on the latest available estimate from the Department of Commerce, are to be derived from the April 1, 1980 population counts, issued by the Bureau of the Census. These Series PHC80-V, population reports furnish the latest available census population counts for the population of States by counties, incorporated places, and selected minor jurisdictions which are on a comparable, uniform, and consistent basis as needed for the derivation of population totals for health service areas. Data from the Department of Treasury, Office of Revenue Sharing, "Census Tribal Population List", were used to make adjustments of the population of health service areas in Arizona and the health service area that includes portions of Arizona, New Mexico, and Utah.

Accordingly, the Secretary has made the following determination of the populations of the health service areas and areas designated under section 1536 as described above.

Dated: February 25, 1982.

Robert Graham,

Acting Administrator, Health Resources Administration.

HEALTH SERVICE AREA POPULATIONS FOR PURPOSES OF DETERMINATION OF PLANNING GRANTS IN FISCAL YEAR 1982[1]

Health service area	Population
Alaska:	
1	49,660
2	269,123
3	81,698
Arizona:	
1	1,636,421
2	671,089
3	191,962
4 Incl. Ut. #2—4,560 and N. Mex. #2—47,868	124,575
5	146,247
Arkansas:	
1	718,630
2	575,596
3	498,396
4	492,891
California:	
1	661,141
2	1,256,511
3	634,229
4	1,490,090
5	1,762,631
6	822,845
7	1,295,071
8	658,935
9	1,311,815
10	828,559
11	7,477,657
12	1,583,552
13	1,931,570
14	1,953,956
Colorado:	
1	1,986,223
2	612,200
3	290,411
Connecticut:	
1	626,443
2	597,180
3	497,893
4	895,166
5	490,894
Delaware: 1	595,225
Florida:	
1	862,237
2	686,758
3	748,432
4	1,717,934
5	1,232,420
6	984,610
7	804,481
8	1,014,043
9	1,689,077
Georgia:	
1 See Tenn. #3	
2	562,323
3	2,298,033
4 Incl. S.C. #5—105,625	658,204
5	822,557
6	566,677
7	603,673
Hawaii: Sec. 1536	965,000
Idaho: 1	943,935

HEALTH SERVICE AREA POPULATIONS FOR PURPOSES OF DETERMINATION OF PLANNING GRANTS IN FISCAL YEAR 1982[1]—Continued

Health service area	Population
Illinois:	
1	594,609
2	715,567
3	586,564
4	799,384
5	640,113
6	3,005,061
7	2,906,306
8	866,501
9	495,170
10 Incl. Ia. #3—200,458	443,680
Indiana:	
1	1,972,497
2	2,162,613
3	1,355,069
Iowa:	
1	2,542,244
2	
3 See Ill. #10	
Kansas:	
1	
2	596,423
3	850,793
Kentucky:	
1	1,823,584
2	1,571,632
Maine: 1	1,124,660
Maryland:	
1	334,395
2	579,053
3	832,355
4	2,174,023
5	296,620
Massachusetts:	
1	803,517
2	680,521
3	487,884
4	2,110,139
5	1,023,073
6	631,903
Michigan:	
1	4,682,131
2	700,181
3	783,576
4	1,087,078
5	591,627
6	769,929
7	324,065
8	319,757
Minnesota:	
1 See N. Dak. #2	
2 Incl. Wis. #7 135,901	479,182
3 See N. Dak. #3	
4	453,263
5	1,985,705
6	526,256
7	405,765
Mississippi: 1	2,520,638
Montana: 1	786,690
Nevada:	
1	337,368
2	461,816
New Hampshire: 1	920,610
New Jersey:	
1	1,292,970
2	1,962,723
3	556,972
4	2,043,457
5	1,508,036
New Mexico:	
1	1,252,100
2 See Ariz. #4	
New York:	
1	1,664,728
2	1,203,052
3	1,405,794
4 Incl. Pa. #8—107,144	419,948
5	1,362,774
6	1,931,293
7	7,071,030
8	2,605,813
North Carolina:	
1	1,017,110
2	1,114,700
3	995,726
4	817,599
5	897,605
6	1,031,689

HEALTH SERVICE AREA POPULATIONS FOR PURPOSES OF DETERMINATION OF PLANNING GRANTS IN FISCAL YEAR 1982[1]—Continued

Health service area	Population
North Dakota:	
1	299,396
2 Incl. Minn. #1—160,365	305,879
3 Incl. Minn. #3—202,513	410,298
Oklahoma: 1	3,025,266
Oregon:	
1	1,139,259
2	1,139,486
3	353,918
Pennsylvania:	
1	3,682,709
2	934,203
3	811,558
4	1,413,131
5	754,574
6	2,889,755
7	770,648
8 See N.Y. #4	
9	503,006
Rhode Island: Sec. 1536	947,154
South Carolina:	
1	822,338
2	863,394
3	624,679
4	703,172
5 See Ga. #4	
South Dakota: 1	690,178
Tennessee:	
1 Incl. Va. #6—90,596	508,676
2	845,039
3 Incl. Ga. #1—105,779	604,498
4	1,516,632
5	452,561
6	859,720
Texas:	
1	370,174
2	365,563
3	500,350
4	659,715
5	3,257,962
6	1,353,640
7	806,568
8	1,287,986
9	1,349,415
10	654,874
11	3,276,236
12	345,900
Utah:	
1	1,456,477
2 See Ariz. #4	
Vermont: 1	511,456
Virginia:	
1	695,768
2	1,105,714
3	1,159,681
4	960,110
5	1,334,409
6 See Tenn. #1	
Washington:	
1	2529,355
2	593,626
3	488,220
4	518,962
West Virginia: 1	1,949,644
Wisconsin:	
1	826,993
2	1,764,919
3	471,676
4	511,263
5	592,525
6	402,058
7 See Minn. #2	
Wyoming: 1	470,816
Total: 178	198,616,860

[1] Population based on Bureau of the Census population counts as of April 1, 1980 as noted in the accompanying text of this Notice.

[FR Doc. 82-5665 Filed 3-2-82; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Irrigation Project, Arizona; Fiscal Year Operation and Maintenance Charges

February 22, 1982.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

SUMMARY: The purpose of the public notice is to change the per acre assessment rate for the operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project to properly reflect the cost of labor, materials, equipment and services. The change is from $11.79 to $15.53 per acre per year.

EFFECTIVE DATE: This public notice shall become effective March 3, 1982.

FOR FURTHER INFORMATION CONTACT: Ralph Esquerra, Project Engineer, San Carlos Irrigation Project, P.O. Box 456, Coolidge, Arizona 85228, telephone: (602) 723-5439.

SUPPLEMENTARY INFORMATION: An analysis of the costs of operation and maintenance of the Joint Works of the San Carlos Irrigation Project was made and on April 22, 1981, was presented to the fact finding Committee which is made up of representatives from the San Carlos Irrigation and Drainage District, San Carlos Irrigation Project, Gila River Indian Community, Pima Agency, and the Phoenix Area Office.

Objections to two elements of the budget used to compute the Operation and Maintenance rate were received. After careful consideration the two elements were left in the budget. If other funding is obtained or the elements are not needed, future rate increases will be postponed or the existing Irrigation Operation and Maintenance rate will be decreased accordingly.

Pursuant to § 191.1(e) of Part 191, Chapter 1, subchapter R of Title 25 of the Code of Federal Regulations, this public notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3.

The principal author of this document is George Knoll, Bureau of Indian Affairs, Phoenix, Arizona 85011, telephone (602) 241-2285. The authority to issue this regulation is vested in the Secretary of the Interior by 5 U.S.C. 201 and 25 U.S.C. 385.

The Public Notice shall read as follows:

San Carlos Irrigation Project

Assessment, Joint Works

Pursuant to the Act of Congress approved June 7, 1924 (43 Stat. 476) and supplementary acts, the Repayment Contract of June 8, 1931, as amended, between the United States and the San Carlos Irrigation and Drainage district, and in accordance with applicable provisions of the order of the Secretary of the Interior of June 15, 1938, the cost of the operation and maintenance of the Joint Works of the San Carlos Irrigation Project for the Fiscal Year 1983, is estimated to be $1,552,550 and the rate of assessment for the said fiscal year and subsequent fiscal years until further order, is hereby fixed at $15.53 for each acre of land.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-5715 Filed 3-2-82; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Closure of Access and Determination of Special Areas

February 1, 1982.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public access and determination of special areas.

DECISION: Notice is hereby given relating to the closure of public access to certain caves located on lands under administration of the Worland District Office, Bureau of Land Management. Public access and use of these caves will be limited to specifically authorized permits. This restriction has been made in the interest of public health and safety and for the preservation and protection of public lands and resources. This closure is made under the authority contained in 43 U.S.C. 1201 and regulations contained in 43 CFR 8364.1-1.

Notice is also given that these caves have been determined to be "special areas," in accordance with provisions contained in 43 CFR 8372.1-2, and require special management and control measures for their protection. Special recreation permits are required for the use of these areas, but permit fees are waived for noncommercial and noncompetitive recreational uses. The issuance to special recreation permits is authorized by the Land and Water Conservation Fund Act of 1965, as amended.

The areas affected by this closure consist of all subterranean passages at the following named caves:

Bad Medicine
Great Expectations
Horsethief
Natural Trap
Spirit Mountain
Tres Charros

These caves have been identified with signs which list the cave name, specify that entrance is allowed by permit only, and provide the address of the administering Bureau of Land Management office.

Several of these caves have been physically closed to public access for several years, with entrance allowed only under special permit. Restricted use of these caves was required because they contain fragile mineral formations or paleontological resources, and/or they present severe hazards to the public health and safety. Due to continued vandalism, unauthorized entry, and destruction of fragile resources in these caves, it has been found necessary to effect a legal closure to complement existing use restrictions and management efforts. Present administrative penalties have not been adequate. A legal closure and attendant criminal penalties will increase BLM's ability to protect these public resources.

This notice and land closure become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the State Director. Violations of this closure order are punishable upon conviction by a fine not to exceed $1,000 or imprisonment of not more than 12 months, or both.

ADDRESS: For further information about this closure, contact the following BLM office: Worland District Office, Bureau of Land Management, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: John Kwiatkowski, District Manager at the Worland, Wyoming address, or call (307) 347-6151.

F. William Eikenberry,

Associate State Director.

[FR Doc. 82-5655 Filed 3-2-82; 8:45 am]

BILLING CODE 4310-84-M

[INT DEIS 82-7]

Proposed Grazing Management for the Willow Creek Planning Unit, Eagle Lake Resource Area, Susanville District, Calif.; Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental impact statement concerning a proposed intensive grazing management program for the Willow Creek Planning Unit in Lassen County, California. Management proposals are presented and analyzed for each of twenty-six (26) grazing allotments. Intensive management will occur on eleven of the allotments and less intensive management will occur on fifteen allotments. The planning unit covers 575,910 acres, of which fifty-two percent is Federal land.

Comments on the draft environmental impact statement are being solicited from public agencies and interest individuals and entities. The Bureau of Land Management invites written comments on the statement to be submitted by April 19, 1982, to the District Manager, Susanville District, Bureau of Land Management, P.O. Box 1090, Susanville, California 96130.

A limited number of copies of the draft environmental impact statement are available upon request at the following offices:

California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484-4541

Susanville District Office, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, Telephone (916) 257-5381

Copies of the draft environmental impact statement will be available for public reading and review at the following locations:

Division of Rangeland Management, Bureau of Land Management, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240

California State Office (911), Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484-4541

Susanville District Office, Bureau of Land Management, 705 Hall Street, Susanville, California 95130, Telephone (916) 246-5325

Dated: February 22, 1982.

Ron Hofman,

Associate State Director.

[FR Doc. 82-5656 Filed 3-2-82; 8:45 am]

BILLING CODE 4310-84-M

Final Wilderness Inventory Decision for Michigan and Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final wilderness inventory decision for Michigan and Wisconsin.

SUMMARY: This notice is to announce the final wilderness decision on public islands administered by the Bureau of

Land Management in Michigan and Wisconsin, under the authority of Section 603 of the Federal Land Policy and Management Act, and in accordance with guidelines in the September 27, 1978 Bureau of Land Management *Wilderness Inventory Handbook,* Organic Act Directive No. 78–61, Change 3; and Bureau of Land Management Washington Office memorandum dated July 22, 1981.

DATE: The final wilderness inventory decision will be effective at 4:00 p.m. April 2, 1982.

Persons wishing to protest this decision must file a written protest with the Eastern States Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, on or before April 2, 1982 at 4:00 p.m. Eastern Time. Only those protests received by the Eastern States Office by the time and date specified will be accepted.

SUPPLEMENTAL INFORMATION: The August 28, 1981 **Federal Register** (46 FR 43509) announced a 90-day public comment period on 1,732 island inventory units in Michigan and Wisconsin, encompassing approximately 4,798 acres. The public comment period ended November 25, 1981. During the comment period, reports of proposed wilderness inventory decisions, along with maps and public comment worksheets, were published and widely distributed to state and local governments, interest groups and concerned individuals; and press releases were issued to encourage response.

Summary of Public Reponse

Fifteen written and oral comments were received. Six comments were submitted by individuals; four comments were submitted by organizations; three by local governments; one by a state council; and one by a Federal agency. Six comments agreed with the inventory proposals. Three comments disagreed with all or some of the proposals; one of these comments identified specific islands for wilderness designation. The remaining six comments and portions of other comments brought up issues that are not relevant to wilderness review.

After the close of the public comment period, announcement of a final decision was delayed in order to evaluate a request for a one-year extension of the formal comment period. The principle reason for the request was to allow field checking of certain islands. This request was accompanied by a comment stating disagreement with BLM's interpretation of the wilderness criteria. In addition, a list of islands was submitted. These islands were considered to qualify as wilderness because of the commenter's on-site experience and knowledge of the surrounding environment. There was no discussion as to whether the islands met the criteria for providing outstanding opportunities for solitude and/or primitive and unconfined recreation.

Comments were also received on non-wilderness concerns. These included proposals to retain the islands in Wisconsin and Michigan in public ownership, preserve them in a natural condition and make them available for public recreational use. Ten of the fifteen letters received on the wilderness proposals expressed a concern that the islands remain in public ownership. These issues are important, but they are not directly relevant to wilderness review. Rather, they are issues that will be addressed during the multiple use planning process, tentatively scheduled to commence in Wisconsin and Michigan during 1982. The forum for surfacing the non-wilderness related issues is discussed below.

The wilderness related issues raised during the public comment period and touched on above have been examined in an analysis report that is available upon request. The matters pertaining to non-wilderness considerations, also, are discussed in this analysis report, albeit briefly.

By way of background, the BLM Eastern States Policy and Program Study of 1980 determined the Bureau of Land Management's primary role in the east should be the management of federal minerals; and that the surface ownership and management responsibilities should be transferred on a planned basis to other state, federal, or local government agencies and qualified organizations; or disposed of through public sale where appropriate. For each state in which ESO has federal minerals and/or surface responsibility, including Michigan and Wisconsin, a two-phase multiple use plan will be completed. Appropriate consideration will be given to the islands and uplands in question. In Wisconsin and Michigan, multiple use planning is tentatively scheduled to start during 1982. During this time the public will be provided the opportunity to offer comments. More detailed announcements regarding the planning schedule and opportunities for public participation will be provided in the **Federal Register** at the initiation of planning activities.

The emphasis of the concerns expressed during the public comment period regard preservation, continued public ownership and availability for public recreational use of the islands in Wisconsin and Michigan. Since these are non-wilderness issues that will be fully considered in the multiple-use planning process, previously alluded to, the following units proposed to be dropped from further study in the August 28, 1981 **Federal Register**, are no longer subject to wilderness review because they were found to lack wilderness characteristics:

	No. of islands	Total acres
Michigan	849	960.06
Wisconsin	881	3,548.49
Waugoshance and Temperance Island (Lake Michigan)	2	290.00
Total	1,732	4,798.55

The final wilderness decision will become effective on April 2, 1982, unless timely protests are received.

Persons wishing to protest this decision must file a written protest with the Eastern States Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, on or before April 2, 1982 at 4:00 p.m. Eastern Time. Only those protests received by the Eastern States Office by the time and date specified will be accepted.

The protest must specify the inventory unit(s) to which it is directed. It must include a clear and concise statement of the reasons for the protest, as well as data to support the reasons stated.

At the conclusion of the protest period, the Eastern States Director will publish a notice in the **Federal Register** of those decisions (if any) which are under formal protest. The notice will identify those inventory units under protest and will announce that the decision on the units will not become final pending a decision on the protest and any resulting appeal.

The Eastern States Director will issue a written decision on any protest which is filed according to the above requirements and will public a notice in the **Federal Register** of the action taken in response to the protest.

Any person adversely affected by the Eastern States Director's decision on a written protest, may appeal such decision under the provisions of 43 CFR Part 4.

To obtain a copy of the analysis report of public comments or for additional information, contact: Eastern States Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, telephone (703) 235–2866; or Manager, Duluth Field Office, Bureau of Land Management, 125 Federal Building, Duluth, Minnesota

55802, telephone (218) 727–6692, Extension 378.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 82–5688 Filed 3–2–82; 8:45 am]

BILLING CODE 4310–84–M

Environmental Impact Statement; National Petroleum Reserve in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: This notice announces that the Bureau of Land Management (BLM) will prepare an environmental impact statement (EIS) for competitive oil and gas leasing in a portion of the National Petroleum Reserve in Alaska (NPR–A).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–90), the BLM will prepare an EIS to analyze activities in NPR–A related to competitive oil and gas leasing, exploration, development, production and transportation as to environmental impacts, issues, alternatives within the proposed action, and mitigation measures. The proposed action will be carried out pursuant to the FY 1981 U.S. Department of the Interior Appropriations Act (Pub. L. 96–514). Public participation and comment are invited through the analysis process. A formal scoping document was made available from the address given below on February 1, 1982. Notification of scoping meetings to be held in North Slope communities and in Anchorage and Fairbanks will be sent to the news media, interest groups, and individuals. Further public review and comment will be sought regarding the preparation of the EIS. A preliminary outline for the EIS is available from the NPR–A Staff at the address given below.

DATES: Scoping meetings will be scheduled during February and March, 1982. The Draft Environmental Impact Statement (DEIS) is scheduled for completion by October 1, 1982, and the Final EIS (FEIS) is scheduled for completion February 1, 1983.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Jerry C. Wickstrom, Program Manager, Alaska State Office (916), Bureau of Land Management, 701 C Street, Box 13, Anchorage, AK 99513, Phone: (907) 271–3632.

SUPPLEMENTARY INFORMATION: The 1981 Appropriations Act mandates oil and gas leasing in the NPR–A which is located in north central Alaska on the North Slope. It provided that the detailed environmental sutdies and assessments already conducted under the government exploration program and that the comprehensive land use studies conducted in response to Section 105(b) and (c) of Pub. L. 94–258 fulfill the requirements of NEPA Section 102(C) for the first two NPR–A oil and gas lease sales if not more than 2,000,000 acres are leased. For these two sales, 4.56 million acres were cleared for leasing under the Final Environmental Assessment (FEA) published October 1, 1981. The FEA also outlines general land areas to be included in an EIS. Well sites, development of a field, major pipeline construction, or other activities may necessitate the completion of additional NEPA analysis review at a later date.

This EIS will discuss the impacts of the Congressionally mandated action for an expeditious competitive oil and gas leasing program within the Reserve on: (a) Caribou, with particular emphasis on the Utukok calving area and on caribou migration routes, (b) black brant, white-fronted geese, and other waterfowl, with particular empasis on molting, staging, and nesting habitat in the Teshekpuk Lake Area; (c) scenic, aesthetic, and recreational values of the rivers within NPR–A legislatively designated as study rivers in the Wild and Scenic River System, and (d) resources used for subsistence purposes by native Alaskans.

Other issues may surface during the scoping process as part of the preparation of the DEIS. Federal, State, and local agencies, public interest organizations, individuals and representatives of industry who are interested in or affected by the decision will be invited to participate in the scoping process. It will include (a) identification of issues; (b) elimination of insignificant issues or those covered by previous environmental reviews, and (c) identification of cooperating agencies and their assignment to analytical and management tasks.

The draft decision document to aid in scoping these issues was made available February 1, 1982 for public review. Scoping meetings will be scheduled in North Slope communities and in Anchorage and Fairbanks during February and March 1982. Notices of these meetings will be sent to news media, interested groups and individuals. A multi-disciplinary team of specialists from BLM will develop a range of management alternatives that address issues established in the scoping process and that will be included in the EIS. The final decision document outlining the EIS areas, issues, and alternatives will be available May 1, 1982.

The State Director, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513, is the responsible official.

Curtis V. McVee,

State Director.

February 19, 1982.

[FR Doc. 82–5687 Filed 3–2–82; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Availability of Report of the Research and Development Program, Minerals Management Service

The following report is available without charge: *Research and Development Program for Outer Continental Shelf Oil and Gas Operations, Technical Report 1981, Open File Report 81–704.* Interested persons should write or phone the Research and Development Program, Minerals Management Service, National Center, Mail Stop 620, Reston, Virginia 22092, telephone number (703) 860–7865.

This report of program progress is updated at 18-month intervals. It summarizes the research being pursed by the Minerals Management Service (formerly the Conservation Division, U.S. Geological Survey) in support of its offshore oil and gas operations. In addition, the report discusses the objectives of the Program and its method of operation. Research is carried out at universities, Government laboratories, and private companies. Programmatic content is divided into three categories: well-contrl or the prevention of blowouts and attendant fires, the verification of offshore structures and pipelines, and environmental concerns.

The following individual projects are summarized in the report which contains 87 pages and 76 figures:

- Dynamic Properties of Offshore Structures—Vandiver, Massachusetts Institute of Technology
- Damage Detection in Offshore Structures by Vibration Measurements—Rubin, The Aerospace Corporation
- Detection of Incipient Structural Failure by the Random Decrement Method—Yang, University of Maryland
- NDE Round Robin Experiment for Evaluating Structures Monitoring Techniques—Dame, Mega Engineering
- Fracture Toughness of Steel Weldments for Arctic Structures—McHenry, National Bureau of Standards
- Unmanned, Free-Swimming Undersea Inspection Technology—Heckman,

Naval Ocean Systems Center, Corell, University of New Hampshire
- Acoustic Transmission of Digital Data From Undersea Sensors—Softley, Ocean Electronic Applications
- Self-Contained Cavitation Erosion Cleaning Technology for Use on an Unmanned, Untethered Vehicle—Bohli, Daedalean Associates; Barber, Naval Surface Weapons Center
- Development of Improved Blowout Prevention Procedures for Deepwater Drilling Operations—Bourgoyne, Louisiana State University
- Fluidic Mud Pulse Telemetry—Holmes, Harry Diamond Laboratories
- Suppression of Blowout Fires—O'Neill, National Bureau of Standards
- Overpressured Marine Sediments—Thompson, Texas A&M University
- Subsea Collection of Oil From a Blowing Well—Milgram, Massachusetts Institute of Technology
- Toxicity of Drilling Fluids on Corals—Shinn, U.S. Geological Survey
- Environmental Effects of Wellhead Removal by Explosives—Hays, Woods Hole Oceanographic Institution

Andrew V. Bailey,

Acting Chief, Minerals Management.

[FR Doc. 82-5709 Filed 3-2-82; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-43]

Lease and Interchange of Vehicles by Motor Carriers

Decided: February 23, 1982.

Automobile Carriers Inc. (No. MC-113436), C&J Commercial Driveaway, Inc. (No. MC-10345) and Motorcar Transport Company (No. MC-60470) have filed a petition for waiver of Subpart B, § 1057.11 (except paragraph (b)) and § 1057.12 of the Lease and Interchange of Vehicles Regulations (49 CFR Part 1057), with respect to equipment augmented between them.

Findings

1. Petitioners are commonly controlled and administer a common safety program.

2. Petitioners have acceptable fitness records.

3. Greater economy and efficiency would result from partial waiver.

It is ordered:

1. The petition of Automobile Carriers, Inc., C&J Commercial Driveaway, Inc. and Motorcar Transport Co. for waiver of Subpart B (Sections 1057.11 and 1057.12), is granted, except for paragraph (b) of § 1057.11, with respect to equipment augmented between them, provided petitioners or their authorized representatives agree in writing that the lessee shall have control and responsibility for the operation of the equipment from the time possession is taken by the lessee and the receipt required under paragraph (b) of § 1057.11 is given to the lessor until possession of the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment. A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

2. The waiver granted in this decision does not affect the application of the leasing regulations to a lease between an owner-operator and the lessor carrier.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-5673 Filed 3-2-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice; Finance Applications

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality or the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: February 26, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

MC-F-14797, filed January 29, 1982. INTER-CITY TRUCK LINES (CANADA) INC. (INTER-CITY) (3033 Universal Drive, P.O. Box 900, Station "U", Toronto, Ontario, Canada)—Continuance in Control—TRANS CANADA TRUCK LINES, INC. (TRANS CANADA) 3033 Universal Drive, P.O.

Box 900, Station "U", Toronto, Ontario, Canada). Representative: Robert D. Gunderman; Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. Inter-City seeks authority to continue in control of Trans Canada, its wholly-owned subsidiary, upon Trans Canada's receipt of a certificate(s) to provide common carrier service and its institution of operations thereunder. By the same application, N. M. Davis Corporation Limited (Davis), a non-carrier holding company which controls Inter-City also seeks authority to acquire control of said rights and property through this transaction. Davis also controls Automobile Transport Limited, a common carrier holding authority in Certificate No. MC–127548 and subs thereunder to transport automobiles, trucks, buses and tractors between ports of entry on the International Boundary line between the U.S. and Canada in NY, VT, and MI, and Roadway Transport Ltd., a common carrier holding authority in Certificate No. MC–106037 and subs thereunder to transport automobiles, trucks, buses and tractors between ports of entry on the International Boundary line between the U.S. and Canada in NY and MI, and points in NY and MI. Common control has been approved in Docket No. MC–F–7987. Inter-City holds authority in MC–87689 and subs thereunder to transport general commodities, with exceptions, between ports of entry on the International Boundary line between the U.S. and Canada in MI, MT, and NY, on the one hand, and, on the other, Great Falls, MT, Detroit and Port Huron, MI, and specified New York points. Trans Canada is seeking authority to transport general commodities, with exceptions, between ports of entry on the International Boundary line between the U.S. and Canada in MI, on the one hand, and, on the other, points in MI, and additional authority to transport general commodities, with exceptions, (1) between points in Erie County, NY, and (2) between points in Erie County, NY, on the one hand, and, on the other, points in Allegheny, Cattaraugus, Chautauqua, Chemung, Genesee, Monroe, Niagara, Onondaga, Ontario, Orleans, Oswego, Seneca, Steuben, Wayne, and Wyoming Counties, NY. Conditions: N. M. Davis Corporation Limited, a non-carrier holding company, shall be considered a carrier within the meaning of 49 U.S.C. 11348 and is subject to the requirements of 49 U.S.C. 11302 for those issuance of securities and assumption of obligations which may relate to or affect the activities of its carrier subsidiaries. Regarding the reporting requirements of 49 U.S.C. 11145, N. M. Davis Corporation Limited need only file such special reports as the Commission may from time to time require. N. M. Davis Corporation Limited is not made subject to the accounting requirments of 49 U.S.C. 11142.

MC–F–14800, filed February 8, 1982. Applicant: WILLIAM M. HAYES, SR. and JUDY W. HAYES—continuance in control— ALL POINTS EXPRESS, INC., P.O. Box 610, Lebanon, TN 37087. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Authority sought by William M. Hayes, Sr. and Judy W. Hayes to continue in control of All Points Express, Inc. in a common interest with William Hayes Lines, Inc. (MC–121399). Application for initial authority has been filed by All Points Express, Inc. in MC–159140, published November 23, 1981.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5674 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Decision Notice; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered: The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

F.D. 29842. By decision of February 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1151, Review Board Number 3 approved the transfer to H–PA FORWARDING, of Los Angeles, CA, of Permit No. FF–277 issued January 14, 1964, to HAWAIIAN PACIFIC FREIGHT FORWARDING, of Los Angeles, Orange, CA, authorizing: General commodities, from points in Los Angeles, Orange, and Riverside Counties, CA, to points in Honolulu and Hawaii Counties, Hawaii. Representative: Fred H. Mackensen, 2029 Century Park East, Suite 4150, Los Angeles, CA 90067; phone (213) 879–5955. TA lease is not sought. Transferee is not a carrier.

MC–FC–79333. By decision of February 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to JOSEPH J. SARCONA TRUCKING CO., INC., of Brooklyn, NY, of Permit No. MC–127976 (Sub-No. 3) X, issued October 6, 1981, to J & J TRUCKING CO., INC., of Brooklyn, NY, authorizing the transportation of *transportation equipment,* between points in the U.S., under continuing contract(s) with Beck Distributing Corp., of Melville, NY. Representative: Piken & Piken, P.C., 95–25 Queens Blvd., Rego Park, NY 11374.

Note.—Transferee is not a carrier.

MC–FC–79371 (supplemental publication). By decision of 2/16/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to CHAFEN BODY WORKS, INC. of Certificate No. MC–116174 (Sub-No. 1) issued to CHAFEN BODY WORKS, PATSY L. LAWSON, administratix, authorizing the transportation of *wrecked, damaged, disabled, repossessed or abandoned*

motor vehicles and trailers, and *replacement motor vehicles and trailers* to points of wreck, damage or disablement by the use of tow or wrecking equipment only, between points in IL, IA, KS, MO, NE and OK. Representative: Tom B. Kretsinger, 20 East Franklin, P.O. Box 258, Liberty, MO 64068–0258.

Note.—The purpose of this supplemental publicatin is to transfer MC–116174 (Sub-No. 1) not authorized in the previous publication.

ELVIS A. LONG, d.b.a. MOTOR DELIVERY SERVICE—Leo Baldree, Carolyn Baldree and Jerry Sutton, a partnership doing business as LCBS TRUCKING ENTERPRISES. No. MC–FC–79607. By decision of February 10, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 3 approved the transfer to Elvis A. Long doing business as Motor Delivery Service of Irving, TX, of Permit No. MC–148447 (Sub-Nos. 3F, 4F and 5F) issued November 6, 1980 and July 8, 1981 to Leo Baldree, Carolyn Baldree once Jeffy Sutton, partnership doing business on LCBS Trucking Enterprises generally authorizing the transportation of paper (in rolls), plastic articles and rubber and plastic products from, to, and between points in the United States under authority contracts with Paper Tech, Inc., Dolco Packaging and Sewell Plastics Company (all of Dallas, TX) and Reper Plastics, Inc. and D&) Container Corporation (both of Grand Prairie, TX). Representative: Sam Hallman, Esq., 4555 First National Bank Building, Dallas, TX 75202.

MC–FC–79620. By decision of 2/22/82 issued under 49 U.S.C. 10926 and the transfer rules at 4 CFR Part 1132, Review Board Number 3 approved the transfer to FERRY EXPRESS, INC. of Permit No. MC–150280F issued to BILL ED, INC., d.b.a. GLASSMAN TRUCKING CORPORATION authorizing the transporation of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment and furniture), between the facilities of Liss Brothers, at Philadelphia, PA, and those points in the United States in and east of MN, IA, MO, AR, and TX, under continuing contract(s) with Liso Brothers of Philadelphia, PA. Representative: Andrew D. Lipman, 1777 F. St., NW., Washington, DC 20006.

Note.—Transferee is a non-carrier.

MC–FC–79624. By decision of February 18, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to O'BRIEN MOVERS, INC., of Watertown, MA, of Certificate No. MC–78177 (Sub 3), issued on October 13, 1981, to BROOKLINE MOVING CO., INC., of Brookline, MA, authorizing the transport of *household goods,* between Malden, MA and points in MA within 10 miles of Malden, on the one hand, and, on the other points in NY, CT, RI, and NH. Representatives: Transferee: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. Transferor: George C. O'Brien, 342 Wild Harbor Road, North Falmouth, MA 02556. Transferee presently holds no authority. TA application has not been filed.

MC–FC–79638. By decision of February 24, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board No. 3, approved the transfer to CODY EXPRESS, INC., of Norwood, MA, of Certificates No. MC–22425 and Sub-Nos. 5, 7, and 8 and MC–152606 issued to MALFIN EXPRESS, INC., of Norwood, MA, authorizing the transportation to operate as a *common carrier,* by motor vehicle, in interstate commerce, over *regular* and *irregular routes, general commodities,* with exceptions, and other *specified commodities,* between points in numerous northeastern States. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5675 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the ground that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–33

Decided: February 19, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 99680 (Sub-16), filed February 5, 1982. Applicant: NORTH SHORE & CENTRAL ILLINOIS FREIGHT CO., 7701 W. 95th St., Hickory Hills, IL 60457. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236–5944. Transporting *general commodities* (except classes A and B explosives), between Wayland and Kahoka, MO, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 145351 (Sub-1), filed February 4, 1982. Applicant: SORRELS TRUCKING CO., INC., 160 N. Perkins St., Memphis, TN 38117. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004, (202) 347–8862. Transporting *general commodities,* between Malesus, Medon, Toone, Conger, Bolivar, Middleburg, Hickory Valley, and Grand Junction, TN, Michigan City, Lamar, Hudsonville, Holly Springs, Waterford, Spraggins, Abbeville, McClary, College Hill, Oxford, Taylor, and Water Valley, MS, and Deaneville, Whitesville, Philpot and Oak Ridge, KY, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail service.

MC 158050 (Sub-1), filed February 16, 1982. Applicant: QUALITY TRANSPORT SERVICES, INC., Suite 300, Landover Mall West, Landover, MD 20285. Representative: G. W. Taylor, 8411 Patterson Ave., Richmond, VA 23229, (804) 740–6081. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 160421, filed February 4, 1982. Applicant: TIGER EXPRESS, INC., 1479 Ripley Street, Lake Station, IN 46405. Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602, (312) 236–5944. Transporting *general commodities,* between Moosehart, IL, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail service.

MC 160551, filed February 12, 1982. Applicant: ALLSERVICES, INC., 343 Crosson, Elk Grove Village, IL 60007. Representative: Irwin D. Rozner, 134 North LaSalle St., Chicago, IL 60602, (312) 782–6937. As a *broker* of *general commodities* (except household goods), between points in the U.S.

Volume No. OP2–36

Decided: February 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 149253 (Sub-3), filed February 1, 1982. Applicant: THE HONEY CREEK EXPRESS CO., Blakesburg, IA 52536. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309, (515) 244–2329. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 159743, filed February 5, 1982. Applicant: VANGUARD MOVING & STORAGE CO., INC., 1901 Light St. Bldg. #7, Baltimore, MD 21230 Representative: Eugene W. Smoot (same as applicant) (301) 727–3171. Transporting *used household goods* for the account of the United States Government, incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 160443, filed February 5, 1982. Applicant: LOWELL BOEKE d.b.a. BOEKE TRUCKING, Box 363, Hubbard, IA 50122. Representative: Larry D. Knox, 600 Hubbell Bldg. Des Moines, IA 50309, 515–244–2329. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160463, filed February 8, 1982. Applicant: McDANIEL WELDING, INC., P.O. Box 579, Vee-Jay St. Cameron, LA 70631. Representative: Charles McDaniel (same address as applicant) 318–775–5581. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP3–36

Decided: February 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 119774 (Sub-118), filed February 16, 1982. Applicant: EAGLE TRUCKING COMPANY, a Corporation, P.O. Box 471, Kilgore, TX 75662. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116 (817) 731–8431 Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 160645, filed February 19, 1982. Applicant: DOLPHIN FORWARDING INC., 56 Oak Hill Way, Brockton, MA 02403. Representative: Margaret M. White (same address as applicant) (617) 588–1250. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP4–66

Decided: February 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 160586, filed February 16, 1982. Applicant: M. A. WORBEL BROKERS, INC., 7000 W. Southwest Hwy. #201, P.O. Box 207, Chicago, IL 60415–0205. Representative: Mark A. Worbel (same address as applicant) (312) 448–5951. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 160606, filed February 17, 1982. Applicant: JOSEPH F. SELF d.b.a. JOE F. SELF, 2705 Howard Ave., Medford, OR 97501. Representative: Joe F. Self (Same address as applicant) (503) 773–8531. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160646, filed February 19, 1982. Applicant: DENNIS SMITH & SAM McMURRAY d.b.a. S.A.M. TRUCKING, Star Route 2385, Silver Lakes, Helendale, CA 92342. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114 (402) 397–9900. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP4–71

Decided: February 22, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 297 (Sub-19), filed February 16, 1982. Applicant: WOODLAND TRUCK LINE, INC., P.O. Box 70, Woodland, WA 98674. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210 (503) 226–3755. Transporting *general commodities* (except classes A and B explosives), between Winlock, WA, on the one hand, and, on the other, points in the US.

MC 160577, filed February 16, 1982. Applicant: KEVIN A. SIMONSON d.b.a.

K.A.S. TRUCKING, Rt. 2, Melrose, WI 54642. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703 (608) 256–7444. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., and (2) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160597, filed February 17, 1982. Applicant: BILL & WAGS, INC., 609 E. Holt Blvd., Ontario, CA 91761. Representative: Garvin W. Robertson (Same address as applicant) (714) 986–4501. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S., (3) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other oil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S., (4) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense between points in the U.S., and (5) as a *broker of general commodities* (except household goods), between points in the U.S.

MC 160617, filed February 18, 1982. Applicant: JOHN MILLIGAN, 5732 Orval Ct., Ft. Worth, TX 76117. Repesentative: A. William Brackett, 632 South Henderson, 2nd Floor, Ft. Worth, TX 76104 (817) 332–4415. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP4–74

Decided: February 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Williams not participating.)

MC 146827 (Sub-3), filed February 19, 1982. Applicant: DONOVAN L. SPRY, d.b.a. W. J. SPRY & SONS, P.O. Box 36, Chili, WI 54420. Repesentative: Richard A. Westely, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086 (608) 238–3119. Transporting *general commodities* (except classes A and B explosives and household goods), between Edgar, Fenwood, Marathon and Stratford, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Issuance of a Certificate in this proceeding is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The certification should be sent to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423.

MC 160637, filed February 19, 1982. Applicant: WILSON TRUCKING, d.b.a. ROWIL, INC., 118 E. Hudspith, Valley, NE 68064. Repesentative: Roger W. Wilson (same address as applicant) (402) 359–5628. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP5–42

Decided: February 18, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 134768 (Sub-4), filed February 4, 1982. Applicant: LEXINGTON–PARIS MOTOR FREIGHT, INC., P.O. Box 699, Milan, TN 38358. Repesentative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW, Washington, DC 20004 (202) 347–8862. Transporting *general commodities* between Lexington, Luray, Beech Bluff, Ralston, Terrell, Malesus, Medon, Toone, Conger, Bolivar, Middleburg, Hickory Valley, and Grand Junction, TN, Michigan City, Lamar, Hudsonville, Holly Springs, Waterford, Spraggins, Abbeville, McClary, College Hill, Oxford, Taylor, and Water Valley, MS, Deanefield, Whitesville, Philpot, Oak Ridge, Masonville, Thompsonville, and Edgoten, KY, Kenwood, Hickory Point, Dodsville, Fox Bluff, Chapmansboro, Parkburg, Deanburg, Silerton, Hornsby, Serles, and Lacy, TN, on the one hand, and, on the other, points in the U.S. Condition: Approval of this authority is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service, at each point to be served, has actually terminated.

Note.—This application is filed as a direct substitute of motor carrier service for completely abandoned rail service, and applicant intends to tack this authority with its existing regular-route authority.

Volume No. OP5–45

Decided: February 23, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 142059 (Sub-186), filed February 11, 1982. Applicant: CARDINAL TRANSPORT, INC., 1230 Northern Illinois Drive, Channahon, IL 60410. Representative: Jack Riley (same address as applicant) (815) 729–3808. Transporting *general commodities*, between McNary and Snowflake, AZ, Parrott and Weston, GA, Broughton, Dales, Equality and Lexington, IL, Arbela, Downing, Granger, Kahoka, Lancaster, Medill, Memphis, and Wayland, MO, Boyd, Juliet, Red Lodge and Roberts, MT, Mottville, and Skaneateles Falls, NY, West Salem, OR, Bedford, Garrett Road, Grassland and Llanerch, PA, Edgefield, SC, and Big Sandy, Deanburg, Hornsby, Lacy, Serles and Sileston, TN, on the one hand, and, on the other, points in the U.S. Condition: Approval of this authority is conditioned upon applicant certifying to the Commission, prior to commencing operations that all rail service has actually terminated at all of the involved points.

Note.—The purpose of this application is to substitute motor carrier service for complete abandonment of rail carrier service.

Volume No. OP5–47

Decided: February 24, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 150528 (Sub-2), filed February 16, 1982. Applicant: SOON LEE, MILTON LEE AND DENNIS LEE d.b.a. LEE & LEE, 440 First St., Woodland, CA 95695. Repesentative: Dennis Lee (same address as applicant.) (916) 662–7305. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160608, filed February 17, 1982. Applicant: ABLE TRANSPORTATION, INC., 14854 E. Valley Blvd., City of Industry, CA 91746. Repesentative: Bill Arthur Birkett, P.O. Box 2447, La Puente,

CA 91746 (213) 961–7296. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5680 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absense of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–32

Decided: February 19, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 2900 (Sub-454), filed February 11, 1982. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant) (904) 353–3111. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with General Foods Corporation, of White Plains, NY, and its subsidiaries (a) General Foods Manufacturing Corporation, and Birds Eye, Inc., both of White Plains, NY, and (b) Oscar Mayer and Co., Inc., of Madison, WI. Condition: Issuance of a permit in this proceeding is subject to the coincidential cancellation, at applicant's written request, of Permit No. MC–2900 Sub 446.

MC 18121 (Sub-35), filed February 10, 1982. Applicant: ADVANCE TRANSPORTATION COMPANY, P.O. Box 719, Milwaukee, WI 53201. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703 (608) 256–7444. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 107460 (Sub-85), filed February 8, 1982. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Rd., P.O. Box 4124, Lancaster, PA 17604. Representative: Christian V. Graf, 407 N Front St., Harrisburg, PA 17101 (717) 236–9318. Transporting *metal products,* between points in the U.S., under continuing contract(s) with U.S. Reduction Co., of Lansing, IL, and U.S. Aluminum Corp., of Marietta, PA.

MC 124170 (Sub-196), filed February 11, 1982. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521 (312) 629–2900. Transporting *food and related products,* between points in Solano and San Francisco Counties, CA, Dallas and Bexar Counties, TX, Beadle County, SD, Jefferson County, KY, Madison and Douglas Counties, NE, Canyon County, ID, Buchanan and Jackson Counties, MO, Nobles and Martin Counties, MN, Eau Claire and Green Counties, WI, Cerro Gordo, Hancock and Mills Counties, IA, Allegheny County, PA, Multnomah County, OR, Cook County, IL, and Daviess County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 124170 (Sub-197), filed February 12, 1982. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521 (312) 629–2900. Transporting *food and related products,* between points in Peoria and Warren Counties, IL, Marion and Cass Counties, IN, Dubuque, Polk, Scott, Woodbury, Cherokee, Linn and Page Counties, IA, Wyandotte County, KS, Jefferson County, KY, Ramsey, Hennepin and Freeborn Counties, MN, St. Louis, MO and Jackson and Saline Counties, MO, Douglas County, NE and Oklahoma County, OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 134401 (Sub-16), filed February 11, 1982. Applicant: McGILLION TRANSPORT, INC., 141 Healey Road, Box 644, Bolton, Ontario, Canada LOP 1AO. Representative: Allan C. Zuckerman, 29 South LaSalle Street, Suite 905, Chicago, IL 60603 (312) 236–9375. Transporting *metal products,* between points in MI and NY, on the one hand, and, on the other, points in the U.S.

MC 146890 (Sub-43), filed February 12, 1982. Applicant: C & E TRANSPORT, INC., d.b.a. C & E ZUMSTEIN CO., P.O. Box 27, Lewisbury, OH 45338. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Street, NW, Washington, DC 20001 (202) 628–9242. Transporting *general commodities* (except classes A and B explosives, household goods as defined

by the Commission, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Dayton Superior Corporation, of Miamisburg, OH.

MC 146910 (Sub-7), filed February 10, 1982. Applicant: MOTOR CARGO TRANSPORT CORP., 21 D'Shibe Terrace, Vineland, NJ 08360. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666 (201) 836–1144. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Kerr Glass Mfg. Corp., of Sand Springs, OK.

MC 147500 (Sub-4), filed February 9, 1982. Applicant: ERNEST L. "BOB" CORNISH, 201 W. 6th St., PO Box 114, Shoshoni, WY 82649. Representative: Ernest L. "Bob" Cornish (same address as applicant) (307) 876–2524. Transporting *hyrochloric acid, soda ash, lime, bags, drums, and pallets,* between points in MT, WY, ND, and SD.

MC 147570 (Sub-9), filed February 8, 1982. Applicant: KABAT EXPRESS, INC., 1944 Scranton Rd., Cleveland, OH 44113. Representative: Arthur E. Gogol, 7723 Greenwich Rd., Lodi, OH 44254 (216) 948–2531. Transporting *machinery, transportation equipment, and pipe fittings,* between Cleveland and Akron, OH, and points in Portage County, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, NE, KS, OK, and TX.

MC 148560 (Sub-6), filed February 8, 1982. Applicant: GOLD STAR, INC., 130 Davidson Avenue, Somerset, NJ 08873. Representative: A. David Millner, 7 Becker Farm Road, PO Box Y, Roseland, NJ 07068 (201) 992–2200. Transporting *such commodities* as are dealt in or used by food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with The Kroger Co., of Cincinnati, OH. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the applications for common control to team 1, room 6354.

MC 149590 (Sub-3), filed February 8, 1982. Applicant: BOB STEWART TRUCKING, INC., 2609 Crosby Street, Klamath Falls, OR 97601. Representative: Jerry R. Woods, Suite 1600, One Main Place, 101 SW Main Street, Portland, OR 97204 (503) 224–5525. Transporting *compressed wood fuel pellets and such commodities as are used in the manufacture and distribution of compressed wood fuel pellets,* between points in Klamath, Jackson, Josephine, Deschutes, Crook, Jefferson and Curry Counties, OR, on the one hand, and, on the other, points in CA, ID, NV and WA.

MC 154210 (Sub-1), filed January 18, 1982, previously noticed in the **Federal Register** issue of February 5, 1982. Applicant: A & R TRANSPORTATION CO., INC., 21 Ridgecrest Drive, Hudson, NH 03051. Representative: Samuel L. Watts, 54 Middlesex Turnpike, Burlington, MA 01803 (617) 273–3530. Transporting *metal products,* and *commodities* used or useful in the manufacture of metal products, between points in the U.S., under continuing contract(s) with Hendrix Wire and Cable Co., of Milford, NH.

Note.—This republication clarifies the commodity description.

MC 154511, filed February 10, 1982. Applicant: N & M TRUCKING, INC., 105 Case Street, Morganton, NC 28655. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204 (704) 372–6730. Transporting *furniture and fixtures,* between points in the U.S., under continuing contract(s) with Drexel Heritage Furnishings, Inc., of Drexel, NC.

MC 158681, filed February 11, 1982. Applicant: TAYLORVILLE TRUCKING SERVICE, INC., 1001 N. Cheney St., Taylorville, IL 62568. Representative: Edward D. McNamara, Jr., 907 South Fourth St., Springfield, IL 62703 (217) 528–8476. Transporting *cement,* between points in IN and MO, on the one hand, and, on the other, points in IL.

MC 159261, filed February 10, 1982. Applicant: PEAKE TRUCKLINE, INC., 10 Main, Hudson, IA 50643. Representative: Thomas S. Fryer (same address as applicant) (319) 988–3242. Transporting *petroleum products,* between Bettendorf and Linwood, IA, on the one hand, and, on the other, points in IL.

MC 159451 (Sub-1), filed February 9, 1982. Applicant: GOLDEN WEST EXPRESS, INC., 4902 So. 61st St., Omaha, NE 68117. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114 (402) 397–9900. Transporting *food and related products,* between points in IA and NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159711, filed February 8, 1982. Applicant: FISCHER TRUCK & BUS SERVICE, INC., P.O. Box 622, Fernwood, WI 54431. Representative: Nancy J. Johnson, 103 East Washington Street, Box 218, Crandon, WI 54520 (715) 478–3341. Transporting *pallets and pallet parts* between points in Marathon County, WI, on the one hand, and, on the other, points in IL, IN, IA, MI and MN.

MC 160281, filed January 27, 1982, previously noticed in the **Federal Register** issue of February 17, 1982. Applicant: KAREN BUS CO., INC., 132 Lake Avenue, Boonton, NJ 07005. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904 (201) 572–5551. Transporting *passengers and their baggage,* in the same vehicle with passengers in charter operations, beginning and ending at points in Kings, NY and points in Orange and Rockland Counties, NY, Bergen, Hudson, Morris and Passaic Counties, NJ, and extending to points in CT, DE, FL, GA, KY, ME, MA, MD, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WV and DC.

Note.—The purpose of this republication is to reflect the State of NH in the proposed territorial description which had been omitted.

MC 160340, filed February 16, 1982. Applicant: PITTMAN TRANSPORT, INC., Rt 2, Box 258, Durand, WI 54736. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. Transporting *such commodities* as are dealt in or used by distributors of petroleum and petroleum products, between points in the U.S., under continuing contract(s) with Pittman Oil Co., of Durand, WI.

MC 160491, filed February 8, 1982. Applicant: N.F.C., INC., d.b.a. NORTRAN, Route 2, P.O. Box 415A, Forest Grove, OR 97116. Representative: Jerry R. Woods, 1600 One Main Pl., 101 SW Main St., Portland, OR 97204 (503) 224–5525. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Nordstrom, Inc., of Seattle, WA.

MC 160501, filed February 9, 1982. Applicant: HOTCHKISS CONTRACT CARRIERS, 100 State Street Apt. 62, North Haven, CT 06473. Representative: Robert Graham Hotchkiss (same address as applicant) (203) 239–5709. Transporting (1) *ores and minerals, and clay, concrete, glass or stone products,* and (2) *metal products,* between points in the U.S., under continuing contract(s) with New England Silica, Inc., of South Windsor, CT, and Dura Flex, Inc., of Hartford, CT, in (1) above, and Peterson Steel, Cold Finishing Division, of Windsor, CT, in (2) above.

MC 160540, filed February 11, 1982. Applicant: FRED BURK, d.b.a. BURKS TRUCKING, 5408 Whispering Hills, Louisville, KY. Representative: Rudy Yessin, P.O. Drawer B, Frankfort, KY 40602 (502) 227–7326. Transporting *bananas,* between Louisville, KY, on the one hand, and, on the other, Tampa and Fort Lauderdale, FL, Gulfport, MS, Mobile, AL, and Charleston, SC.

MC 160550, filed February 12, 1982. Applicant: CHADDERTON AUTOMOTIVE MAINTENANCE, INC., d.b.a. C C C TRUCKING COMPANY, Budd Ave., Sharon, PA 16146. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219-2383 (412) 471–1800. Transporting *metal products, refractories, refractory products, transportation equipment, and those commodities which because of size or weight require the use of special equipment,* between points in DE, MD, NJ, OH, PA, and WV.

MC 160560, filed February 12, 1982. Applicant: ASP, INC., DBA AACTION MOVERS, 2100 Vermont Avenue, Bismarck, ND 58502. Representative: Charles E. Johnson, P.O. Box 773, Bismarck, ND 58502, (701) 223–5300. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Zerox Corporation, of Des Plaines, IL.

MC 160561, filed February 16, 1982. Applicant: WDT, INC., 2125 Marsha Drive, Madison, TN 37115. Representative: J. Greg Hardeman, 618 United American Bank Bldg., Nashville, TN 37219, (615) 244–8100. Transporting *such commodities* as are dealt in or used by grocery stores and food business houses, between points in the U.S., under continuing contract(s) with Bi-Rite Foods, Inc., of Nashville, TN.

Volume No. OP4–72

Decided: February 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

FF–486 (Sub-1), filed February 10, 1982. Applicant: GULF FORWARDING, INC., P.O. Box 468, Biloxi, MS 39533. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Washington, D.C. 20026, (202) 785–0024. As a freight forwarder, in connection with the transportation of *Mercer commodities, iron and steel articles, and commodities which because of their size or weight require the use of special handling or equipment,* between points in the U.S.

MC 1936 (Sub-54), filed February 16, 1982. Applicant: B & P MOTOR EXPRESS CO., 825 W. Federal St., Youngstown, OH 44501. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives and household goods), between Youngstown, OH, on the one hand, and, on the other, points in the U.S.

MC 30446 (Sub-22), filed February 10, 1982. Applicant: BRUCE JOHNSON TRUCKING COMPANY, INC., 3408 N. Graham St., P.O. Box 5647, Charlotte, NC 28225–5647. Representative: Leon Thompson (same address as applicant) (704) 376–9101. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Distribution Technology, Inc., of Charlotte, NC.

MC 61396 (Sub-399), filed February 16, 1982. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Henry County, IL, on the one hand, and, on the other, points in IA.

MC 111656 (Sub-17), filed February 16, 1982. Applicant: FRANK LAMBIE, INC., Pier 79 N. River, New York, NY 10018. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835–4411. Transporting *printed matter and educational materials,* between points in the U.S., under continuing contract(s) with Educational Reading Service and Troll Book Clubs, Divisions of Educational Reading Service, Inc., of Mahwah, NJ.

MC 139276 (Sub-13), filed February 11, 1982. Applicant: ALOHA FREIGHTWAYS, INC., 1069 Bryn Mawr Ave., Bensenville, IL 60106. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *machinery and metal products,* between points in the U.S.

MC 147546 (Sub-4), filed February 9, 1982. Applicant: DEPENDON, INC., 875 East Rand Rd., Des Plaines, IL 60016. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *hardware items, electrical components, water pumps, power units and diesel electric generating sets* between points in the U.S., under continuing contract(s) with Western Engine Corporation, of Addison, IL.

MC 150066 (Sub-5), filed February 10, 1982. Applicant: MULTI-STATES TRANSPORT, INC., P.O. Box M244, Gary, IN 46401. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, D.C. 20005. Transporting *metal products, refractories* and *transportation equipment,* between points in the U.S.

Note.—the purpose of this application is to convert applicant's contract carrier authority to common carrier authority.

MC 151996 (Sub-3), filed February 10, 1982. Applicant: M & S TRANSPORTATION, INC., P.O. Box 155, Lonke, AR 72086. Representative: James M. Duckett, Suite 411, 221 West 2nd, Little Rock, AR 72201, (501) 375–3022. Transporting *food and related products,* between points in Ramsey County, MN, on the one hand, and, on the other, points in Pulaski and Jefferson Counties, AR.

MC 159116 (Sub-1), filed February 19, 1982. Applicant: FRONTIER TRAILS, INC., 18701 S. Wolf Rd., Mokena, IL 60448. Representative: James R. Madler, 120 W. Madison Rd., Chicago, IL 60602, (312) 726–6525. Transporting *passengers and their baggage,* in special or charter operations beginning and ending at points in Volusia County, FL, and expanding to points in the U.S. (except AK and HI).

MC 160536, filed February 11, 1982. Applicant: BADDOUR TRANSPORTATION, INC., 4300 New Getwell Road, Memphis, TN 38118. Representative: Harold J. Holcomb (same address as applicant), (901) 365–8880 (ext. 3053). Transporting *ground clay* between points in the U.S., under continuing contract(s) with Oil-Dry Corporation of America, of Chicago, IL.

MC 160556, filed February 12, 1982. Applicant: MARCO TRANSPORTATION, 1492 Lealand Dr., Marion, OH 43302. Representative: Walter E. Collins (same address as applicant), (614) 389–3331. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI).

MC 160636, filed February 19, 1982. Applicant: OWENS TRUCK SALES, INC., 7742 Lee Highway, Chattanooga, TN 37421. Representative: Sam Owens, 7742 Lee Highway, Chattanooga, TN 37421, (615) 894–3555. Transporting *transportation equipment,* in driveaway service, between points in the U.S. under continuing contract(s) with The Heil Co. of Milwaukee, WI.

Volume No. OP5–43

Decided: February 22, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

FF–119 (Sub-1), filed September 23, 1981. Published initially in the **Federal Register** on October 29, 1981. Applicant: NIPPON EXPRESS U.A.A. (ILLINOIS),

INC., 2050 Lively Blvd., Elk Grove Village, IL 60007. Representative: Abraham A. Diamond, 29 So. LaSalle St., Chicago, IL 60603, (312) 236–0548. To operate as a *freight forwarder*, in interstate commerce, transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., on the one hand, and, on the other, ports in the U.S.

Note.—This application is republished to show that (1) applicant seeks freight forwarder authority, and (2) household goods as defined by the Commission are *not* to be excluded. Certificate FF–119 Sub 1, issued to applicant on January 6, 1982, will be cancelled upon issuance of this permit.

MC 9268 (Sub-23), filed February 9, 1982. Applicant: PACE MOTOR LINES, INC., 1425 Honeyspot Rd., Ext., Stratford, CT 46497. Representative: Patrick R. Pacelli (same address as applicant), 203–366–3881. Transporting *general commodities* (except classes A and B explosives), between points in CT, NY, NJ, MA, RI, ME, NH, VT, DE, PA, MD and OH.

MC 123178 (Sub-9), filed January 12, 1982. Published in the **Federal Register** originally February 2, 1982. Applicant: COLUMBIA COACHWAYS, INC., 6112 Fruit Valley Rd., Vancouver, WA 98660. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201, 503–226–6491. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Clackamas, Clatsop, Columbia, Multnomah, and Washington Counties, OR; and Clark, Cowlitz, Pacific and Wahkiakum Counties, WA, and extending to points in the U.S. (except HI).

Note.—The purpose of this application is to include "in special and charter operations".

MC 149378 (Sub-9), filed February 4, 1982. Applicant: KIRBY TRANSPORT, INC., 8023 East Slausen Ave., Montebello, CA 90640. Representative: A. Dayton Schell, 6 Eileen Way, Edison, NJ 08837, (201) 494–8765. Transporting *paint and paint products*, between points in the U.S., under continuing contract(s) with The Sherwin-Williams Co., of Cleveland, OH.

MC 159558 (Sub-1), filed February 8, 1982. Applicant: EIGHTEEN WHEEL TRANSPORTATION, INC., 355 South Santa Fe Ave., Los Angeles, CA 90013. Representative: Frederick J. Coffman, P.O. Box 1455, Upland, CA 91786, 714–981–9981. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S. under continuing contract(s) with Trade and Marketing International, Ltd., of Salt Lake City, UT.

MC 160309, filed January 29, 1982. Applicant: FLOIT SAND AND GRAVEL COMPANY, Route 1, Sycamore, IL 60178. Representative: Martin J. Kennedy, 120 W. Madison St., Chicago, IL 60602, (312) 726–0375. Transporting (1) *cement* between points in Cook, Will, and Winnebago Counties, IL, on the one hand, and, on the other, points in WI, and (2) *fertilizer, clay products, and foundry sand additives*, between points in Boone County, IL, on the one hand, and, on the other, points in IA, IN, MI, MO, and WI.

MC 160409, filed February 8, 1982. Applicant: SOUTHERN NEVADA MOVERS, INC., 1037 East Colton Ave., Las Vegas, NV 89030. Representative: Mike Pavlakis, P.O. Box 646, Carson City, NV 89702, 702–882–0202. Transporting *furniture and fixtures*, between points in Clark County, NV, on the one hand, and, on the other, points in the U.S. (except HI).

Volume No. OP5–44

Decided: February 23, 1982.

By the Commission, Review Board No. 3, members Krock, Joyce, and Dowell.

FF–559 Sub-1), filed February 12, 1982. Applicant: WESTPAC MOVING SYSTEMS, INC., 105 Puuhale Rd., P.O. Box 17517, Honolulu, HI 96817. Representative: Alfred I. Castillo (same address as applicant), (808) 845–9595. To operate as a *freight forwarder* transporting *household goods as defined by the Commission, unaccompanied baggage, and used automobiles*, between points in the U.S. (except HI), on the one hand, and, on the other, points in HI.

MC 118449 (Sub-4), filed January 27, 1982. Applicant: TACHICK FREIGHT LINES, INC., Box 488, Soldotna, AK 99669. Representative: R. W. McKenzie (same address as applicant), (907) 262–9383. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in Second, Third, and Fourth Judicial Districts, AK.

MC 121649 (Sub-12), filed February 12, 1982. Applicant: MILAN EXPRESS, INC., P.O. Box 699, Milan, TN 38358. Representative: Warren A. Goff, 109 Madison Ave., Memphis, TN 38103, (901) 526–2900. Transporting *metal products*, between points in Cook County, IL, on the one hand, and, on the other, points in MO, MS, AR, GA, AL, TN, KY, and OK.

MC 145058 (Sub-6), filed February 11, 1982. Applicant: THOMAS PRODUCE COMPANY OF MOUNT AIRY, INC., P.O. Box 16707, Greensboro, NC 27406. Representative: Michael F. Morrone, 1150 17th St. NW., Suite 1000, Washington, D.C. 20036, (202) 457–1124. Transporting *wine and brandy* between points in CA, on the one hand, and, on the other, points in FL, GA, KY, MD, NJ, NC, SC, PA, TN, VA, WV, DE, IN, AL, IL, OH, AR, and DC.

MC 147259 (Sub-20), filed February 16, 1982. Applicant: CHURCHILL TRANSPORTATION, INC., 2455 24th St., Detroit, MI 48216. Representative: Richard E. Van Winkle, 16901 Van Dam Rd., South Holland, IL 60473, 312–596–9200. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in Mobile County, AL; Pulaski and Sabastian Counties, AR; Fairfield County, CT; New Castle County, DE; Dade, Duval, Hillsborough, and Orange Counties, FL; Clinton, Scott and Woodbury Counties, IA; Jefferson and Orleans Parishes, LA; Harrison and Jackson Counties, MS; Jefferson, St. Louis and St. Charles Counties, MO; Brunswick and Carteret Counties, NC; Clackamas, Columbia, Multnomah and Washington Counties, OR; Charleston County, SC; Shelby County, TN; and CA, GA, IL, IN, NY, MD, MA, MI, MN, NJ, KY, OH, PA, TX, VA, WA, and WI, on the one hand, and, on the other, points in the U.S.

MC 148518 (Sub-8), filed February 12, 1982. Applicant: JUR CORPORATION d.b.a. RAJOR, INC., 830 Columbia Pike, Box 756, Franklin, TN 37064. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945–2745. Transporting *plastic products*, between points in Christian County, KY, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, CT, DE, FL, GA, IL, IA, KS, LA, MD, MS, MO, NE, NJ, NM, NY, NC, OH, OK, OR, PA, SC, TX, VA, WA, and WI.

MC 151679 (Sub-2), filed February 12, 1982. Applicant: L. G. KITCHENS TRANSPORTATION, INC., 31179 Clark Road, Lucerne Valley, CA 92356. Representative: John C. Russell, 1545 Wilshire Blvd., Los Angeles, CA 90017, (213) 483–4700. Transporting *non-metallic minerals, and clay, concrete, glass and stone products*, between points in AZ, CA, NV, UT, WA, and OR.

MC 152109 (Sub-8), filed February 11, 1982. Applicant: KAIBAB TRANSPORTATION, INC., P.O. Box 20506, Phoenix, AZ 85036. Representative: Michael F. Marrone, 1150 17th St. NW., Suite 1000, Washington, DC 20036, (202) 457–1124.

Transporting *building materials,* between points in the U.S., under continuing contract(s) with Howrey Lumber Company, Inc., of El Paso, TX.

MC 154158 (Sub-2), filed February 8, 1982. Applicant: KINNEY TRUCK LINES, INC., 124 West Willis Ave., Perry, IA 50220. Representative: Steven C. Schoenebaum, 1200 Register & Tribune Bldg., Des Moines, IA 50309, (515) 283–2076. Transporting (1) *Agricultural machinery,* (2) *agricultural implements,* and (3) *agricultural machinery and implement parts,* between points in Outagamie County, WI and Mason County, IL, on the one hand, and, on the other, points in Stanislaus County, CA.

MC 160259, filed February 11, 1982. Applicant: ARBOR FREIGHT SERVICE, INC., P.O. Box 117, Altoona, WI 54720. Representative: Michael S. Varda, P.O. Box 2509, Madison, WI 53701, (608) 255–8891. Transporting *pulp, paper, and related products* (except in bulk) between points in Eau Claire and Rusk Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160518, filed February 10, 1982. Applicant: JEFF'S FAST FREIGHT, INC., 4900 South Howell Ave., Milwaukee, WI 53207. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, 608–238–3119. Transporting *general commodities* (except classes A and B explosives household goods as defined by the Commission, and commodities in bulk), between points in Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha Counties, WI; Cook, DuPage, Kane, Kanakakee, Kendall, Lake, McHenry and Will Counties, IL; and Lake, LaPorte, and Porter Counties, IN.

MC 160558, filed February 12, 1982. Applicant: B. TURNER BUS RENTAL, INC., 1437 Bangor St. SE., Washington, DC 20020. Representative: Bernard Turner (same address as applicant), (202) 889–0911. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, beginning and ending at Washington, DC, and extending to points in the U.S. (except AK and HI).

Volume No. OP5–46

Decided: February 24, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 13028 (Sub-20), filed February 16, 1982. Applicant: BONANZA BUS LINES, INC., 97 Sabin St., Providence, RI 02901. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St. NW., Washington, D.C. 20004, (202) 737–1030. Over regular routes, transporting *passengers and their baggage and express and newspapers* in the same vehicle with passengers, between Hartford, CT, and New York, NY, from Hartford over Interstate Hwy 84 to junction Interstate Hwy 184 and Interstate Hwy 684, at or near Brewster, NY, then over Interstate Hwy 684 to junction Interstate Hwy 684 and Interstate Hwy 287, at or near White Plains, NY, then over Interstate Hwy 287 and Interstate Hwy 87, at or near Elmsford, NY, then over Interstate Hwy 87 to New York, and return over the same route, serving all intermediate points.

MC 18738 (Sub-69), filed February 16, 1982. Applicant: SIMS MOTOR TRANSPORT LINES, INC., 610 West 138th St., Riverdale, IL 60627. Representative: Carl L. Steiner, 29 South LaSalle St., Chicago, IL 60603, 312–236–9375. Transporting *clay, concrete, glass or stone products,* between points in Lawrence and Parke Counties, IN, on the one hand, and, on the other, points in AL, AR, CO, CT, FL, GA, LA, MA, ME, MN, MS, NE, NC, ND, NH, NM, OK, RI, SC, SD, TX, and VT.

MC 40978 (Sub-89), filed February 8, 1982. Applicant: CHAIR CITY MOTOR EXPRESS COMPANY, 3321 South Business Drive, Sheboygan, WI 53081. Representative: Daniel R. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting (1) *furniture and fixtures,* between Polk County, GA, on the one hand, and, on the other, points in IA, IL, IN, MI, MN, MO, OH, and WI, and (2) *furniture and fixtures, computer equipment, computer parts* and *paper products,* between points in Dodge and Washington Counties, WI, on the one hand, and, on the other, points in GA, VA, and WV.

MC 96819 (Sub-2), filed February 4, 1982. Applicant: TOWNS TRANSPORTATION, INC., P.O. Box 2, Cordova, AL 35550. Representative: Dee Anne Dover, 510 Green Ave., Cordova, AL 35550, (205) 483–9551. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in LA, MS, AL, and GA.

Note.—Applicant intends to tack this authority with its existing authority in MC–96819 Sub 1.

MC 105269 (Sub-112), filed February 16, 1982. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake St., P.O. Box 986, Kalamazoo, MI 49005. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459–6121. Transporting *paper and paper products* between points in Allegan County, MI, on the one hand, and, on the other, points in the U.S.

MC 108859 (Sub-87), filed February 16, 1982. Applicant: CLAIRMONT TRANSFER CO., 1803 Seventh Ave., North, Escanaba, MI 49829. Representative: John L. Bruemmer, P.O. Box 927, Madison, WI 53701, (608) 257–9521. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in Chicago, Isanti, Mille Lacs and Sherburne Counties, MN, on the one hand, and, on the other, St. Louis, MO, points in Clinton, Muscatine and Scott Counties, IA, Boone, Campbell, Daviess, Henderson, Jefferson and Kenton Counties, KY, Anoka, Carver, Dakota, Goodhue, Hennepin, LeSueur, Olmsted, Ramsey, Rice, Scott, Wabasha, Washington, Winona and Wright Counties, MN, Franklin, Jefferson, Lincoln, St. Charles, St. Louis and Warren Counties, MN, and points in IL, IN, MI, OH, and WI.

Note.—Applicant intends to interline.

MC 109448 (Sub-41), filed February 16, 1982. Applicant: PARKER TRANSFER COMPANY, P.O. Box 256, Elyria, OH 44036. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, 614–228–1541. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of heating and air conditioning units, between points in Hillsdale County, MI, on the one hand, and, on the other, points in the U.S.

MC 112989 (Sub-155), filed February 16, 1982. Applicant: WEST COAST TRUCK LINES, INC., 85647 Hwy 99 So., Eugene, OR 97405. Representative: John T. Morgans (same address as applicant), 503–747–1283. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. under continuing contract(s) with Edward Hines Lumber Co., of Chicago, IL.

MC 112989 (Sub-156), filed February 16, 1982. Applicant: WEST COAST TRUCK LINES, INC., 85647 Hwy. 99 So., Eugene, OR 97405. Representative: John T. Morgans, (same address as applicant), 503–747–1283. Transporting *those commodities which because of their size or weight require the use of special handling or equipment,* between points in AZ, CA, ID, NV, OR, UT, and WA.

MC 125799 (Sub-3), filed February 6, 1982. Applicant: BLAIRSVILLE TRANSPORT, INC., R.D. #3, Blairsville, PA 15717. Representative: Harry M. Neal, (same address as applicant), (412) 459–8900. Transporting *general*

commodities (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with American Hardware Supply Company of Butler, PA.

MC 126899 (Sub-151), filed February 16, 1982. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Rd., Paducah, KY 42001. Representative: George M. Catlett, McClure Bldg., Suite 700–702, Frankfort, KY 40601, (502) 227–7384. Transporting *malt beverages* between Chicago, IL, Cincinnati, OH, Atlanta, GA, and points in Seneca County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 133259 (Sub-10), filed February 16, 1982. Applicant: ALLIED FREIGHT SYSTEMS, INC., Griswold Industrial Park, Williston, VT 05459. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, 413–732–1136. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Vermont Commercial Warehousing Inc., of Williston, VT.

MC 142508 (Sub-173), filed February 16, 1982. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th St., Omaha, NE 68137. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603, 312–263–2306. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which because of their size and weight require special handling or equipment), between points in the U.S. (except AK and HI). under continuing contract(s) with General Foods Corporation of White Plains, NY., and its subsidiaries Birds Eye, Inc. of White Plains, NY, and Oscar Mayer and Co., Inc. of Madison, WI.

MC 146108 (Sub-6), filed February 16, 1982. Applicant: BIG T TRANSFER, INC., P.O. Box 287, New Albany, IN 47150. Representative: Harold C. Jolliff, 3242 Beech Dr., Columbus, IN 47201, 812–379–2556. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S. under continuing contract(s) with Porter Paint Co. of Louisville, KY.

MC 146729 (Sub-13), filed February 16, 1982. Applicant: JAMES S. HELWIG & ALLEN L. GRIMLAND, d.b.a., H & G LEASING, 4525 Irving Blvd., Dallas, TX 75247. Representative: D. Paul Stafford, Suite 1125 Frito Lay Tower, P.O. Box 45538, Dallas, TX 75245, 214–358–3341. Transporting *chemicals and related products,* (except in bulk), between points in TX, on the one hand, and, on the other, points in UT, OR, CA, VA, MD and PA.

MC 148599 (Sub-1), filed February 16, 1982. Applicant: SIMONSEN TANK LINES, INC., P.O. Box 157, Quimby, IA 51049. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Simonsen Mill, Inc., and Simonsen Mfg., a division of Simonsen Mill, Inc., both at Quimby, IA.

MC 149608 (Sub-5), filed February 16, 1982. Applicant: REBEL EXPRESS COMPANY, 6241 No. Dixie Hwy., Ft. Lauderdale, FL 33334. Representative: James W. Muldon, 50 W. Broad, Columbus, OH 43215, (614) 464–4103. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. (except AK and HI). Conditions: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 5, Room 6370.

MC 152609 (Sub-5), filed February 4, 1982. Applicant: SHIPPERS FREIGHT SERVICES, INC., P.O. Box 1248, Lake Oswego, OR 97034. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 682–1185. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with General Products Manufacturing, Inc., of Wilsonville, OR.

MC 152959 (Sub-1), filed February 16, 1982. Applicant: MOBILE EXPRESS, INC., P.O. Box 8167, Longview, TX 75607. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255–6279. Transporting *trailers, trailer chassis, converter dollies* and *recreational vehicles,* between points in the U.S.

MC 159849 (Sub-2), filed February 16, 1982. Applicant: DAYMARK FOODS, INC., d.b.a. ODISCO TRANSPORTATION, 500 W. Main St., Suite 208, Russellville, AR 72801. Representative: Jeff McEowen, (same address as applicant), (501) 968–4038. Transporting *wine and brandy,* between San Francisco, CA, and points in Santa Clara County, CA, on the one hand, and, on the other, points in AR, KS, MO, LA, and TX.

MC 159508, filed February 16, 1982. Applicant: MY LORD'S TRUCK LINE, INC., 1433 South Chestnut, Green Bay, WI 54304. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, 608–273–1003. Transporting *such commodities* as are dealt in or used by mechanical contractors, between points in the U.S. under continuing contract(s) with Azco, Inc. of Appleton, WI.

MC 150529, filed February 11, 1982. Applicant: CLIFFORD E. COSSEY, P.O. Box 28, Oakridge, MO 63769. Representative: Joseph E. Rebman, 314 N. Broadway, St. Louis, MO 63102, (314) 421–0485. Transporting (1) *paints, stains, lacquers, varnishes, liquid roof coatings, aluminum exterior wall coatings, solvents, adhesives, caulk and caulking compounds and brushes,* between St. Louis, MO, on the one hand, and, on the other points, in OK and TX, and (2) *aloe vera juice and aloe vera gel,* between points in Cameron County, TX, on the one hand, and, on the other, points in IL, OH, and WI.

MC 160569, filed February 16, 1982. Applicant: ROBERT H. BURN TRUCKING, 5359 Sodom-Hutchings Rd., Farmdale, OH 44417. Representative: Robert H. Burn (same address as applicant), 216–772–2750. Transporting *commodities in bulk,* between points in Vigo and Adams Counties, IN; Crawford, Mercer, Allegheny, Lawrence, and Butler Counties, PA; and points in OH.

MC 160578, filed February 16, 1982. Applicant: GIANT TRANSPORTATION, INC., 2231 E. 49th St., Vernon, CA 90058. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017, 213–627–8471. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in AZ, NV, and CA.

MC 160588, filed February 16, 1982. Applicant: M R TRANSPORT, INC., 3151 S.E. Evergreen Ave., Milwaukie, OR 97222. Representative: Marvin C. Schroedl (same address as applicant), (503) 653–5621. Transporting *diesel fuel and gasoline* between points in the U.S., under continuing contract(s) with M R Distributing, Inc., of Milwaukie, OR.

MC 160598, filed February 16, 1982. Applicant: C. R. SMITH TRUCKING, P.O. Box 516, Taylor, AZ 85939. Representative: Donald E. Fernaays,

4040 E. McDowell Rd. Suite 320, Phoenix, AZ 85008, 602–275–3124. Transporting (1) *lumber and wood products,* (2) *building materials,* (3) *metal products,* (4) *concrete,* (5) *scrap paper,* and (6) *ores and minerals,* between points in AZ, AR, CA, CO, ID, NM, NV, OK, OR, TX, UT, and WA.

MC 160599, filed February 16, 1982. Applicant: H. BETTENCOURT & SON TRUCKING, INC., 425 Coaledo Rd., Coos Bay, OR 97420. Representative: Harold R. Bettencourt, Jr., (same address as applicant), (503) 267–5630. Transporting *lumber, particle board, and wallboard,* between Tacoma and Seattle, WA, and points in Clark and Cowlitz Counties, WA, and points in OR.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5681 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-112)]

Burlington Northern Railroad Company—Abandonment—In Crawford and Cherokee Counties, Kans.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its rail line known as the Highway 160 Crossing to Weir City, Kansas Line extending from railroad milepost 143.13 near Highway 160, to railroad milepost 145.88, at the end of the line, near Weir City, KS, a distance of 2.75 miles, in Crawford and Cherokee Counties, KS, subject to certain conditions. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that:

(1) A financially responsible person (or government entity) has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and

(2) It is likely that:

(a) If a subsidy, the assistance would cover the difference between the revenues attributable to the line and the avoidable cost of providing rail freight service on the line, together with a reasonable return on the value of the line, or

(b) If a purchase, the assistance would cover the acquistion cost of all or any portion of the line.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to the Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this notice.

If the Commission makes the findings described above, the effectiveness of the abandonment certificate will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made for the Commission to set conditions or amount of compensation, the abandonment certificate will become effective. Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448) and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5672 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte Nos. 417 and 417 (Sub-1)]

Costing Methodologies for the Northeast Corridor; Commuter Service and Conrail Freight Service

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing comments on adoption of interim procedures and notice of proposed procedures.

SUMMARY: On January 22, 1982, the Interstate Commerce Commission issued an Adoption of Interim Procedures and a Notice of Proposed Procedures, 47 FR 3418, January 25, 1982 concerning the appropriate costing methodology for compensating Amtrak for the use of its trackage in the Northeast Corridor and other areas by commuter rail passenger and freight services. Interested parties were requested to file comments on the interim and proposed procedures on or before March 1, 1982. On February 12, 1982 Amtrak requested a thirty day extension of this filing deadline. The Commission believes that, given the complexity of the issues involved in this proceeding, all parties should be given ample opportunity for comment and therefore an extension in the comment period is warranted. Additionally, since interim procedures are in effect, no party will be disadvantaged by an extension of the comment filing deadline. Accordingly, the filing deadline is extended an additional thirty days.

COMMENT DATE: Comments are now due on or before March 31, 1982.

ADDRESS: An original and 15 copies of the comments should be submitted to: Section of Rail Services Planning, Room 5355, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Stephen Grimm, (202) 275–0839

or

Elaine Kaiser, (202) 275–0907.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: February 23, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5678 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-57)]

Seaboard Coast Line Railroad Company—Abandonment—In Bamberg and Collection Counties, S.C.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission has issued a certificate authorizing Seaboard Coast Line Railroad Company to abandon its rail line between Lodge, SC (milepost AMF–461.62) and Ehrhardt, SC (milepost AMF–467.04) in Bamberg and Collection Counties, SC, a total distance of 5.42 miles, subject to certain conditions. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that:

(1) A financially responsible person (or government entity) has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that:

(a) If a subsidy, the assistance would cover the difference between the revenues attributable to the line and the avoidable cost of providing rail freight service on the line, together with a reasonable return on the value of the line, or

(b) If a purchase, the assistance would cover the acquisition cost of all or any portion of the line.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Richard Kelly, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice.

If the Commission makes the findings described above, the effectiveness of the abandonment certificate will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made for the Commission to set conditions or amount of

compensation, the abandonment certificate will become effective. Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448) and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5679 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 2]

Motor Carriers; Applications, Alternate Routes Deviations, and Intrastate Applications

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this **Federal Register** notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 63390 (Deviation No. 2), CARL R. BIEBER, INC., Vine and Baldy Streets, Kutztown, PA 19530, filed January 21, 1982. Carrier's representative: Jeffrey A. Vogelman, Suite 400, Overlook Office Bldg., 6121 Lincolnia Rd., P.O. Box 11278, Alexandria, VA 22312. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over deviation routes as follows: (1) from Reading, PA, over the Warren Street By-Pass to junction U.S. Hwy 222, (2) from Reading, PA, over U.S. Hwy 222 to junction PA Legislative Route (L.R. 39046), then over PA LR 39046 to junction PA Hwy 100, then over PA Hwy 100 to junction Interstate Hwy 78, and (3) from junction Interstate Hwy 78 and Interstate Hwy 287, over Interstate Hwy 287 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 280, then over Interstate Hwy 280 to NJ Turnpike Interchange No. 15, and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over pertinent service routes as follows: (1) From Reading, PA over U.S. Hwy 222 to junction Warren Street By-Pass, (2) over U.S. Hwy 222 to junction PA Hwy 309, then over PA Hwy 309 to junction Interstate Hwy 78, and (3) from junction Interstate Hwys 78 and 287 over Interstate Hwy 287 to junction U.S. Hwy 22, then over U.S. Hwy 22 to junction U.S. Hwys 1–9, then over U.S. Hwys 1–9 to NJ Turnpike Interchange No. 14, and return over the same routes.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5683 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–192

The following applications were filed in region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 115694 (Sub-II–3TA), filed February 17, 1982. Applicant: J. BALLEW & SONS, INC., Box 47, Stuarts Draft, VA 24477. Representative: James E. Ballew (same as applicant). Contract Irregular: *Metal products and machinery* between the facilities of Salem Tools, Inc., at Salem, VA, Bristol, TN, and Knoxville, TN, on the one hand, and, on the other, points in the U.S. under continuing contract(s) with Salem Tools, Inc., Salem, VA for 270 days. Supporting shipper(s): Salem Tools, Inc., PO Box 512, Salem, VA 24153.

MC 160618 (Sub-II–1TA), filed February 17, 1982. Applicant: CHAMPS DELIVERY & WAREHOUSING, INC., 8080 D Alban Road, Springfield, VA 22150. Representative: Elliott Bunce, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. *Printing ink*, in containers other than metal or plastic tubes, in trailers not exceeding 25 feet in length, from Springfield, VA to points in MD for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s): United States Printing Ink, 7942–0 Angus Court, Springfield, VA 22153.

MC 160568 (Sub-II–1TA), filed February 16, 1982. Applicant: COMMERCIAL STEEL ERECTION, INC., Route 7, Box 123, Ragland Road, Madison Heights, VA 24572. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. (1) *Machinery and equipment and accessories;* between Bedford and Lynchburg, VA, and points in Bedford and Amherst Counties, VA, on the one hand, and, on the other, points in the U.S., except AK and HI; (2) *Fabricated Iron and Steel Products,* (a) between Bedford, VA, on the one hand, and, on the other, points in MD, NC, WV, and DC, (b) between Lynchburg, VA, on the one hand, and, on the other, points in CT, DE, FL, GA, MD, NC, NJ, NY, PA, SC, TN, WV, and DC for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s): There are five supporting shippers. Their statements may be examined at the Regional office, ICC, Philadelphia, PA.

MC 158859 (Sub-II–2TA), filed February 17, 1982. Applicant: O. DEAN TRANSPORTATION INC., 406 W. Williamsburg Rd, Sandston, VA 23150. Representative: P. Owen Dean (same as applicant). *Internal combustion engines,*

parts, supplies and materials to manufacture same, Between Safeguard Engines, Inc. Facilities at Los Angeles, CA; Virginia Beach, VA; Milwaukee, WI; Marinette, WI; Nashville, TN; Jersey City, NJ; Luddington, MI; Hagerstown, IN; Richmond, IN; Sparta, MI; Elgin, IL; St. Louis, MO; Cincinnati, OH; Minneapolis, MN; Kansas City, KS; Seattle, WA; Midland, TX and points in the U.S. for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s): Safeguard Engines, Inc., 800 Space Park South, Nashville, TN.

MC 107012 (Sub-II–210TA), filed February 17, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). General commodities (except classes A & B explosives and household goods as defined by the Commission) between points in the U.S., under continuing contract(s) with Carson Pirie Scott and Co., Wholesale Floor Covering Div., Chicago, IL for 270 days. An underlying eta seeks 120 days authority. Supporting shipper: Carson Pirie Scott & Co., 13–127 Merchandise Mart, Chicago, IL 60654.

MC 107012 (Sub-II–211TA), filed February 17, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). *General commodities* (except classes A & B explosives and household goods as defined by the Commission) between points in the United States, under continuing contract(s) with Hart Stores, Inc., Div., Big Bear Foods, Inc., Columbus, OH for 270 days. Supporting shipper: Hart Stores, Inc., Div., Big Bear Stores, Inc., 770 W. Goodale, Columbus, OH 43212.

MC 107012 (Sub-II–212TA), filed February 17, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant) *Household goods* between points in the United States, under continuing contract(s) with Miller Brewing Company of Milwaukee, WI (including AK & HI) for 270 days. An underlying eta seeks 120 days authority. Supporting shipper: Miller Brewing Company, 3939 West Highland Ave., Milwaukee, WI 53201.

MC 160609 (Sub-II–1TA), filed February 17, 1982. Applicant: TOMAR, INC., Rt. 2, Box 274, Ridgeley, WV 26753. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Irregular: Contract: *Ventilator equipment, including materials, equipment and supplies* used in the manufacture, sale and distribution thereof, between Keyser, WV, Junction City, KY and Tabor City, NC, including their respective commercial zones, on the one hand, and, on the other, points in and east of MN, IA, MO, AR, and LA, for 270 days under a continuing contract or contracts with Penn Ventilator Company, Inc. Supporting shipper: Penn Ventilator Company, Inc., Red Lion & Gantry Rds., Philadelphia, PA 19115.

The following applications were filed in region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 145154 (Sub-3–9TA), filed February 19, 1982. Applicant: YOUNG'S TRANSPORTATION CO., 3401 Norman Berry Drive, Suite 246, East Point, GA 30344. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue NW., Washington, DC 20005, (202) 347–9332. *Floor coverings, and materials and supplies used in the manufacture and installation of floor covering,* between North Plainfield and Salem, NJ, and points in their commercial zones, and New York, NY, and points in its commercial zone, on the one hand, and, on the other, points in TX, OK, NM, LA, and AR. Supporting shipper(s): Vickery & Company, Inc., 1445 West Belt Line Road, Carrollton, TX 75006.

MC 146226 (Sub-3–7TA), filed February 19, 1982. Applicant: J & P TRUCKING CO., INC., P.O. Box 457, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., 110 North Second Street, P.O. Box 1320, Clearfield, PA 16830. *Foodstuffs* between Stuttgart, AR on the one hand, and on the other, points in NC and SC. Supporting shipper: The Arkansas Rice Growers Cooperative Association, d/b/a, Riceland Foods, P.O. Box 927, 22nd and Park Avenue, Stuttgart, AR 72160.

MC 149135 (Sub-3–1TA), filed February 19, 1982. Applicant: HAILEY & SON TRUCKING AND LEASING, INC., 1109 East Green Drive, P.O. Box 1591, High Point, NC 27261. Representative: Hazel Hailey (same address as applicant). *Pre-cut log homes and materials and supplies used in the manufacture of pre-cut log homes* between Dallas, NC and points in AL, AR, FL, GA, IN, KY, MS, MO, NC, OH, OK, SC, TN, VA, and WV. Supporting shipper: Smoky Gap Log Homes, Box 562, Dallas, NC 28034.

MC 153679 (Sub-3–5TA), filed February 19, 1982. Applicant: CUMBERLAND FREIGHT LINE, INC., 13th Street, Smyrna, TN 37167. Representative: J. Greg Hardeman, 618 United American Bank Building, Nashville, TN 37219. *Contract* carrier: irregular: *Such commodities as are dealt in or used by wholesale grocery or grocery distribution warehouses* between points in Davidson Co., TN, on the one hand, and, points in NE, KS, OK, TX, MN, IA, MO, AR, LA, WI, IL, IN, OH, KY, AL, MS, MI, GA, FL, SC, NC, VA, WV, MD, DE, DC, PA, NY, NJ, and CT, on the other under a continuing contract with Bi-Rite Foods, Inc., Nashville, TN. Supporting shipper: Bi-Rite Foods, Inc., 601 Armory Dr., Nashville, TN 37202.

MC 138157 (Sub-3–56TA), filed February 22, 1982. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). *General commodities (except Classes A and B explosives, commodities in bulk, and household goods),* between points in the U.S., (except AK and HI). Restricted to traffic moving for the account of Itofca, Inc. Supporting shipper: ITOFCA, Inc., 1001 West 31st St., Downers Gfove, IL 60515.

MC 151559 (Sub-3–2TA), filed February 22, 1982. Applicant: THE GRAY ROCK FARM, INC., Route 12, Box 143, Statesville, NC 28677. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Contract carrier;* irregular; *such commodities as are dealt in or used by food business establishments,* between Claremong, NC, on the one hand, and, on the other, points in AL, CO, FL, GA, KS, MD, MN, SC, TN, VA, and DC, under contract with Western Steer-Mom 'n' Pop's, Inc. of Claremont, NC. Supporting shipper: Western Steer-Mom 'n' Pop's, Inc., P.O. Box 399, Claremont, NC 28610.

MC 155004 (Sub-3–2TA), filed February 22, 1982. Applicant: JOSEPH LAND AND CO., INC., West Central Ave., P.O. Drawer 3310, Lake Wales, FL 33853. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. *Flooring and air conditioners,* from Red Lion, PA, and Baltimore, MD, to points in AL, AZ, CA, CO, FL, GA, LA, MO, NM, NV, OK, OR, SC, TX, UT, and WA. Supporting shippers: Liskey, Incorporated, P.O. Box 8748, Baltimore, MD 21240, and Donn Access Floors, Inc., P.O. Box 191, Red Lion, PA 17356.

MC 154103 (Sub-3–28TA), filed February 22, 1982. Applicant: MID SOUTH FREIGHT, INC., P.O. Box 446, Hendersonville, TN 37075. Representative: Joe F. Powell (same address as applicant). *Contract* carrier:

irregular: *fused sodium carbonate in bags* from the facility of Burris Chemical located at East Point, GA to PA, VA, WV, KY, OH, and IN. Supporting shipper: Burris Chemical, P.O. Box 36, Springfield, TN 37172.

MC 155004 (Sub-3–3TA), filed February 22, 1982. Applicant: JOSEPH LAND AND CO., INC., West Central Ave., P.O. Drawer 3310, Lake Wales, FL 33853. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. *Foodstuffs,* from Rahway, NJ, to points in AL, AZ, AR, CA, CO, FL, GA, LA, MS, NM, NV, NC, OK, OR, SC, TN, TX, UT, VA, and WA. Supporting shipper: Hershey Imports Co., Inc., 700 E. Lincoln, Rahway, NJ 07065.

MC 159923 (Sub-3–1TA), filed February 22, 1982. Applicant: JAY T. AUBREY, d.b.a. JAY AUBREY TRUCKING, 5201 18 Mile Creek Road, Westport, KY 40077. Representative: H. E. Miller, Jr., 15 Main Street, Indianapolis, IN 46204. *Bottled wine (in cartons & cases), but not in bulk or tank and not passengers, newspapers or baggage.* Between the CA counties of Napa (Napa), Solano (Fairfield), Tuolumne (Sonora), Santa Clara (San Jose), Sonoma (Santa Rosa) and Stanislaus (Modesto), and the KY counties of Jefferon (Louisville), Fayette (Lexington), McCracken (Paducah), Campbell, (Alexandria), Kenton (Independence), Boone (Burlington). Supporting shipper: Kentucky Liquor & Wine Co., 3050 West Broadway, Louisville, KY.

MC 160395 (Sub-3–1TA), filed February 22, 1982. Applicant: JOHNSON TRUCKING COMPANY, INC., P.O. Box 751, Highway 23 South, Red Bay, AL 35582. Representative: John Paul Jones, P.O. Box 3140, Front Street Station, 189 Jefferson Avenue, Memphis, TN 38103. (1) *such commodities as are dealt in or used by manufacturers and distributors of pet food* between Lee County, MS and Franklin County, AL, on the one hand, and, on the other, all points in and east of ND, SD, NE, KS, OK, and TX, restricted to the facilities of Sunshine Mills, Inc.; (2) *textile mill products,* between CT, FL, GA, IL, KY, MA, MD, NC, NY, NJ, OH, PA, SC, and WV, on the one hand, and, on the other, points in Lee County, MS, restricted to the facilities of Hancock Textile Company, Inc. Supporting shippers: Sunshine Mills, Inc., P.O. Drawer S, Red Bay, AL 35582; Hancock Textile Company, Inc., P.O. Drawer 1627, Tupelo, MS 38801.

MC 121600 (Sub-3–6TA), filed February 19, 1982. Applicant: AVERITT EXPRESS, INC., P.O. Box 273, Livingston, TN 38570. Representative: Robert L. Baker, Sixth Floor, United Southern Bank Building, Nashville, TN 37219. *General Commodities (except household goods, commodities in bulk and Classes A & B explosives)* between points in TN, on the one hand, and on the other, points in the U.S. in and east of KS, NE, ND, OK, SD, and TX. Supporting shippers: There are 32 Certificates of Support submitted with this application that can be reviewed at the Atlanta, Georgia Regional Office.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–5682 Filed 3–2–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82–3221, published at page 5798, on Monday, February 8, 1982, on page 5799, in the third column, in the third paragraph "MC 93682 (Sub-24)", in the eighth line "OY" should be corrected to read "OH".

BILLING CODE 1505–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82–3630, published on page 6387, on Thursday, February 11, 1982, in the third column, in the eighth paragraph, "MC 33513 (Sub-4)", in the ninth line, "NJ, OH," should be corrected to read "NJ, NY, OH,".

BILLING CODE 1505–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–86 Through 119, 701–TA–121, 701–TA–123 Through 144, 701–TA–146, 701–TA–147, 731–TA–53 Through 65, and 731–TA–67 Through 86 (Preliminary)]

Certain Steel Products From Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany

Determinations

On the basis of the record [1] developed in its countervailing duty investigations involving certain steel products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be subsidized by the Governments of the cited countries:

Hot-rolled carbon steel plate [2] from—

Belgium (investigation No. 701–TA–86 (Preliminary)), Brazil (investigation No. 701–TA–87 (Preliminary)), the United Kingdom (investigation No. 701–TA–92 (Preliminary)), and West Germany (investigation No. 701–TA–93 (Preliminary));

Hot-rolled carbon steel sheet and strip [3] from—

Belgium (investigation No. 701–TA–94 (Preliminary)), France (investigation No. 701–TA–96 (Preliminary)), Italy (investigation No. 701–TA–97 (Preliminary)), the Netherlands (investigation No. 701–TA–99 (Preliminary)), and West Germany (investigation No. 701–TA–101 (Preliminary));

Cold-rolled carbon steel sheet and strip [4] from—

France (investigation No. 701–TA–104 (Preliminary)), Italy (investigation No. 701–TA–105 (Preliminary)),[5] the Netherlands (investigation No. 701–TA–107 (Preliminary)), and West Germany (investigation No. 701–TA–109 (Preliminary));

Carbon steel structural shapes [6] from—

Belgium (investigation No. 701–TA–117 (Preliminary)), France (investigation No. 701–TA–119 (Preliminary)), Luxembourg (investigation No. 701–TA–121 (Preliminary)), the United Kingdom (investigation No. 701–TA–123 (Preliminary)), and West Germany (investigation No. 701–TA–124 (Preliminary));

Hot-rolled carbon steel bar [7] from the United Kingdom (investigation No. 701–TA–128 (Preliminary)); and

[1] The record is defined in § 207.2(j) of the Commission's rules of practice and procedure (19 CFR 207.2(j)).

[2] For purposes of these investigations, hot-rolled carbon steel plate is provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (TSUSA).

[3] For purposes of these investigations, hot-rolled carbon steel sheet is provided for in items 607.6610, 607.6700, 607.8320, 607.8342, and 607.9400 of the TSUSA. Hot-rolled carbon steel strip is provided for in items 608.1920, 608.2120, and 608.2320 of the TSUSA.

[4] For purposes of these investigations, cold-rolled carbon steel sheet is provided for in items 607.8320 and 607.8344 of the TSUSA. Cold-rolled carbon steel strip is provided for in items 608.1940, 608.2140, and 608.2340 of the TSUSA.

[5] Chairman Alberger and Commissioner Stern dissenting.

[6] For purposes of these investigations, carbon steel structural shapes are provided for in items 609.8005, 609.8015, 609.8035, 609.8041, and 609.8045 of the TSUSA.

[7] For purposes of these investigations, hot-rolled carbon steel bar is provided for in items 606.8310, 606.8330 and 606.8350 of the TSUSA.

Cold-formed carbon steel bar [8] from the United Kingdom (investigation No. 701–TA–138 (Preliminary)).

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the following products which are alleged to be subsidized by the Governments of the cited countries:

Hot-rolled carbon steel plate from—

France (investigation No. 701–TA–88 (Preliminary)),[9] Italy (investigation No. 701–TA–89 (Preliminary)),[9] Luxembourg (investigation No. 701–TA–90 (Preliminary)),[9] and the Netherlands (investigation No. 701–TA–91 (Preliminary));[9]

Hot-rolled carbon steel sheet and strip from—

Brazil (investigation No. 701–TA–95 (Preliminary)),[10] Luxembourg (investigation No. 701–TA–98 (Preliminary)),[10] and the United Kingdom (investigation No. 701–TA–100 (Preliminary));[10]

Cold-rolled carbon steel sheet and strip from—

Belgium (investigation No. 701–TA–102 (Preliminary)),[11] Brazil (investigation No. 701–TA–103 (Preliminary)),[10] Luxembourg (investigation No. 701–TA–106 (Preliminary)),[10] and the United Kingdom (investigation No. 701–TA–108 (Preliminary));[10]

Galvanized carbon steel sheet [12] from—

Belgium (investigation No. 701–TA–110 (Preliminary)),[10] France (investigation No. 701–TA–111 (Preliminary)),[13] Italy (investigation No. 701–TA–112 (Preliminary)),[13] Luxemboug (investigation No. 701–TA–113 (Preliminary)),[10] the Netherlands (investigation No. 701–TA–114 (Preliminary)),[10] the United Kingdom (investigation No. 701–TA–115 (Preliminary)),[10] and West Germany (investigation No. 701–TA–116 (Preliminary)),[13]

Carbon steel structural shapes from Brazil (investigation No. 701–TA–118 (Preliminary)),[10]

Hot-rolled carbon steel bar from—

Belgium (investigation No. 701–TA–125 (Preliminary)),[11] Brazil (investigation No. 701–TA–126 (Preliminary)),[11] France (investigation No. 701–TA–127 (Preliminary)),[10] Italy (investigation No. 701–TA–146 (Preliminary)),[10] Luxembourg (investigation No. 701–TA–147 (Preliminary)),[11] and West Germany (investigation No. 701–TA–129 (Preliminary));[11]

Hot-rolled alloy steel bar [14] from—

France (investigation No. 701–TA–130 (Preliminary)),[10] Italy (investigation No. 701–TA–131 (Preliminary)),[10] the United Kingdom (investigation No. 701–TA–132 (Preliminary));[10] and West Germany (investigation No. 701–TA–133 (Preliminary)),[10]

Cold-formed carbon steel bar from—

Belgium (investigation No. 701–TA–134 (Preliminary)),[15] Brazil (investigation No. 701–TA–135 (Preliminary)),[15] France (investigation No. 701–TA–136 (Preliminary)),[16] Italy (investigation No. 701–TA–137 (Preliminary)),[15] and West Germany (investigation No. 701–TA–139 (Preliminary));[15]

Cold-formed alloy steel bar [17] from—

Belgium (investigation No. 701–TA–140 (Preliminary)),[15] France (investigation No. 701–TA–141 (Preliminary)),[18] Italy (investigation No. 701–TA–142 (Preliminary)),[18] the United Kingdom (investigation No. 701–TA–143 (Preliminary)),[15] and West Germany (investigation No. 701–TA–144 (Preliminary));[15]

On the basis of the record developed in its antidumping investigations involving certain steel products from Belgium, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be sold in the United States at less than fair value:

Hot-rolled carbon steel plate from—

Belgium (investigation No. 731–TA–53 (Preliminary)), Romania (investigation No. 731–TA–58 (Preliminary)), the United Kingdom (investigation No. 731–TA–59 (Preliminary)), and West Germany (investigation No. 731–TA–60 (Preliminary));

Hot-rolled carbon steel sheet and strip from—

Belgium (investigation No. 731–TA–61 (Preliminary)), France (investigation No. 731–TA–62 (Preliminary)), Italy (investigation No. 731–TA–63 (Preliminary)), the Netherlands (investigation No. 731–TA–65 (Preliminary)), and West Germany (investigation No. 731–TA–67 (Preliminary));

Cold-rolled carbon steel sheet and strip from—

France (investigation No. 731–TA–69 (Preliminary)), Italy (investigation No. 731–TA–70 (Preliminary)),[19] the Netherlands (investigation No. 731–TA–72 (Preliminary)), and West Germany (investigation No. 731–TA–74 (Preliminary)); and

Carbon steel structural shapes from—

Belgium (investigation No. 731–TA–82 (Preliminary)), France (investigation No. 731–TA–83 (Preliminary)), Luxembourg (investigation No. 731–TA–84 (Preliminary)), the United Kingdom (investigation No. 731–TA–85 (Preliminary)), and West Germany (investigation No. 731–TA–86 (Preliminary)).

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the following products which are alleged to be sold in the United States at less than fair value:

Hot-rolled carbon steel plate from—

France (investigation No. 731–TA–54 (Preliminary)),[20] Italy (investigation No. 731–TA–55 (Preliminary)),[20] Luxembourg (investigation No. 731–TA–56 (Preliminary)),[20] and the Netherlands (investigation No. 731–TA–57 (Preliminary));[20]

Hot-rolled carbon steel sheet and strip from Luxembourg (investigation No. 731–TA–64 (Preliminary)),[20]

Cold-rolled carbon steel sheet and strip from—

Belgium (investigation No. 731–TA–68 (Preliminary)),[21] Luxembourg (investigation No. 731–TA–71 (Preliminary)),[20] and the United Kingdom (investigation No. 731–TA–73 (Preliminary));[20] and

Galvanized carbon steel sheet from—

Belgium (investigation No. 731–TA–75 (Preliminary)),[20] France (investigation No. 731–TA–76 (Preliminary)),[22] Italy (investigation No. 731–TA–77 (Preliminary)),[22] Luxembourg (investigation No. 731–TA–78 (Preliminary)),[20] the Netherlands (investigation No. 731–TA–79 (Preliminary)),[20] the United Kingdom (investigation No. 731–TA–80 (Preliminary)),[20] and West Germany (investigation No. 731–TA–81 (Preliminary)).[22]

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[8] For purposes of these investigations, cold-formed carbon steel bar is provided for in items 606.8805 and 606.8815 of the TSUSA.

[9] Commissioner Frank dissenting.

[10] Commissioner Frank dissenting.

[11] Vice Chairman Calhoun and Commissioner Frank dissenting.

[12] For purposes of these investigations, galvanized carbon steel sheet is provided for in items 608.0730 and 608.1300 of the TSUSA.

[13] Commissioners Eckes and Frank dissenting.

[14] For purposes of these investigations, hot-rolled alloy steel bar is provided for in item 606.9700 of the TSUSA.

[15] Commissioner Frank dissenting.

[16] Vice Chairman Calhoun and Commissioner Frank dissenting.

[17] For purposes of these investigations, cold-formed alloy steel bar is provided for in item 606.9900 of the TSUSA.

[18] Commissioners Eckes and Frank dissenting.

[19] Chairman Alberger and Commissioner Stern dissenting.

[20] Commissioner Frank dissenting.

[21] Vice Chairman Calhoun and Commissioner Frank dissenting.

[22] Commissioners Eckes and Frank dissenting.

Background

On January 11, 1982, petitions were filed by seven U.S. steel producers [23] with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that imports of certain steel products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany are being subsidized by their respective Governments and/or sold in the United States at less than fair value. Accordingly, the Commission instituted preliminary countervailing duty and antidumping investigations under sections 701(a) and 733(a), respectively, of the Tariff Act of 1930 to determine 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 imports of such merchandise into the United States.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was duly given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notices in the **Federal Register** on January 20, 1982 (47 FR 2950). The conference was held in Washington, D.C., on February 3 and 4, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of Chairman Alberger, Vice Chairman Calhoun, and Commissioners Stern and Eckes

I. Introduction

These views incorporate the reasons for our determinations in the 92 steel product investigations before us involving imports of nine steel products from nine foreign countries. There are 59 preliminary countervailing duty investigations and 33 preliminary antidumping investigations, most of which are overlapping in coverage of the subject countries and products. As more fully explained in our determinations, the Commission reached an affirmative determination in 38 cases and a negative determination in 54 cases.

A. Standards for Determinations

In preliminary countervailing duty and antidumping investigations the Commission is directed by Title VII of the Tariff Act of 1930 to determine, based upon the best information available to it at the time of the determination, 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 imports of the merchandise that is the subject of the investigation.[24] "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant." [25] In making its determinations the Commission is required to consider, among other factors, (1) the volume of imports of the merchandise which is the subject of the investigation, (2) the effect of imports of that merchandise on prices in the United States for like products, and (3) the impact of imports of such merchandise on domestic producers of like products.[26]

In making a determination as to whether there is a threat of material injury the Commission considers, among other factors, (1) the rate of increases of subsidized or dumped imports into the U.S. market, (2) the capacity in the exporting country to generate exports, and (3) the availability of other export markets.[27] Findings of a reasonable indication of threat of material injury must be based on a showing that the likelihood of harm is real and imminent, and not on mere supposition, speculation, or conjecture.[28]

Separate views of Chairman Alberger and Commissioner Stern on Threat

Chairman Alberger and Commissioner Stern note that Congress and the courts have made it clear that a finding of threat of material injury (or reasonable indication thereof in the case of a preliminary investigation) must be based on "information showing that the threat is real and injury is imminent, not mere supposition or conjecture." S. Rep. No. 96–249, 96th Cong., 1st Sess. 88–89 (1979). In a recent decision by the U.S. Court of International Trade in *Alberta Gas Chemicals, Inc.* v. *U.S.*, 515 F. Supp. 780, 791 (Ct. Int'l Trade 1981), the Commission's majority determination that a likelihood of injury [29] existed was reversed because it was "flawed with supposition and conjecture." Specifically, the court rejected the majority's finding that a *possible* expansion of foreign capacity, coupled with a negative Commission determination, would pose a threat of increased Canadian LTFV exports to the United States. It found instead that "the record before the Commission shows simply a mere possibility that injury might occur at some remote future time." Thus, the record did not adequately support the Commission's determination.

In the cases presently before us, it is apparent that the capacity utilization rate in many of the EC steel producers' facilities is below an optimum level. Our negative determinations with respect to certain products in these investigations will not, however, create any additional incentive or license to flood the U.S. market with those allegedly dumped or subsidized products. A finding of reasonable indication of threat of material injury which is premised solely upon the existence of excess capacity and the lack of an outstanding antidumping and/or countervailing duty order is nothing but the sheerest form of speculation and conjecture, condemned by both Congress and the courts. We have therefore limited our findings based on threat to those cases where the best information available gives a reasonable indication that the threat of material injury is both real and imminent.

B. Definition of the Domestic Industries [30]

Our first task in these investigations is to determine the scope of the domestic

[23] Bethlehem Steel Corp., Cyclops Corp., Inland Steel Co., Jones & Laughlin Steel, Inc., National Steel Corp., Republic Steel Corp., and United States Steel Corp.

[24] 19 U.S.C. 1671b, 1673b.

[25] 19 U.S.C. 1677(7)(A).

[26] 19 U.S.C. 1677(7)(B).

[27] 19 CFR 207.26(d). In countervailing duty investigations, the Commission also considers such information as may be presented to it by the Department of Commerce as to the nature of the subsidy provided by a foreign country and the effects likely to be caused by the subsidy. 19 U.S.C. 1677(7)(E)(i). Specifically, the Commission will consider whether the subsidy is an export subsidy within the meaning of the Agreement on Subsidies and Countervailing Measures (the Agreement is properly titled the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade). In these preliminary investigations the only information available to us from the Department of Commerce regarding subsidies is that supplied in Hot-Rolled Carbon Steel Sheet from France, Inv. No. 701–TA–85 (Preliminary), USITC Pub. 1206 (1982); and Hot-Rolled Carbon Steel Plate from Belgium, Brazil, and Romania, Inv. Nos. 701–TA–83 and 84 (Preliminary), USITC Pubs. 1207 and 1208 (1982).

[28] S. Rep. No. 96–249, 96th Cong., 1st Sess. 88–89 (1979); S. Rep. No. 1298, 93d Cong., 2d Sess. 180 (1974); Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 790 (Ct. Int'l Trade 1981).

[29] The Commission's determination in the underlying investigation, Methanol from Canada, Inv. No. AA1921–202, was based on the "likelihood of injury" standard contained in the Antidumping Act of 1921. Although that standard was subsequently replaced by the "threat of material injury" standard in the Trade Agreements Act of 1979, the court explicitly acknowledged that Congress did not intend to change its "real and imminent" test for future injury.

[30] No information has been gathered or presented in the Report on the question of whether separate

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industries against which the impact of the allegedly dumped or subsidized imports is to be assessed. The domestic industry is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[31] "Like product" is defined in section 771(10) as a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation * * *.[32]

These investigations concern allegedly dumped or subsidized imports of nine different categories of steel products from Belgium, Brazil, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, Romania, and the United Kingdom. These nine categories are: (1) hot-rolled carbon steel plate; (2) hot-rolled carbon steel sheet and strip; (3) cold-rolled carbon steel sheet and strip; (4) galvanized carbon steel sheet; (5) carbon steel structural shapes; (6) hot-rolled carbon steel bar; (7) hot-rolled alloy steel bar; (8) cold-formed carbon steel bar; and (9) cold-formed alloy steel bar. For the purposes of these investigations we find each of the nine categories to constitute a separate "like product." Since the investigations are only preliminary, we have made our conclusions as to the like products and the definition of the industries on the basis of the best available information. These are not necessarily the conclusions we will reach in any final investigations that may be conducted, because our information base at that time will likely be much more detailed. In the discussion below we will describe each product and the reasons why each is distinguished from the others in terms of characteristics and uses.[33]

Hot-rolled carbon steel plate is a finished product. It is distinguished from other flat-rolled steel products, such as sheet, by its dimensions, defined as 0.1875 inch or more in thickness and over 8 inches in width.[34] The predominant uses for hot-rolled carbon steel plate are for the construction of bridges, storage tanks, pressure vessels, railroad cars, ships, line pipe, and industrial machinery.[35]

Carbon steel sheet and strip are also generally considered to be finished products distinguishable by their dimensions from other flat-rolled products. Sheet is defined as being over 12 inches in width and in coils, or if not in coils under 0.1875 inch in thickness.[36] Hot-rolled sheet is used in the manufacture of automotive products, construction products, pipes and tubes, appliances, and electrical equipment.[37] Cold-rolled sheet is made by processing hot-rolled steel sheet coils in cold-reduction mills, thereby achieving a smoother-finished product of reduced thickness.[38] It is used extensively in the manufacture of appliances, electrical equipment, and automotive products.[39] Carbon steel strip has the same properties as hot-rolled or cold-rolled sheet, depending upon which finishing process is used. It differs only in that it is not more than 12 inches in width.[40]

Hot-rolled strip is used principally for purposes similar to those of hot-rolled sheet, while cold-rolled strip is chiefly used in the making of containers, packaging and shipping materials and automotive uses.[41]

Galvanized carbon steel sheet is produced in the same dimensions as ordinary carbon steel sheet. It differs because it has been coated with zinc for protection against corrosion.[42] The prinicpal end users of galvanized sheet are the construction and automotive vehicle industries.[43]

Carbon steel structural shapes are rolled, flanged shapes having at least one dimension of their cross section 3 inches or more. Among the structural shapes involved in these investigations are wide flange beams, H-piles, I-beams, angles, channels, bull angles, T's and Z's.[44] The major uses of structural shapes are in construction and contractors' products; manufacture of machinery, industrial equipment, and tools; and shipbuilding and marine equipment.[45]

Bars are steel products not conforming to the specifications of other steel products and having cross sections in a variety of shapes, such as circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons. The shape of a bar depends upon the intended end use.[46]

Carbon steel bar, whether hot-rolled or cold-formed, is produced in two principal grades, merchant bar and special quality bar. Merchant bar is used in most noncritical applications, while special quality bar is used when the end use calls for certain quality characteristics.[47] Cold-formed carbon steel bar is produced by further subjecting hot-rolled bar to a cold-finishing process that imparts surface and mechanical properties that render it superior for certain uses to hot-rolled bar.[48] Hot-rolled carbon steel bar is used primarily in the manufacture of automotive vehicles, machinery, industrial equipment, and tools; in mining, quarrying, and lumbering applications; and in construction uses.[49] Cold-formed carbon steel bar is consumed chiefly by manufacturers of machinery, industrial equipment, tools, automotive products, and agricultural equipment.[50]

Alloy steel bars differ from their carbon steel counterparts because other elements besides carbon and iron have been introduced during the production process to give the products added

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regional industries exist within the meaning of section 771(4)(c). No such allegations were made in the petitions filed with the Commission in these investigations or otherwise raised in a timely manner. During the conference there was some discussion regarding possible regional industries, but there was no comprehensive development of views or argumentation on the various requirements set forth in the statute. Furthermore, such data has been gathered in past steel investigations for all the product lines considered in these investigations, except the four bar products. See Certain Carbon Steel Products from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom, Inv. Nos. 731-TA-18-24 (Preliminary), USITC Pub. No. 1064 (1981); Hot-Rolled Carbon Steel Plate from Belgium, Brazil, and Pomania, Inv. Nos. 701-TA-83 and 84 (Preliminary), and 731-TA-51 (Preliminary), USITC Pubs. 1207 and 1208 (1982); and Hot-Rolled Carbon Steel Sheet from France, Inv. No. 701-TA-85, USITC Pub. 1206 (1982). In none of those cases could any geographical area, except possible the western United States, qualify for such treatment because such areas were insufficiently isolated from the national market. In the present cases, no allegations were made concerning injury to the western states geographical area. Thus, there is no reason to expect that regional treatment might be justified even were such data to be developed.

[31] 19 U.S.C. 1677(4)(A).

[32] 19 U.S.C. 1677(10).

[33] A more detailed description of each product, its uses, characteristics, and method of manufacture can be found in the "description and uses" section of the Report on each of the products. The Report also describes the sections of the Tariff Schedules of the United States covering each product.

[34] Report at II-2. Most distinctions between products employed by the Commission in these investigations are derived from the Tariff Schedules of the United States, but some adhere to industry usage rather than strict TSUS categories exclusively used in the 1980 cases.

[35] *Id.* at II-4.

[36] *Id.* At III-1; IV-2. The description of sheet used in these investigations includes some products described as plate in the TSUS but deemed by the U.S. industry to be sheet.

[37] *Id.* at III-2.

[38] *Id.* at IV-2.

[39] *Id.*

[40] *Id.* at III-2, IV-2.

[41] *Id.*

[42] *Id.* at V-1

[43] *Id.* at V-2.

[44] *Id.* at VI-2.

[45] *Id.* at VI-2.

[46] *Id.* at VII-2, VIII-1 and VIII-2, IX-2, X-2 and X-3.

[47] *Id.* at VII-2, IX-2.

[48] *Id.* at IX-2.

[49] *Id.* at VII-2 and VII-3.

[50] *Id.* at IX-3.

properties. Hot-rolled alloy steel bar has uses in the automobile, machinery and industrial equipment, mining, quarrying, lumbering, and oil and gas industries.[51] Cold-formed alloy steel bar has its principal uses in the manufacture of machinery, industrial equipment, tools and automotive products.[52]

We find that each of the nine product categories should constitute a separate like product. Each has physical characteristics of size, shape, or composition that are unlike those of the others. Moreover, they have varying uses, and products of one type generally do not compete with products of another type. As noted in the Commission determination in the 1980 steel products antidumping investigations, "Although raw steel constitutes much of the value of each of the * * * product groups under investigation, competition in the U.S. market between domestically produced steel products and the alleged LTFV [and subsidized] imports occurs in each of the * * * separate and distinct product groups." [53] In these investigations the domestic producers have been able to identify production and profitability data in terms of each of the nine groups, allowing the Commission to examine the impact of imports on each group separately.

Within each of the product categories there may be distinct characteristics and uses for items with differing specifications, but we lack sufficient information in these preliminary investigations to make any meaningful distinctions among them.[54] There generally appear to be no clear dividing lines among the products in each group, and therefore each category will be treated as a like product.[55] Thus, we find that there are nine domestic industries involved in these investigations corresponding to each of the nine like product groupings.[56]

C. Cumulation

Chairman Alberger and Commissioners Stern and Eckes have made their determinations on a case-by-case basis.[57] Each of them maintains that the imports in those investigations they voted to terminate could not conceivably have contributed to material injury. Should any of the affirmative preliminary cases return for final determinations, they do not preclude cumulation when the record as developed shows it is appropriate.[58]

For cumulation to be appropriate, we believe that it must be demonstrated that "the factors and conditions of trade in the particular case show its relevance to the determination of injury." [59] Factors and conditions which could combine to create a collective "hammering effect on the demestic industry" would be of most concern. These might include:

Volume of subject imports.
Trend of import volume.
Fungibility of imports.
Competition in markets for the same end users.
Common channels of distribution.
Pricing similarity.
Simultaneous impact.
Any coordinated action by importers.

There have been preliminary indications that many of these factors may be present. [60] Should any of these cases return for final determinations, we invite further argument and hope for a more complete record on this issue.

II. Hot-Rolled Carbon Steel Plate

With respect to the investigations on hot-rolled carbon steel plate, [61] we conclude that there is reasonable indication of material injury or threat thereof by reason of allegedly dumped and subsidized imports from Belgium, Brazil, Romania, the United Kingdom and the Federal Republic of Germany.[62] [63] We find that there is no reasonable indication of material injury or threat thereof by reason of allegedly dumped and subsized imports from France, Italy, Luxembourg, and the Netherlands.

Condition of the domestic industry

The domestic hot-rolled carbon steel plate industry is experiencing severe difficulties. The industry's production, capacity utilization, and employment have declined since 1979. The

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[51] *Id.* at VIII–2.

[52] *Id.* at X–3.

[53] Certain Carbon Steel Products from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom, Inv. Nos. 731–TA–18 to 24, USITC Pub. 1064 (1980), at 4 (Views of Chairman Bedell and Commissioners Moore and Calhoun). The approach taken in these investigations is also consistent with the views of Chairman Alberger in the 1980 investigations. Commissioner Stern notes that the definition of the domestic industry followed here conforms to the approach she adopted in Certain Carbon Steel Products, Inv. Nos. 731–TA–18–24 (Preliminary), USITC Pub. 1064 (1980):

It is clear that Congress desired the Commission determination and any resulting relief to be applied on a like product basis. There is a semantic problem, of little practical consequence in these cases, as to whether "the industry" consists of all suitable product lines, or each product line should define a separate industry for the purposes of the Act. Because Section 731 and Section 701 require that the determination shall be made in terms of "an industry," I have decided to adopt the convention that product lines which are separately identifiable in terms suggested by Section 771(4)(D) constitute separate industries for the purposes of the Act. ("Statement of Reasons of Commissioner Paula Stern," at 43.)

For the present cases, the observation made in Hot-Rolled Carbon Steel Sheet from France, Inv. No. 701–TA–85 (Preliminary), USITC Pub. 1206 (1982), continues to apply:

The question of aggregation—which the Commission chose to approach on a product line basis—apparently has been settled for the steel industry. ("Views of Commissioner Paula Stern," at 13.)

[54] We have carefully considered the arguments of certain respondents that some of their products are produced in shapes or dimensions that do not compete with domestically produced products. French and Belgian producers have argued, for example, that their sheet and plate products in certain widths and thicknesses should be excluded from these investigations. A similar argument is made by British Steel Corporation regarding special sections, joist sections, and organic coated steel. As stated in the text, the Commission lacks adequate information to evaluate these allegations in the context of these preliminary investigations.

The French producer Compagnie Francaise des Aciers Speciaux, S.A. (CFAS) argues that the appropriate domestic like product in the investigation of cold-formed alloy bar from France is hot-rolled bar. This claim has not been substantiated within the constraints of these preliminary investigations. However, certain information, discussed in the Report at X–26 to X–32, tends to bolster the argument. Since we have found that our injury determination regarding French cold-formed alloy bar would be the same in any case, a definitive disposition of the issue raised by CFAS is unnecessary. *See* p. 89, *infra*.

[55] *See* Sheet Piling from Canada, Inv. No. 731–TA–52 (Preliminary), USITC Pub. 1212 (1982); Hot-Rolled Carbon Steel Sheet from France, Inv. No. 701–TA–85 (Preliminary), USITC Pub. 1206 (1982); Hot-Rolled Carbon Steel Plate from Belgium, Brazil, and Romania, Inv. Nos. 701–TA–83 and 84 (Preliminary), and 731–TA–51 (Preliminary), USITC Pubs. 1207 and 1208 (1982); Stainless Clad Steel Plate from Japan, Inv. No. 731–TA–50 (Preliminary), USITC Pub. 1196 (1981).

[56] *See* additional views of Vice Chairman Calhoun.

[57] *See* additional views of Vice Chairman Calhoun.

[58] Chairman Alberger and Commissioner Stern refer readers to their respective discussions of the practice of cumulation in Certain Carbon Steel Products from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom, Inv. Nos. 731–TA–18–24 (Preliminary), USITC Pub. 1064 (1980), at 14–15 and 64–67, respectively.

[59] S. Rep. No. 93–1298, 93d Cong., 2d Sess. 180 (1974). There are no specific references to cumulation in the Trade Agreements Act of 1979 or its legislative history. A general reference to the "conditions of trade and competition" is found in S. Rep. 96–249, 96th Cong., 1st Sess. 74 (1979).

[60] Chairman Alberger and Commissioner Stern note that while there is not yet sufficient information available to them to determine whether cumulation is appropriate in any of these investigations, they have voted to continue certain cases which may merit cumulative treatment in a final investigation where an isolated analysis might otherwise call for a negative determination at the preliminary stage.

[61] Investigations Nos. 701–TA–86 to 93 (Preliminary); 731–TA–53 to 60 (Preliminary).

[62] Chairman Alberger finds reasonable indication of material injury for Belgium, Brazil, Romania and the Federal Republic of Germany and does not reach the issue of threat. Commissioners Alberger and Stern find a reasonable indication of threat of material injury due to imports from the United Kingdom.

[63] In reaching his conclusion, Vice Chairman Calhoun cumulated the data regarding imports. See his additional views at p. 98.

production of firms that submitted useable data [64] fell from 5,897,000 tons in 1979 to 5,564,000 tons in 1980 and to 5,161,000 tons in 1981.

Capacity declined from 9,713,000 tons in 1979 to 9,300,000 tons in 1980 and 9,051,000 tons in 1981. Capacity utilization has declined steadily from 62 percent in 1978 to 57 percent in 1981. Although there have been additions to the industry's practical capacity, there have also been closures of carbon steel plate facilities during the period of investigation. [65]

Employment of production and related workers engaged in producing hot-rolled carbon steel plate fell from 19,000 workers in 1979 to 18,500 workers in 1980 and 16,900 in 1981, 12 percent less than in 1979. [66]

Demand for carbon steel plate is shrinking. U.S. consumption of carbon steel plate declined from 8.4 million tons in 1978 to 7.6 million tons in 1980, or by 9 percent. Consumption during January–November 1981 amounted to about 7.0 million tons, the same as that during the same period in 1980. From 1979–1981 U.S. producers' shipments have shown a declining trend, [67] and the market share of the domestic industry has eroded. [68]

Profitability in the carbon steel plate industry was low throughout the period under investigation. Three firms sustained operating losses in 1978, four firms in 1979 and 1981, and six firms in 1980. The industry furnished profit-and-loss data which showed a ratio of operating profit to net sales of 4.0 percent in 1978, 3.9 percent in 1979, 1.4 percent in 1980 and 2.3 percent in 1981. These figures are well below the general manufacturing rate of return and are insufficent to provide the necessary reinvestment capital. [69]

Discussion of Affirmative Determinations

A. *Belgium.* .1 *Imports.* Belgian imports declined from their 1978 level to 214,000 tons in 1979, but increased to 286,000 tons in 1980. [70] The January–November 1981 data show an increase over the same period in 1980, from 252,000 tons to 285,000 tons. Belgium was the largest foreign supplier of carbon steel plate to the U.S. market during January 1978–1981, accounting for 17 percent of total U.S. imports during that period. [71] The ratio of imports from Belgium to apparent domestic consumption shows the same trend. The highest annual ratio, 4.6 percent, occurred in 1978, declining to 2.7 percent in 1979, increasing to 3.7 percent in 1980, and increasing again to 4.1 percent in January–November 1981. On a quarterly basis, imports from Belgium in July–September 1981 reached 5.4 percent of apparent U.S. consumption. [72]

Belgium's carbon steel plate industry has substantial plate-making capacity, over 2.6 million tons annually in 1981. [73] Nearly all of Belgium's production of carbon steel plate is exported. Exports to the United States account for an increasing amount of total exports, 16 percent in 1979, 20 percent in 1980, and 21 percent in January–September 1981. [74]

2. *Prices and lost sales.* The Commission requested data on actual transaction prices in 1981 from purchasers of carbon steel plate to determine whether the imported products undersold the domestic products. Eight purchases provided information regarding prices of Belgian imports. Varying results were reported. In some instances there was underselling of from 1 to 14 percent. In other cases, Belgian products were sold at higher prices than domestic products. [75]

Forty-seven lost sales allegations were made with respect to imports from Belgium. Seven were investigated, and price was cited as the major reason for the decsion to purchase the imports in each case.

3. *Determination.* We concluded that there is a reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from Belgium. [76] The volume of imports from Belgium is not insubstantial and increased in 1981. Moreover, underselling by Belgian imports and sales lost by underselling have been verified.

B. *Brazil.* 1. *Imports.* Brazilian imports increased dramatically from the 1978 level of 80,000 tons to 206,000 tons in 1979 and 323,000 tons in 1980. Data for the first eleven months of 1981 indicate that Brazilian imports had declined compared with those in the same period in 1980, from 312,000 tons to 288,000 tons. The ratio of imports from Brazil to apparent domestic consumption showed similar trends. The ratio increased from 0.9 percent in 1978 to 2.6 percent in 1979 and 4.2 percent in 1980. The ratio for the first eleven months of 1981 was 4.1 percent, a slight decrease from the 4.4 percent during the same period in 1980. [77]

Brazil was the third largest foreign supplier of imported carbon steel plate, providing 13 percent of total imports during January 1978 through November 1981. [78] About one-fifth of Brazil's production of carbon steel plate was exported in 1979. This increased to about one-third in 1980. Approximately 55 percent of Brazil's aggregate exports of carbon steel plate were shipped to the United States in 1979. This increased to 68 percent in 1980. [79] The Department of Commerce has characterized certain of the Brazilian subsidies under investigation as being specifically directed at exports. 46 FR 56636–37 (November 18, 1981).

2. *Prices and lost sales.* Information was obtained from eight purchasers regarding prices of hot-rolled carbon steelplate from Brazil. Margins of underselling from 7 to 21 percent were reported. During the same period, margins of overselling were also reported. [80]

Six of 34 allegations of lost sales were investigated. Of the six, price was cited as a major reason for the decision to purchase imports in four cases. [81]

3. *Determination.* We conclude that there is a reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from Brazil. [82] The volume of imports is increasing and several instances of underselling by Brazilian imports and sales lost by underselling have been verified.

C. *Federal Republic of Germany.* 1. *Imports.* Imports from the Federal Republic of Germany declined from 183,000 tons in 1978 to 75,000 tons in 1979, then increased to 102,000 tons in

[64] This response accounts for approximately 90 percent of the total shipments of carbon steel plate reported by the American Iron and Steel Institute in 1980. Report at II–11.

[65] Report at II–7.

[66] Id. at II–15.

[67] Id. at II–12.

[68] Id. at II–9.

[69] Ten firms furnished profit-and-loss data. These firms accounted for 89 percent of total U.S. producers' shipments of hot-rolled carbon steel plate in 1980.

[70] Official U.S. import statistics do not separate imports from Belgium and Luxembourg. Data submitted to the Commission by the U.S. affiliate of the sole producer of hot-rolled carbon steel plate in Luxembourg indicates that exports from Luxembourg were less than 0.2 percent of the total from the two countries in each of the years 1978–81. Thus, imports from Luxembourg never exceeded 800 tons per year.

[71] Report at II–29.

[72] Id. at II–29.

[73] Id. at II–22.

[74] Id.

[75] Id. at II–52.

[76] Chairman Alberger finds that there is a reasonable indication of present material injury by reason of these imports, and therefore does not reach the issue of threat.

[77] Id. at II–37.

[78] Id.

[79] Id. at II–22.

[80] Id. at II–52.

[81] Id. at II–53.

[82] Chairman Alberger finds that there is a reasonable indication of present material injury by reason of these imports, and therefore does not reach the issue of threat.

1980. In the first eleven months of 1981 imports amounted to 86,000 tons compared with 94,000 tons during the same period in 1980.[83] The ratio of imports from the Federal Republic of Germany to apparent domestic consumption declined from 2.2 percent in 1978 to 1 percent in 1979, but increased to 1.3 percent in 1980. For the first eleven months of 1981 the imports held 1.2 percent of apparent consumption.[84] At this time, there is no reliable information available to the Commission regarding capacity to produce steel plate in the Federal Republic of Germany.

2. *Prices and lost sales.* Information was obtained regarding prices of hot-rolled carbon steel plate from the Federal Republic of Germany. Margins of underselling were reported.[85] Thirty-four specific allegations of lost sales were made with respect to imports from the Federal Republic of Germany. Two of these were investigated by the Commission and both disclosed that price was the major reason for the decision to purchase the imports.[86]

3. *Determination.* We conclude that there is a reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from the Federal Republic of Germany.[87] The volume of imports is not insubstantial and instances of underselling and sales lost by underselling have been verified.

D. *Romania.* 1. *Imports.* Imports from Romania dropped from 49,000 tons in 1978 to 15,000 tons in 1979, doubled to 32,000 tons in 1980 and increased to 229,000 tons during the first eleven months of 1981. The ratio of imports from Romania to apparent domestic consumption shows a decline from 0.6 percent in 1978 to 0.2 percent in 1979. The ratio then doubled to 0.4 percent percent in 1980. The January–November 1981 data show a ratio of 3.3 percent. Quarterly data show that imports from Romania reached of 4.6 percent of apparent consumption during July–September 1981.[88]

Romania's capacity for producing hot-rolled carbon steel plate is increasing. That capacity is expected to increase annually so that by 1985 Romanian capacity is projected to be substantially greater than capacity in 1979 and 1980. During January–October 1981, the United States was one of Romania's largest export markets for hot-rolled carbon steel plate. Romania is experiencing a shortage of hard curency. The rolling mill equipment for the new plant was purchased with a U.S. Export-Import Bank Loan which must be repaid in dollars. The financial needs of the Romanian steel sector present an incentive to export to obtain U.S. currency.[89]

2. *Prices and lost sales.* Twenty-one allegations of lost sales were made with respect to imports from Romania. Four of these were investigated, and price was cited as a major reason for the decision to purchase the Romanian product in three of them.[90]

3. *Determination.* We conclude that there is a reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from Romania.[91] The United States is one of Romania's largest markets for carbon steel plate. Romanian capacity and incentives to export are expected to increase. The ratio of Romanian imports to apparent U.S. consumption reached 3.3 percent in 1981 and sales lost to the imports because of underselling have been confirmed.

E. *The United Kingdom.* 1. *Imports.* Imports from the United Kingdom dropped from 34,000 tons in 1978 to 10,000 tons in 1979 and 6,000 tons in 1980. In the first eleven months of 1981, the imports from the United Kingdom increased to their peak during the period under investigation of 35,000 tons.[92] The ratio of imports from the United Kingdom to apparent domestic consumption demonstrated similar trends. From 0.4 percent in 1978, the ratio dropped to 0.1 percent in 1979 and 1980. In 1981, the ratio increased to 0.5 percent and showed quarterly increases throughout the year, reaching 1.0 percent of apparent consumption in the last quarter,[93] as the British steel industry recovered from a strike and increased production.

The United Kingdom's production of carbon steel plate decreased from 2.0 million tons in 1979 to 1.2 million tons in 1980. However, production in January–October 1981 exceeded that for all of 1980. There is no reliable information available to the Commission on the United Kingdom's capacity to export carbon steel plate. Total United Kingdom exports of carbon steel plate dropped from 1979 to 1980 and the bulk of United Kingdom exports are to the European Community.

2. *Underselling and lost sales.* Five sales were allegedly lost to imports from the United Kingdom. Two of these were investigated and price was cited as the major reason for the decision to purchase the product imported from the United Kingdom in each.[94]

3. *Determination.* We conclude that there is a reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from the United Kingdom.[95] The volume of imports from the United Kingdom was higher in 1981 than in any other year during the period under investigation. In addition, there are verified instances of sales lost by the domestic industry because of underselling.

Discussion of Negative Determinations

A. *France.* 1. *Imports.* French imports decreased dramatically from a 1978 peak of 61,000 tons to 16,000 tons in 1979, then increased to 28,000 tons in 1980. Imports subsequently dropped to 17,000 tons in January-November 1981.[96] The ratio of imports from France to apparent domestic consumption declined from 0.7 percent in 1978 to 0.2 percent in 1979, then increased to 0.4 percent in 1980. The percentage for the first eleven months of 1981 dropped back to the 0.2 percent level.[97]

Although exports of French carbon steel plate increased yearly from approximately 30 percent of production in 1979 to 50 percent during the first eleven months of 1981, the share of exports shipped to the U.S. dropped from 16 percent in 1979 to 13 percent in 1980 and January-November 1981.[98]

2. *Prices and lost sales.* Instances of sales lost by the domestic industry to imports were verified in two instances.

3. *Determination.* We conclude there is no reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from France. There is no pattern of underselling of the imports from France. These imports are a decreasing percentage of total French exports and

[83] Report at II–38.
[84] Id.
[85] Id. at II–52.
[86] Id. at II–53.
[87] Chairman Alberger finds that there is a reasonable indication of present material injury by reason of these imports, and therefore does not reach the issue of threat.
[88] Report at II–38.
[89] See, Hot-Rolled Carbon Steel Plate from Belgium, Brazil, and Romania, Inv. No. 701–TA–83 and 701–TA–84 (Preliminary) and 731–TA–51 (Preliminary) (USITC Pub. No. 1207, January 1982).
[90] Report at II–54.
[91] Chairman Alberger finds that there is a reasonable indication of present injury by reason of these imports, and therefore does not reach the issue of threat.
[92] Report at II–38
[93] Id.
[94] Id. at II–53.
[95] Chairman Alberger and Commissioner Stern limit their finding to threat of material injury. They find no reasonable indication of present material injury by reason of the subject imports.
[96] Report at II–37.
[97] Id.
[98] Id. at II–24.

an insignificant and declining percentage of domestic consumption.

B. *Italy.* 1. *Imports.* Imports from Italy dropped consistently from 82,000 tons in 1978 to 1,000 tons in 1980, all of which were imported during the first eleven months of that year. Imports for the first eleven months of 1981 increased to 14,000 tons, slightly less than the 1979 level, but well below 1978. The ratio of imports from Italy to apparent domestic consumption shows that they accounted for 1 percent in 1978 but have not accounted for more than 0.2 percent since.[99]

There is no reliable information available to the Commission on Italy's capacity to produce hot-rolled carbon steel plate, its utilization of that capacity, or on total Italian exports. Italian production of carbon steel plate during January-October 1981 amounted to 2 million tons, compared with 2.3 million tons in 1980 and 2.1 million tons in 1979.[100]

2. *Prices and lost sales.* Nine allegations of sales lost to Italian imports were made by domestic producers. One was investigated but it was not confirmed that the firm in question had purchased carbon steel plate imported from Italy.[101]

3. *Determination.* We conclude that there is no reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from Italy. There is no reliable information indicating underselling by Italian imports which are a very small factor in domestic consumption.

C. *Luxembourg.* 1. *Imports.* Although Luxembourg exports most of its relatively small carbon steel plate production, the bulk of the exports are to other members of the European Community. Exports to the United States have been only 1 percent or less of total exports each year.[102]

2. *Prices and lost sales.* There is no information indicating underselling by imports from Luxembourg and there were no allegations of lost sales by reason of the imports.

3. *Determination.* We conclude that there is no reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from Luxembourg. Our conclusion is based upon the negligible quantities of these imports during the period under investigation and the absence of any showing that they had any impact on the prices of U.S. products as well as the absence of any allegations of lost sales.

D. *The Netherlands.* 1. *Imports.* Imports from the Netherlands remained at 5,000 tons during 1978 and 1979, dropped to 4,000 tons in 1980 and rebounded to 5,000 tons during the first eleven months of 1981. As a percentage of apparent domestic consumption imports from the Netherlands have remained at 0.1 percent during the entire period under investigation.[103]

The Netherlands' production of carbon steel plate has decreased annually since 1979, from 368,000 tons to 277,000 tons in January–October 1981. There is no reliable information available to the Commission on the Netherlands' capacity to produce hot-rolled carbon steel plate or its utilization of that capacity. The bulk of the production of carbon steel plate is exported to other members of the European Community. Exports to the United States accounted for about 2 percent of aggregate exports of this product in 1979, declining to less than 1 percent in 1980.[104]

2. *Prices and lost sales.* There is no information indicating underselling by imports from the Netherlands and there were no allegations of lost sales by reason of the imports.

3. *Determination.* We conclude that there is no reasonable indication of material injury or threat thereof by reason of imports of hot-rolled carbon steel plate from the Netherlands. Our conclusion is based upon the insignificant market share of these imports, their stable volume, and the lack of any allegations or other information showing that their small presence in the market has had any effect on U.S. prices or resulted in lost sales. Moreover, we note that the Netherlands' production of the product has decreased annually since 1979.

III. Hot-Rolled Carbon Steel Sheet and Strip

With respect to the investigations on hot-rolled carbon steel sheet and strip,[105] we conclude that there is a reasonable indication that allegedly dumped and subsidized imports from Belgium, the Federal Republic of Germany, France, Italy, and the Netherlands are causing material injury or threatening material injury to the affected domestic industry, but that there is no reasonable indication that allegedly subsidized imports from Brazil and the United Kingdom and allegedly dumped and subsidized imports from Luxembourg are causing material injury or the threat of material injury.[106]

Condition of the Domestic Industry

The available data show that the health of the domestic industry producing hot-rolled carbon steel sheet and strip has declined compared to its condition in 1978 and 1979. Domestic production of hot-rolled carbon steel sheet and strip increased from 11.7 million tons in 1978 to 12.6 million tons in 1979 but declined by over 20 percent to 9.9 million tons in 1980. Production increased to 11.4 million tons in 1981, a level below that reached in 1978 or 1979. Shipments showed a trend similar to that of production. Utilization of capacity declined from 65.7 percent in 1978 to 65 percent in 1979 and to 52.5 percent in 1980. Capacity utilization then increased in 1981 to 59.0 percent.[107]

Employment of production and related workers engaged in producing hot-rolled carbon sheet and strip increased from 23,100 in 1978 to 25,400 in 1979 and then declined 20 percent to 20,400 in 1980. In 1981 the figure had increased to 22,400, still below the 1978 figure.[108]

Demand for hot-rolled carbon steel sheet and strip is shrinking. Apparent domestic consumption declined nearly 30 percent, from 18.3 million tons in 1978, to 13.3 million tons in 1980. During the first eleven months of 1981, apparent consumption amounted to 13.7 million tons, about 15 percent more than that during the corresponding period in 1980.

Profitability in the hot-rolled carbon steel sheet and strip industry was low during 1978 and 1979, never exceeding $162 million or 4.8 percent of net sales. The nine reporting U.S. producers showed operating losses of $232 million, or 7.5 percent of net sales, in 1980 and $139 million, or 3.5 percent of net sales, in 1981.[109] Five reported losses in 1978, four in 1979, eight in 1980, and six in 1981.[110]

Discussion of Affirmative Determinations

A. *Belgium.* 1. *Imports.* Imports from Belgium and Luxembourg declined from 77,000 tons in 1978 to 21,000 tons in 1979 and remained at that level through 1980.[111] During January–November 1981,

[99] Id. at II–37.
[100] Id. at II–25.
[101] Id. at II–53.
[102] Id. at II–25 and see footnote 10, p. 20.
[103] Id. at II–32 to II–37.
[104] Id. at II–26.
[105] Investigation Nos. 701–TA–94 to 101 (Preliminary); 731–TA–61 to 65, 67 (Preliminary).
[106] In reaching his conclusion, Vice Chairman Calhoun cumulated the data regarding imports. See his additional views at p. 98.
[107] Report at III–8 to III–10.
[108] *Id.* at III–13 to III–15.
[109] These producers accounted for 83 percent of U.S. producers' shipments in 1980.
[110] Report at III–16.
[111] Official U.S. import data combine imports from Belgium and Luxembourg, but information available

Continued

however, these imports increased to 100,000 tons. The bulk of the rise in imports from these two countries came in the last two quarters of 1981. The dramatic increase in January–November 1981 brought the ratio of these imports to apparent domestic consumption to 0.7 percent. At all other times during the period under investigation these imports amounted to less than 0.5 percent of apparent domestic consumption.[112]

2. *Prices and Lost Sales.* The Commission requested data on actual transaction prices in 1981 from purchasers of steel sheet to determine whether the imported products undersold the domestic products. Three purchasers provided information regarding prices of Belgian imports. Varying results were reported. In some instances there was underselling of from 1 to 8 percent. In other cases, the Belgian products sold at prices higher than the domestic prices at margins from 1 to 16 percent.[113] The allegations of sales lost to Belgian imports by reason of underselling were also investigated and confirmed.[114]

3. *Determination.* We find a reasonable indication that imports from Belgium are a cause of material injury or threat of material injury to the U.S. industry.[115] The volume of imports from Belgium increased greatly in 1981, particularly in the latter half of the year. Moreover, several instances of underselling by Belgian imports and of sales lost by underselling have been verified.

B. *Federal Republic of Germany.* 1. *Imports.* The Federal Republic of Germany was a principal supplier of these products throughout the period 1978–81. Although West German imports declined from 1978 to 1981, they remained above 300,000 tons. Moreover, imports rapidly increased during the last two quarters of 1981. The share of the U.S. market held by these imports declined from 3.7 percent in 1978 to 2.3 percent in January–November 1981.[116] No reliable information is available on West German production, capacity to produce, or total exports of hot-rolled carbon steel sheet and strip.

2. *Prices and lost sales.* Information was obtained from three purchasers regarding prices of hot-rolled carbon steel sheet from the Federal Republic of Germany. Margins of underselling of from 1 to 4 percent in 1981 were reported in different markets. During the same time, West German imports were reported to have sold at prices 2 to 9 percent higher than domestic products in some instances.[117]

All five allegations of sales lost to West German imports were confirmed. Purchasers reported that their decisions to purchase the imports were based on lower price.[118]

3. *Determination.* We conclude that there is a resonable indication of material injury or threat of material injury [119] by reason of imports of hot-rolled carbon steel sheet and strip from the Federal Republic of Germany. That country is a major foreign supplier of these products to the U.S. market and its imports have held a significant share of the market throughout the period investigated. Moreover, the Commission was able to confirm instances of underselling and lost sales indicating a possible adverse effect on the domestic industry by reason of the pricing of these imports.

C. *France.* 1. *Imports.* Imports of hot-rolled carbon steel sheet and strip from France declined from 694,000 tons in 1978 to 529,000 tons in 1979 and 395,000 tons in 1980. Imports in January-November 1981 increased to 413,000 tons, a 26 percent increase over imports in the corresponding period of 1980. The ratio of imports from France to apparent domestic consumption has remained at about 3 percent since 1979.[120]

France exports about 60 percent of the hot-rolled carbon steel sheet and strip it produces. Its primary export market is other EC countries, although exports to the United States accounted for 18 percent of aggregate exports in 1981.[121] There is no available information on French capacity to produce these products.

2. *Prices and lost sales.* Seven purchasers prices for French hot-rolled sheet. The data were mixed. French imports at times were sold at higher prices than U.S.-produced products, but underselling predominated. Margins of underselling ranged from 1 to 11 percent.[122]

Five allegations of sales lost to French imports were confirmed by the Commission, some of which were verified to have occurred on the basis of the lower price of the imports.[123]

3. *Determination.* We determine that there is a reasonable indication that imports of carbon steel sheet and strip from France are a cause of material injury or threat thereof [124] to the affected U.S. industry. Total imports from France have been significant over the entire period investigated, amounting to about 3 percent of domestic consumption, and French imports increased greatly in 1981 over 1980 levels. Moreover, the Commission has verified both significant levels of underselling by French imports and sales lost to imports because of underselling.

D. *Italy.* 1. *Imports.* Imports from Italy declined from 250,000 tons in 1978 to 85,000 in 1979 and 39,000 tons in 1980. They then increased in January-November 1981 to 62,000 tons, an increase of 23,000 tons over the corresponding period in 1980. The greatest bulk of 1981 imports were concentrated in the last half of the year. The ratio of imports from Italy to apparent domestic consumption was 0.5 percent in January–November 1981.[125] No reliable data is available regarding Italian capacity to produce, or total exports of these products.

2. *Prices and lost sales.* Two purchasers provided information regarding U.S. prices of Italian hot-rolled carbon steel sheet. No consistent pattern was evident, with Italian products selling from 1 percent under to 9 percent over domestic prices.[126]

The Commission was able to confirm allegations of sales lost by the domestic industry to Italian imports. Purchasers cited lower prices as the reason for their purchase of the imports.[127]

3. *Determination.* We conclude that there is a reasonable indication of material injury or threat thereof [128] by reason of Italian imports of hot-rolled carbon steel sheet and strip. There are verified indications of underselling by these imports and of sales lost by the domestic industry because of

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to the Commission indicates that the overwhelming majority of aggregate imports are from Belgium.

[112] Report at III–28. There is no reliable information available to the Commission regarding Belgian production or capacity to produce these products. Exports to the U.S. accounted for about 2 percent of total Belgian exports.

[113] *Id.* at III–40.

[114] *Id.* at III–41.

[115] Chairman Alberger and Commissioner Stern limit their finding to a reasonable indication of threat of material injury. They find no reasonable indication of present material injury by reason of the subject imports.

[116] Report at III–35.

[117] *Id.* at III–41.

[118] *Id.*

[119] Chairman Alberger finds that there is a reasonable indication that the subject imports are a cause of present material injury, and therefore does not reach the issue of threat.

[120] *Id.* at III–28.

[121] *Id.* at III–19.

[122] *Id.* at III–40.

[123] *Id.* at III–41.

[124] Chairman Alberger finds that there is a reasonable indication that the subject imports are a cause of present material injury, and therefore does not reach the issue of a reasonable indication of threat.

[125] Report at III–28.

[126] *Id.* at III–40.

[127] *Id.* at III–41.

[128] Chairman Alberger and Commissioner Stern limit their finding to a reasonable indication of threat of material injury. They find no reasonable indication of present material injury by reason of the subject imports.

underselling. Significantly, Italian imports increased dramatically in the last two quarters of 1981.

E. *The Netherlands.* 1. *Imports.* Imports from the Netherlands decreased from 322,000 tons in 1978 to 269,000 tons in 1979 and 189,000 tons in 1980, when imports from the Netherlands accounted for approximately 10 percent of total imports. Imports rose to 230,000 tons in January–November 1981, a 22 percent increase over the corresponding period in 1980. During January–November 1981, imports from the Netherlands accounted for 1.7 percent of apparent domestic consumption.[129] No reliable information is available to show capacity in the Netherlands to produce hot-rolled carbon steel sheet and strip or total exports from that country.

2. *Price and lost sales.* Two purchasers provided information on transaction prices for imports from the Netherlands. Although imports were reported to have sold at prices substantially higher than domestic products, underselling was also reported to have occurred at margins up to 3 percent.[130] Allegations of lost sales as a result of lower import prices were confirmed by the Commission.[131]

3. *Determination.* Our conclusion that there is a reasonable indication that imports from the Netherlands have caused or are threatening material injury [132] is based on several factors. Imports were relatively steady over the whole period covered, accounting for 1.7 percent of U.S. consumption in 1981. Moreover, there is information showing underselling and sales lost because of underselling.

Discussion of Negative Determinations

A. *Brazil.* 1. *Imports.* Imports from Brazil increased from 9,000 tons in 1978 to a high of 28,000 tons in 1979, then dropped to 7,000 tons in 1980. During January–June 1981, imports from Brazil amounted to only 4,000 tons, compared with imports of 7,000 tons in the corresponding period in 1980. At all times during the period under investigation, these imports amounted to less than 0.5 percent of apparent domestic consumption.[133] No reliable information is available on Brazilian capacity, production or exports.

2. *Prices and lost sales.* No purchasers provided any information indicating underselling by Brazilian imports and no allegations of sales lost to the domestic industry on the basis of underselling.

3. *Determination.* We find no reasonable indication that allegedly subsidized imports of hot-rolled carbon steel sheet from Brazil are a cause of material injury or threat thereof to the subject U.S. industry. Brazilian imports have fallen consistently and drastically since 1979, never amounting to more than 0.5 percent of domestic consumption in any year. Moreover, unlike imports from those countries as to which we have reached affirmative determinations, Brazilian imports have not been shown to have resulted in underselling or lost sales.

B. *Luxembourg.* 1. *Imports.* Although import data for hot-rolled carbon steel sheet and strip from Luxembourg are not segregated from data for Belgium information available to the Commission indicates that nearly all these imports come from Belgium.[134] There is no reliable data on Luxembourg's capacity to produce these products. Its exports of these products to the United States were only 0.2 percent of its total exports in 1979 and 1980 and 0.1 percent in 1981.[135]

2. *Underselling and lost sales.* There is no information indicating underselling by imports from Luxembourg or lost sales by reason of imports.

3. *Determination.* We find that there is not a reasonable indication that imports of hot-rolled carbon steel sheet and strip from Luxembourg are causing material injury or treat thereof to the domestic industry. While its volume of imports is not precisely known, it is only a minute portion of total Belgium/Luxembourg imports. Moreover, it is clear that the United States is a very minor export market for Luxembourg in these products, and its exports to the United States have fallen. Finally, there is no information of underselling or lost sales.

C. *United Kingdom.* 1. *Imports.* Imports from the United Kingdom declined from 35,000 tons in 1978 to 11,000 tons in 1979 and to 1,000 tons in 1980. During January–November 1981, imports from the United Kingdom accounted for less than 500 tons.[136] These imports accounted for less than 0.5 percent of apparent domestic consumption at all times during the period under investigation.[137] No reliable data is available to show U.K. capacity to produce these products or its exports.

2. *Underselling and lost sales.* No purchasers reported underselling or lost sales with respect to imports from the United Kingdom.

3. *Determination.* We determine that there is no reasonable indication that imports of hot-rolled carbon steel sheet from the United Kingdom are causing or threatening material injury to the U.S. industry. Imports from the United Kingdom of the products have fallen drastically from 1978 to 1980, and there is no information that they have undersold U.S. products or caused lost sales.

IV. Cold-Rolled Carbon Steel Sheet and Strip

In the investigations on cold-rolled carbon steel sheet and strip, [138] we determine that there is a reasonable indication of material injury or threat of material injury by reason of allegedly dumped and subsidized imports from the Federal Republic of Germany, France, Italy, [139] and the Netherlands of cold-rolled carbon steel sheet and strip, but that there is no reasonable indication of material injury or threat thereof by reason of allegedly dumped and subsidized imports of those products from Belgium, [140] Luxembourg, and the United Kingdom and allegedly subsidized imports from Brazil.

Condition of the Domestic Industy

The condition of the domestic industry producing cold-rolled carbon steel sheet and strip weakened significantly from 1978 to 1981. Domestic production of cold-rolled carbon steel sheet and strip remained stable at 13.2 million tons in 1978 and 1979, then decreased in 1980 to 10.3 million tons. Although production increased to 11.2 million tons in 1981, it still remained below 1978 and 1979 levels. Over the 1978–81 period there was a 2 percent increase in the production capacity of the domestic industry to 15.9 million tons. Capacity utilization fluctuated during the period, however, falling from nearly 85 percent in 1978 to approximately 70 percent in 1981. [141]

During the period under investigation, employment of production and related

[129] Report at III–28.
[130] *Id.* at III–40.
[131] *Id.* at III–41.
[132] Chairman Alberger finds a reasonable indication that the subject imports are a cause of present material injury, and therefore does not reach the issue of threat.
[133] Report at III–28 and III–29.
[134] Aggregate import data for Belgium and Luxembourg are set forth at p. 33.
[135] Report at III–20.
[136] Report at III–25.
[137] Report at III–28 and III–29.
[138] Investigations Nos. 701–TA–102 to 109 (Preliminary); 731–TA–68 to 74 (Preliminary).
[139] Chairman Alberger and Commissioner Stern determine that there is no reasonable indication of material injury or threat thereof by reason of allegedly dumped or subsidized imports from Italy.
[140] Vice-Chairman Calhoun finds a reasonable indication of material injury or threat thereof by reason of allegedly dumped and subsidized imports from Belgium. In reaching his conclusion, Vice Chairman Calhoun cumulated the data regarding imports. See his additional views at p. 98.
[141] Report at IV–10. Decreases in production corresponded to the decline in domestic consumption, primarily attributable to falling in the automotive industry.

workers engaged in producing cold-rolled carbon steel sheet and strip reached a peak of 39,200 in 1979, but declined to 35,300 by 1981. Productivity decreased each year during the period. [142]

Profitability in the cold-rolled carbon steel sheet and strip industry was low during 1978 and 1979, then declined further in 1980 and 1981. The reporting U.S. producers showed operating losses of $383 million in 1980 and $293 million in 1981, equivalent to 9.2 percent and 5.9 percent of net sales in 1980 and 1981, respectively. Of the 9 producers reporting profit and loss data for the period under investigation, three reported losses in 1978, four in 1979, eight in 1980, and seven in 1981. [143]

Discussion of Affirmative Determinations

A. *Federal Republic of Germany.* 1. *Imports.* The Federal Republic of Germany is the second largest exporter of cold-rolled sheet of strip to the United States. During the period from 1978 through the first eleven months of 1981, West Germany accounted for 2 to 3 percent of apparent domestic consumption. Imports from West Germany declined from 665,000 tons in 1978 to 602,000 tons in 1979, then plummeted to 273,000 tons in 1980. During 1981 these imports rebounded to about 400,000 tons. [144] Information is not available on West German capacity to produce those products. Exports to the United States constituted about 15 percent of all West German exports during the period studied. [145]

2. *Prices and lost sales.* Nine purchasers provided price information regarding West German imports. In some instances West German products sold at prices higher than domestic products and in other instances at lower prices. The margins of underselling, where found, ranged from 1 to 10 percent. [146]

Forty-nine allegations of lost sales were made with respect to West German cold-rolled carbon steel sheet and strip. Of these, a sample of eight was investigated. Five purchasers indicated that alternate sourcing was the chief reason for their purchasing decisions. Three of the five instances involved a purchaser affiliated with a foreign producer. Three other purchasers cite quality differentials. No purchasers listed price as the primary factor. [147]

3. *Determination.* We conclude that there is reasonable indication that imports of cold-rolled carbon steel sheet and strip from the Federal Republic of Germany have caused or threatened materials injury. [148] West German imports are substantial and have increased greatly from 1980 to 1981, accounting for 2 to 3 percent of U.S. consumption. Moreover, there are indications that West German imports have undersold U.S. products.

B. *France.* 1. *Imports.* Imports from France declined from 260,000 tons in 1978 to 118,000 tons in 1980. During this period France's share of the U.S. market for cold-rolled carbon steel sheet and strip decreased from 1 percent to 0.8 percent. During 1981, however, French imports increased to 154,000 tons. [149] French exports to the United States accounted for about 10 percent of its total exports during 1978–81. [150] No information is available on French production capacity.

2. *Prices and lost sales.* Five purchasers provided information on domestic prices of French hot-rolled carbon steel sheet and strip. Although imports sold at higher prices in some markets at some times, underselling of from 2 to 11 percent was reported to have occurred in 1981. [151]

Twenty-nine allegations of lost sales were made with respect to French sheet and strip. Of these, a sample of seven was investigated and two of the purchasers indicated that the lower price of the French steel was the principal factor in the decision to purchase French imports. [152]

3. *Determination.* We conclude on the basis of the best information available that there is a reasonable indication that imports of cold-rolled carbon steel sheet and strip from France have caused or threatened material injury [153] to the U.S. industry producing the like product. Our conclusion is based on the significant level of French imports, the substantial increase in such imports in 1981, and confirmation of underselling and of sales lost by reason of underselling.

C. *Italy.* 1. *Imports.* Imports from Italy declined from 213,000 tons in 1978, or 1 percent of apparent domestic consumption, to 9,000 tons in 1980, or 0.1 percent of domestic consumption. Thereafter, imports from Italy increased to about 55,000 tons in 1981. [154] Italian exports to the United States during the period were about 20 percent of total Italian exports. [155] No data are available on Italian production capacity for these products.

2. *Underselling and lost sales.* Only one purchaser gave prices for Italian imports. No underselling was reported. [156]

One allegation of a lost sale was made with respect to Italian sheet. The purchaser was affiliated with a foreign producer and stated that it made the purchase decision on this basis. [157]

3. *Determination.* Vice Chairman Calhoun and Commissioner Eckes conclude that there is a reasonable indication that imports from Italy have caused or threatened material injury to the domestic industry. The principal bases for this determination are that Italian imports have increased substantially in 1981 over 1980 levels. Substantially all of the 1981 imports entered during the last half of the year, resulting in an import penetration of 0.6 percent for the third quarter of 1981. The United States continues to be a principal market for Italian exports of cold-rolled carbon steel sheet and strip.

Commissioners Alberger and Stern have determined there is no reasonable indication that imports from Italy are causing and could contribute to any material injury, or threat thereof, that the domestic industry is experiencing. These imports have a very small market share. Since 1978 they declined from one percent of consumption to 0.1 percent in 1980. During the first eleven months of 1981, they grew to 0.3 percent compared to 0.1 for the same period of 1980. However, this level still represents an insignificant volume. Only one allegation of a lost sale was made. The purchaser was in fact affiliated with a foreign producer and made the purchase on that basis.

D. *The Netherlands.* 1. *Imports.* During 1978–80 imports from the Netherlands declined from 233,000 tons to 118,000 tons. In 1981, however, these imports increased to over 146,000 tons. The market penetration of imports from the Netherlands has remained stable at approximately 1 percent. [158] Exports from the Netherlands to the United States accounted for 14 percent of its total exports in the 1978–81 period. [159] There is no reliable information on capacity in

[142] *Id.* at IV–14.
[143] 16.
[144] *Id.* at IV–34.
[145] *Id.* at IV–23.
[146] *Id.* at IV–43.
[147] *Id.* at IV–44.

[148] Chairman Alberger finds a reasonable indication that the subject imports are a cause of present material injury, and therefore does not reach the issue of treat.
[149] Report at IV–26.
[150] *Id.* at IV–20.
[151] *Id.* at IV–43.
[152] *Id.* at IV–44.
[153] Chairman Alberger finds a reasonable indication that the subject imports are a cause of present material injury, and therefore does not reach the issue of threat.

[154] Report at IV–34.
[155] *Id.* at IV–21.
[156] *Id.* at IV–43.
[157] *Id.* at IV–44.
[158] *Id.* at IV–34.
[159] *Id.* at IV–22.

the Netherlands to produce these products.

2. *Prices and lost sales.* One domestic purchaser contacted by the Commission reported prices for cold-rolled carbon steel sheet and strip from the Netherlands. It cited margins of underselling ranging from 3 to 12 percent.[160]

Twelve allegations of lost sales were made with respect to cold-rolled carbon steel sheet from the Netherlands. Of these, a sample of six was investigated, and one of the purchasers indicated that the price of the Dutch steel was the principal factor influencing the purchase decision.[161]

3. *Determination.* Our Determination as to imports of cold-rolled carbon steel sheet and strip from the Netherlands is that there is a reasonable indication that the imports have caused or threatened material injury [162] to the U.S. industry. Dutch imports account for about 1 percent of consumption and increased significantly in 1981 over 1980. Additionally, there are confirmed instances of underselling and lost sales attributable to these imports.

Discussion of Negative Determinations

A. *Belgium.* 1. *Imports.* Imports of cold-rolled carbon steel sheet and strip from Belgium and Luxembourg declined from 129,000 tons in 1978 to 98,000 tons in 1980. Imports for 1981 were more than 56 percent below the 1980 level.[163] Together, these countries have never accounted for more than 0.7 percent of apparent domestic consumption during 1978–80. For the first eleven months of 1981 the percentage was merely 0.3 percent.[164] The Commission has no reliable information on Belgian capacity to produce these products.

2. *Underselling and lost sales.* One domestic purchaser provided price information with respect to Belgian cold-rolled carbon steel sheet and strip. It noted margins of underselling ranging from 5 to 7 percent.[165] No specific allegations of sales lost to Belgian imports were made by the petitioners and non came to light in the course of the investigation.[166]

3. *Determination.* Chairman Alberger and Commissioners Stern and Eckes determine that there is no reasonable indication that Belgian imports of these products have caused or threatened material injury to the domestic industry involved.[167] Market penetration by Belgian imports has been small and is decreasing, and, while some underselling has been confirmed, there is no information of any sales lost because of underselling by Belgian imports.

B. *Brazil.* 1. *Imports.* Brazilian imports grew from 866 tons in 1978 to 8,765 tons in 1979, then fell to 1,491 tons in 1980. They then icreased to 18,887 tons in 1981. These figures represented 0.5 percent or less of total domestic consumption in 1978, 1979, and 1980. U.S. market penetration was 0.1 percent in 1981.[168] No reliable information is available on Brazil's capacity to produce cold-rolled carbon steel sheet and strip or total exports.

2. *Underselling and lost sales.* No instances involving underselling or lost sales on account of Brazilian imports were uncovered by the Commission's investigation.

3. *Determination.* It is our conclusion that there is no reasonable indication of material injury or threat thereof by reason of Brazilian imports of these products. Over the four-year period investigated, imports from Brazil remained a very small percentage of overall U.S. consumption. Moreover, no information of Brazilian underselling or sales lost to Brazilian imports was found.

C. *Luxembourg.* 1. *Imports.* Aggregate import figures for Belgium and Luxembourg are represented at p. 50. Extremely few of these already minimal imports originated in Luxembourg.

2. *Underselling and lost sales.* No information regarding underselling by imports from Luxembourg was received by the Commission, and no allegations were made or information received regarding lost sales.

3. *Determination.* Imports from Luxembourg of cold-rolled carbon steel sheet and strip from Luxembourg are practically nil, and have had no demonstrated impact on domestic prices. Thus, we find no reasonable indication that these imports have caused or threatened material injury to the U.S. industry.

D. *United Kingdom.* 1. *Imports.* Imports of cold-rolled carbon steel sheet [169] from the United Kingdom declined from 21,400 tons in 1978 to 5,800 tons in 1979 and 330 tons in 1980. They then increased in January-November 1981 to 8,400 tons. At no time in the four-year period did U.K. imports reach a greater percentage of apparent consumption than 0.1 percent, attained in 1978.[170]

2. *Underselling and lost sales.* One report of underselling by British imports was received by the Commission. The margin of underselling was 2 percent.[171] British imports were neither alleged nor found to have taken sales from domestic producers.

3. *Determination.* We conclude that there is no reasonable indication that imports of cold-rolled carbon steel sheet from the United Kingdom have caused or threatened material injury to the domestic industry producing this product. Imports remained at very small levels throughout the period investigated. Information regarding underselling was limited, and no information was provided regarding lost sales.

V. Galvanized Carbon Steel Sheet

Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioner Paula Stern

Our determination with respect to all antidumping and countervailing duty investigations on galvanized carbon steel sheet [172] is that there is no reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of the imports subject to these investigations. While we recognize that the domestic industry producing galvanized carbon steel sheet has suffered a downturn in 1980 and 1981, there is no evidence to support a finding that the allegedly subsidized and/or dumped imports have caused any part of this decline.

In a previous series of determinations regarding imported galvanized sheet from certain EC countries (Investigations Nos. 731–TA–18–24 (Preliminary), May 1980), Chairman Alberger found that there was no reasonable indication of material injury to the domestic industry by reason of the alleged LTFV sales.[173] Among other factors which formed the basis for that opinion were rapidly rising profit levels along with increases in U.S. production, shipments, capacity utilization, exports

[160] *Id.* at IV–43.

[161] *Id.* at IV–44.

[162] Chairman Alberger finds a reasonable indication that the subject imports are a cause of present material injury, and therefore does not reach the issue of threat.

[163] Official import data do not segregate imports from Belgium and Luxembourg. A Department of commerce analysis of these imports indicated that Belgium accounts for virtually all of them.

[164] Report at IV–26.

[165] *Id.* at IV–43.

[166] *Id.* at IV–44.

[167] *See* additional views of Vice-Chairman Calhoun.

[168] Report at IV–31, IV–34.

[169] Imports of cold-rolled carbon steel strip from the United Kingdom are not subject to these investigations.

[170] Report at IV–34.

[171] *Id.* at IV–43.

[172] Investigation Nos. 701–TA–110–116 (Preliminary) and 731–TA–75–81 (Preliminary).

[173] See views of Vice Chairman Bill Alberger on Certain Steel Products From the European Community, Investigation Nos. 731–TA–18–24 (Preliminary), May 1980, at 20–21.

and apparent consumption. Moreover, during the period under consideration in that investigation (1977–1979) the ratio of imports to apparent consumption from all sources and from the subject EC countries remained stable at about 25 percent and 5.8 percent respectively.

In the May 1980 cases, Commissioner Stern made affirmative determinations in the prelimianry cases of galvanized sheet from the Federal Republic of Germany and France, the only EC suppliers of any significance. The factors just noted by Chairman Alberger made these marginal cases. However, in May 1980, Commissioner Stern believed that it was not possible at the preliminary stage to discount the possibility that the subject French and German imports had a cumulative material impact on domestic profits on galvanized sheet. Since the previous investigaitons, the imports of this product from France and Germany have declined by almost half. The present total of subject imports in this product line—coupled with all other factors cited below—has simply eliminated them as possible causes of material injury.

In the period immediately following our May 1980 determinations, the galvanized steel sheet industry suffered a sharp drop in production, shipments, employment, capacity utilization, net sales, and profitability. Based on returns from Commission questionnaires production declined from 4.7 million tons in 1979 to 3.7 million tons in 1980. U.S. producers' shipments followed this pattern, dropping from 6.3 million tons in 1979 to 5.2 million tons. Employment declined by 13 percent from 1979 to 1980, while capacity utilization fell from 70% to 59%. Net sales also declined from $2.3 billion in 1979 to $1.9 billion in 1980. After enjoying operating profits of $135 million in 1979, the industry experienced an aggregate operating loss of $91 million, or 4.8 percent of net sales, in 1980.

While we are instructed by the legislative history of the Trade Agreement Act not to weight the different causes of injury to the domestic industry, we are nevertheless required to ascertain whether imports are at least a material cause of any injury being suffered.[174] Based on our analysis of all the information available to the Commission, it is our judgment that factors other than these import are responsible for the present state of the industry. At the same time that production, employment, profits and other indicators were declining, imports from each of the countries under investigation also plunged.

From 1979 to 1980 imports from all countries subject to countervailing duty investigations (including Spain and South Africa) [175] fell from 7.2 percent of apparent U.S. consumption to 4.3 percent of U.S. consumption. Likewise, imports from all countries subject to antidumping investigations, fell from 5.5 percent to 2.9 percent of apparent U.S. consumption. Imports from all sources also declined from 26 percent in 1979 to 21 percent in 1980. The 1981 statistics reveal only slight increases in import levels while U.S. production, shipments, capacity utilization and employment data indicate a significant rebound for the industry. Profitability levels in 1981 were also improving, although still in the red.

It is clear from thee patterns that the cause of the industry's difficulty in 1980–81 must be factors other than the allegedly dumped or subsidized imports. A major source of trouble obviously has been the sharp drop in U.S. consumption of galvanized sheet, from 8.7 million tons in 1978 to 6.5 million tons in 1980—a 25 percent decline. Data for January-November 1981 show a small but accelerating growth in consumption.[176] It may also be significant that while labor productivity declined by 5 percent over the 1978–81 period, an hourly wage increase of 39 percent pushed the unit labor cost per ton of galvanized sheet from $86.56 per ton in 1978 to $127.28 per ton in 1981. This represents an increase of 47 percent.[177]

Moreover, there is no reasonable indication that the industry is threatened with material injury by reason of the subject imports. U.S. importers' inventories of galvanized sheet from the EC declined by 48 percent during the 1978–81 period. Notwithstanding preliminary data which indicate that there may exist excess capacity to generate exports in some of the countries concerned, there appears to be no significant increase in market penetration.

V. Galvanized Carbon Steel Sheet

Views of Commissioner Alfred Eckes

Unlike the Commission majority, I determine that there *is* a reasonable indication that the domestic producers of galvanized carbon steel sheet are being materially injured, or threatened with material injury by reason of imports from France, Italy, and West Germany.

Condition of the Domestic Industry

Since the last Commission investigation of galvanized carbon steel sheet concluded in May 1980 with an affirmative preliminary determination, the condition of the domestic industry has deteriorated sharply.

In fact, in describing the state of the domestic industry in his 1980 dissenting opinion, then Vice Chairman Alberger wrote: "For the period 1977 to 1979, U.S. production, shipments, capacity utilization, exports, apparent consumption and profitability have all increased." But, if those factors are considered in light of more recent evidence, a different picture emerges of the galvanized carbon steel sheet industry. It is one that justifies an affirmative determination more than ever.

Domestic production has declined from a peak of 4.7 million tons in 1979 to 3.7 million tons in 1980 and 4.4 million tons in 1981.[178] U.S. producers' shipments dropped 19 percent from 1978 to 1980, before increasing in 1981. However, in the last quarter of 1981 shipments were 28 percent below the final quarter of 1980, additional evidence of an industry in trouble.[179] Capacity to produce galvanized sheet fell from 6.7 million tons in 1979 to 6.2 million tons in 1981. And, capacity utilization declined sharply from 70 percent in 1979 to 59 percent in 1980 before returning to about the 70 percent level in 1981.[180]

Most of the other indicators mentioned in the 1980 opinion show evidence of injury. Apparent domestic consumption fell 25 percent between 1978 and 1980 before reviving in 1981. However, U.S. producer's share of consumption, which rose to 90 percent in the first quarter of 1981, slid to 78 percent in the third quarter.[181] Furthermore, the domestic industry is considerably less profitable than at the time of the earlier investigation. The ratio of operating profit to sales fell from 5.8 percent to a *negative* 4.8 percent in 1980 and a *negative* 1.2 percent in 1981. Six of the eight producers reported operating losses in 1980, and, although sales picked up in 1981, operating losses continued.[182]

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[174] Senate Finance Committee Report on the Trade Agreements Act of 1979, Sen. Rept. No. 96–249, 96th Cong., 1st Sess., at 74–75.

[175] With respect to Vice Chairman Calhoun's inclusion of Spain and South Africa, see his additional views.

[176] See TAble V–2 of Report at p. V–4.

[177] Vice Chairman Calhoun is of the view that the 21 percent import penetration level from all sources cannot be ignored. Of this amount 61 percent is from Japan whose products tend to concentrate in the Western United States.

[178] Report at V–7.

[179] Id. at V–8.

[180] Report at V–7.

[181] Id. at V–4.

[182] Id. at V–14.

Inventories offered further evidence of material injury. Producers' year-end inventories were 30 percent higher for 1981 than for 1980. Indeed, the 1981 levels are the highest inventories reported for this industry since 1977.[183]

In 1980 a majority of the Commission determined there was reason to believe the domestic industry was being materially injured or threatened with material injury from imports even though the domestic industry was apparently in a healthier condition than at present. The subsequent decline in 1980 and late 1981 confirms the wisdom of that judgment and justifies my affirmative determination that there is a reasonable indication of material injury to the domestic producers of galvanized sheet.

Reasonable indication of material injury by reason of subject imports

In my view there is a reasonable indication that imports of galvanized sheet from West Germany, France, and Italy are causing or threatening material injury. West Germany is a major exporter of galvanized sheet to the United States, accounting for 2 to 3 percent of U.S. consumption through the period 1978–81. While the volume of overall German exports declined from 226,000 tons in 1978, the volume has begun to pick up again. Analyzed on a quarterly basis, more than 80 percent of the 1981 volume entered during the second half of the year. Third quarter 1981 imports were 2.3 percent of U.S. consumption, far above the 0.3 percent and 0.8 percent levels reached in the first and second quarters of 1981, respectively.[184] In addition, staff confirmed two instances where American producers lost sales to German suppliers,[185] reasonable evidence at the preliminary level of a connection between imports and material injury.

Imports from France declined from a peak in 1978, but have begun to rise again. The January–November 1981 figures show a 15 percent increase over the corresponding period for 1980. Viewed on a quarterly basis, imports increased each quarter during 1981, with the final three months representing 46 percent to total 1981 imports. Quarterly import penetration figures also show an increasing trend. Further, a larger share of French exports were directed to the United States during 1981, up from 7.3 percent of total French exports in 1980 to 10.5 percent for the first 11 months of 1981.[186] Finally, staff confirmed three allegations of lost sales.[187]

Imports from Italy dropped sharply from 1978 to 1980—from 64,000 tons to 4,000 tons. But, in 1981 the pattern reversed. Imports climbed to 31,000 tons, almost two-thirds of that volume arrived in the last three months of 1981. As a result, the import penetration ratio rose steadily from 0.1 in 1980 to 0.6 percent in the third quarter of 1981. Fourth quarter import penetration figures should be even higher.[188] In addition, staff confirmed an instance of American producers losing a sale because of lower prices for the imported product.[189] The import trends and penetration figures coupled with evidence of lost sales demonstrate a reasonable indication of material injury by reason of allegedly subsidized of LTFV imports from Italy.

Imports of galvanized steel sheet from Belgium, Luxembourg, the Netherlands, and the United Kingdom do not threaten or materially injure the domestic industry. Imports from Belgium/Luxembourg decreased in volume from 1978 through 1980, increasing slightly in 1981. Import penetration followed a similar trend, dropping to 0.1 percent in 1980 before rising to 0.2 percent in 1981. A review of quarterly data indicates no significant increasing trends in the levels of these imports.[190] Based on the above data, plus consistent production levels, rates of utilization, and export patterns from Belgium and Luxembourg, I determine that these cases can be terminated.

Similarly, imports of galvanized sheet from the Netherlands have declined steadily throughout 1978–81, from 40,000 tons in 1978 to 11,000 tons in 1980 and 1981. An analysis of import trends on a quarterly basis shown no significant change in patterns.[191] Imports from the United Kingdom were also inconsequential. They fell from 16,419 tons in 1979 to 374 tons in 1980.

Imports for the period January to November 1981 were 3,298 tons, almost all of which entered during the second half of 1981. Throughout the period, however, the import penetration level did not exceed the 0.2 percent level reached in 1979, and remained at less than 0.05 percent for the period January–November 1981.[192] Having considered these import levels and trends, as well as all other information presented in these proceedings, I have determined there is no reasonable indication of material injury of threat thereof by reason of allegedly subsidized or LTFV imports from the Netherlands or the United Kingdom.

VI. Carbon Steel Structural Shapes

In the investigations on carbon steel structural shapes[193] we conclude that there is a reasonable indication of material injury or threat thereof to the affected domestic industry by reason of allegedly dumped and subsidized imports from Belgium, the Federal Republic of Germany, France, Luxembourg and the United Kingdom.[194] [195] However, there is no reasonable indication that allegedly subsidized imports from Brazil are causing material injury or the threat of material injury to the domestic industry.

Condition of the Domestic Industry

Judged by all the available indicators, the condition of the U.S. industry producing carbon steel structural shapes has declined since 1979. Production increased somewhat from 1978 to 1979, but dropped from 4.1 million tons in 1979 to 3.7 million tons in 1981, a decline of about 10 percent.[196] Domestic shipments also increased slightly from 1978 to 1979, then declined annually from 4.5 million tons in 1979 to 4 million tons in 1981.[197]

Capacity for the production of structural shapes remained relatively constant, declining from 6.4 million tons to 6.3 million tons between 1979 and 1981. In contrast, utilization of available capacity dropped during that period, from 64.4 percent to 58.2 percent.[198] U.S. producers' yearend inventories remained relatively constant throughout the 1978–81 period at roughly 6 percent of total annual shipments.[199]

Employment of production and related workers in domestic establishments producing structural shapes rose with increased production in 1979, but fell significantly in 1980 and 1981 as production declined. The number of hours paid for production and related workers similarly declined.[200]

The lack of profitability of the structural shapes sector is striking. The

[183] Id. at V–10.
[184] Report at V–26.
[185] Id. at V–39.
[186] Id. at V–26.
[187] Id. at V–39.
[188] Report at V–26.
[189] Id. at V–39.
[190] Id. at V–26.
[191] Id. at V–26.
[192] Report at V–27.
[193] Investigations Nos. 701–TA–117 to 119, 121, 123, and 124 (Preliminary); 731–TA–82 to 86 (Preliminary).
[194] Chairman Alberger finds a reasonable indication that the subject imports are a cause of present material injury, and therefore does not reach the issue of threat.
[195] In reaching his conclusion Vice Chairman Calhoun cumulated the data regarding imports. See his additional views at p. 98.
[196] Report at VI–7.
[197] *Id.* at VI–8.
[198] *Id.* at VI–7.
[199] *Id.* at VI–10.
[200] *Id.* at VI–11 to VI–14.

domestic industry recorded a loss in every year from 1978 to 1981.[201] That loss declined from $25 million in 1978 to $4 million in 1979, then ballooned to $62 million in 1980 and $66 million in 1981. The ratio of operating loss to net sales increased irregularly from 2.2 percent in 1978 to 4.9 percent in 1981.[202]

Imports

Aggregate imports from the six countries subject to these dumping and countervailing duty investigations declined from about 670,000 tons in 1978 to approximately 540,000 tons in 1980. They then jumped to about 700,000 tons in 1981.[203] For three out of the four years examined,[204] imports from the six countries under investigation maintained an aggregate share of the U.S. market of approximately 11 percent.[205]

Imports of carbon steel structural shapes from Belgium and Luxembourg increased from 307,000 tons in 1978 to 379,000 tons in 1979, then declined to 293,000 tons in 1980.[206] They then increased in the first eleven months of 1981 to 367,000 tons, a substantial increase of 34 percent over the same period in 1980.[207] Imports from Belgium and Luxembourg represented 6 percent of apparent domestic consumption in 1979, 5.1 percent in 1980, and 6.7 percent in January–November 1981. In the third quarter of 1981 their share of apparent domestic consumption was an even greater 7.8 percent.[208] Belgian utilization of capacity for producing structural shapes was 48.6 percent in 1981, when exports to the United States accounted for 28.1 percent of total Belgian exports.[209] The EC was the principal market for Belgian exports from 1979–81.[210] Capacity utilization in Luxembourg fell from 97.2 percent in 1979 to 90 percent in 1981 as more capacity was added. Its principal export market was also EC countries.[211]

Imports from the Federal Republic of Germany declined from 167,000 tons in 1978 to 134,000 tons in 1979 and 136,000 tons in 1980. They further declined to 107,000 tons in the first eleven months in 1981. However, these volumes represented 2.4 percent of apparent U.S. consumption in 1980 and 1.9 percent in January–November 1981.[212] Data on West German capacity utilization is unknown. The United States accounted for 13.8 percent of German exports in 1979 and 10.9 percent in 1980.[213]

French imports declined steadily from 99,000 tons in 1978 to 46,000 tons in 1980, but increased in January–November 1981 to 49,000 tons, a 36 percent increase over those in the same period in 1980.[214] The ratio of French imports to total domestic consumption remained at about 1 percent in 1980 and 1981.[215] Between 1979 and 1981, French capacity for producing structural shapes was utilized at a relatively stable rate of approximately 60 percent. The EC was the major export market for the French products under this investigation. The United States accounted for slightly under 10 percent of these French exports in 1980 and 1981.[216]

The volume of structural shapes imported from the United Kingdom fell between 1978 and 1980 from 72,000 tons to 63,000 tons. It then increased dramatically in January–November 1981 to 133,000 tons, or almost 200 percent over that in the corresponding period in 1980.[217] This represented a climb from 1 percent of the U.S. market in 1980 to 2.4 percent in the first eleven months of the following year. The EC is the United Kingdom's principal export market. Exports to the United States were 11.4 percent of U.K. exports of carbon steel structural shapes in 1979 and 12.6 percent in 1980.[218]

Imports from Brazil declined from 24,000 tons in 1978 to less than 500 tons in 1980. Although Brazilian imports increased substantially in 1981, they still accounted for only 0.2 percent of apparent domestic consumption.[219] Further, quarterly data show decreasing imports during the second half of 1981. Principal Brazilian export markets in 1981 were the EC and the United States.[220]

Prices and Lost Sales

Evidence of underselling and of sales lost as a result of underselling was found with regard to imports from all the countries investigated except Brazil. Although there were instances in which imports sold at higher prices than domestic products, underselling by the imports predominated. Average margins of underselling ranged from lows of 2 to 5 percent to highs of 10 to 15 percent.[221]

Of the 21 confirmed allegations made by the petitioners of sales lost to imports, price was cited as the principal reason for the purchasing decision in every instance, although other factors were also given. Ten of the confirmed allegations involved imports from Luxembourg. Belgian, French and U.K. imports each accounted for from 1 to 3 confirmed lost sales due to price. Five sales lost to imports were not identifiable as to source.[222]

Determinations

For all the countries subject to these investigations except Brazil we find a reasonable indication of material injury or threat of material injury to the domestic industry by reason of imports of carbon steel structural shapes. The U.S. industry is caught between falling demand for its products, linked to a downturn in the construction industry, and an increased rate of penetration of the domestic market by the foreign-produced structural shapes under investigation. As domestic production and sales slumped during 1981, imports from Belgium, France, Luxembourg, and the United Kingdom increased greatly in 1981, driving the share of the market held by domestic producers even lower. Imports from the Federal Republic of Germany remained significant.

Moreover, as demand for the products fell, competition increased sharply. The increased share of the market garnered by imports has been achieved largely through price undercutting, leading to sales lost to the domestic industry. These preliminary cases are significant in the number of instances in which allegations of lost sales due to lower import prices were confirmed.

The record provides no reasonable indication of material injury or threat thereof to the domestic industry by reason of imports from Brazil. In no year investigated did Brazilian imports account for more than 0.4 percent of domestic consumption. Significantly, of all the imports subject to these investigations only those from Brazil were not confirmed to have either undersold domestic products or caused lost sales through underselling.

VII. Hot-Rolled Carbon Steel Bar

With regard to the countervailing duty investigations involving hot-rolled

[201] Profit-and-loss data were received from seven firms accounting for 78 percent of U.S. shipments in 1980. *Id.* at VI–15.

[202] *Id.*

[203] *Id.*, Tables VI–18 and VI–19.

[204] 1978 through Jan.–Nov. 1981.

[205] Report, Table VI–20.

[206] Separate import data are not available for Belgium and Luxembourg, but information in Department of Commerce documents indicates Luxembourg accounts for over 50 percent of the combined imports.

[207] Report, Table VI–18.

[208] *Id.*, Tables VI–20 and VI–21.

[209] *Id.* at VI–19.

[210] *Id.* at VI–20 and VI–21.

[211] *Id.*

[212] *Id.*, Table VI–20.

[213] *Id. at VI–22.*

[214] *Id., Table VI–18.*

[215] *Id., Table VI–20.*

[216] *Id. at VI–20.*

[217] *Id.*, Table VI–18.

[218] *Id.* at VI–21.

[219] *Id.*, Table VI–20.

[220] *Id.* at VI–19.

[221] *Id.* at VI–48 and VI–49.

[222] *Id.* VI–50 and VI–51.

carbon steel bar,[223] we determine that, with the exception of imports from the United Kingdom, there is no reasonable indication of material injury or the threat thereof by rason of the allegedly subsidized imports.[224]

Condition of the Domestic Industry

The condition of the domestic industry producing hot-rolled carbon steel bars has been affected greatly by declining domcestic consumption of the product, which fell from 6.7 million tons in 1978 to 4.3 million tons in 1980, a 36 percent drop. Consumption increased in 1981, but only to a small degree.[225]

Following the tend in consumption, domestic production steadily declined from 5.5 million tons in 1978 to 3.9 million tons in 1980, but recovered to 4.1 million tons in 1981.[226] Shipments showed a like trend, falling from 6.1 million tons in 1978 to 4 million tons in 1980, a decline of roughly one-third. Shipments then increased to 4.2 million tons in 1981.[227]

Practical domestic capacity for the productaion of hot-rolled carbon steel bar declined from 8.1 million tons in 1978 and 1979 to less than 7.7 million tons in 1980, and then increased slightly in 1981. Capacity utilization fell annually from 68.1 percent in 1978 to 50.7 percent in 1980. It increased to 52.9 percent in 1981.[228] U.S. producers' inventories of the product remained relatively constant throughout the period as a precentage of shipments.[229]

The decline in production from 1978 to 1980 caused a drop in average employment as well. The average numer of workers engaged in producing hot-rolled carbon steel bar fell by 3 percent from 1978 to 1979, then dropped 27 percent in 1980. Average employment then picked up about 1 percent in 1981.[230]

Profitability in the industry matched the figures for production as well. Net sales rose from $2 billion in 1978 to $2.2 billion in 1979, then fell 26 percent in 1980 to $1.6 billion. They posted a 17 percent increase in 1981 to $1.9 billion. The firms responding to the Commission's questionnaires[231] reported in the aggregate small operating profits on their hot-rolled carbon steel bar operations in 1978 and 1979 and losses in 1980 and 1981. Losses were reported by six firms in 1978, four in 1979, seven in 1980, and six in 1981.[232]

Volume of Imports

Aggregate imports of hot-rolled carbon bar from the seven countries involved fell from 171,000 tons in 1978 to 148,000 tons in 1979 and 103,000 tons in 1980. Imports rebounded in 1981 to 159,000 tons.[233]

Imports from each of the subject countries show varying trends. Hot-rolled carbon steel bar imported from Belgium and Luxembourg declined drastaically from 27,000 tons in 1978 to only 9,000 tons in 1980. In the first eleven months of 1981 imports from Belgium and Luxembourg increased to 13,000 tons compared to 8,000 tons in the same period in 1980.[234] Belgian capacity and capacity utilization for producing both hot-rolled carbon steel bar and hot-rolled allowy steel bar fell significantly between 1979 and 1981. Information on capacity is unavailable for Luxembourg.[235]

Brazilian imports declined steadly between 1978 and 1980, falling from 26,000 to 14,000 tons. January–November 1981 data show a further decline to 7,000 tons, approximately half the amount for the corresponding period of 1980.[236] The ratio of Brazilian imports to apparent domestic consumption demonstrated the same downward trend, from 0.4 percent in 1978 to 0.2 percent in the first eleven months of 1981.[237] Information on Brazilian capacity for production of bar products in not available.

French imports of hot-rolled carabon steel bar declined from 10,000 tons in 1978 to 4,000 tons in 1980, then increased somewhat in 1981, reaching 5,000 tons in the first eleven months of that year. Throughout the 1978–81 period, penetration of the domestic market by French imports remained at about 0.1 percent.[238] Data are unavailable on French capacity and utilization. France's major export market is West Germany. The United States accounted for only 3 percent of Franch exports.[239]

Imports from Italy totalled only 5,000 tons in 1978, then fell to less than 500 tons in each of the succeeding three years. The ratio of Italian imports to apparent U.S. consumption was 0.1 percent in 1978 and less than 0.05 percent in the remainder of the period under investigation.[240] Data are unavailable on Italian capacity and capacity utilization for production of these products. West Germany and France are Italy's major export markets, with the United States accounting for only a small share.[241]

Imports from the Federal Republic of Germany fell from 15,000 tons in 1978 to 11,000 tons in 1979, then increased slightly to 12,000 tons in 1980. Imports in the first eleven months of 1981 were 12,500 tons, slightly higher than the 11,500 tons imported in the same period in 1980.[242] The ratio of imports to apparent domestic consumption rose slightly from 0.2 percent in 1978 and 1979 to 0.3 percent in 1980 and 1981.[243] Information regarding West German capacity to produce steel bar products is unavailable. Over the period 1978–80, West German exports to the United States accounted for about 2 percent of its total exports. Its major export market for the products is France.[244]

Of the countries subject to these investigations, the United Kingdom is by far the largest supplier of hot-rolled carbon steel bar to the U.S. market. Imports from the United Kingdom amounted to 88,000 tons in both 1978 and 1979. After falling to 64,000 tons in 1980, U.K. imports then increased significantly in 1981, reaching 102,000 tons in the first eleven months compared to only 53,000 tons in the same period in 1980.[245] Quarterly data for 1981 show a dramatic increase in imports from less than 9,000 tons in the first quarter to 38,000 tons in the final quarter.[246] As a percentage of total apparent domestic consumption, imports from the United Kingdom rose from 1.3 percent in 1978 to roughly 2.5 percent in 1981.[247] In the last quarter of 1981, U.K. penetration of the U.S. market for this product reached 4.2 percent, up substantially from the 2.9 percent registered in the same period in 1980.[248] The United States was the U.K.'s largest export market in 1980, accounting for 18 percent of exports.

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[223] Investigations Nos. 701–TA–125 to 129, 146 and 147 (Preliminary).

[224] In reaching his conclusion, Vice Chairman Calhoun cumulated the data regaring imports. See his additional views at p. 98.

[225] Report at VII–5.

[226] *Id.*, Table VII–3.

[227] *Id.* at VII–7.

[228] *Id.*, Table VII–3.

[229] *Id.* at VII–10.

[230] *Id.* at VII–10.

[231] The firms providing profit-and-loss data accounted for 91 percent of U.S. production in 1980. *Id.* at VII–14.

[232] *Id.*

[233] *Id.*, Tables VII–18 and VII–20.

[234] *Id.* Official U.S. import statistics do not separate imports from Bilgium and Luxembourg. Information made available by the U.S. affiliate of the sole producer of hot-rolled carbon steel bar in Luxembourg indicates that the greater share of imports from the two countries is attributable to Belgian products. *Id.* at VII–22 fn.1.

[235] *Id.* at VII–17.

[236] *Id.*, Table VII–18.

[237] *Id.*, Table VII–19.

[238] *Id.*, Tables VII–18 and VII–19.

[239] *Id.* at VII–17.

[240] *Id.*, Tables VII–18 and VII–19.

[241] *Id.* at VII–18.

[242] *Id.*, Table VII–18.

[243] *Id.* Table VII–19.

[244] *Id.* at VII–20.

[245] *Id.*, Table VII–18.

[246] *Id.*, Table VII–20.

[247] *Id.*, Table VII–19.

[248] *Id.*, Table VII–21.

Data on U.K. capacity and utilization rates are unavailable.[249]

Price

The Commission has sought to investigate allegations regarding underselling by imports and sales lost to imports on the basis of price. The results achieved within the constraints of these preliminary investigations are both limited and mixed. Only two purchaser's questionnaires reported pricing data for imports, and those data are limited to imports from Luxembourg. In both instances the import prices were higher than domestic prices. Of those purchasers named in the lost sales sections of domestic producers' questionnaires, most confirmed that they had made purchases of imports in lieu of domestically produced bars. Only one purchaser of Belgian imports and two purchasers of imports from the United Kingdom, however, reported that the price of the imported products they purchased was lower than prices for domestic products, and of these one of the purchasers of bars from the United Kingdom indicated that the lower price was not its principal reason for buying the imports. All other purchasers of foreign-produced bar indicated that other factors, such as superior quality, motivated their purchase decisions.

Determinations

We conclude on the basis of the information available that there is no reasonable indication of material injury or threat of material injury by reason of imports of hot-rolled carbon steel bar from Belgium, Brazil, the Federal Republic of Germany, France, Italy, and Luxembourg, but that there is a reasonable indication of material injury or threat thereof by reason of imports from the United Kingdom.[250]

The domestic industry manufacturing hot-rolled carbon steel bar is presently experiencing a period of greatly diminished demand for the product, which has resulted in a marked decline in the industry's fortunes. With regard to all but one of the countries subject to these investigations, imports appear not to have been a material cause of harm to the industry. Imports from Belgium, Brazil, the Federal Republic of Germany, France, Italy, and Luxembourg are very small compared to overall domestic consumption and have generally been falling in recent years. Moreover, the Commission has not been able to confirm any underselling by imports from those countries, with the exception of one transaction involving less than 100 tons of Belgian bar.

The data regarding imports from the United Kingdom show a trend that is wholly unlike that of the other imports under investigation. At a time of contracted domestic demand, when both domestic shipments and imports from other investigated sources have fallen, imports from the United Kingdom have reached their highest absolute level and degree of penetration of the U.S. market. The increase was particularly strong in the last three quarters of 1981. Additionally, there are two confirmed reports of underselling by U.K. hot-rolled carbon steel bar, one of which was confirmed to have resulted in a sale lost to the domestic industry.

VIII. Hot-Rolled Alloy Steel Bar

We determine that there is no reasonable indication that the domestic industry is being materially injured or threatened with material injury by reason of allegedly subsidized imports of hot-rolled alloy steel bar from France, Italy, the United Kingdom, or West Germany.[251, 252]

Condition of the Domestic Industry

Some 34 firms produce hot-rolled alloy steel bars in the United States. However, 54 percent of U.S. shipments are manufactured by five large steel producers.[253]

Although the market for steel has been poor in the most recent three year period, the performance of the domestic steel bar industry has been relatively strong. Nine firms, accounting for approximately 62 percent of total U.S. producers' shipments,[254] provided the Commission with profit-and-loss data. Net sales of hot-rolled alloy steel bar increased from $905 million in 1978 to slightly over $1 billion in 1981.[255] Although operating profits and operating margins for the 9 firms fell from 1978–81, the 9 firms' aggregate operations on hot-rolled alloy steel bar remained profitable throughout the entire period.[256] Operating profits for the nine firms fell from $105 million in 1978 to $37 million in 1980, before recovering to $87 million in 1981.[257] Operating margins 14.6 percent in 1978 to 8.3 percent in 1980 before recovering to 11.8 percent in 1981.[258]

U.S. production of hot-rolled alloy steel bar declined from 1.8 million tons in 1978 to 1.2 million tons in 1980, but recovered to 1.4 million tons in 1981. Capacity declined by 11 percent from 1978 to 1981, from 2.4 million tons in 1978 to 2.2 million tons in 1981. Capacity utilization decreased from 73.5 percent in 1978 to a low of 53.1 in 1980, but recovered to 65.1 percent in 1981.[259] In contrast, the value of U.S. producers' shipments rose yearly with the exception of 1981, showing an 11 percent increase in 1981 over the 1978 figure. The average unit value of shipments rose annually at a rate of 12 percent. U.S. producers' inventory levels remained relatively steady as a percentage of U.S. producers' shipments. Employment decreased at an annual rate of 6.6 percent during the period. However, total wages and compensation paid were greater in 1981 than in 1978. Labor productivity increased 3.1 percent from 1978 to 1981, despite an 8 percent decrease in 1980. Unit labor costs registered increases in both 1979 and 1980 before dropping slightly in 1981. Based on data supplied from 6 firms, aggregate capital expenditures rose substantially during the period.

Volume of Imports

Market penetration of imports of hot-rolled alloy steel bar from all countries fell from 6.5 percent in 1978 to 4.8 percent in 1979 before rising to 5.6 percent in 1980 and 6.2 percent in January–November 1981. Imports from countries not subject to these investigations accounted for the majority of the import penetration figures in each of the period under investigation.

The volume of imports from France, Italy, the United Kingdom, and West Germany increased substantially from 1980 to 1981. Imports from France rose from 5,954 tons to 40,669 tons; imports from Italy rose from 257 tons to 1,286 tons; imports from the United Kingdom rose from 395 tons to 5,197 tons; and imports from West Germany rose from 882 tons to 1,722 tons.[260] However, the increase in volume of imports in 1981 from the United Kingdom and West Germany represents only a partial recovery from the declines experienced in 1978 and 1979. The 1981 level of French imports, though higher than the three previous years, represents 1.7

[249] *Id.*, at VII–19.

[250] Chairman Alberger finds that the subject imports are a cause of present material injury, and therefore does not reach the issue of threat.

[251] Invs. Nos. 701–TA–130 to 133 (Preliminary).

[252] In reaching his conclusion, Vice Chairman Calhoun cumulated the data regarding imports. See his additional views at p. 98.

[253] The five largest U.S. producers of hot-rolled alloy steel bars are Armco, Inc., Bethlehem Steel Corp., Republic Steel Corp., Timken Co., and U.S. Steel Corp.

[254] Report at VIII–14.

[255] *Id.*

[256] Operating losses were reported by one firm in both 1979 and 1981 and four firms in 1980.

[257] Report, Table VIII–9.

[258] *Id.*, Table VIII–9.

[259] *Id.*, Table VIII–3.

[260] *Id.*, Table VIII–12.

percent of apparent U.S. consumption. Italian imports reached a period high in 1981 of one twenty-fifth of 1 percent of apparent U.S. consumption.[261] Imports from the United Kingdom accounted for one-fifth of 1 percent of apparent U.S. consumption for January–November 1981.[262] Imports from West Germany accounted for one-tenth of 1 percent of apparent U.S. consumption during the same time period.[263]

Effect of Imports on Prices

The record developed to date reveals no correlation between U.S. producers' prices and imports of hot-rolled alloy steel bar from France, Italy, the United Kingdom, or West Germany. The U.S. producers' price index (based on list prices) for hot-rolled alloy steel bar increased 27.6 percent from 1978 to 1981. The major steel producers have announced five base price increases for hot-rolled alloy steel bar since January 1, 1979. Although the decline in profit margin that the domestic industry experienced from 1978 to 1980 indicates that its price increases were not commensurate with its increased costs, there is nothing in the record that indicates that imports from the four countries under investigation had any impact on domestic prices. Moreover, the domestic industry's profit margin made a substantial recovery in 1981.

None of the countries under investigation for this product is a price leader. Indeed, the market share of each of the four countries makes it difficult for them individually or collectively to have a significant impact on domestic pricing.

The percentage price increases by the foreign producers are either commensurate with or significantly greater than the increases in U.S. producers' prices and are all greater than the percentage increase in the trigger price. Thus, there is no indication of destructive price-cutting or other price suppressing behavior by producers from the four countries under investigation.

Of 11 allegations of lost sales 5 were verified. Of the verified allegations, only one involved a purchase made principally because of lower price. The most important factor for the other four lost sales was the greater availability of the imported product. This information does not adequately support a finding that there is a reasonable indication that the imports under investigation have had a negative impact on domestic prices.

Impact of Imports on the Domestic Industry

The record fails to support a finding that there is a reasonable indication that imports from France, Italy, the United Kingdom and West Germany had any correlation to the trends in the domestic industry. As with pricing, the level of imports from the four countries, separately or combined, strongly indicates that they could not have had a significant impact on the domestic industry. Moreover, while it is true that imports from France, Italy, the United Kingdom, and West Germany increased substantially in 1981, this factor is not considered alone in assessing the existence of injury to the domestic industry. During the 1978–80 period, imports from France, the United Kingdom and West Germany were steadily declining as were overall imports. At that time, while U.S. production and capacity utilization were down, the domestic industry remained profitable, but profits did decline. Since imports were declining, the decline in profitability appears to have little or no relationship to imports. In 1981, the year of the largest volume of imports, the domestic industry improved. Production and capacity utilization increased, and shipments continued to rise at an annual rate of 12 percent. Profits reached a level of 8.6 percent of net sales, nearly doubling the figure reported for 1980. Therefore, although imports increased in the final period under investigation, the domestic industry remained healthy, in fact, reporting significant increases in key economic areas. Thus, there is no reasonable indication that the subject imports from France, Italy, the United Kingdom, and West Germany have had any discernible negative impact on the domestic industry.

The rate of increase of imports from France, Italy, the United Kingdom, and West Germany poses no real and imminent threat of harm in the near future. Imports from each of the four countries increased in 1981 over 1980. However, despite the increases, only one of the countries, France, reached an import penetration level of over 1 percent. Imports from the other three countries were all below 0.5 percent of apparent U.S. consumption in 1981.[264] Indeed, during the period under investigation, imports from Italy, the United Kingdom, and West Germany were for the most part one-tenth of 1 percent or less of apparent U.S. consumption. Although imports from France were somewhat larger, import penetration was extremely low. Except for 1981, imports from France were substantially below one percent of apparent domestic consumption.[265]

The increase in imports to the United States in 1981 from the United Kingdom and West Germany did not even bring them back to their 1978 level. For Italy, the increase in U.S. exports in 1981 represented a period high. However, that high represents only one twenty-fifth of 1 percent of apparent U.S. consumption. France's imports in 1981, also a period high, were 1.7 percent of apparent U.S. consumption.

There is no indication in the record that a significant shift in imports to the United States from the four countries under investigation is likely. The United States is the main export market for the United Kingdom; whereas France, Italy, and West Germany export mainly within the EC. The trend in the EC in recent years has been to pare down steel production capacity. Furthermore, there is no available information on capacity or capacity utilization for these four countries. Thus, based on the best available information at this time, we find no reasonable indication of threat of material injury.

IX. Cold-Formed Carbon Steel Bar

With regard to the six countervailing duty investigations involving cold-formed carbon steel bar,[266] we determine that, with the exception of imports from the United Kingdom, there is no reasonable indication of material injury or the threat of material injury by reason of the allegedly subsidized imports.[267]

Condition of the Domestic Industry

Like other segments of the overall domestic steel industry involved in our investigations, the facilities manufacturing cold-formed carbon steel bar have been faced in the years 1980 and 1981 with demand that was substantially lower than in the previous two years. U.S. production of the product fell sharply from 1 million tons in 1979 to 738,000 tons in 1980. While production was up in the 1981, the increase still left production levels far below the 1979 mark.[268] Shipment data are similar, showing a 7 percent rise

[261] These calculations were taken from the data presented in the Report at Tables VIII–2 and VIII–12. According to Table VIII–2, apparent domestic consumption for January–September 1981 was 1,921,000 tons.

[262] Report, Table VIII–13.

[263] *Id.*, Table VIII–13.

[264] Report, Table VIII–13.

[265] In 1978, imports from France accounted for 0.6 percent of apparent U.S. consumption; in 1979, 0.3 percent; and in 1980, 0.3 percent. *Id.*

[266] Investigations Nos. 701–TA–134 to 139 (Preliminary).

[267] In reaching his conclusion, Vice Chairman Calhoun cumulated the data regarding imports. See his additional views at p. 98.

[268] Report, Table IX–4.

from 1978 to 1979, then a precipitous drop of almost one-third in 1980. Total domestic shipments then rebounded somewhat in 1981.[269]

Capacity to produce cold-formed carbon steel bar fluctuated throughout the period, reaching its highest level, 1.4 million tons, in 1981. Because of flagging production levels in 1980 and 1981, capacity utilization dropped sharply after 1979, falling to 56 percent in 1981.[270] U.S. producers' inventories of the product remained fairly constant throughout the period at 10–12 percent of annual shipments.[271]

Employment trends followed the trends in production. The average number of workers engaged in producing the product increased 2 percent from 1978 to 1979, then fell 24 percent in 1980 and an additional 4 percent in 1981. Hours paid for workers engaged in producing cold-formed carbon steel bar declined 30 percent from 1979 to 1980 and a further 1 percent in 1981. Total wages and compensation in 1980 and 1981 were also well below 1979 levels.[272]

U.S. producers' profitability has suffered in the last two years as well.[273] Operating profits were $16 million in 1978 and $19 million in 1979, or 4.1 percent of net sales in both years. However, losses of $7 million and $5 million were sustained in 1980 and 1981, respectively. These losses amounted to 1.9 percent and 1.2 percent of net sales.

Volume of Imports

Total imports from the six countries involved in these investigations declined steadily from 38,500 tons in 1978 to 21,700 tons in 1979 and 17,900 tons in 1980. They then increased greatly in 1981 to 41,000 tons, more than double the 1980 total.[274] Data are unavailable regarding the productive capacity for those products of any of the countries under investigation.

Nearly all the total increase in 1981 over 1980 is accounted for by imports from the United Kingdom. Imports from the United Kingdom fell from 28,700 tons in 1978 to 11,400 tons in 1979, and 7,400 tons in 1980. They subsequently jumped to 28,300 tons in the first eleven months of 1981, with an increase in the ratio of U.K. imports to domestic consumption from 0.6 percent in 1980 to 2.1 percent in January–November 1981.[275] Imports from heavy in the latter part of 1981, reaching 10,400 tons in the third quarter, or 3 percent of U.S. consumption for the period.[276]

France provided the second highest volume of imports among the countries investigated. Imports of cold-formed carbon steel bar from France increased from 7,700 tons in 1978 to 8,700 tons in 1980. However, French imports then declined 12 percent to 7,000 tons in January–November 1981 compared to 8,000 tons in the corresponding period in 1980. Penetration of the U.S. market by French bar also fell during that period from 0.6 percent in January–November 1980 to 0.5 percent in January–November 1981.[277]

Belgian imports declined from 277 tons in 1978 to 120 tons in 1980. Belgian imports then increased to 352 tons in January–November 1981; however, during all periods investigated imports from Belgium accounted for less than .05 percent of apparent domestic consumption.[278]

Brazilian imports increased steadily from 328 tons in 1978 to 731 tons in the first eleven months of 1981. The ratio of imports from Brazil to total U.S. consumption was less than .05 percent in 1978 and 1979, and 0.1 percent in 1980 and 1981.[279]

Italian imports fell from 911 tons in 1978 to 477 tons in 1979, less than 0.5 ton in 1980, and 224 tons in the first eleven months of 1981. Market penetration levels were only 0.1 percent in 1978 and less than .05 percent in the later years.[280]

Imports from the Federal Republic of Germany declined from 579 tons in 1978 to 413 tons in 1979, then increased to 950 tons in 1980 and 1,280 tons in January–November 1981. The ratio of these imports to U.S. consumption was less than .05 percent in 1978 and 1979 and 0.1 percent in 1980 and 1981.[281]

Prices and Lost Sales

Purchasers' responses to the Commission's questionnaires yielded two instances of underselling by imported cold-formed carbon steel bar, both involving bar produced in the United Kingdom. The quarterly margins of underselling ranged from 3 to 9 percent.[282]

Of the seventeen allegations of sales lost to imports by reason of underselling, only three were confirmed, two involving bar from the United Kingdom and one from Italy. In the case of the Italian imports the purchaser reported that both the lower price and a desire to maintain an alternate source for its materials motivated the purchase.[283]

Determinations

We find there is no reasonable indication that imports of cold-formed carbon steel bar from Belgium, Brazil, the Federal Republic of Germany, France, and Italy are contributing to material injury or threat of material injury to the affected U.S. industry. Import penetration by products from each of these countries has remained at minimal levels throughout the period covered by these investigations, and has been so small as to have little or no effect on the fortunes of the domestic industry. Moreover, only one instance was confirmed of a sale lost to imports from one of these countries, that being Italy, one of the least important of the source countries for imports of the product.

Imports from the United Kingdom, on the other hand, increased drastically in 1981 and achieved a level of penetration of the U.S. market that cannot be characterized as insignificant. In addition, there are indications that U.K. products substantially undersold U.S. products in 1981, and U.K. imports were found in two confirmed instances to have taken sales away from the domestic industry on the basis of price. Thus, we find it appropriate to continue the investigation of cold-formed carbon steel bar from the United Kingdom.[284]

X. Cold-Formed Alloy Steel Bar

In the countervailing duty investigations on cold-formed alloy steel bar [285] we determine that there is no reasonable indication of material injury or threat of material injury by reason of imports from Belgium, the Federal Republic of Germany, France, Italy, and the United Kingdom.[286] [287]

[269] *Id.* at IX–9 and IX–10.
[270] *Id.* Table IX–4.
[271] *Id.* at IX–12.
[272] *Id.* at IX–12 to IX–14.
[273] Profit-and-loss figures were submitted by four firms accounting for about 42 percent of U.S. shipments in 1980.
[274] *Id.*, Tables IX–14 and IX–16.
[275] *Id.*, Tables IX–14 and IX–15.
[276] *Id.*, Tables IX–16 and IX–17.
[278] *Id.*, Tables IX–14 and IX–15.
[277] *Id.*, Tables IX–14 and IX–15. Although U.S. import statistics aggregate imports from Belgium and Luxembourg, a representative of the U.S. Department of Commerce has indicated that ll imports of cold-formed carbon steel bar from the two countries in 1981 originated in Belgium. *Id.* at IX–22.
[279] *Id.*, Tables IX–14 and IX–15.
[280] *Id.*
[281] *Id.*
[282] *Id. at IX–34.*
[283] *Id.*
[284] Chairman Alberger makes his findings on the basis of a reasonable indication of threat of material injury. He finds no reasonable indication of present material injury by reason of the subject imports.
[285] Investigations Nos. 701–TA140 to 144 (Preliminary).
[286] Commissioner Eckes found reasonable indication that imports from France and Italy are resulting in material injury or threat of such injury to the domestic industry. His views concerning those two cases begin on page 93.

Continued

Condition of the Domestic Industry

Despite decreases in production over the period investigated, the U.S. industry producing cold-formed alloy steel bar has performed well. Production declined irregularly from 1978 to 1981 from 147,000 tons to 122,000 tons, or by 17 percent.[288] Data on domestic shipments show a trend comparable to production, with shipments increasing in 1981 over 1980 levels.[289]

Total domestic capacity for the production of cold-formed alloy steel bar rose slightly from 1978 to 1981, from 207,000 tons to 213,000 tons. Capacity utilization, however, fell from a high of 75.9 percent in 1979 to 55.5 percent and 57.3 percent in 1980 and 1981, respectively, as domestic production decreased.[290] Yearend inventories held by the domestic industry remained relatively constant throughout the 1978–81 period.[291]

Total employment and employment of production and related workers in establishments producing cold-formed alloy steel bar increased from 1978 to 1979, then declined in 1980 and 1981. The number of hours worked by production and related workers engaged in making this product fell 27.1 percent between 1978 and 1981. Wages paid to these workers fell from 1979 to 1980 and increased in 1981 almost to the 1979 level.[292]

Even with declines in production and net sales, the industry remained profitable throughout the period studied.[293] Net sales rose from $105 million in 1978 to $124 million in 1979, fell to $106 million in 1980, and then rose to $111 million in 1981. Total profits were $17 million in 1978, $15 million in 1979, and $11 million in 1980 and 1981. These figures yielded returns of 16.2 percent of net sales in 1978, 12.1 percent in 1979, 10.4 percent in 1980, and 9.9 percent in 1981.[294]

Volume of Imports

Determination of the precise levels of total imports of cold-formed alloy steel bar and imports from France depends upon resolution of the question, discussed at pp. X–26 through X–32 of the report, whether imports from France are misclassified for tariff purposes, thereby skewing the statistics. There is information tending to show that the French imports are not competitive with domestically produced cold-formed alloy bar, but the information is not sufficient in this preliminary investigation to permit reaching a conclusion. However, resolution of the issue is not critical to our determination that there is not a reasonable indication that French imports are causing material injury to the domestic industry, because our finding would be the same regardless of which set of figures is used.[295] For purposes of the present discussion, the import data used in this section do not exclude the 80 percent of French imports claimed not to be competitive with domestic products.[296]

The aggregate number of imports from all the countries subject to these investigations has fluctuated yearly, with 24,800 tons in 1978, 30,300 tons in 1979, 14,000 tons in 1980, and 42,000 tons in 1981. Market penetration by imports from these countries grew from about 8 percent of apparent consumption in 1978 to about 16 percent of apparent consumption in 1981.[297] Data are not available to show the capacity of any of the countries investigated to produce these products.

France is the principal foreign supplier of cold-formed alloy steel bar to the U.S. market. French imports increased from 18,400 tons in 1978 to 26,900 tons in 1979, then declined to 12,000 tons in 1980. They thereafter grew to 36,100 tons in 1981, accounting for almost all of the aggregate increase in imports recorded for that year. French imports reached 4.9 percent of domestic consumption in 1980 and 13.8 percent in the first eleven months of 1981.[298]

Belgian imports fell from 735 tons in 1978 to 419 tons in 1979 and 6 tons in 1980.[299] They subsequently increased to 1,032 tons in 1981. Even with the 1981 increase Belgian imports did not exceed 0.4 percent of apparent domestic consumption at any time during the four-year period investigated.[300]

Imports from the Federal Republic of Germany declined from 1,609 tons in 1978 to 265 tons in 1979 and 105 tons in 1980, then increased to 1,417 tons in the first eleven months of 1981. In no year did these imports account for more than 0.5 percent of total U.S. consumption.[301]

Imports from Italy increased from 787 tons in 1978 to 1,488 tons in 1979, 1,679 tons in 1980, and 2,723 tons in January-November 1981. This represents an increase from 0.2 percent of total domestic consumption in 1978 to 1 percent in the first 11 months of 1981.[302]

Imports from the United Kingdom declined from 3,245 tons in 1978 to 1,241 tons in 1979 and 310 tons in 1980, then rose to 626 tons in January-November 1981. Import penetration levels were 1 percent in 1978, 0.4 percent in 1979, 0.1 percent in 1980, and 0.2 percent in 1981.[303]

Prices and Lost Sales

No purchasers to whom the Commission sent questionnaires regarding cold-formed alloy steel bars provided information regarding prices of imported bars. Of the six allegations made by the petitioners of sales lost to imports because of underselling, two involving Italian imports were confirmed.

Determinations

On the basis of the information available in these preliminary investigations we determine that there is no reasonable indication that the domestic industry producing cold-formed alloy steel bars is suffering injury or is threatened with material injury by reason of imports. Although production, shipments and net sales are all down significantly from the peak years of 1978 and 1979, the industry has maintained a healthy profit picture throughout the four-year span investigated. In 1981 it posted operating profits of 9.9 percent measured against net sales. Although this is down from the 16.2 percent level reached in 1978, the major profit declines occurred from 1978 to 1980, the period when imports from Belgium, France, the United Kingdom and West Germany were also declining. Throughout the period of investigation, the domestic industry remained healthy, especially in face of the general economic situation. In every year between 1978 and 1981, the profit ratio in this product line significantly exceeded that for all manufacturing firms and manufacturers of durable

[287] In reaching his conclusion, Vice Chairman Calhoun cumulated the data regarding imports. See his additional views at p. 98.

[288] Report, Table X–3.

[289] *Id.*, Tables X–2 and X–4.

[290] *Id.*, Table X–3.

[291] *Id.* at X–12 and X–13.

[292] *Id.* at X–13 to X–15.

[293] Profit-and-loss data were received from three firms accounting for about 47 percent of total domestic shipments in 1980.

[294] *Id.* at X–17.

[295] Commissioners Stern and Alberger note that CFAS presents a strong case that the impact of French cold-formed alloy bar should be measured against domestic hot-rolled alloy bar. Further work by Commission staff seems to support this claim. See Report at X–29 thru X–31. However, the issue has been mooted because we have found no reasonable indication of injury to either of these product lines.

[296] Separate import volume data, based on differing assumptions regarding the nature of the French imports, are shown at pp. X–31 and X–32 of the Report.

[297] *Id.*, Tables X–11, X–12, X–13, and X–14.

[298] *Id.*, Tables X–13 and X–14.

[299] *Id.*, Import figures for Belgium include imports from Luxembourg. There were no imports from Luxembourg for this product line.

[300] *Id.*, Tables X–13 and X–14.

[301] *Id.*

[302] *Id.*

[303] *Id.*

goods.[304] This information indicates no possibility of material injury to the domestic industry by reason of these imports.

X. Cold-Formed Alloy Steel Bar

Views of Commissioner Alfred Eckes

I disagree with the Commission majority on this important product line. In my view there is a reasonable indication that imports from France and Italy are causing material injury and threatening the domestic industry.

The majority underestimates present injury to the domestic industry and assigns disproportionate attention to the seemingly favorable 9.9 percent ratio of operating profit to net sales in 1981. From my vantage point a firm may be technically profitable but still be suffering injury. A broader focus on profit trends and other indicators suggests the cold-formed alloy steel bar industry is experiencing serious problems. For one thing, there has been a steady down trend in profits from 16.2 percent in 1978 to 9.9 percent in 1981—a 6.3 percentage point decline.[305] Also, in 1981 U.S. production was nearly 17 percent below 1978 levels. Capacity utilization was almost 14 percentage points below 1978.[306] Employment in the industry had fallen 24 percent in three years.[307]

Coincident with these indications of injury were increases in the import volume and market penetration ratio from all countries cited in the petition. However, because imports from Belgium, the United Kingdom, and West Germany entered at a very low volume level and, reportedly, did not account for lost sales, there is no reason to think they are injuring or threatening the domestic industry in a material way.

The opposite is true for both France and Italy. Imports from France more than doubled in the January–November 1981 period as compared to the same period in 1980. The import penetration level rose dramatically from 5 to 13.8 percent in a single year. While the volume of imports from Italy was comparatively low, it increased 67 percent in January–November 1981 compared to the same period of 1980. In addition, the Commission staff confirmed two instances of sales lost to American producers because of lower-priced imports from Italy. These sales accounted for a substantial portion of Italy's export sales to this national market.[308] In the cases involving Italian and French producers, the evidence warrants further investigation and provides ample justification for an affirmative vote at the preliminary stage.

One other matter warrants brief comment here. The major French producer of imports classified as cold-formed alloy bar claims that the appropriate like domestic product for the principal product it is exporting (rough-turned bar) is hot-rolled alloy bar. The company alleges that classification confusion has distorted the import data and resulted in an overly high import penetration ratio.[309] However, in the 45 days allowed for a preliminary investigation, this claim could not be tested adequately. For this reason, the classification problem was not a factor in my decision on French imports.

Additional Views of Vice Chairman Michael J. Calhoun

These additional views are intended as a supplement to the majority opinion which I have joined. While I am in agreement with much of what that opinion expresses, there are some areas in which I do not share, exactly, the views of my colleagues or in which I have additional thoughts. There are several matters encompassed in this supplement: First, I do not view our investigations to include imports from Spain and South Africa. Second, to the extent my votes in these investigations do not appear to be consistent with those in the 1980 steel investigations,[310] there is a good basis for the changes. Finally, in reaching any decisions in these investigations, I have cumulated the impact of the imports under our review and I feel some need to explain my conceptual framework and methodology to augment the majority views by explaining how this methodology led to my specific industry determinations.

I. In General

A. Imports from Spain and South Africa. I understand that some of my colleagues included imports from Spain and South Africa in their assessment of the impact of the imports on the domestic industry. I do not consider the steel imports from these countries to be before us in this investigation. It seems to me that the inclusion of material injury investigations of imports for which no injury test is required is troublesome as a matter of law and policy for two reasons: First, by the plain terms of Title VII of the Trade Agreements Act of 1979, our assessment of the impact of imports is to be made only with regard to those imports entitled to an injury test. For this reason, imports from countries not entitled to an injury test, though properly in the Commerce Department's investigation simply, as a matter of law, cannot be before us for purposes of determining a causal nexus to material injury. Second, to include non-injury test imports with injury test imports in our assessment of the impact of imports skews the data base on which we rely to reach a conclusion as to the critical causal nexus between the imports and material injury. In some cases, for instance, where the presence of non-injury test imports in the marketplace is strong and injury test imports is weak, their inclusion can operate to dilute the rightful protection afforded by the injury test to which beneficiary countries are entitled. Such a result is bad policy if not unlawful.

B. Departure from my position in the 1980 steel investigations. My determinations in these investigations relied, in many instances, on rather close examination of preliminary data and, based on this preliminary data, on equally fine differentiation by product and by country. In contrast, my determination in the 1980 steel investigation resisted such refined analysis based upon information collected during a 45-day investigation and relied, instead, upon uniform aggregation of all imports from all of the countries before us.

While the difference between these two approaches to complex preliminary investigations may seem without great significance, for me the difference is rather important. The latter approach implies that in 45-days, collected data cannot be sufficiently detailed or reliable to support fine distinctions on such question as like product, product line assessment, and material injury the resolution of which can result in the early foreclosure of remedy to a domestic industry. The implication in this approach is strong that, in the absence of compelling information to the contrary, preliminary cases ought not to be resolved based on an especially detailed analysis. Rather, they should be decided broadly and in favor of the petitioner when available information supports its allegations in the petition. The former approach, however, implies that such detailed analysis is not precluded even in a close case simply because the case is preliminary. Under

[304] Report at I–40.
[305] Report at p. X–17.
[306] Id. at p. X–10.
[307] Id. at p. X–14.
[308] Report at pp. X–23 through X–28 and X–38.
[309] Id. at pp. X–26 through X–31.
[310] *Certain Carbon Steel Products from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom*, Investigation No. 731–TA–18/24 (Preliminary), USITC Pub. 1064, May 1980.

this approach, preliminary cases impose an equal obligation on us to be as analytical and discerning as the best information available permits.

The reason for my shift from the one approach to the other in this investigation is rather simple. The Court of International Trade seems to have endorsed the stricter approach to analysis in preliminary cases. In our preliminary investigation in Steel Pipes and Tubes,[311] I employed the same approach I used in the 1980 steel cases, relying heavily on the fact that the shortness of the period for data collecting in a complex preliminary case limited the data available for assessing import impact and for making reliable product line differentiations. As a result, I employed a more general analysis to reach an affirmative result. The Court of International Trade, however, in reviewing the Commission's decision in that investigation went to some length in discussing the scope of data we should have considered and in applying the details of product line differentiation provided for under section 771(4)(D).[312] With some reluctance, I have taken the Court's discussion to suggest strongly that it expects the provisions of Title VII to be applied as thoroughly in preliminary cases as in final cases. Furthermore, in its views the Commission has an obligation not only to solicit a full range of information in preliminary cases but, also, to fully apply facts to law in order to reach a determination. Based on such a view of my responsibility, I have, in these investigations of steel products, departed from some aspects of the methodology I employed in our prior steel investigation and have adopted the thrust of the Court's view of proper preliminary case analysis.

II. Cumulation

Although I concur with many of the conclusions and much of the reasoning of Chairman Alberger, Commissioner Stern and Commissioner Eckes, I differ with them in one important respect of how I arrived at my conclusions. To the extent consistent with the best information available in each of the nine industries, my analytical methodology relied upon the aggregation of the impact of imports from the various importing countries under investigation. It is my impression that my colleagues have not necessarily used this approach.[313] I believe, therefore, each instance in which we have varied is largely the result of this difference.

My aggregation of the imports in each industry is based upon my view that the plain thrust of our responsibility under title VII of the Trade Agreements Act of 1979 is to determine the nature of the impact on the domestic industry of the imports under investigation. Thus, for the most part, the nationality of the imports under investigation is a matter of relative insignificance in measuring impact. The gist of our concern is to make the most realistic and accurate evaluation of the influence in the market of all of the imports under investigation. In this regard, section 771(7) enumerates the factors which we are to consider in reaching our conclusion and makes no suggestion that our analysis should be on a basis of national origin. The factors enumerated by this section are volume of imports, effect of imports on prices, and the impact of these imports on the affected industry. In assesssing the overall impact on the affected industry we are to "evaluate all relevant econmomic factors which have a bearing on the state of the industry. . . ."

Commission practice under Title VII and, indeed, my voting record have not often relied on the aggregation of import data in making our statutory determination. In my view, there has been a rather simple reason for this. Under section 771(7)(C)(iii) the statute leaves for our judgment what the significant factors are which have a bearing on the state of the industry, thus affording us the discretion, *inter alia*, to find aggregated behavior or individual behavior as the more relevant to a particular factual situation. But, the statute requires us to establish, as well, a direct causal nexus between the imported merchandise under investigation and material injury to the domestic industry. The problem posed by aggregation is that there is the inherent risk that imports from a particular country (or company as the case may be) which have no causal nexus to material injury may be inadvertently included in the aggregate. Such a result would seem to me to be a misapplication of our authority. Thus, in most prior cases whenever possible I have assessed import impact on a country by country basis to assure that each such category of imports has plainly met the causality requirements expressed and implied under Title VII.

In these investigations, however, I have departed from my usual practice because of what strikes me to be rather unusual circumstances. In evaluating all the relevant economic factors before us thus far, my view is that it is through their aggregated rather than individualized presence in the U.S. marketplace that the imports before us have their significant impact. This is true since the market for each of the nine product categories before us is characterized by relatively low levels of penetration by the allegedly offending imports. For example, the highest market penetration level by any single country is 13.8 percent of domestic consumption held by France in cold allow bar, followed by 6.7 percent for Belgium in structural shapes. The highest aggregate market penetration is 16 percent by five countries importing cold rolled alloy bar. This was followed by 14 percent by eight countries importing plate. More typical of the penetration levels in these investigations, however, is the 1.9 percent held by West German imports of structural shapes and the 8.1 percent aggregate held by the seven importers of hot-rolled carbon steel sheet and strip. Such uniformly low individual penetration levels strongly suggest that collective impact is being felt by the domestic producers.

Second, in most instances, the domestic industry enjoys a rather significant dominance over the marketplace. In hot alloy bar, for example domestic producers have their highest market share of all nine industries at 93.8 percent. In carbon steel structural shapes domestic producers have 66.2 percent of the domestic market which is their lowest penetration. In the remaining seven industries domestic producers tend to have about 90 percent of the market. Where a domestic industry characteristically holds high levels of market share absent special market circumstances, the likelihood of imports causing material injury is certainly less than where domestic market share is low. Thus, the combination of low individual market shares coupled with high levels of domestic producer shares strongly demonstrates to me that whatever impact is taking place in the market must be the result of the cumulative presence of the allegedly offending imports.

[311] Pipes and Tubes of Iron and Steel from Japan, Inv. No. 731–TA–15 (Preliminary), USITC Pub. 1058, April 1980.

[312] See, *Steel Wire Nails from Korea, Japan and Yugoslavia*, Inv. No. 731–TA–45 (Preliminary), USITC Pub. No. 1175, Aug. 1981.

[313] I say this is my impression because while my colleagues maintain they have made their decision on a "case-by-case" basis they, nevertheless, observe that "the imports in those investigations (they) voted to terminate could not conceivably have contributed to material injury." If they are deciding case-by-case as they claim, then the appropriate test is whether information reasonably indicates that imports are a direct cause of material injury. On the other hand, contributing to material injury is a consideration only where cumulation is the methodology employed to assess the impact of imports.

But, I wish to make clear that, in general, market share analysis is not the sole basis for my aggregating in these investigations. Historically, the Commission has looked to a number of factors in deciding if it were appropriate to aggregate the impact of imports from various sources. These factors include whether the imports are comparable to the domestic like product and compete in the same marets, as well as whether the factors and conditions of trade show the relevance of such cumulative consideration to the determination of injury.[314] Related to this latter factor is the fungibility of the subject imports with the domestic products, the extent of competition in the marketplace between imports and the domestic product for the same end users, common channels of distribution, pricing similarity and simultaneous impact.

From this array of factors, what seems to underly the Commission's exercise of its discretion to aggregate is the essential concern that the imports under investigation operate in the marketplace to create a collective "hammering" effect on the domestic industry. Examination of these factors in the context of these preliminary investigations well satisfies this concern. In each of the industries we have found the imported article is readily commercially interchangeable with the domestic produce.[315] Evidence of lost sales gives sufficient indication that there is keen competition between imports and domestic products on a product specific basis. Pricing data thus far collected make it clear that imports and corresponding domestic products interact very closely. Furthermore, while imports tend to be distributed through steel service centers and domestic products largely, but by no means exclusively, rely upon direct sales, corresponding imports and domestic products are directed at the same class of users and are marketed for the same end uses. As well, my analysis is largely based on behavior in 1980–1981 and, so far as our information indicates, all of the imports in question have had consistent presence and impact during this period.

For me, at this point in our investigation, the various factors underlying a sound decision to aggregate firmly encourages aggregation. In addition, the limited market penetration of the imports before us coupled with the strong market share held by domestic producers indicates to me that it is the collective impact of the imports that is the basis of a reasonable indication of material injury rather than the limited individual presence of imports on a national basis.

Deciding these investigations by aggregation has resulted in six instances in which I have varied from the majority. In each of these instances I have found in the affirmative where the majority found in the negative with regard to a particular country's imports. But it is worth noting that in each of these instances there was a majority affirmative finding regarding material injury to the domestic industry. Although each of these instances is addressed separately below, the same basic rationale applies to each of them: Where the market penetration of the imports under investigation is low and the distribution of the individual national shares of that penetration is narrow, absent information regarding specific behavior of the imports in the market, it is difficult for me to find in the negative with respect to the imports of a particular country. To find in the negative simply because the penetration level of its exports to the United States is below an arbitrary level is mechanistic, if not arbitrary.

For me an essential test in deciding which countries to aggregate has to be whether imports from a particular country can be found to be contributing to the collective adverse impact.[316] The nature of the factors relevant to such a judgement vary with each product so that a penetration level considered too low to be contributory regarding one product may be sufficient to be contributory regarding another. For these reasons, comparing the market penetration levels of the individual imports I have included in my aggregation with those I have not will not reveal a common trigger point.

As a final matter, I would like to make clear that the discussion below of individual industries is supplemental to the majority opinion of which I am a part. Thus, such matters as pricing, lost sales, etc. are not addressed here because they are adequately addressed in the majority opinion. These matters were an important part of my aggregation decision.

[314] See, *Steel Wire Nails from Korea, Japan and Yugoslavia*, Inv. No. 731–TA–45 (Preliminary), USTIC Pub. No. 1175, Aug. 1981, p. 8, fn. 21.

[315] As noted in the majority opinion, some importers have alleged that their products were qualitatively distinguishable from domestic products or were highly specialized and, thus, not actually competitive with domestic products. While these allegations may well prove to be true in a final investigation, there simply was insufficient data available in our 45 day investigation for me to base a concurring decision.

[316] See, *Steel Wire Nails from Korea, Japan and Yugoslavia*, Inv. No. 731–TA–45.

Hot Carbon Steel Plate

In agreeing with the majority that imports from France, Italy, Luxembourg and the Netherlands provide no basis for concluding reasonable indication of material injury or threat, I would add the following: The aggregate market share of all nine importers under our scrutiny for the period January to November of 1981 was 14 percent, an increase from 10.3 percent in 1980. The distribution of the individual market shares by nationality ranged from about 4.1 percent for Belgium and Brazil to a negligible amount from Luxembourg. Thus, in my view, in the absence of information on some special market behavior, the .2 percent market share held by France, the .05 percent share by Italy, the .1 percent by the Netherlands and the negligible share held by Luxembourg cannot be seen individually or cumulatively as contributing to the aggregate adverse impact on the domestic producers. Of the total 14 percent, these imports amounted to less than .4 percent.

While the UK's imports were only at .5 percent market share, this did represent a jump from this .1 percent share for 1980. On final it will be a matter of interest to met to discover whether this increase portends a trend of increasing imports or is simply a function of modest increases from a small base resulting in a large percentage change.

Hot-Rolled Carbon Steel Sheet and Strip

In addition to the views expressed by the majority, for purposes of my aggregation the cumulative adverse impact of the imports of the five countries receiving an affirmative vote is not advanced by the imports from Brazil, Luxembourg and the United Kingdom. In total, the imports under investigation accounted for about 8.1 percent of domestic consumption in the first 11 months of 1981. This was a slight increase over the 7.5 percent for the same period in 1980. Of this rather small collective market share, Brazil's imports accounted for only 0.3 percent in the 1981 period which represents a decline over the level of the past two years. Luxembourg's presence is again miniscule and the United Kingdom's share is, likewise, negligible down from a negligible level in 1980. In all, the imports from these countries displayed no behavior which reasonably could be construed as contributing to the indication of material injury or threat posed by the imports of the remaining five countries.

Cold-Rolled Carbon Steel Sheet and Strip

Again, I embrace the views of the majority with one exception and with additional views regarding aggregation. In finding in the negative with respect to Brazil, Luxembourg and the United Kingdom, I find that the market share held by these countries is so low as to be without contributory impact. Even though the whole of the imports of the eight importing countries amounted to 5 percent in January-November 1981, imports from Brazil, Luxembourg and the United Kingdom only accounted for less than .2 percent. We have no information on market factors which demonstrates how such a small presence could contribute to material injury. Even though the industry is operating in the red, its circumstance has been improving during a period of rather flat import levels.

I do feel, however, that the .3 percent market share held by Belgium, in light of the very low aggregate share, had a reasonable indication of contributory harm to the adverse impact (or threat thereof) of the aggregate. It is worth noting that while imports from belgium for the first 11 months of 1980 accounted for less than .4 percent of the domestic market, their whole share for 1980 was .7 percent, exceeding that for 1979. Thus, in the one month period of December of 1980 Belgian imports were substantial. We have not yet received complete consumption data for December of 1981. In view of the fact that the total of import penetration before us is less than five percent, a large December surge similar to the one last December would be significant.

Galvanized Carbon Steel Sheet

I have nothing to add to the joint opinion of the Chairman, Commissioner Stern and mine, except that even considering the aggregate penetration of 3.7 percent, I cannot find the requisite relationship between imports from these seven countries and material injury to the domestic producers.

Carbon Structural Shapes

In addition to the views expressed in the majority opinion, in my analysis the .2 percent market share by Brazil, absent information of special behavior by these imports, does not seem capable of contributing to the aggregate impact of imports holding over 12 percent of the market. Indeed, the distribution of the individual market shares well supports this view. Of the remaining five importing countries, Belgium/Luxembourg have the highest share at 6.7 percent and France the lowest at .9 percent.

Hot Rolled Carbon Bar

I have included West Germany, Belgium, Brazil, and Luxembourg in my aggregate affirmative determination because of what strikes me as the peculiar circumstances of this particular industry. First, the imports from the seven countries before us have only a 3.3 percent share of the domestic market, a share I find to be very low. What is more, the distribution of individual market share is greatly fragmented. After the United Kingdom's 2.4 percent share, the next largest share is held by West Germany at .3 percent. Thus, Germany's share, together with Belgium's .1 percent share, Brazil's .2 percent share and Luxembourg's .2 percent share, while ridiculously low, is, in the context of an already very small aggregate market share, a relatively significant amount of imports for which to say there is no contribution to the overall indication of adverse impact.

Plainly, the coincidence of the industry's move from operating in the black to operating in the red in the same period that the United Kingdom's market share went from 1.5 percent to 2.4 percent cannot be ignored especially when domestic consumption dropped by 33 percent. Indeed, it strongly suggests a direct causal relationship. But this significant change in profitability also demonstrates the considerable importance to this industry of incremental market share. If a .9 percent shift in market penetration in a time of low consumption can have this impact on profitability then, to me, a .7 percent market share (the share held by W. Germany, France, Brazil and Belgium) cannot be found to be completely without contributory importance.

I have found in the negative with regard to France because its market share is without significance even among these very low import levels.

Hot Rolled Alloy Bar

The aggregation of imports in this industry is even more acute than that in the hot carbon bar industry. There are imports from four countries, but these imports account for total of only 2 percent of the domestic market. The distribution of the individual shares is, therefore, limited. The largest single share of 1.7 percent is held by France. The United Kingdom and West Germany hold .02 percent and .1 percent, respectively. Thus, absent particular data on market behavior, to me any potential for import impact must be on a collective basis. But even on an aggregated basis, I concur with the majority's assessment that the requisite impact simply cannot be established.

Cold Formed Rolled Carbon Bar

Again, the aggregation of imports from the countries before us, in principle, seems to me to be compelled here. In total, the four countries only account for 2.8 percent of the market. The largest share of 2.1 percent is held by the United Kingdom and the reasonable indication of injury I have found is related to the relatively large increase in the UK's imports over the period 1980 to 1981, from .6 percent to 2.1 percent. While domestic sales, consumption, and prices increased net operating profit which has been in the red did not seem to improve proportionately. This coincidence of import rise with uncharacteristically sluggish improvement by the domestic industry provides an important basis for a preliminary affirmative.

My inclusion of imports from France with those from the UK is admittedly tenuous. However, as in hot rolled carbon bar, it is my view that a reasonable argument can be made that given the poor state of the industry with its weak recovery in the face of encouraging improvement in leading indicators, incremental market share may be rather significant. Thus, I have aggregated France's .5 percent market share so that my finding of reasonable indication is with regard to 2.6 percent of the 2.8 percent market share under our consideration.

The remaining .2 percent market share I find too small to be contributory to the impact of the aggregate. While in hot rolled carbon bar I did include market shares that were smaller than .2 percent there are several differences between this industry and the hot rolled carbon bar industry. In hot rolled carbon bar, the industry's profit picture was in significant decline in paralled to proportionately significant increases in import penetration, the great bulk of which were increases in the imports under investigation. In this industry, the rate of improvement in the industry's health seems to be retarded by an increase in imports only a small part of which is attributable to the imports under review. The indication of some improvement by a troubled industry is more illusive than the plain decline experienced by the hot rolled carbon industry and makes me question the level of the impact on imports from two countries which amount to a total of only .2 percent of domestic consumption.

Cold Formed Rolled Alloy Bar

Joining the views of the majority, I note that in aggregating the whole of imports under review here the increase in market share from 5.7 percent to 16.0 percent over the 1980-1981 period seems little related to the industry's stable profit experience over that period. Indeed, in 1979 when profits were higher than 1980, aggregate import penetration was also higher than in 1980. I found no information regarding market behavior, i.e., pricing, lost sales, nor the argument regarding French alloy bar imports to present a sufficiently strong basis to offset the evidence of their being no significant relationship between imports and profits.

Additional Views of Commissioner Paula Stern

Introduction

If we are to avoid becoming lost in the intricate maze of these 92 cases, an overview is both necessary and desirable. My remarks cover three areas: (1) the relation between the performance of the industry and that of each product category we considered; (2) a highlight of the problems the steel industry is facing; and (3) a discussion of the additional information that at this time appears to be needed if any of the 38 affirmative preliminary cases returns for a final determination.

The general perception of the U.S. steel industry is that it is suffering—suffering from years of neglect, suffering from the current recession, suffering from the successful inroads of imports into once secure markets.

All these factors have had bearing on the cases before the Commission today. But, unlike the automobile import relief case of December 1980,[317] the issue before the Commission here is not whether imports as a whole are a substantial cause of the industry's problems. Rather, we must decide whether there is a preliminary indication that specific imports have caused material injury while allegedly benefitting from foreign subsidies and/or dumping in their competition with like domestic products. These more narrow findings are best made with the larger picture in mind.

Overall Industry Performance

Certain overall industry data serve as vital background. As noted in my "Statement of Reasons" in *Certain Carbon Steel Products* (May 1980):

* * * aggregate capacity utilization and profit data for the raw steel melting facilities common to all lines are crucial to understanding industry performance in the individual product lines and thus, to determinations made on the best information available.

Capacity utilization in raw steel is particularly significant since it measures the common constraint on full simultaneous utilization of all milling operations. There is usually planned excess capacity in the milling operations of the individual product categories to allow continuous adjustment of the product mix to maximize aggregate profits on all lines.

Capacity utilization in U.S. raw steel production fell from 87 percent in 1978 to 73 percent in 1980.[318] For all of 1981, this figure was 78 percent; however, it rapidly declined during the last half of 1981. The May 1980 investigations were conducted when raw steel capacity utilization had just peaked at 88 percent (1979). At that time I concluded that:

* * * with raw steel operating at what amounts to almost full capacity, it does not appear that the solution to these problems can be found in selling more steel. Rather, the problems of all product lines and the larger industry appear to lie in the price at which the steel is sold and the costs at which it is made, not the quantity produced.[319]

Clearly, the situation has changed: the U.S. industry now has a significant overall volume problem.

In an industry with high fixed costs, one should expect reduced levels of production to have a rather dramatic impact on profits. For 17 steel producers accounting for 82 percent of U.S. production in 1980, overall operating profits on steel operations as a ratio of net sales fell from 5.0 percent in 1978 to 2.0 percent in 1980.[320] Clearly, the overall data neither suggest that the industry as a whole is healthy, nor that it is any longer operating at full capacity.

Because the determinations are made on a product category basis,[321] the health of each category must also be assessed. This has been done in the preceding views where I joined the majority of the Commission. There are no reliable indications of bottlenecks in any of the nine categories. Raw steel and the nine product categories are all operating well below full capacity. Thus, there remains room for expanded production in each of the nine. Nonetheless, in both hot-rolled and cold-formed alloy steel bars, the healthy profits noted in the majority views eliminate any possibility of injury by reason of allegedly subsidized imports to those two categories.

Problems of the U.S. Steel Industry

The legislative history of the Act specifically instructs the Commission to take into account causes of injury, other than the subject imports,[322] without weighing those other causes against those of the allegedly subsidized or LTFV imports. These factors include wages, investment, trigger price mechanism, other foreign competitors, not the subject of these investigations, and the effects of the recent general economic situation in the United States. Many of these factors have helped keep the costs of the steel industry from falling to a point at which adequate profits might be earned even at the prices prevailing in the subject product categories.

Wages—Partly as a result of a very effective cost-of-living adjustment negotiated by the United Steel Workers of America and the unexpected increase in the rate of inflation during the last decade, there has been an accelerating growth of wages at a rate far higher than in general manufacturing. In 1977 steel wages stood at 153 percent of those in

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[317] Certain Motor Vehicles * * *, Inv. No. TA-201-44, USITC Pub. No. 1110, December 1980.

[318] Report at I-21.

[319] See Certain Carbon Steel Products * * * (May 1980), "Statement of Reasons of Commissioner Paula Stern," at 39-71.

[320] Report at I-35.

[321] It is important to note that although the condition of the individual industries cannot be fully understood without reference to data for the overall steel industry, each of the nine product categories is in itself a relatively large aggregate. The Commission is charged with the responsibility to assess the impact of subject imports on the domestic production of a like product, available data permitting. Combining all nine categories—plus perhaps others not included in these investigations—into a single industry producing all steel would violate the clear meaning of the statutory language of section 771(4) (A) and (D). To do so would fly in the face of consistent Commission practice in all previous steel cases and blunt beyond recognition the meaning of "like product."

There is no substitute for a careful, discriminating approach which makes use of the best available information on the individual product lines as well as the overall industry of which they are components.

[322] Comments on Ways and Means, U.S. House of Representatives, Trade Agreements Act of 1979, H.R. 96-317, 96th Cong., 1st Sess. (1979) at 47:

Of course, in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors.

However, the petitioner will not be required to bear the burden of proving the negative, that is, that material injury is not caused by such other factors, nor will the ITC be required to make any precise, mathematical calculations as to the harm assoicated with respect to such factors. In short, the Committee does not view overall injury caused by unfair competition, such as dumping, to require as strong a causation link to unfairly competitive imports as would be required for determining the existence of injury under fair trade conditions.

general manufacturing. By 1980 this number had grown to 175 percent. The wages of foreign steel workers seem to have remained considerably below those of their U.S. counterparts. For example, in 1980 the French average hourly compensation in steel was less than 60 percent of that in the United States.

Investment—There has been much discussion about the level of investment undertaken by this industry. There are indications that for at least a decade investment levels have been inadequate to keep the U.S. industrial plant modern. Testimony in the January 1982 cases pointed to a capital replacement cycle moving toward fifty years compared to a desirable one of fourteen years.[323] The industry's gains from its most recent upswing—which is now ended—will not be sufficient to sustain a rate of investment adequate to improve significantly this situation.

Furthermore, large portions of the total investment that had been undertaken have gone to satisfying stricter mandatory standards for environmental and safety protection.[324] Further investment funds have gone into diversification beyond the traditional bounds of the steel industry.[325] While these investments may be socially desirable or economically sound, they have not added in the short run to productivity in the steel industry. All these investment factors may also help explain in part why productivity gains of U.S. steel workers have not kept pace with the growth of their wages.

The TPM and International Competition—Further compounding these considerations is the role that the trigger-price-mechansim (TPM) has played. Implemented in June 1978, the TPM was intended to substitute for individual antidumping or countervailing duty petitions by the domestic steel industry. The TPM base price for a steel product was calculated each quarter based on constructed costs in Japan, a producer generally regarded as one of the world's most efficient. Any repeated or substantial imports below applicable trigger prices could "trigger" an expedited investigation. Clearly trigger price were not identical to a price floor for imports, but they do seem to have had similar effects. The entire TPM program was suspended in March 1980 when United States Steel Corporation filed antidumping petitions which were preliminarily decided in May 1980 at the Commission. The TPM program was reinstated in October 1980 when negotiations resulted in withdrawal of those cases which might have otherwise returned for final determinations. However, the entire system was scrapped in January 1982 when the petitions were filed which resulted in the present cases. Thus, the TPM was in effect for much of the period of these investigations and was a definite factor in the marketing decisions of all participants, domestic and foreign. It is unclear at this point how this factor affected competition in the U.S. market.

Since the TPM represents the production plus transportation costs of the world's supposedly most efficient producer (on average) producing at 85 percent capacity utilization, it may have been an invitation for less efficient producers to market at prices at or around the minimum established by the TPM. The publishing and disseminating of TPM prices may have brought an orderlines to the import share of the U.S. market which continues to make that market attractive for foreign producers.

The general appreciation of the U.S. dollar brought on by high interest rates has had a perverse effect on attempts through the TPM to regulate imports of steel products. From January–March 1980 to October–December 1981 the dollar rose, in most cases substantially, against almost all of the currencies of the countries whose steel exports are the subject of these investigations. (The exception is Romania, whose currency is not convertible.)[326] However, in the same time period, the U.S. dollar actually depreciated against the Japanese yen by 8.5 percent. Since the TPM was based on estimates of Japanese costs of production, the mechanism may have had the contrary effect of attracting European and Brazilian exports to the U.S. market, because these foreign producers can sell at or near the TPM and realize higher prices in their home currencies for their goods than they might have attained in an unregulated market. Therefore, the TPM may have had the effect of making the U.S. market an attractive option for sales from even the more inefficient foreign producers.

All the above considerations do not settle the causality issue because without adequate comparable data for all significant foreign suppliers, I have been unable to dismiss the possibility that some other foreign producer stands to gain if the subject imports are reduced. The allegedly subsidized and LTFV imports may be hurting foreign suppliers rather than domestic producers.

General Economic Conditions—Perhaps the most important short-range, but hopefully short-lived, problem facing the U.S. steel industry is the sharp drop in demand for its products caused by the continued slump in two major steel end-markets, the automobile and construction industries. These declines in demand are compounded by structural changes within these end-markets, such as the downsizing of automobiles and the use of lighter weight materials in their construction.

Structural changes are also occurring in the U.S. economy which have brought the U.S. steel industry problems in the short run. Chief among these is the shift in economic activity from the Northeast and Midwest sections of the country to the Gulf Coast and West. Because the U.S. steel industry is primarily located in the "steel belt" of the Northeast, it faces disproportionately high transport costs to the West and Gulf Coasts, where the growth in steel consumption is taking place. These costs diminish the relative competitiveness of U.S. steel.

Finally, the continuing high interest rates which have been prevalent in the U.S. economy for the last several years have discouraged debt financing of investment projects, made U.S. exports less cometitive (through the appreciation of the dollar), and depressed end-markets for steel. They are an undeniable part of this industry's problems.

Data Problems

All my determinations have been made on the best available information. In general, quarterly data are more volatile than yearly data; they have only been consulted in margial cases when some additional guidance on the question of threat was desirable. The data gathered on lost sales, pricing and the capacity and plans of foreign producers are incomplete. In general, the subject imports seem to undersell their domestic counterparts, though by margins that have probably narrowed during the last three years. To establish firmly any causal links between material injury or threatened material injury to the domestic industries, significantly more information on all these factors will be necessary.

Issued: February 28, 1982.

[323] Hot-Rolled Carbon Steel Sheet from France (January 1982), "Views of Commissioner Paula Stern," at 21.

[324] Mandated costs for pollution control and worker safety have been estimated at about $365 million per year during the 1970s, or about 17 percent of the total annual capital available for investment generated by the U.S. steel industry.

[325] An important question lies beneath diversification of investments: why has investment in traditional steel making activities been so relatively undesirable for U.S. firms?

[326] Report at I–46.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 5785 Filed 3-2-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 603-TA-8]

Certain Stainless Steel Shears; Preliminary Investigation

AGENCY: International Trade Commission.

ACTION: Institution of preliminary investigation.

SUMMARY: Notice is hereby given that on February 11, 1982, the U.S. International Trade Commission voted to institute a preliminary investigation under section 603(a) of the Trade Act of 1974 to investigate the alleged existence of unfair methods of competition and unfair acts in the importation into the United States or in the sale of certain stainless steel shears by K. R. Witte Co., Kurt-Reiner Witte P.O. B 10086 Felderstrasse, 41 5650 Solingen 1, West Germany, and K. R. Witte Solingen-U.S.A., 70 Northfield Avenue, Edison, New Jersey 08817. The Commission will also investigate the effects, if any, that the said methods and acts have upon the domestic stainless steel shear industry.

AUTHORITY: This preliminary investigation is being instituted pursuant to section 603(a) of the Trade Act of 1974 (19 U.S.C. 2482(a)) and § 201.7 of the Commission's rules of practice and procedure (19 CFR 201.7).

SCOPE OF THE INVESTIGATION: The alleged unfair methods of competition and unfair acts to be investigated are—

1. False and deceptive advertising for the purpose of furthering the belief on the part of the consumers that the stainless steel shears manufactured by K. R. Witte Co. and imported by K. R. Witte Solingen-U.S.A. are forged and ice-tempered shears, the effect or tendency of which may be to destroy or substantially injure the efficiently and economically operated stainless steel shear industry in the United States.

2. Trade libel, product disparagement, and tortious interference with contractual relations by K. R. Witte Co. or K. R. Witte Solingen-U.S.A., the effect or tendency of which may be to destroy or substantially injure the efficiently and economically operated stainless steel shear industry in the United States.

DEADLINE: The Commission's Unfair Import Investigations Divison has been directed to submit its report and recommendation to the Commission no later than May 3, 1982.

FOR FURTHER INFORMATION CONTACT: Juan S. Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, telephone 202-523-1272.

By order of the Commission.

Issued: February 22, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-5773 Filed 3-2-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-116]

Certain Drill Point Screws for Drywall Construction; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 20, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Illinois Tool Works, Inc., 8501 West Higgins Road, Chicago, Illinois 60631. The complaint alleges unfair methods of competition and unfair acts in the importation of certain drill point screws for drywall construction into the United States, or in their sale, by reason of the alleged direct infringement by said screws of claims 1-6 of U.S. Letters Patent 3,463,045. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commisson to institute an investigation, and, after a full investigation, to issue either an order excluding from entry into the United States drill point screws for drywall construction that infringe claims 1-6 of U.S. Letters Patent 3,463,045 or an order directing the proposed respondents to cease and desist from engaging in the alleged unfair methods of competition and unfair acts.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of the Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 18, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, and investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unauthorized importation of certain drill point screws for drywall construction into the United States, or in their sale, by reason of alleged direct infringement by said screws of claims 1-6 of U.S. Letters Patent 3,463,045, the effect or tendency of which is to destroy or substanially injure an industry, efficiently and economically operated, in the United States:

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is Illinois Tool Works, Inc., 8501 West Higgins Road, Chicago, Illinois 60631.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:
Gyplok, 403-873 Beatty Street, Vancouver, British Columbia, Canada
Kabushi Kaisha Yamashina Seikosho, No. 16, Higashinokisuneyabu-cho Yamashina-Ku Kyoto-Shi, Kyoto-Fu, Japan

(c) John Milo Bryant, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for public inspection during official business 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., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: John Milo Bryant, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0419.

By order of the Commission.

Issued: February 26, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–5774 Filed 3–2–82; 8:45 am]

BILLING CODE 7020–02–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel; Advisory Committee Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and Office of Management and Budget Circular A–63 of March 1974, and after consultation with the Committee Management Secretariat, notice is hereby given that renewal of the Arts and Artifacts Indemnity Panel (Advisory Committee) has been approved by the Chairman of the Federal Council on the Arts and the Humanities.

The Arts and Artifacts Indemnity Panel (Advisory Committee's) activities include: (1) Advising the Federal Council on policy options related to the administration of the Arts and Artifacts Indemnity Act (Pub. L. 94–158); (2) reviewing and making recommendations on applications for Federal indemnity; (3) providing expert judgement with respect to the dollar valuation, the adequacy for packing, shipping, and security arrangements, and the cultural, historical, educational, and scientific significance of the objects to be indemnified; and (4) reviewing claims submitted for payment under the Indemnity Act.

The charter for the Arts and Artifacts Indemnity Panel has been filed with the standing committees of the Senate and the House of Representatives having jurisdiction over the Federal Council and with the Library of Congress.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–5719 Filed 3–2–82; 8:45 am]

BILLING CODE 7536–01–M

National Council on the Humanities; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463); section 8 of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 957), notice is hereby given that renewal of the National Council for the Humanities has been approved by the Chairman of the National Endowment for the Humanities.

The National Council on the Humanities advises the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions and it reviews applications for financial support and makes recommendations thereon to the Chairman.

The charter for the National Council for the Humanities has been filed with standing committees of the Senate and the House of Representatives having jurisdiction over the Endowment and with the Library of Congress.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–5718 Filed 3–2–82; 8:45 am]

BILLING CODE 7536–01–M

Humanities Panel (Advisory Committee); Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and Office of management and Budget Circular A–63 of March 1974, and after consultation with the Committee Management Secretariat, notice is hereby given that renewal of the Humanities Panel (Advisory Committee) has been approved by the Chairman of the National Endowment for the Humanities.

The Humanities Panel (Advisory Committee) advises the National Council on the Humanities with respect to recommendations it would make to the Chairman concerning policies, programs and procedures for carrying out his functions and concerning recommendtions it should make on applications for financial support presented to the National Endowment for the Humanities, and it advises the Chairman of the National Endowment for the Humanities concerning policies, programs and procedures for carrying out his functions and concerning action he should take on applications for financial support.

The charter of the Humanities Panel has been filed with the standing committees of the Senate and the House of Representatives having jurisdiction over the National Endowment for the Humanities and with the Library of Congress.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–5717 Filed 3–2–82; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8102]

Exxon Minerals Co.; Negative Declaration Regarding Issuance of a Renewal for License SUA–1139 for Operation of the Highland Uranium Mill in Converse County, Wyo.

The Nuclear Regulatory Commission (the Commission) is renewing Source Material License SUA–1139 authorizing the operation of the Exxon Minerals Company's Highland Uranium Mill and future solution mine in Converse County, Wyoming. By original application dated June 1978 and updated application dated June 1981, Exxon Minerals Company requested a renewal of the Source Material License issued July 12, 1973. A Final Environmental Statement (FES) for the mill was issued March 1973 with an FES (NUREG–0489) on the solution mining project published in November 1978.

The Commission's Division of Waste Management has prepared an environmental impact appraisal for the proposed renewal action. On the basis of this appraisal, the Commission has concluded that an environmental impact statement for this particular action is not warranted for there will be no significant environmental impact attributable to the action not addressed in the 1973 and 1978 environmental statements. The environmental impact appraisal and license will be available for public inspection and copying at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

Dated at Silver Spring, Maryland, this 10th day of February, 1982.

For the Nuclear Regulatory Commission.

Ross A. Scarano,

Chief, Uranium Recovery Licensing Branch, Division of Waste Management.

[FR Doc. 82–5734 Filed 3–2–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-302]

Florida Power Corp., et al.; Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Facility Operating License No. DPR-72, issued to the Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainesville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., and the City of Tallahassee (the licensees) which revised the Technical Specifications (TSs) for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (the facility) located in Citrus County, Florida. The amendment is effective as of the date of issuance.

This amendment revises (1) the Auxiliary Building Ventilation Exhaust System Limiting Condition for Operation (LCO) and (2) the flow rate at which the containment purge filters are tested.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated October 8, 1981, and December 11, 1981, (2) Amendment No. 52 to License No. DPR-72, 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, NW., Washington, D.C., and at the Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida. 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 18th day of February 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-5735 Filed 3-2-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-458-OL and 50-459-OL]

Gulf States Utilities Co. and Cajun Electric Power Cooperative (River Bend Station, Units 1 and 2); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for *Gulf States Utilities Company and Cajun Electric Power Cooperative* (River Bend Station, Units 1 and 2), Docket Nos. 50-458-OL and 50-459-OL, is hereby reconstituted by appointing the following Administrative Judge to the Board: Forrest J. Remick. J. Venn Leeds was a member of this Board, but, because of a conflict, is unable to continue to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr., Chairman
Dr. Richard F. Cole
Dr. Forrest J. Remick

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Forrest J. Remick, The Carriage House, Apt. 205, 2201 L Street, NW., Washington, DC 20037.

Issued at Bethesda, Maryland, this 26th day of February 1982.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 82-5736 Filed 3-2-82; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 48-17466-01 MD]

Nuclear Pharmacy, Inc.; Order Imposing a Civil Monetary Penalty

I

Nuclear Pharmacy, Incorporated, 1024 North 6th Street, Milwaukee, Wisconsin 53203 (the "licensee") is the holder of Byproduct Material License No. 48-17466-01 MD (the "license") issued by the Nuclear Regulatory Commission. License Condition 9D authorizes the processing, mixing or compounding and distribution of prepared xenon-133 as a radiopharmaceutical to authorized recipients. License Condition 15 requires the licensee to procure xenon-133 from a supplier who distributes the product indicated for human use in accordance with the Federal Food, Drug, and Cosmetic Act. The license was issued originally on May 25, 1977. This license was amended on June 17, 1977, to increase the maximum possession limit of xenon-133 from 500 millicuries to 2 curies.

II

An inspection conducted on January 16-17, 1979, at the licensee's facility in Milwaukee, Wisconsin, showed that, contrary to regulatory requirements and license conditions, the licensee had procured xenon-133 gas (which was not approved for human use in accordance with the Federal Food, Drug, and Cosmetic Act) routinely from Union Carbide Corporation, had repackaged and relabeled the product showing it to be for human use, and subsequently had distributed the material for that purpose. Bulk quantities of xenon-133 labeled "not for human use in present form" were also transferred to licensed medical institutions.

The specific items of noncompliance associated with the findings of the Commission inspection were described in accordance with 10 CFR 2.201 in a Notice of Violation which was served upon the licensee by letter dated August 17, 1979. A Notice of Proposed Imposition of Civil Penalties dated August 17, 1979, was served concurrently upon the licensee in accordance with section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282), and 10 CFR 2.205. A letter dated October 22, 1979, with attachments, in response to the Notice of Violation and Notice of Proposed Imposition of Civil Penalties was received from the licensee. Further action on this matter was suspended by the NRC at the request of the U.S. Department of Justice until November 1981.

III

Upon consideration of the licensee's response and the statements of fact, explanation and argument in denial or mitigation contained therein, the Director of the Office of Inspection and Enforcement has determined that the penalties designated in Item 1 of the Notice of Violation should be mitigated to Two Thousand Dollars and that Item 2 of the Notice of Violation should be withdrawn.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205.

It is hereby ordered that: The licensee pay civil penalties in the total amount of Two Thousand Dollars within thirty (30) days of the date of receipt of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may request a hearing within thirty (30) days of the receipt of this Order. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S.N.R.C., Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the licensee was in compliance with the conditions of the license as set forth in Item 1 of the Notice of Violation issued on August 17, 1979, and

(b) Whether, on basis of the item of noncompliance, this Order Imposing a Civil Monetary Penalty should be sustained.

Dated at Bethesda, Maryland this 24th day of February 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 82–5737 Filed 3–2–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272, 50–311; License Nos. DPR–70 DPR–75; EA 81–71]

Public Service Electric & Gas Co. Salem Nuclear Generating Station (Units 1 and 2); Order Imposing Civil Monetary Penalties

I

Public Service Electric and Gas Company, 80 Park Plaza, Newark, New Jersey 07101 (the "licensee") is the holder of License Nos. DPR–70 and DPR–75 (the "licenses") issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the licensee to operate the Salem Nuclear Generating Station, Unit Nos. 1 and 2, at Hancocks Bridge, New Jersey, in accordance with the conditions specified therein. License No. DPR–70 was issued on August 13, 1976 and has an expiration date of September 25, 2008. License No. DPR–75 was issued on May 20, 1981 and also has an expiration date of September 25, 2008.

II

An investigation of the licensee's activities under the licenses was conducted between January 29 and July 6, 1981 at the Salem Nuclear Generating Station, Unit Nos. 1 and 2, at Hancocks Bridge, New Jersey. As a result of this investigation, it appeared that the licensee had not conducted its activities in full compliance with the conditions of its licenses and with the requirements of NRC regulations. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated September 24, 1981. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission regulations and license conditions which the licensee had violated, and the amount of civil penalty proposed for each violation. An answer dated October 22, 1981 to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

Upon consideration of the answer received and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205.

It is hereby ordered that: the licensee pay civil penalties in the amount of Forty Thousand Dollars ($40,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S.N.R.C., Washington, DC 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC regulations and license conditions as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) Whether, on the bases of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 23rd day of February 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 82–5738 Filed 3–2–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261; License No. DPR–23; EA 82–07]

H. B. Robinson Nuclear Facility (Unit 2); Order Imposing Civil Monetary Penalties

I

Carolina Power and Light Company, 411 Fayetteville Street, Raleigh, NC 27602 (the "licensee") is the holder of License No. DPR–23 (the "license") issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes operation of the H.B. Robinson Unit 2 facility in Darlington County, South Carolina under certain specified conditions and is due to expire on April 13, 2007.

II

An inspection of the licensee's activities under the license was conducted on August 25–26, 1981 at the H. B. Robinson Unit 2 facility in

Darlington County, South Carolina. As a result of this inspection, it appears that the licensee has not conducted its activities in full compliance with the conditions of its license and with the requirements of NRC regulations. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 1, 1981. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission regulations and license conditions which the licensee had violated, and the amount of civil penalty proposed for each violation. Answers dated January 5, 1982 to the Notice of Violation and Proposed Imposition of Civil Penalties were received from the licensee.

III

Upon consideration of the answers received and the statements of fact and explanation as set forth in the enclosure to this Order, the Director of the Office of Inspection and Enforcement determined that the penalties proposed for the violations designated as Items A and C in the Notice of Violation and Proposed Imposition of Civil Penalties, as amended in the Appendix to this Order, should be imposed. The Director agrees in part with the licensee's denial of the violation designated as Item B in the Notice of Violation and Proposed Imposition of Civil Penalties and withdraws the survey portion of the violation, and mitigates the civil penalty for Item B to Five Thousand Dollars.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205.

It is hereby ordered that: The licensee pay a civil penalty in the amount of Forty Thousand Dollars within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S.N.R.C., Washington, DC 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC regulations and license conditions as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties as amended by the Appendix to this Order; and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland this 23d day of February 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluations and Conclusions

For each violation and associated civil penalty identified in the Notice of Violation and Proposed Imposition of Civil Penalties (dated December 1, 1981) the original violation is restated and the Office of Inspection and Enforcement's evaluation and conclusion regarding the licensee's response (dated January 5, 1982) to each item is presented.

Item A

Statement of Noncompliance. Technical Specification 6.8.1 states, in part, that written procedures shall be established, implemented and maintained that meet or exceed the requirements and recommendations of Appendix A of U.S. NRC Regulatory Guide 1.33 dated November 3, 1972. Sections G and I of Appendix A to Regulatory Guide 1.33 list procedures for repair of PWR steam generator tubes and for special radiation work permits.

Contrary to the above, on August 15, 1981, between 3:00 a.m. and 6:35 a.m., the licensee failed in conjunction with marking steam generator tubes to comply with required plant procedures for steam generator repairs and radiation permits. The failure, which resulted in an overexposure (Item B below) is exemplified by the four departures from the procedures described below, any or all of which constitute a violation of TS 6.8.1.:

1. Section 3.5.2 of HP–12, Revision 8, requires that the health physics technician ensure that high and low range dosimeters are worn by persons engaged in primary side steam generator work. The dosimeters shall be worn on the body at or near the field of the highest dose rates. Section 3.5.2 indicates that the highest dose rates occur in the region of the head, and self-reading dosimeters may be worn on the shoulders. However, the health physics technician on duty specified that high and low range self-reading dosimeters be worn on the chest and not on the shoulders or head of the person engaged in primary side steam generator work.

2. Special Plant Procedure SP–319 incorporates Westinghouse procedure No. MRS 2.2.2 Gen–12 which in Section 7.2 requires that a minimum of two health physics technicians provide continuous health physics coverage. However, during the time referenced above, only one health physics technician at a time provided coverage.

3. Special Radiation Work Permit SRWP 815–6 and Section 7.2 of MRS 2.2.2 Gen–12 require continuous health physics coverage of steam generator marking operations. Section 5.0 of MRS 2.2.2 states that steam generator tube marking is a "high exposure task and requires vigilance on the part of the health physics technicians to carefully monitor the marking team and to keep track of the exposure dose rate and total does." However, the tube marking operation was neither continuously nor vigilantly monitored by the assigned health physics technician since he did not maintain continuous visual contact with workers performing tube marking operations. Additionally, he did not control and record entries into the steam generator.

4. Section 3.2 of plant Procedures HP–12, Revision 8, requires the "Steam Generator Entry Log" to be filled in and completed whenever a steam generator entry is performed. However, the health physics technician on duty did not record the four entries into the steam generator made by one worker.

This is a Severity III Violation (Supplement IV). (Civil Penalty—$25,000.)

NRC Evaluation and Conclusion. The licensee admitted the violations identified in Items A.2 and A.4. With respect to Item A.1, the licensee admitted failure to follow the procedure, but stated that although the Radiation Control Technician on duty had countenanced the improper placement of the worker's pocket dosimeters, he had not specified their placement. We accept the licensee's factual correction. The correction does not alter the basic fact that the licensee did not follow the required procedures. Accordingly, the last sentence of paragraph A.1 is amended as follows: "However, the health physics technician on duty did not ensure that high and low range self-reading dosimeters were worn on the shoulders or head of the person engaged in primary side steam generator work."

With respect to Item A.3, the licensee presented the following statements: "The RC Technicians' vigilance in their coverage was evidenced by an RC Technician's continuous presence on the S/G platform and frequent monitoring of the tube marker's pocket chamber throughout the tube marking operation to ensure the tube marker did not exceed his allowed dose of 500 mrem for that particular containment entry. To ensure that the tube marker did not approach his allowed dose, the RC Technician directed the tube marker out of containment when the tube marker's pocket chamber reading approached 470 mrem. After exiting the containment, the tube markers pocket chamber read 470 mrem. CP&L believes that the job coverage rendered was both continuous and vigilant and does

not interpret "continuous" in this context to require direct line of sight coverage at all times. Such an interpretation would require one TC Technician for *each* contract worker. By procedure, the contract worker had the responsibility of informing the RC Technician of each entry. The exposure occurred due to the improper placement of pocket chamber dosimetry and not to the lack of vigilance on the part of the RC Technician."

Inasmuch as the licensee had determined that marking steam generator tubes was a high risk task that warranted assignment of not less than two health physics technicians to assure continuous monitoring of the job, it would be reasonable to assume that continuous monitoring requires the HP technician to be in a position to monitor each worker while he is performing activities and does not necessarily require line of sight contact at all times. However, the HP coverage must be capable of watching the total activity. The HP technician may be looking at one worker, then another, but should at a minimum be able to monitor the workers.

In this case, on August 15, the health physics technician was also monitoring a two-man activity being conducted on a scaffold above the channel head manway through which the tube marking operations were being conducted. While monitoring the scaffold workers' pocket dosimeters, the health physics technician could not observe the activities of the steam generator tube markers.

While improper placement of personnel dosimetry was a principal cause of this event, the technician's lack of vigilance was a contributing cause. If the technician's vigilance had extended to the control of steam generator entries, the worker's exposure might have been decreased.

Item A remains a violation. While additional input was presented by the licensee, it is clear that procedures were not followed as required. Therefore, the civil penalty is not being mitigated or remitted.

Item B

Statement of Noncompliance. 10 CFR 20.201(b) requires licensees to make or cause to be made such surveys as may be necessary to comply with the regulations in 10 CFR 20. A survey as defined in 20.201(a) is an evaluation of the radiation hazards under a specific set of conditions. 10 CFR 20.101(a) requires licensees to restrict the total occupational dose to the head of each individual in a restricted area to 1.25 rems during any calendar quarter except as provided in paragraph (b) of 10 CFR 20.101.

Contrary to the above, between August 11 and 16, 1981, surveys of the radiation hazards associated with marking steam generator tubes were not conducted adequately to assure compliance with the head dose limit specified in 10 CFR 20.101(a) in that radiation exposure to individuals marking steam generator tubes was controlled based on readings from self-reading pocket dosimeters worn on the chest instead of the head where the exposure to radiation levels was higher. One individual received a radiation dose to the head of 1.3 rems during the third calendar quarter of 1981, specifically, on August 15, 1981, which was in excess of the applicable limit.

This is a Severity Level III Violation (Supplement IV). (Civil Penalty—$15,000).

NRC Evaluation and Conclusion. The licensee admitted that one individual had received a radiation dose to the head of 1.3 rems during the third calendar quarter of 1981, but denied the inadequacy of the survey of the associated radiation hazards. The statement continued as follows: "The surveillance data for S/G tube marking was in sufficient quantity to accurately evaluate the hazard. HP–12, which required the pocket chambers be placed on the head or shoulders, was in complete concert with the survey which indicated that the highest dose was to be in the region of the head. Had this procedure been followed, the overexposure would not have occurred. CP&L has previously in this response admitted to the failure to follow procedure."

The NRC agrees with this partial denial. Accordingly, the survey portion of the violation will be deleted from Item B in our records, the severity level for Item B has been reduced to a severity level IV, and the civil penalty for Item B is mitigated to $5,000.

Item C

Statement of Noncompliance. Technical Specification 6.3.1 requires that each member of the facility staff shall meet or exceed ANSI N18.1–1971 with regard to the minimum qualifications for comparable positions. Paragraph 4.5.2 of ANSI N18.1–1971 states, in part, that technicians in responsible positions shall have a minimum of two years working experience in their specialty.

Contrary to the above, between approximately 4:30 a.m. and 6:35 a.m. on August 15, 1981, a radiation control technician was serving in a responsible position who had approximately 11 months experience, most of which consisted of observing personnel monitoring themselves for contamination as they left the controlled area. This technician was solely responsible for monitoring and controlling doses to four individuals on the "B" steam generator platform. Two of these individuals were marking steam generator tubes, a task that was identified by the licensee as a high exposure task requiring vigilance on the part of the health physics technician to carefully monitor and control radiation dose rates and total worker doses.

This is a Severity Level IV Violation (Supplement IV). (Civil Penalty—$10,000).

NRC Evaluation and Conclusion. The licensee admitted the violation and stated as follows: "A contract RC Technician who had 11 months of experience and had received on-the-job training concerning S/G Health Physics (HP) coverage on more than six occasions was assigned to the S/G platform to cover a tube marking operation that was not to include a S/G entry. Existing plant procedures provide adequate instructions for a more experienced RC Techician to provide the proper HP coverage of the S/G tube marking operation. However, an RC Technician with less than the ANSI N18.1–1971 level of experience should have been given detailed written instructions so that no discretion in the establishment of specific work requirements could be required or implied in the performance of his duties. This was not done in this case."

The item as stated is a Severity Level IV Violation. The information presented by the licensee does not provide a basis for remission or migitation of the proposed penalty.

Cause of Failure of Radiation Control Program

NRC Request. The NRC letter, dated December 1, 1981, contained the following request: "* * * please inform us of the underlying causes of the failure of your radiation control program to prevent this type of occurrence and how you plan to correct this failure."

NRC Evaluation and Conclusion. The licensee responded as follows: "In your letter of December 1, 1981 you requested that CP&L address the underlying causes of the failure of our radiation control program and how we plan to correct this failure. CP&L disagrees with your charge that it has a programmatic problem in the area of radiation control. As discussed in our response to the specific violations, we have demonstrated that this occurrence was an isolated failure to follow procedures. In the following paragraphs we have provided additional information relating to your inspection activities and the measures we have and/or will take to refine our radiation Control Program."

The licensee's response continued with a comprehensive review of NRC and licensee actions relating to external radiation exposures at the H. B. Robinson Plant since January 1981. In his description of the May 30, 1981 overexposure incident the licensee stated as follows: "The root cause of this occurrence was clearly the contractor's failure to follow written (i.e., RWP) and posted instructions provided to him by Radiation Control personnel, * * *"

In a summary paragraph the licensee stated as follows: "The occurrence on August 15, 1981, was due to a failure to follow procedures in that the Tube Marker, although wearing multiple whole body TLDs, did not wear his pocket chamber on his head or shoulder as required in HP–12, Revision 8. The previous violation and civil penalty regarding calculated doses to the head was a result of S/G entries being made prior to 1981 without TLDs on the head. Therefore, CP&L does not believe this occurrence was a repeat event. Furthermore, the overexposure and its causes were identified by CP&L, the causes were corrected by CP&L, and the violation (overexposure) was promptly reported to the Resident Inspector. Unlike the earlier incidents, this incident was the direct result of an isolated failure to follow a procedure which was adepuate in itself."

Although the licensee denied that this event should be attributed to a programmatic problem in the area of radiation control, the circumstances surrounding the event indicate program involvement rather than an isolated failure to follow a procedure. The following observations support this position:

- Neither the worker nor the assigned health physics technician were instructed in the provisions of HP–12 (Rev. 8).
- The health physics technician who prepared the radiation work permit, failing to specify proper location of personnel dosimetry and failing to prohibit steam generator entry, had not been adequately instructed.
- The individual who assigned one health physics technician (rather than two) to monitor the tube marking activity was apparently not cognizant of the provisions of SP–319.
- The individual who assigned the inadequately trained health physics technician to this job was apparently not aware of the requirements of Technical Specification 6.8.1.

The licensee's denial that the August 15 event is repetitive is contradicted by his statements of the respective causes of the May 30 and August 15 events. The root cause of each was identified as a failure to adequately follow procedures. In fact, failure to follow a procedure in both events should be more accurately categorized as proximate and contributing causes. A more basic common cause can be found in program management that allowed an uninstructed worker to be supervised by an unqualified and uninstructed health physics technician.

The statements presented by the licensee in this portion of the letter do not provide a basis for remission or mitigation of the proposed penalty.

Information Provided in Licensee Letter Dated January 5, 1982 (Serial No. 82–018)

Licensee Statement. "CP&L denies that the identified infractions reflect a failure to institute appropriate corrective measures in response to prior incidents or that the infractions are indicative of a programmatic defect, as implied in the transmittal letter accompanying the Notice, for the reasons set forth in the Company's Response to the Notice."

NRC Evaluation and Conclusion. In the last sentence on page 8 of the licensee's response (Serial No. 82–017), the root cause of the May 30, 1981 incident is attributed to "the contractor's failure to follow written (i.e., RWP) and posted instructions * * *". Had appropriate corrective measures been instituted in response to this prior incident, the August 15, 1981 incident, which is also attributed by the licensee to a failure to follow a procedure, may not have occurred. The licensee's denial of programmatic involvement has been evaluated above.

Licensee Statement. "CP&L acknowledges that Infraction B as set forth in the Notice constitutes a Severity Level III infraction pursuant to the guidelines contained in the proposed General Statement of Policy and Procedure for Enforcement Actions published at 45 FR 66754 ("Proposed Enforcement Policy"), but submits that Infraction A was improperly classified as a Severity Level III event since it involved only an isolated failure to follow a recently promulgated (June 22, 1981) procedure (Infractions A–1 and A–4) and an isolated failure to follow special Plant procedure SP–319 (Infraction A–2). CP&L has denied the alleged failure to follow Special Radiation Work Permit SRWP 816–6 and Section 7.2 of MRS 2.2.2 Gen-12 (Infraction A–3). Although this failure to follow procedures was the direct cause of Infraction B, which was categorized as a Severity Level III occurrence, it is improper to also categorize Infraction A as a Severity Level III event. Supplement IV of the Proposed Enforcement Policy clearly classifies a "failure to follow procedures that has other than minor safety or environmental significance" as a Category V violation. The maximum penalty for a Severity Level V infraction is $5,000. Accordingly, the $15,000 penalty proposed for Infraction A violates the Proposed Enforcement Policy which was followed in assessing penalties in this case."

NRC Evaluation and Conclusion. In assigning a Severity Level to a violation of a procedure, the NRC considers the consequences of the violation. If, as in this incident, a failure to follow a procedure is a principal or contributing cause of a Severity Level III violation, the NRC emphasizes its concern for correction of the cause by assigning the severity level of the cause on a parity with its effect.

Licensee Statement. "As demonstrated in the Response, the event which gave rise to Infractions A, B, and C was not a repetition of a previous violation nor did it stem from the failure to adopt proper procedures. It arose out of an isolated failure to follow a new procedure which in itself is adequate to prevent overexposures of the type experienced in this and prior incidents. Accordingly, CP&L submits that it is improper to increase the total penalty 25% in this case."

NRC Evaluation and Conclusion. The cause of the overexposures disclosed in the NRC inspection on March 2–4, 1981 was a failure to evaluate nonuniform radiation fields and failure to provide procedures that would preclude excessive exposure in these fields. The licensee took adequate action to correct this situation by issuance of procedures. Had these procedures been followed it is unlikely that the August 15, 1981 event would have occurred. The NRC based the 25% increase of the proposed penalty on the similarity between the May 30 and August 15 overexposures and the fact that adequate steps were not taken to assure the procedures were implemented. Both were related to steam generator tube marking and both resulted from failure to follow a procedure. The NRC also considered that the EA 81–46 civil penalty should have focused management attention on this potentially hazardous operation and should have prevented the several program failures which contributed to this incident.

Licensee Statement. "CP&L respectfully requests that the penalty in this case be reduced to a maximum of $5,000 ($6,250 less 20%) for Infraction A, $20,000 ($25,000 less 20%) for Infraction B, and $8,000 ($10,000 less 20%) for Infraction C. In requesting this reduction, CP&L further asks that recognition be given to the fact that the Company promptly reported the over-exposure; promptly retrained all HP and other necessary personnel in the proper application of HP–12 (Rev. 8); and has implemented extensive measures to assure that all steam generator work is performed in strict compliance with all applicable procedures."

NRC Evaluation and Conclusion. For the reasons presented previously, the NRC has mitigated the proposed penalty of $15,000 for Item B to $5,000, but finds no substantial basis for remission or mitigation of those penalties proposed for Items A or C.

The NRC acknowledges the licensee's prompt reporting of the overexposure, but finds no basis for mitigation in a licensee's reporting of a self-disclosing incident. The NRC also expects licensees to take prompt and effective action to correct each violation identified by the NRC or the licensee.

[FR Doc. 82–5733 Filed 3–2–82; 8:45 am]

BILLING CODE 7590–01–M

Screening Committee for Lawyer Vacancies on the Licensing Board Panel and its Screening Committee for Technical Vacancies on the Licensing Board Panel; Renewal

Notice is hereby given by the Nuclear Regulatory Commission that the Charters for its Screening Committee for Lawyer Vacancies on the Licensing Board Panel and its Screening Committee for Technical Vacancies on the Licensing Board Panel have been renewed for an additional two year period beginning February 22, 1982. These Committees provide advice to the Commission regarding the selection of candidates for positions on NRC's Atomic Safety and Licensing Board Panel.

Dated at Washington, DC this 25th day of February 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–5739 Filed 3–2–82; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22405; 70–6688]

Alabama Power Co.; Formation and Acquisition of Stock of New Subsidiary; Entry Into Credit Agreement by New Subsidiary; Nuclear Fuel Lease by New Subsidiary to Parent; Granting of Security Interest to Creditor; Exception From Competitive Bidding

February 26, 1982.

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration and an amendment thereto with this Commission pursuant to sections 6(a) and 7, 9(a), 10, 12(f) and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2),

50(a)(5), 86, 90 and 91 and any other relevant rules promulgated thereunder.

Alabama proposes to form and acquire the capital stock of a new wholly-owned special purpose subsidiary, Columbia Fuels, Inc. ("Subsidiary"), which will finance a portion of the nuclear fuel requirement for the Joseph M. Farley Nuclear Plant. Upon receiving Commission approval, Alabama will cause Subsidiary to be incorporated and will initially subscribe for and purchase $1,000 of Subsidiary's capital stock. Subsidiary will purchase and hold the legal title to nuclear fuel and enter into agreements with lenders from time to time to provide financing for such purchases. Subsidiary will lease all nuclear fuel purchased by it to Alabama for use in Alabama's Joseph M. Farley Nuclear Plant. The creation of Subsidiary enables creditors to acquire a first priority security interest in the nuclear fuel being financed, and permits Alabama, through Subsidiary, to administer nuclear fuel financing arrangements with a minimum of additional burden and expense. Alabama propose to finance a portion of its nuclear fuel requirements in this manner, which is similar to two other nuclear fuel arrangements to which Alabama is currently a party, and which were authorized by Commission orders dated June 3, 1976 and October 10, 1979 (HCAR Nos. 19555 and 21243) in order to obtain alternative sources of capital. This form of debt financing provides a cost effective means of financing nuclear fuel and gives additional flexibility to Alabama's overall financing program.

Initially, Subsidiary proposes to enter into a credit agreement (the "Credit Agreement") for up to $100,000,000 with Credit Suisse ("Creditor"). The Credit Agreement will have a term of four years and will be extended automatically on each anniversary of its execution for an additional twelve-month period, unless Creditor notifies Subsidiary to the contrary. Subsidiary will grant a security interest in the nuclear fuel to Creditor.

Under the Credit Agreement, Creditor will provide credit to Subsidiary through (i) the issuance of an irrevocable letter of credit (the "Letter of Credit") in support of the contemplated issuance by Subsidiary of its commercial paper and (ii) direct loans to Subsidiary against the issuance and delivery by Subsidiary of its promissory notes having maturities of up to nine months. The maximum aggregate principal amount of commercial paper supported by the Letter of Credit Agreement will be $100,000,000. Such amount may consist of either commercial paper supported by the Letter of Credit or direct loans or any borrowing combination thereof as Subsidiary may from time to time determine.

The commercial paper of Subsidiary will be offered by a dealer, which will be selected by Subsidiary. The commercial paper will be in the form of promissory notes of Subsidiary with varying maturities not to exceed 270 days. Actual maturities will be determined by market conditions and the effective interest costs to Subsidiary at the time of issuance. The basic cost to Subsidiary under the commercial paper option will be the market rate at the time of issuance for its commercial paper plus a dealer fee expected to ⅛ of 1% per annum to place the commercial paper for Subsidiary. It is anticipated that the commercial paper of Subsidiary will be rated A–1/Prime-1 by nationally recognized rating agencies. Costs to be paid to creditor under this option will be (a) ¼ of 1% per annum on the quarterly average amount of commercial paper outstanding, (b) 1/16 of 1% per annum on the face amount of the Letter of Credit ($100,000,000), and (c) ⅜ of 1% on the total credit commitment ($100,000,000) less the amount of unreimbursed drawings under the Letter of Credit and less the amount of outstanding direct borrowings. No drawings will be made under the Letter of Credit unless and until there has been a failure by Subsidiary to pay the commercial paper obligation when due. Any drawings under the Letter of Credit will bear interest at the rate of 120% of Creditor's prime interest rate in effect during the period of such drawings being unreimbursed by Subsidiary. Assuming a discount rate of 12⅜% on a 30-day commercial paper note, a dealer fee of ⅛ of 1% and full utilization of the credit facility, the effective annual cost of borrowing (360-day basis) would be 13.32%.

The commercial paper of Subsidiary will be offered by a dealer to not more than 200 customers of the dealer identified and designated in a nonpublic list prepared in advance by the dealer. Such list will include commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universities, municipal and state benefit funds, and eleemosynary and non-financial corporations which invest surplus funds in commercial paper. No sale will be made to any such customer unless and until it has received from the dealer a current report as to the financial position of the issuer. No additions will be made to such list of customers. It is expected that the commercial paper of Subsidiary will be held by customers to maturity, but, if they wish to resell prior thereto, the dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others on the customer list.

Costs to be paid to Creditor under the direct borrowing option will be (a) 1/16 of 1% per annum on the face amount of the Letter of Credit, (b) ⅜ of 1% on the total credit commitment ($100,000,000) less the amount of unreimbursed drawings under the Letter of Credit and less the amount of outstanding direct borrowings and (c) the interest rate chosen by Subsidiary at the time of each direct borrowing from the following alternatives:

	Year 1 and 2 (percent)	Year 3 and thereafter (percent)
Creditor's prime rate plus	0	¼
Average weekly Federal funds rate plus	¾	¾
Term Federal funds rate plus	¾	¾
London Inter-Bank offering rate ("LIBOR") plus	¾	¾
Creditor's certificate of deposit rate (adjustment to reflect reserve requirements) plus	¾	¾

Assuming all borrowings were made by means of the direct borrowing option, full utilization of the credit facility, a tenor of 30-days for each of the borrowing alternatives and using the rates shown above, the table below reflects the effective annual borrowing cost:

	Assumed base rate (percent)	Effective annual cost (360-day basis) (percent)
Creditor's prime rate	15.75	15.81 (year 1 and 2). 16.06 (year 3 and thereafter).
Average weekly Federal funds rate.	12.50	13.31.
Term Federal funds rate	13.00	13.81.
LIBOR	13.375	14.19.
Creditor's certificate of deposit rate (adjusted to reflect reserve requirements).	12.88	13.69

The borrowings under the Credit Agreement may be prepaid in whole or in part without premium or penalty on any interest payment date upon two business days notice, and at any other time upon ten business days notice. However, if applicable, Subsidiary will pay amounts necessary to compensate Creditor for losses for reinvestment of funds to the end of the current interest period.

Subsidiary will use the funds acquired under the Credit Agreement to pay the cost of acquiring, processing and fabricating the nuclear fuel, including reimbursement to Alabama of incurred

reimbursement to Alabama of incurred nuclear fuel costs. Such costs will include, but not be limited to, the cost of purchasing U_3O_8 ("yellow cake"), the cost of conversion of U_3O_8 into UF_6, the cost of enrichment of uranium by the U.S. Department of Energy, the cost of fabrication of nuclear fuel rods and ruel assemblies and the cost of delivery of fabricated fuel assemblies to the Farley Plant.

Alabama will transfer to Subsidiary its interest in the nuclear fuel proposed to be financed and in procurement contracts in respect thereof. Subsidiary, as owner of the nuclear fuel, will lease fabricated fuel to Alabama pursuant to a nuclear fuel lease which will require payments by Alabama, including rent, sufficient to amortize fully all costs and expenses of Subsidiary under the Credit Agreement over the useful life of the nuclear fuel as it is consumed.

An exception is sought from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(2) thereof for the issuance of commercial paper. All of the commercial paper which Subsidiary proposes to issue and sell will have maturities not in excess of 270 days, current rates for commercial paper for prime borrowers are published daily in financial publications and the invitation of competitive bids is not practical for commercial paper.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 22, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant–declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delgated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-5726 Filed 3-2-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22403; 70-6697]

American Electric Power Co., Inc.; Proposed Creation of Consulting Subsidiary To Render Services to Non-Affiliates

February 26, 1982.

The American Electric Power Company, Inc. ("AEP"), 180 East Broad Street, Columbus, Ohio 43215, a registered holding company, has filed an application-declaration with this Commission, pursuant to sections 9(a), 10, 12(b) and other applicable sections of the Public Utility Holding Company Act of 1935 ("Act") and rules promulgated thereunder, including Rules 45, 87, 90 and 91.

AEP proposes to organize and acquire the Capital Stock of a new, wholly-owned subsidiary, AEP Energy Services, Inc. ("Energy Services"). AEP will make an initial investment of up to $1,000,000 for stock purchases in, and capital contributions to, Energy Services. Energy Services intends to sell management, technical, and training expertise in the open, competitive market to as yet unspecified, non-affiliated entities.

Initially, Energy Services will rely on AEP's management personnel but as significant business is developed, the new subsidiary will employ limited, but permanent, management, marketing and administrative staff. Utilizing a work order system in accordance with the Uniform System of Accounts For Mutual and Subsidiary Service Companies, the American Electric Power Service Corporation ("AEP Service") and the system operating companies will provide personnel and resources, on a full-cost reimbursement basis, to Energy Services for use in individual consulting projects with its clients. It is contemplated that this provision of personnel and resources will be accomplished on a contractual basis. These contracts will define the terms and conditions governing the transactions between Energy Services and the AEP system companies, as well as the conditions for resale, licensing and profit-sharing of intellectual property developed or provided in the course of Energy Services' business with AEP system companies. AEP Service will also perform all necessary financial, accounting and internal auditing functions for Energy Services.

Services provided by Energy Services to non-affiliates will be calculated to recover costs, including overheads, and to produce a profit. All profits or losses will accrue to AEP and no non-contractual obligations or unreimbursed costs are to be incurred by any associate company. AEP asserts that the formation of this new subsidiary creates an excellent profit opportunity at minimal risk. It also states that the new business generated by Energy Services will facilitate the retention of skilled employees in the system's operating companies. Such personnel will be more fully utilized by assignment to off-system consulting projects during periods of light internal workload.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 23, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-5727 Filed 3-2-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12251; 812-5039]

American Money Market Fund; Filing of Application

February 26, 1982.

Notice is hereby given that American Money Market Fund ("Applicant"), 82 Devonshire Street, Boston, Massachusetts 02109, an investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on December 7, 1981, requesting an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to calculate its net asset value per share based on the amortized cost method of valuation. 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.

Applicant represents that its investment objective is to seek to obtain as high a level of current income as is consistent with the preservation of capital and liquidity. Applicant will seek to achieve this objective by investing exclusively in high grade, money market instruments maturing in less than one year, including:

(1) Obligations issued or guaranteed as to interest and principal by the government of the United States or any agency or instrumentality thereof ("Government Securities");

(2) Obligations, including time deposits, certificates of deposit and bankers' acceptances, of U.S. banks, provided that the bank has capital, surplus and undivided profits of $100,000,000 or more at the date of investment ("Major Bank Instruments");

(3) Commercial paper of domestic issuers, including bank holding companies, which at the date of investment is rated A–1 by Standard & Poor's Corporation or Prime–1 by Moody's Investors Service, Inc. ("Commercial Paper");

(4) Certificates of deposit issued by commercial banks of less than the size set forth above, provided that the principal amount of the instrument is insured in full by the FDIC or FSLIC ("Insured Bank Instruments"); and

(5) Repurchase agreements with member banks of the Federal Reserve System and recognized dealers with respect to Government Securities, even though the security matures in more than one year.

Applicant states that, as set forth more fully in its Prospectus, its shares will be purchased automatically not less frequently than weekly with "excess" cash balances in demand deposit accounts maintained by Applicant's shareholders with banks participating in the Financial Management Account Program ("Participating Banks"). Applicant further states that excess cash balances will be the amount by which the bank account balance of the shareholder exceeds and amount established by the Participating Bank. Applicant represents that where Major Bank Instruments, Commercial Paper of bank holding companies and Insured Bank Instruments (collectively, "Bank Instruments") are, in the judgment of Applicant's Board of Trustees, comparable to other obligations in terms of quality, yield and maturity, it is anticipated that Applicant would purchase Bank Instruments being offered by Participating Banks and their holding companies.

Applicant seeks an order of the Commission, pursuant to section 6(c) of the Act to permit is assets to be valued according to the amortized cost method. Applicant states that under the amortized cost method, portfolio securities are valued at cost on the date of the acquisition, and the difference between cost and the face amount of the instrument is amortized over the maturity of the instrument. Applicant represents that by valuing its portfolio securities at amortized cost and declaring dividends daily, its net asset value per share will remain constant in the absence of unusual market conditions.

As here pertinent, section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 states further that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. The Commission has expressed its view, that, among other things, (1) Rule 2a–4 under the Act requires portfolio instruments of "money market" funds which have more than 60 days remaining to maturity be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over sixty-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant expresses its belief that its shareholders would be unfairly treated if Applicant were forced to price its portfolio instruments in a manner which would produce artificial price or yield volatility for instruments which it expects to hold to maturity. Applicant submits that potential investors in its shares are not concerned with the theoretical differences which might occur between the yield achieved through market pricing and the yield computed on the basis of amortized cost as described in the application. On the other hand, Applicant believes that such potential investors are vitally concerned that (1) the net asset value of their shares remain stable; and (2) that the daily net income declared on their investment be steady and not exhibit the volatility which can occur when changes in market prices cause changes in yield on a daily or weekly basis. Applicant believes that by maintaining a portfolio of high quality money market instruments of short maturities, it will be possible to provide the required stability to individual and institutional investors. Applicant states that it has determined, with the advice of its adviser and based on the adviser's experience, that maintaining an average portfolio maturity of 120 days or less will accomplish the aims of Applicant's investors by reducing the risk of significant volatility in the value of portfolio instruments and at the same time producing a yield commensurate with those available in the short-term money market. Applicant states that its request for exemption is based on its proposed policies described in the application. Applicant agrees that the following conditions may be imposed in any order of the Commission granting such relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within its overall duty of

care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review. To fulfill this obligation, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1%, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes that the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; reducing or withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share; *provided*, however, that Applicant will neither (a) purchase any instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity that exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will include in the minutes of Board of Trustees' meetings and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its Board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement indicating whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

Applicant states that prior to adopting the amortized cost method of valuation, its Board of Trustees will determine in good faith that in light of characteristics described above, including the conditions to which it must adhere as set forth in any order of the Commission, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities will reflect the fair value of such securities.

Notice is further given that any interested person may, not later than March 19, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application 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 Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–5728 Filed 3–2–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18512; File No. SR–MSRB–82–2]

Self-Regulatory Organizations; Proposed Rule Change; Municipal Securities Rulemaking Board

February 25, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1982, the Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, NW., Suite 507, Washington, D.C. 20036, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed amendment to Rule A–11 provides for the indemnification of arbitrators against all liabilities and expenses incurred in connection with the performance of their official duties. The MSRB has adopted the proposed rule amendment pursuant to Section 15B(b)(2)(D) which authorizes the MSRB to set up an arbitration program to resolve claims, disputes, and controversies relating to transactions in municipal securities, and Section

15B(b)(2)(I) which authorizes the MSRB generally to adopt rules providing for the operation and administration of the Board as may be necessary to carry out the Board's functions under Section 15B. The amendment is proposed in order to protect those individuals who voluntarily participate as arbitrators in the MSRB's arbitration program, provided they acted in good faith and within the scope of their authority, and to encourage their continued participation in the program.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before March 24, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-82-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-5692 Filed 3-2-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18513; (SR-Phlx-81-23)]

Self-Regulatory Organizations; Order Approving Proposed Rule Change; Philadelphia Stock Exchange, Inc.

February 25, 1982.

The Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, submitted on January 5, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to increase from 399 to 599 the number of shares eligible for the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"), and to amend certain standards contained in Phlx Rule 229 for execution of orders under the PACE system.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18340, January 19, 1982) and by publication in the **Federal Register** (47 FR 3667, January 26, 1982). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-5693 Filed 3-2-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12246; 812-5021]

Sutro Money Market Fund; Filing of Application

February 24, 1982.

Notice is hereby given that Sutro Money Market Fund ("Applicant"), 421 Seventh Avenue, Pittsburgh, Pennsylvania 15219, registered under the Investment Company Act of 1940 ("Act") as an open end, diversified, management investment company, filed an application on November 20, 1981, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost. 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.

Applicant states that it is a "money market" fund organized as a Massachusetts Business Trust and designed as an investment vehicle for investors with temporary cash balances or cash reserves seeking current income consistent with stability of principal. It is stated that in accordance with this investment objective, Applicant's portfolio may be invested in a variety of money market instruments, including obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities (including those purchased on a "when-issued" or "delayed-delivery" basis); instruments of banks and savings and loan associations which are members of the Federal Deposit Insurance Corporation ("FDIC") or the Federal Savings and Loan Insurance Corporation ("FSLIC") (including obligations of foreign branches of such members), if either (i) the principal amount of the obligation is insured in full by the FDIC or the FSLIC, or (ii) the issuer of the obligation has capital, surplus, and undivided profits in excess of $100,000,000 (as of the date of its most recently published financial statements); commercial paper rated A-1 by Standard & Poor's Corporation, P-1 by Moody's Investors Service, Inc., or F-1 by Fitch's Investors Service; and repurchase and reverse repurchase agreements.

Applicant represents that when entering into reverse repurchase agreements, or purchasing securities on a when-issued or delayed-delivery basis, assets of a dollar amount sufficient to make payment for the obligations to be purchased will be placed in segregated accounts at the trade date.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any such security which is next computed after receipt of a tender of

such security for redemption or of an order to purchase or sell such security.

Rule 2a–4 provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution and redemption shall be an amount which reflects calculations make substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further provides that portfolio securities for which market quotations are readily available shall be valued at current market value, and other securities shall be valued a fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed the view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 21, 1977). In view of the foregoing, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

In support of the relief requested, Applicant asserts that experience indicates that two features are critical to attracting investment in a money market fund: (1) Stability of principal, and (2) a steady flow of predictable and competitive investment income. It is further stated that by utilizing high quality money market instruments of short maturities valued at amortized cost, it has been possible to provide these features to investors. Applicant also asserts that investors are not concerned with the theoretical differences which may exist between yield achieved through "marking-to-market" calculations and yield computed through the use of the amortized cost method of valuation. However, investors are concerned, it is stated, that the income which a money market fund declares daily reflects income as earned using the amortized cost method and that it not exhibit the volatility which may occur when changes in so-called "market" prices cause unreal and artificial changes in yield on a daily or weekly basis. Thus, Applicant states that its Board of Trustees ("Board") has determined in good faith that, in light of the characteristics of the Applicant as described above, that the amortized cost method of valuing portfolio securities is appropriate and preferable to the use of a market-based valuation method.

Section 6(c) of the Act, provides, in part, that the Commission upon application may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptions it has requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the Board undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purposes of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board shall be the following:

(a) Review by the Board, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any of Applicant's $1.00 amortized cost price per share from the net asset value per share as determined by using available market quotations, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1 percent, Applicant's Board will promptly consider what action, if any, should be initiated.

(c) Where the Board believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the Board determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c)

[1] Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Board in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained form yield data relating to classes of money market instruments published by reputable sources.

[2] Applicant states that in fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than March 22, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/or she 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 Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date or 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. 82–5891 Filed 3–2–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12248; 812–4829; 812–4853]

Narragansett Capital Corp.; Filing of Application

February 25, 1982.

In the matter of Narragansett Capital Corp., Arthur D. Little, Robert D. Manchester, William P. Lane, Gregory P. Barber, and Roger A. Vandenberg, 40 Westminster Street, Providence, RI 02903.

Notice of filing of an application for an order pursuant to sections 6(c), 17(b) and 57(c) of the act exempting that applicant from the provisions of sections 12(d)(1) (A) and (C), 18(a), 19(b), 17(a) and 57(a) and permitting pursuant to section 17(d) and rule 17d–1 thereunder the proposed reorganization, and notice of filing of an application for an order pursuant to sections 6(c), 17(b) and 57(c) of the act exempting applicants from the provisions of sections 2(a)(3), 12(d)(1)(A), 18(a), 17(a) and 57(a) and permitting pursuant to section 17(d) and rule 17d–1 thereunder the proposed transactions.

Notice is hereby given that Narragansett Capital Corporation ("Narragansett"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company and licensed by the Small Business Administration ("SBA") as a small business investment company ("SBIC"), filed an application on February 23, 1981, and amendments thereto on March 16, 1981, May 1, 1981, July 15, 1981, and November 4, 1981, seeking an order of the Commission pursuant to Sections 6(c), 17(b) and 57(c) of the Act, exempting Narragansett from the provisions of Sections 12(d)(1) (A) and (C), 18(a), 19(b), 17(a) and 57(a), to the extent necessary, and permitting pursuant to Section 17(d) and Rule 17d–1 thereunder, the establishment and operation of a wholly-owned subsidiary of Narragansett pursuant to the terms of the proposed reorganization. Notice is further given that Narragansett, along with Arthur D. Little, Robert D. Manchester, William P. Lane, Gregory P. Barber and Roger A. Vandenberg, all officers or directors of Narragansett ("Applicants"), filed a second application on April 23, 1981, and amendments thereto on July 20, 1981, and November 23, 1981, seeking an order of the Commission pursuant to Sections 6(c), 17(b), and 57(c) of the Act exempting Applicants, to the extent necessary, from the provisions of Sections 2(a)(3), 12(d)(1)(A), 18(a), 17(a) and 57(a) and permitting Applicants pursuant to Section 17(d) and Rule 17d–1 thereunder to establish and participate in a limited partnership under the terms proposed. All interested persons are referred to the applications on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Narragansett, which has operated as an SBIC since 1960, seeks to change its structure and operations to enable it to 1) make investments that would not be permitted under the Small Business Investment Act ("SBA Act"); 2) increase its ability to obtain funds for use in its business ventures and; 3) provide additional financial incentives for Narragansett management employees to continue to work for Narragansett. The board of directors of Narragansett ("Board") has approved a plan of reorganization ("Proposed Reorganization") designed to accomplish these goals. Basically, under the Proposed Reorganization Narragansett would: (a) spin-off its SBIC activities to a wholly-owned subsidiary, Narragansett Venture Corporation ("Venture Corporation"); and (b) enter into limited partnership arrangements with some of its executive personnel and outside investors for the purpose of conducting venture capital business activities. The first such limited partnership arrangement into which Narragansett proposes to enter would be known as Narragansett First Fund ("First Fund"). During the interim period before first Fund is established and operational, Narragansett proposes to engage in venture capital and other investments directly.

In order to implement this Proposed Reorganization, Narragansett needs the approval of its own shareholders and the SBA, as well as exemptive relieve from the Commission. Narragansett represents that shareholder approval of its latest proposal was obtained on September 23, 1981. The highlights of the Proposed Reorganization and the exemptive relief sought are discussed below.

Under the Proposed Reorganization, Narragansett will cause the organization of Venture Corporation, a registered closed-end investment company, under Rhode Island laws. Subject to favorable action by the Commission and the SBA, Narragansett states it will transfer certain of its assets including its license to operate as a SBIC, to Venture Corporation. In return, Venture Corporation will assume substantially all of Narragansett's liabilities, releasing Narragansett from liability on its SBA-guaranteed debentures, and will issue to Narragansett all its outstanding capital stock. After the transfer of assets and liabilities, Venture Corporation, as a wholly-owned subsidiary, will carry on the SBIC activities previously conducted by Narragansett while Narragansett, also a registered investment company, will engage in a broader range of investment activities.

According to the application both Narragansett and Venture Corporation will elect to be regulated as business development companies under the Act as soon as they may do so without losing their status as regulated investment companies. Moreover, until that time, they will maintain portfolios of investments consistent with Section 55 of the Act. Because Narragansett and Venture Corporation will both continue to be operated as regulated investment companies, the majority of Venture Corporation's earnings will be

distributed to Narragansett and Narragansett's earnings to shareholders. Narragansett represents that it may make additional investments in Venture Corporation (in the form of capital stock purchases or loans) after the initial contribution, and Venture Corporation may make loans to Narragansett. However Venture Corporation will not purchase stock of Narragansett. Furthermore, Narragansett represents that: (1) Venture Corporation will always continue to be a wholly-owned subsidiary of Narragansett; (2) Venture Corporation will not change any of its fundamental investment policies or engage in any of the activities described in Section 13(a) of the Act, unless so authorized by a vote of a majority of the outstanding voting securities of Narragansett; (3) no person will serve or act as an investment adviser to Venture Corporation subject to Section 15 of the Act, unless the shareholders and directors of both Narragansett and Venture Corporation have given the necessary approval; (4) only directors of Narragansett are eligible to be directors of Venture Corporation; (5) Narragansett will not issue and it will not permit Venture Corporation to issue, any senior security unless it and Venture Corporation, on an unconsolidated basis, and it on a consolidated basis, meet the 200 percent asset coverage test under the conditions described in the application; and (6) Narragansett will file with the Commission and provide its shareholders the financial statements required by the Act.

Section 12(d)(1)(A) of the Act makes it unlawful for any registered investment company to purchase or otherwise acquire the securities of any other investment company, except to the limited extent permitted by the section. Section 12(d)(1)(C) makes it unlawful for any investment company to purchase or otherwise acquire any security issued by a registered closed-end investment company if the acquiring company would then own more than 10 percent of the voting stock of the closed-end company. Pursuant to the Proposed Reorganization, Narragansett, an investment company, will acquire all of the capital stock of Venture Corporation, a registered closed-end investment company, thereby violating both Sections 12(d)(1) (A) and (C). In addition, in the future Narragansett may make loans or advances to Venture Corporation, and Venture Corporation may make loans or advances to Narragansett. Those transactions also might be considered acquisitions of securities under the section.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly, Narragansett has requested an order pursuant to Section 6(c) permitting it to acquire any securities of Venture Corporation and permitting Venture Corporation to acquire any securities of Narragansett representing indebtedness.

Section 17(a) of the Act, in general, makes it unlawful for any affiliated person of a registered investment company, or any affiliates of such person (i) to sell any security or other property to such registered investment company (except securities of which the buyer is the issuer, the seller is the issuer and which are part of a general offering to a class, or securities deposited with a trustee of a unit investment trust), (ii) to purchase from any investment company or any controlled company any security (except securities of which the seller is the issuer), or (iii) to borrow money or other property from such registered investment company (unless the borrower is controlled by the lender). Section 2(a)(3) of the Act defines affiliated person to include: (i) Any person directly or indirectly owning, controlling, or holding with power to vote 5 per centum or more of the outstanding voting securities of such other person; (ii) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person and (iv) any officer, director, partner, copartner or employee of such other person. Narragansett is an affiliated person of Venture Corporation and Venture Corporation of Narragansett by reason of Narragansett's ownership of all of Venture Corporation's common stock and its control of Venture Corporation. Accordingly, any exchange of securities between Narragansett and Venture Corporation would constitute an affiliated transaction prohibited by Section 17(a). Similarly, loan transactions between Narragansett (as the borrower) and Venture Corporation (as the lender) also would be prohibited by Section 17(a). Section 17(b) of the Act provides that notwithstanding the prohibitions contained in subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction from one or more provisions of that subsection. Therefore, Narragansett has requested exemptive relief pursuant to Section 17(b) of the Act permitting any transaction solely between Narragansett and Venture Corporation with respect to the purchase or sale of securities or other property or the borrowing of any money or other property.

Section 17(d) of the Act and Rule 17d–1 thereunder, in brief, makes it unlawful for any affiliated person of any registered investment company to effect any transaction in connection with any joint enterprise or joint arrangement in which the registered investment company is a participant, except pursuant to an order of the Commission. As noted above, Narragansett and Venture Corporation are each registered investment companies, and each is an affiliate of the other. Accordingly, the application seeks approval pursuant to Section 17(d) and Rule 17d–1 thereunder for any joint transactions solely between Narragansett and Venture Corporation arising from the Proposed Reorganization or operations thereafter.

Narragansett has also requested relief from those provisions of the Act governing capital structure. Section 18(a) makes it unlawful for any registered closed-end investment company to issue or sell any class of senior security of which it is the issuer, unless the company complies with the asset coverage requirements set forth in the section. Under the provisions of Section 18 applicable to closed-end investment companies, senior securities representing indebtedness must have an asset coverage of 300 percent immediately after their issuance or sale. Senior securities representing stock must have an asset coverage of 200 percent. However, Section 18(k) provides special exemptions from these provisions for SBIC's. In addition, for companies which have elected to be regulated as business development companies, the asset coverage requirement is reduced to 200 percent for all senior securities.

As it currently is organized, Narragansett is entitled to the 18(k) exclusion for its SBA-guaranteed debentures, resulting in all of its almost $35 million SBA-guaranteed debt being excluded from asset coverage requirements. However, after the

Proposed Reorganization, Narragansett represents that its current structure would not comply with the asset coverage requirements of Section 18(a). Following the Proposed Reorganization, Venture Corporation, as an SBIC, would be entitled to the Section 18(k) exclusion and thus would not need any asset coverage for its SBA-guaranteed debentures. However, Narragansett, since it would no longer be an SBIC, would be subject to the asset coverage requirements of Section 18(a), without the benefit of the 18(k) exclusion, with respect to senior securities it directly issued, as well as the senior securities issued by Venture Corporation, its wholly-owned subsidiary, of which Narragansett would be deemed to be the indirect issuer. As a result, Narragansett would be required to have greater assets to cover the existing $35 million indebtedness than is currently required. Therefore, Narragansett is seeding an exemption pursuant to Section 6(c) from the provisions of Section 18(a) for both itself and Venture Corporation to permit the issuance of senior securities only to the following extent: (1) Narragansett and Venture Corporation could issue and sell to banks, insurance companies and other financial institutions their secured or unsecured notes, provided that: a) Such notes were not intended to be publicly distributed, b) such notes could not be converted into any equity security, and c) immediately after the sale or issuance of such notes, Narragansett and Venture Corporation on a consolidated basis and individually would have 200 percent asset coverage, but any SBA-guaranteed debenture would not be considered senior securities requiring asset coverage; and (2) Venture Corporation could obtain financing through the issuance of SBA debentures on such basis and in such amount as the SBA might from time to time permit for SBIC's; Venture Corporation could borrow from Narragansett and vice-versa, and such borrowings would not be considered senior securities requiring asset coverage; and so long as 90 percent of Narragansett's assets were represented by its investments in Venture Corporation, Narragansett could guarantee any borrowing of Venture Corporation without the guarantee being considered a senior security requiring asset coverage.

Section 19(b) of the Act and Rule 19b–1 thereunder make it unlawful for any regulated investment company to distribute more than one long-term capital gain dividend in any taxable year. Narragansett has represented that it is contemplated that Venture Corporation will pay dividends and other distributions to it on a regular basis, which may include dividends constituting distributions of long-term capital gains. Accordingly, Narragansett has requested, pursuant to Section 6(c), an order exempting from the provisions of Section 19(b) and Rule 19b–1 distributions and dividends from Venture Corporation to Narragansett.

Once Narragansett and Venture Corporation elect to become regulated as business development companies, pursuant to Section 6(f) of the Act, they will no longer be subject to the provisions of Sections 1 through 53, except to the extent made applicable in Sections 54 through 64. Therefore, Narragansett will no longer need exemptive relief from Section 19(b) of the Act. However, pursuant to Section 60 of the Act Narragansett will continue to be subject to the provisions of Section 12, restricting the ownership of Narragansett of Venture Corporation. Therefore, Narragansett has requested that this exemptive relief continue following any election to be regulated as a business development company. Pursuant to Section 61 of the Act, business development companies are also subject to the provisions of Section 18, with certain modifications. Therefore, Narragansett has requested that such exemptive relief continue after an election by it and Venture Corporation to be regulated as business development companies. Section 17 would not be applicable to Narragansett and Venture Corporation upon election as business development companies. However, Section 57 provides a similar regulatory framework. As pertinent here, Section 57 (a) (1) through (3) prohibits any person controlling a business development company froom engaging in any of the transactions that are proibited under Section 17(a) (1) through (3), except to the extent permitted by rules under Section 17(a). In addition, Section 57(a)(4) prohibits any person controlling a business development company from engaging in any joint transaction with the business development company in contravention of rules under Section 17(d). Therefore, once Narragansett and Venture Corporation elect to become business development companies, they will need, and have so requested, exemptive relief pursuant to Section 57(c) to the same extent as that granted under Sections 17(b) and 17(d) and Rule 17d–1, thereunder. Section 57(c) provides that the Commission shall grant an exemption from that section if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the transaction is consistent with the company's policies; and (3) the proposed transaction is consistent with the general purposes of the Act.

Narragansett submits that under the terms and conditions proposed it is appropriate to grant the requested relief to permit the creation and operation of Venture Corporation as described in the application. Narragansett further submits that the granting of the requested exemptions permitting the proposed reorganization will benefit shareholders by permitting it to utilize the expertise and experience of its officers and directors and retain talented executives as well as enabling Narragansett to invest in an increased range of investment opportunities and to issue funds from a wider source.

Following the spin-off of SBIC activities to Venture Corporation described above, Narragansett states it will continue to be registered and operated as a regulated investment company (until election is made to be regulated as a business development company); however, it will no longer be an SBIC. Narragansett currently intends to retain approximately 40 to 60 percent of its assets (primarily in the form of marketable securities and other liquid assets) for the primary purpose of allowing Narragansett to make direct investments in businesses which are not eligible for investment by an SBIC. In addition, Narragansett has stated an intention to make venture capital investments through First Fund, the limited partnership described below.

Narragansett proposes to invest $225,000 in First Fund (which would have a minimum capitalization of $25.3 million) in exchange for the general partnership interest, which would entitle it to receive 15 percent of the cumulative profits and one percent of the cumulative losses. As the general partner Narragansett would be the sole manager of the partnership and, except for a decision regarding a change in the general partner, will make all decisions for the partnership.

As proposed, each of the Class B Limited Partners would invest $15,000 in First Fund in exchange for a one percent interest in the cumulative profits of the partnership with a liability equal to his pro rata share, based upon his capital contribution, of the cumulative losses not allocated to Narragansett. The five individuals who would be Class B Partners are the five individual applicants, each of whom is an officer or

director of Narragansett. The Class B Partners will provide the actual management services to the partnership, but will not receive any compensation for such services beyond their equity interest in the partnership and the remuneration that they receive directly from Narragansett or Venture Corporation.

The Class A Limited Partners will contribute an aggregate of at least $25 million in exchange for an 80 percent interest in the cumulative profits of the partnership and a liability for cumulative losses equal to their pro rata share based upon capital contributions of the losses not allocated to Narragansett. Narragansett represents that the Class A partnership interests will be offered to less than fifty sophisticated institutions and wealthy individuals in a manner that will not involve a public offering, and therefore, will be exempt from registration under the Securities Act of 1933. Neither the Class A nor Class B Partners will have any voting rights, with the exception that Narragansett may not assign its general partnership interest without the approval of the Class A Partners.

Under the proposed partnership arrangement, Applicants represent that First Fund will not be subject to regulation as an investment company nor will Narragansett be required to register as an investment adviser, but that First Fund will be operated so as to meet the definition of a business development company under the Investment Advisers Act of 1940. In addition, Narragansett has undertaken to file with the Commission and provide to shareholders in the appropriate format all information regarding First Fund required by the Act and the federal securities laws. Under the terms of the Partnership Agreement, Narragansett will not be liable to the partnership or any limited partner for any act or omission performed or omitted in good faith pursuant to its authority under the partnership agreement, but only for willful malfeasance or fraud. Therefore, under the terms of the partnership agreement, First Fund would indemnify Narragansett for any loss or damage incurred while furthering the interests of the partnership, except for liability arising from willful malfeasance or fraud. However, this right of indemnification is modified by a representation made by Applicants to limit indemnification to those situations that would be permitted if First Fund were registered under the Act.

According to the application, the investment activities of First Fund will be determined solely by Narragansett. The selection of investments for First Fund will be made by a majority of the directors of Narragansett who have no financial interest in Narragansett or First Fund (other than normal fees paid to directors or less than a 5 percent ownership interest) and by a majority of the disinterested directors of the board ("required disinterested majority"). The board will allocate investment opportunities among Narragansett, Venture Corporation and First Fund subject to the policy that any investment in an enterprise which qualifies as a "small business concern" will be limited to Narragansett and Venture Corporation, and will not be offered to First Fund regardless of whether Narragansett or Venture Corporaton elect to invest. In order to avoid conflicts of interest, Narragansett has represented that there will be no overlap of investments, whether contemporaneous or separated by time, between Narragansett and Venture Corporation on the one hand (including any company controlled by Narragansett) and First Fund on the other. In addition, neither Narragansett nor Venture Capital (nor any other company controlled by Narragansett) will purchase from, or sell to, First Fund any security of any other business concern.

Applicants contemplate that the source of funds for First Fund's investment would be the capital contributions of its partners, most of which will be contributed by the Class A Partners. However, if additional financing were needed, Applicants represent that First Fund might obtain funds through short-term loans from non-affiliated banks or advances from Narragansett, or other debt financing as to which there would be no recourse to Narragansett and which would not otherwise be an obligation of Narragansett.

Narragansett represents that it, First Fund and Venture Corporation will each bear the expenses directly attributable to its own operations. Expenses which cannot fairly be attributed directly to any particular entity will be allocated *pro rata* among the three entities based upon the total assets of each entity. (Narragansett will exclude its investments in Venture Corporation and First Fund for purposes of this computation). All determinations regarding the allocation of expenses shall be approved by a required disinterested majority of the board.

As proposed, the partnership interests have limited rights of transferability. Narragansett, as the general partner, may not transfer its interest without the consent of the Class A Partners. Class A Partners are entitled to transfer their interests, but only after (1) the interest is offered to the other Class A Partners and then Narragansett and (2) the transferee is approved by Narragansett. Class B Partners, in general, may not transfer their partnership interest without the consent of Narragansett. However, when an employee leaves Narragansett or is terminated, Narragansett has an option to repurchase the "unvested portion" of the partnership interest. In addition, if the employee leaves with the consent of Narragansett, he has the option of selling back his partnership interest.

Narragansett states that its officers and directors will continue to receive their normal compensation, which is determined at the discretion of the board of directors. Narragansett represents, in addition, that should First Fund be successfully organized, the compensation of Class B Partners who are employees of it or Venture Corporation will be determined by a required disinterested majority of Narragansett's board of directors who will take into account the understanding that the Class B Partner's participation in First Fund is a part of their overall compensation arrangement. No Class B Partner will receive any compensation directly from First Fund for services performed for First Fund.

Applicants state that additional compensation may be provided to Class B Partners through stock options. Subject to shareholder approval and receipt of an order of the Commission permitting such a plan, Narragansett's board of directors adopted the 1981 Incentive Stock Option Plan under which each of the Class B Partners would be granted an option to purchase 4,651 shares of Narragansett's common stock at a price of $21.50. Under the Plan, none of the stock options may be exercised until the earlier of September 23, 1982, or the date that Narragansett's board of directors shall have withdrawn the offering of limited partnership interests in First Fund. Upon Narragansett's and Venture Corporation's election to be regulated as business development companies, Sections 57(n) and 61(a)(3)(B) of the Act would permit the implementation of stock option and profit sharing plans. Narragansett represents that in the event that it or Venture Corporation should adopt any such plan, no Class B Partner who then holds any partnership interest in First Fund will be permitted to participate in that plan, except as specifically permitted by further order of the Commission.

Pursuant to Section 2(a)(3) of the Act each partner is an affiliated person of his fellow partners and the partnership. Therefore, each class of partners of First Fund may be deemed to be an affiliated person of First Fund and of the other partners of First Fund. As a result, the Class A Partners would be subject to the provisions of Section 17(a) and 17(d) of the Act prohibiting certain affiliated and joint transactions, solely on the basis of their investment in First Fund. Accordingly, absent exemptive relief, Class A Partners could not sell their partnership interests to Narragansett or an affiliate of Narragansett, nor could they make investments in an enterprise in which First Fund were investing or otherwise take action that could be deemed to be a joint transaction with Narragansett. Thus, Applicants have requested an order of the Commission, pursuant to Section 6(c), exempting each Class A Partner from being deemed an affiliated person of First Fund or any other partner of First Fund by reason of his ownership of a partnership interest, provided that each Class A Partner contributes less than 10 percent of the total capital contributions to the partnership.

Applicants have also sought exemptive relief from the provisions of Section 12(d)(1)(A) of the Act which makes it unlawful for any registered investment company, such as Narragansett, to purchase any security issued by any other investment company if immediately after such purchase the registered company would, *inter alia*, own more than three percent of the total outstanding voting stock of the acquired company. Since Narragansett will be the sole general partner of First Fund, entitling it to 15 percent of the partnership's profits, it appears that Narragansett's ownership of the general partner's interest would violate the provisions of Section 12(d)(1)(A). Although First Fund may be excluded by Section 3(c)(1) from being regulated as an investment company under the Act, that section provides specifically that such a company is deemed to be an investment company for purposes of Section 12(d)(1). Therefore, Narragansett is subject to the limitations of Section 12(d)(1)(A) when it purchases securities of First Fund. Thus, the application includes a request for exemptive relief, pursuant to Section 6(c), to permit Narragansett to acquire a general partnership interest in First Fund.

On the basis of its general partnership interest in First Fund, Narragansett also may be deemed to violate the provisions of Section 18(a) of the Act. As applicable to this situation, Section 18(a) prohibits Narragansett from issuing a senior security representing indebtedness unless immediately after issuance it would have an asset coverage of at least 300 percent. Section 48(a) of the Act prohibits a person from doing through or by means of another person what he cannot do directly. Thus, since Narragansett generally would, as the general partner, be liable for any debt of First Fund not satisfied out of the assets of First Fund, it may be deemed to be the issuer of First Fund's securities. Accordingly, the issuance of any senior debt security of First Fund would be prohibited unless Narragansett has sufficient assets to meet the 300 percent test. Applicants have requested an order of the Commission pursuant to Section 6(c) exempting Narragansett from the provisions of Section 18(a) regarding the issuance of debt securities by First Fund.

Applicants have also requested relief pursuant to Section 17(b) of the Act from the provisions of Section 17(a) to permit certain transactions contemplated under the Partnership Agreement. Under some circumstances, as prescribed by the terms of the Partnership Agreement, Narragansett may purchase some or all of the Class B Limited Partnership interests in First Fund held by the Class B Partners and First Fund may make loans or advances to Narragansett. Each type of transaction involves an affiliate of an investment company engaging in a prohibited transaction with an investment company. Moreover, Applicants have sought approval under Section 17(d) of the Act and Rule 17d–1 thereunder to permit certain joint transactions, including the joint investments of Narragansett and the Class B Partners in First Fund and the joint arrangements among Narragansett, First Fund and Venture Corporation and any other investment entity controlled by Narragansett with respect to the allocation of expenses under the method described in the application.

As noted above, following an election to be regulated as business development companies Narragansett and Venture Corporation would still be subject to the limitations placed by Section 12 on the acquisition of an interest in another investment company; the asset coverage requirements of Section 18(a), with certain modifications, would also apply and in general, the types of transactions that are prohibited by Sections 17(a) and 17(d) and Rule 17d–1 are treated similarly under Section 57. In addition, pursuant to Section 59 of the Act, the definitional provisions of Section 2(a)(3) from which Applicants seek exemption apply to business development companies.

Therefore, Applicants request an order of the Commission providing that upon electing to be regulated as business development companies they will be exempted from the provisions of Sections 2(a)(3), 12(d)(1)(A), 18(a) and 57(a), to the extent necessary to permit the proposed activities and that any joint transactions described in the application that fall within the purview of Section 57(a) are approved thereunder.

If the requested exemptive order is granted, Applicants submit that they will be able to achieve several goals. First, it will permit Narragansett to raise funds for investment in non-SBIC situations on a relatively low-cost basis and provide Narragansett a vehicle for investing in such activities. In addition, First Fund is designed to provide executive personnel of Narragansett with an additional source of compensation and thereby increase Narragansett's ability to retain an experienced management group. Further, Applicants submit that the requested order is appropriate in the public interest and consistent with the protection of investors and that the relative rights and obligations of Narragansett and the Limited Partners set forth in the partnership agreement are an equitable allocation of the benefits and risks between the partners in light of the economic contributions, efforts and intended objectives of the parties.

Notice is further given that any interested person may, not later than March 22, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on either or both of the applications accompanied by a statement as to the nature of his interest, the reasons 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 such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the applications herein 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. 82-5690 Filed 3-2-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22402; 70-6690]

Eastern Utilities Associates, et. al; Proposal To Issue and Sell Common Stock and Make Capital Contribution to Subsidiary; Exception From Competitive Bidding

February 25, 1982.

In the matter of Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107; Eastern Edison Co., 110 Mulberry Street, Brockton, Massachusetts 02403; Montaup Electric Co., P.O. Box 391, Fall River, Massachusetts 02722.

Eastern Utilities Associates ("EUA"), a registered holding company, and Eastern Edison Company ("Eastern Edison"), a public utility subsidiary of EUA, and Montaup Electric Company, a generating subsidiary of Eastern Edison, have filed an application-declaration, and amendments thereto, with this Commission under Sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 43, 45, 50(a)(3) and 50(a)(5) thereunder.

EUA proposes to issue and sell, on or before December 31, 1982, in two underwritten public offerings, at prices and on other terms to be determined, not in excess of 1,800,000 of its Common Shares, par value of $5 per share, to be newly issued ("Additional Shares"). The first of such offerings is planned for early April 1982 and will be for up to 900,000 shares. An offering of 900,000 shares would amount to about $10 million if sold at approximately the present market price. The timing and the exact number of shares to be sold in the second proposed offering will be fixed in the light of market conditions and other relevant factors.

The net proceeds of the sale of the additional shares will be utilized to make capital contributions to Eastern Edison. Eastern Edison, in turn, will apply the proceeds of such capital contributions either to make further capital contributions to or to purchase additional common stock of Montaup, which will use the proceeds to reduce short-term bank borrowings.

EUA requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) in connection with the proposed issuance and sale of stock to underwriters for sale to the public. EUA proposes, and is hereby authorized, forthwith, to select one or more investment banking firms which will act (or form a group of firms to act) as underwriters for the first of the two offerings, and to negotiate the price and other terms on which the shares to be sold in that offering will be issued to such underwriters for public sale. EUA reserves the right to make a similar request at an appropriate time with respect to the second of the two offerings. EUA states that the exception is justified because the company has had unsatisfactory experiences with common stock offerings at competitive bidding, substantial sales effort by underwriters is necessary to successfully market EUA's stock, and the small size of the offering deters competitive bids.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Any interested persons wishing to comment or request a hearing should submit their views in writing by March 22, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-5689 Filed 3-2-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0159]

Miami Capital Corp.; Issuance of a Small Business Investment Company License

On July 27, 1981, a notice was published in the **Federal Register** (46 FR 38444) stating that an application has been filed by Miami Capital Corporation, 106 West Ash Street, P.O. Box 106, Piqua, Ohio 45356, with the Small Business Administration (SBA)) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981) for a license as a small business investment company.

Interested parties were given until close of business August 5, 1981, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0159 on February 8, 1982, to Miami Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 25, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-5781 Filed 3-2-82; 8:45 am]

BILLING CODE 8025-01-M

National Advisory Council Meeting

The U.S. Small Business Administration National Advisory Council will hold a public meeting at 8:30 a.m., on April 29 and 30, 1982, at the Wellington Hotel—2505 Wisconsin Avenue, NW., Washington, D.C., to discuss such business as may be presented by members, the staff of the Small Business Administration, or others attending.

For further information, write or call Edna E. Powers, Director, Office of Advisory Councils, U.S. Small Business Administration, 1441 L Street, NW., Room 920-D, Washington, D.C. (202) 653-6892.

Dated: February 25, 1982.

Edna E. Powers,

Director, Office of Advisory Councils.

[FR Doc. 82-5783 Filed 3-2-82; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 10/10-0178]

Seattle Trust Capital Corp.; Application for a License

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)), under the name of Seattle Trust Capital Corporation, 804 Second Avenue, Seattle, Washington 98104, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and sole shareholder of the Applicant are as follows:

William P. Riley, 9015 S.E. 44th, Mercer Island, WA 98040, Chairman of the Board, Director

Alan Bradley, 3930 Crystal Springs Drive, Bainbridge Island, WA 98110, President, Manager, Director

William J. Roller, 4715 S.E. 139th, Bellevue, WA 98006, Secretary, Director

Joseph C. Baillargeon, 179 Lake Washington, Blvd. East, Seattle, Washington 98112, Director

Leroy L. Lewis, Jr., 4554 East Mercer Way, Mercer Island, WA 98040, Director

Seattle Trust & Savings Bank, 804 Second Avenue, Seattle, Washington 98104, Sole Shareholder

The bank has approximately 1,000 beneficial owners of its equity securities, none of whom owns as much as 10 percent of such securities.

There will be one class of stock authorized: 2,000 shares of common stock. Initially only 1,000 shares will be issued with a resultant private capital of $1,005,000. Applicant proposes to conduct its operations principally in the State of Washington.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than March 18, 1982, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Seattle, Washington.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 25, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-5782 Filed 3-2-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/495]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on March 18, 1982, of the Working Group on Treatment of Investment and Special Investment Problems of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 10:00 a.m. to 12:00 noon. The meeting will be held in Room 1105 of the State Department, 2201 C Street, NW., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to review and discuss the status of U.S. investment initiatives in the OECD and GATT including performance requirements and other issues, problems relating to U.S. investment in Canada and France and reciprocity in investment.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632-2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: February 18, 1982.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 82-5751 Filed 3-2-82; 8:45 am]

BILLING CODE 4710-07-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 42
Wednesday, March 3, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Thursday, March 4, 1982

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 4, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., Subject

Common Carrier—1—*Title:* World Press Freedom Committee's petition for notice of inquiry. *Summary:* The Commission examines the need for a notice of inquiry to determine whether the rates charged by the international record carriers to press entities curtail the free flow of news.

Cable Television—1—Petitions for Reconsideration of *Teleprompter Corporation, et al.*, FCC 81–351, 87 FCC 2d 531 (1981). On November 7, 1980, Teleprompter Corporation filed applications for consent to the transfer of control from its existing stockholders to Westinghouse Broadcasting Company, Inc., or to a subsidiary thereof (CAR–15535–09, CAR–15634–09, CAR–15637–09). In the above-captioned case, the Commission granted its consent to the applications. Petitions for reconsideration have been filed by several groups, which are opposed by Westinghouse.

Assignment and Transfer—1—*Title:* (1) Application to assign the license for station KLBS–FM, Los Banos, California from KLBS–FM, Inc. to Sunshine Valley Broadcasting Company, Inc. (2) Petition to Deny the application filed by Cal Central Broadcasting, Inc. *Summary:* The Commission will consider the petitioner's allegations concerning activities undertaken by Sunshine Valley prior to Commission action on its application and the alleged *de facto* reallocation of KLBS–FM by Sunshine Valley to a nearby larger community.

Broadcast—1—*Title:* Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Montgomery, Selma and Tuscaloosa, Alabama, and Columbus, Georgia). *Subject:* Application for Review filed by WCOV Inc. seeking Commission review of the Broadcast Bureau's denial of a WCOV request for the institution of a rule making proceeding to reassign VHF television Channel 8 from Selma, Alabama, to Tuscaloosa, Alabama, and to reserve it for noncommercial educational use.

Broadcast—2—*Title: Memorandum and Opinion and Order* in the Matter of amendment of Sections 73.35 and 73.240 of the Commission's Rules relating to Multiple Ownership of AM and FM stations. *Subject:* The Commission will consider a petition for rule making filed by the National Association for the Advancement of Colored People and others seeking to amend the above noted Multiple Ownership Rules.

Broadcast—3—*Title:* Report and Order in the Matter of Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM, and TV Stations. *Subject:* Report and Order considers and resolves issues raised in the Notice of Proposed Rule Making in this proceeding (BC Docket 79–233) and addresses a petition for termination of interim policy.

Broadcast—4—*Title:* In the matter of AM Stereophonic Broadcasting. *Subject:* Report and Order authorizes stereophonic broadcasting for AM broadcast licensees terminating BC Docket 21213.

Broadcast—5—*Title:* Report and Order in the Matter of an Inquiry into the Future Role of Television Translators and Low Power Television Broadcasting in the National Telecommunications System (BC Docket No. 78–253). *Summary:* On September 9, 1980, the Commission adopted a Notice of Proposed Rulemaking proposing to permit program origination and subscription service via TV translators. Stations operating pursuant to these rule changes, and related regulations would comprise the low power television service. This Report and Order discusses and resolves the issues in the proceeding.

Complaints and Compliance—1—*Title:* Application for Review of the Broadcast Bureau's ruling of May 28, 1981, filed by Ms. Phylis Cowan, Mr. William DiBari and Mr. William C. Still on June 23, 1981. *Summary:* The Commission will consider whether to affirm the Bureau's May 28, 1981, ruling. The Bureau denied a candidate discrimination allegation but admonished the licensee for allowing its station manager to conduct interviews and municipal candidates without disclosing his involvement as campaign treasurer for one of the candidates.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: February 26, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–322–82 Filed 3–1–82; 3:18 pm]

BILLING CODE 6712–01–M

2

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold A Closed Commission Meeting, Thursday, March 4, 1982

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, March 4, 1982, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda Item No., and Subject

Hearing—1—Exceptions to the Initial Decision in the Simon Geller, WVCA–FM Comparative renewal proceeding, Gloucester, Massachusetts (Docket Nos. 21104 and 21105).

This item is closed to the public because it concerns adjudicatory matters (See 47 CFR 0.603 (j)).

The following persons are expected to attend:

Commissioners and their Assistants
General Counsel and members of his staff
Managing Director and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission December 30, 1981. Commissioners Fowler, Chairman; Quello, Washburn, Fogarty, Jones, Dawson and Rivera voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: February 26, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-323-82 Filed 3-1-82; 3:18 pm]

BILLING CODE 6712-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

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, March 8, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

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. 45,095-NR—San Francisco National Bank, San Francisco, California
Case No. 45,111-L—Franklin National Bank, New York, New York
Memorandum and Resolution re: Bank of Lake Helen, Lake Helen, Florida

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Powell, Goldstein, Frazer & Murphy, Atlanta, Georgia, in connection with the liquidation of The Hamilton Bank and Trust Company, Atlanta, Georgia.

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 Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Sale of Residential Mortgage Loans to Federal National Mortgage Association (FNMA).

Report of the Director, Office of Corporate Audits:

Audit Report re: Travel Voucher Claims, dated September 10, 1981.
Audit Report re: Investigation Involving a Liquidation Site, dated November 17, 1981.
Audit Report re: Park Hill Estates, dated December 4, 1981.

Discussion Agenda:

No matters scheduled.

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: March 1, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-317-82 Filed 3-1-82; 12:46 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

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, March 8, 1982, 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), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Requests for relief from adjustment for violations of Regulation Z:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

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).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

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: March 1, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-318 Filed 3-1-82; 12:46 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Tuesday, March 9, 1982.

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 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: March 1, 1982.

William W. Wiles,

Secretary of the Board.

[S-327 Filed 3-1-82; 3:08 pm]

BILLING CODE 6210-01-M

6

NATIONAL MUSEUM SERVICES BOARD (NMSB)

DATE AND TIME: March 5, 1982, 9 a.m. to 2:45 p.m.

PLACE: Fourth Level Seminar Room, East Building, National Gallery of Art, 4th Street at Constitution Avenue, NW., Washington, D.C. 20001.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Introduction: George Seybolt, Chairman 9:00 to 9:20 a.m.
2. Minutes 9:20 to 9:30 a.m.
3. Director's Report: Mrs. Lilla Tower 9:30 to 11:30 a.m.

—Budget
—Administration
—Transfer of IMS to National Foundation on the Arts and Humanities
—Grants
—Congressional Hearings schedule

4. Public Information Report: Roberta Faul 11:30 to 11:45 a.m.
5. Lunch 11:45 to 1:00 p.m.
6. Program Report: Mary Kahn 1:00 to 1:30 p.m.
7. National Museum Services Board Business: George Seybolt 1:30 to 2:45 p.m.

—Reprogramming of Special Project funds
—Future Board meeting dates

8. Adjournment 2:45 p.m.

CONTACT PERSON FOR MORE INFORMATION: Kate Merlino, Executive Assistant to the National Museum Services Board Telephone: 202/426–6577.

Dated: February 24, 1982.

Kate Merlino,

Executive Assistant to the National Museum Services Board.

[S–319 Filed 3–1–82; 12:58 pm]

BILLING CODE 4000–01–M

7

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10 a.m., Monday, April 5, 1982.

PLACE: Board Room, 712 Jackson Place N.W., Washington, D.C. 20006.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Call meeting to order. Check quorum.
2. Adoption of proposed agenda.
3. Approval of minutes of September 14, 1981 meeting.
4. Report of Chairman.
5. Report of the President.
6. Report of Executive Secretary.
7. Discussion of Awards Ceremony.
8. New Business.
9. Set date for next meeting in September, 1982.

Portions closed to the public:

1. Selection of Truman Scholars for 1982–83.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary; telephone, 202–395–4831.

Malcolm C. McCormack,

Executive Secretary.

[S–320–82 Filed 3–1–82; 2:45 pm]

BILLING CODE 6115–02–M

federal register

Wednesday
March 3, 1982

Part II

Department of Education

Special Services for Disadvantaged Students Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 646

Special Services for Disadvantaged Students Program

AGENCY: Education Department.

ACTION: Final Regulations.

SUMMARY: The Secretary of Education is issuing final regulations for the Special Services Programs. These regulations reflect the statutory changes contained in the Education Amendments of 1980. They also clarify and simplify requirements governing the program.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the Federal Register. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a future date the Secretary will publish a notice in the Federal Register stating the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT: Mary Kathleen Smith, Office of Postsecondary Education, Department of Education, (Room 3514, ROB–3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2511.

SUPPLEMENTARY INFORMATION: On May 24, 1977, the Commissioner of Education published in the Federal Register the final regulations for the Special Services Program. Those regulations governed the grant awards made during fiscal year 1981. The Education Amendments of 1980 changed the Special Services Program in several respects, and proposed regulations that reflected these changes were published as a notice of proposed rulemaking in the Federal Register on December 31, 1980 (45 FR 86900–86905). These final regulations will govern grant awards made in fiscal year 1982 and thereafter.

These regulations incorporate by reference 34 CFR Parts 75 and 77 of the Education Department General Administrative Regulations (EDGAR); therefore, the regulations do not repeat certain types of information and requirements found in EDGAR. However, the general selection criteria found in EDGAR (34 CFR 75.202 through 75.206) have been repeated in these regulations for the convenience of the applicant (§ 646.31 (a) through (e)).

To avoid any implication of overregulation, the Secretary has deleted from these final regulations all of the nonrequired project activities that had been included in §§ 646.10 and 646.11 of the notice of proposed rulemaking.

However, as an aid to potential applicants, the following is a list of *examples* of activities the Secretary may consider for funding for this program in addition to the optional statutory activities listed in § 646.10(a). Projects may—

(1) Develop and use procedures to identify individuals who are eligible to participate;

(2) Develop and use procedures to select participants from among eligible individuals;

(3) Determine for each participant academic and other educational deficiencies that must be corrected to enable that individual to graduate;

(4) Develop for each participant an individualized plan of program support to improve the participant's skills;

(5) Document the effects of project activities on a student's performance and progress while he or she is participating in the project; and

(6) Refer participants, on an individual basis, to health, employment, housing and legal agencies and other resources to resolve noneducational problems related to academic success.

In the notice of proposed rulemaking, the Secretary invited comments on the proposed regulations. A summary of the substantive comments received and the Secretary's responses to those comments is contained in the appendix to these regulations.

The Secretary has made a number of other changes in these regulations in an effort to deregulate and to reduce burdens on applicants, participants, and grantees. Each of these changes is also described in the appendix together with an explanation for the change.

In addition, some technical and editorial revisions have been made in the language of the regulations.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

Invitation to Comment

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Citation of Legal Authority

A citation of statutory or other authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.042, Special Services for Disadvantaged Students Program)

Dated: February 25, 1982.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 646 of Title 34 of the Code of Federal Regulations to read as follows:

PART 646—SPECIAL SERVICES FOR DISADVANTAGED STUDENTS PROGRAM

Subpart A—General

Sec.

646.1 Special services for disadvantaged students program.
646.2 Eligible applicants.
646.3 Eligible project participants: General.
646.4 Eligible project participants: Selection requirements.
646.5 Regulations that apply to the Special Services Program.
646.6 Definitions that apply to the Special Services Program.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

646.10 Kinds of projects the Secretary assists under the Special Services Program.

Subpart C—How Does One Apply for a Grant?

646.20 Assurances.

Subpart D—How Does the Secretary Make a Grant?

646.30 How the secretary evaluates an application for a new award.
646.31 Selection criteria the Secretary uses.
646.32 Past performance [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

646.40 Allowable costs.
646.41 Nonallowable costs.
646.42 Other requirements of a grantee.

Authority: Secs. 417A and 417D of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d; 1070d–1b), unless otherwise noted.

Subpart A—General

§ 646.1 Special services for disadvantaged students program.

The special services for disadvantaged students program—referred to in these regulations as the Special Services program—provides

Federal financial assistance to projects designed to assist qualified postsecondary students through services such as those described in § 646.10.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.2 Eligible applicants.

Institutions of higher education are eligible to apply for grants to carry out Special Services projects.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.3 Eligible project participants: General.

An individual is eligible to participate in a Special Services project if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is enrolled or accepted for enrollment in the next enrollment period at the grantee institution;

(c) Has a need for academic support in order to successfully pursue a postsecondary educational program; and

(d) Is, at the time of initial selection—

(1) A low-income individual;

(2) A first-generation college student; or

(3) Physically handicapped.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.4 Eligible project participants: Selection requirements.

(a) At least two-thirds of the eligible individuals an applicant proposes to serve under a Special Services project must be—

(1) Physically handicapped; or

(2) Low-income individuals who are first-generation college students.

(b) The remaining individuals the applicant proposes to serve under the Special Services project must be—

(1) Physically handicapped;

(2) Low-income individuals; or

(3) First-generation college students.

(c) A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(d)(1) A "first-generation college student" means a person neither of whose parents received a bachelor's degree.

(2) With respect to individuals 18 years of age and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student.

(3) With respect to individuals over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student.

(e) "Physically handicapped," with reference to an individual, means a person who, because of a physical disability, needs specifically designed instructional materials or programs, modified physical facilities, or related services in order to participate fully in the experience and opportunities offered by postsecondary educational institutions.

(20 U.S.C. 1070d, 1070d–1b; House Report 96–520, 96 Cong. 1st Sess. p. 26 (1979) and Senate Report 96–733, 96 Cong. 2nd Sess. p. 26 (1980))

§ 646.5 Regulations that apply to the Special Services program.

The following requirements apply to the Special Services program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 646.

(20 U.S.C. 1070d, 1070d–1b and 3474)

§ 646.6 Definitions that apply to the special services program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant	Grantee
Application	Nonprofit
Award	Private
Budget	Project
EDGAR	Public
Equipment	Secretary
Facilities	State
Fiscal year	Supplies
Grant	

(20 U.S.C. 1070d, 1070d–1b, 1221e–3)

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended. (20 U.S.C. 1001 et seq.)

"Institution of higher education" means an educational institution as defined in sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a), 1088)

"Limited proficiency in English," with reference to an individual, means an individual—

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied upon for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in the English language; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which the language of instruction is English because he or she cannot adequately understand, speak, read or write the English language.

(20 U.S.C. 3223(a)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 646.10 Kinds of projects the Secretary assists under the special services program.

(a) The Secretary gives consideration to an application for a Special Services project that proposes to provide services such as—

(1) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

(2) Personal counseling;

(3) Academic advice and assistance in course selection;

(4) Tutorial services;

(5) Exposure to cultural events and academic programs not usually available to disadvantaged students;

(6) Activities designed to acquaint students participating in the project with the range of career options available to them;

(7) Activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs; and

(8) Programs and activities as described in paragraphs (a) (1) through (7) of this section which are specially designed for students of limited proficiency in English.

(b) The Secretary will consider an application that proposes to carry out activities in addition to the ones listed in paragraph (a) of this section if the

activities support the purposes of the Special Services program.

(20 U.S.C. 1070d, 1070d–1b)

Subpart C—How Does One Apply for a Grant?

§ 646.20 Assurances.

An applicant shall submit as part of its application an assurance that each participant enrolled in the project will receive sufficient financial assistance to meet the student's full financial need.

(20 U.S.C. 1070d, 1070d–1b)

Subpart D—How Does the Secretary Make a Grant?

§ 646.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 646.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted a Special Services project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 646.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the applicant institution as compared to the need in other applicant institutions.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.31 Selection criteria the Secretary uses.

The Secretary uses the criteria in paragraphs (a) through (h) of this section to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups; and

(B) Women.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project at the applicant institution.* (25 points)

(1) The Secretary reviews each application for information that shows that a need for a Special Services project exists at the institution applying for a grant.

(2) The Secretary looks for information that shows—

(i) (9 points) The number and percentage of students enrolled or accepted for enrollment at the institution who meet the eligibility requirements of § 646.3;

(ii) (8 points) The academic and other problems that eligible students encounter at the institution; and

(iii) (8 points) A comparison between students who would be eligible for Special Services and the total enrollment at the institution on the following factors:

(A) Attrition rates.

(B) Grade point averages.

(C) Graduate and professional school enrollment rates.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success of the proposed project.

(2) To determine the likelihood of success, the Secretary looks for information that shows the comprehensiveness of the applicant's plan for—

(i) (4 points) Identifying students eligible to be served by the project and selecting participants from those eligible;

(ii) (4 points) Conducting an individual needs assessment of supportive services for each participant selected;

(iii) (10 points) Providing—through the project, the institution, or other sources—those activities listed in § 646.10(a) that the applicant chooses to propose, and any other activities that the applicant proposes that relate to the goal of the program; and

(iv) (2 points) Locating the project in an area that is accessible to participants, especially handicapped participants.

(h) *Institutional commitment.* (15 points)

(1) The Secretary reviews each application for information that shows the commitment of the applicant to the Special Services project.

(2) The Secretary looks for information that shows—

(i) (3 points) The degree to which the administrative and academic policies, grading systems, retention policies, and probation procedures indicate institutional commitment to the participants' chances for graduating from the institution;

(ii) (5 points) (A) The extent to which the institution has made available, in the previous three years, educational opportunities for low-income students, first-generation college students, and physically handicapped students; and

(B) The efforts of the institution to retain these students and to improve their chances of graduating from the institution;

(iii) (3 points) The extent to which the project director will contribute to administrative and academic policies that affect participants' chances of completing an educational program at the institution;

(iv) (2 points) The extent to which the applicant proposes to inform the institutional community of the goals and objectives of the Special Services project; and

(v) (2 points) The extent to which the applicant will make available to the project institutional resources, including the commitment of time from institutional faculty and staff.

(20 U.S.C. 1070d, 1070d–1b and 3474)

§ 646.32 Past performance. [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 646.40 Allowable costs.

Allowable project costs, not specifically covered by 34 CFR Part 74, may include the following costs reasonably related to carrying out a Special Services project:

(a) Cost of remedial and special classes if—

(1) These classes are limited to project participants; and

(2) The institution does not provide identical instruction—

(i) As part of its program of instruction; or

(ii) Through another Federal program or a State, local, or privately funded program.

(b) Courses in English language instruction for students of limited proficiency in English if these classes are—

(1) Limited to project participants; and

(2) Not otherwise available.

(c) In-service training of project staff.

(d) Activities of an academic or cultural nature, such as field trips, special lectures, and symposiums, that have as their purpose the improvement of the participants' academic progress and personal development at the institution.

(e) Transportation of participants to and from approved educational and cultural activities sponsored by the project.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Costs involved in the recruiting of students for enrollment at the institution.

(b) Purchase of major equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is required to meet the purposes of the project and is less expensive than renting.

(c) Payment of tuition, stipends, or any other form of student financial support to staff or participants.

(d) Research not directly related to the evaluation or improvement of the project.

(e) Construction, renovation, or remodeling of any facilities.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.42 Other requirements of a grantee.

Each grantee shall—

(a) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511; and

(b) Determine the eligibility of each participant at the time that the individual is selected to participate in the project. The grantee does not have to revalidate a participant's eligibility after this time.

(20 U.S.C. 1070d, 1070d–1b)

Note.—This appendix is included for information purposes only. It is not to be published in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses

In the notice of proposed rulemaking published in the **Federal Register** on December 31, 1980 (45 FR 86900–86905), the Secretary invited comments on the proposed regulations.

The following includes a summary of the substantive public comments received and the Secretary's responses to those comments including any changes. The comments and responses and any changes are organized in the same order as the referenced sections are organized in these final regulations.

Section numbers and section headings in parentheses are the numbers and headings that appeared in the notice of proposed rulemaking but that have been renumbered, retitled, or deleted in these final regulations.

Section 646.1 The Special Services for Disadvantaged Students Program.

Comment. One commenter noted that "supportive services" was omitted from the program purpose in § 646.1.

Response. A change has been made. Section 646.1 has been revised to read:—provides Federal financial assistance to projects designed to assist qualified postsecondary students through services such as those described in § 646.10.

Section 646.2 Eligible applicants.

Comment. One commenter questioned the statutory authority for the inclusion of "combinations of institutions of higher education" as an eligible applicant in § 646.2(b) of the proposed regulations.

Response. Section 646.2(b) of the NPRM has been deleted from these final regulations.

Section 646.3 Eligible project participants: General.

Comment. Two commenter suggested that the phrase "excluding the summer session" in § 646.3(b) be deleted because the wording is vague.

Response. A change has been made. The Secretary has deleted the phrase. The section now reads: "Is enrolled or accepted for enrollment for the next enrollment period at the grantee institution."

Comment. Two commenters suggested "cultural deprivation" and "educationally disadvantaged" should be retained—from the previous regulations—as eligibility criteria under § 646.3(d) for participation in Special Services projects.

Response. No change has been made. The Education Amendments of 1980 changed participant eligibility requirements to low-income individuals, first-generation college students, and the physically handicapped.

Comment. Eight Commenters suggested that in § 646.3(d)(3) the word "physically" should be deleted and projects allowed to serve handicapped students as defined in section 504 of the Vocational Rehabilitation Act of 1973. Three commenters also suggested that "learning disabilities" be added to the definition of physically handicapped.

Response. A change has been made. However, the suggestions of the commenters have not been taken. The law requires Special Services projects to

provide services to the "physically handicapped" as defined in § 646.4(e). The Secretary has deleted the list of physical disabilities.

Section 646.4 Eligible project participants: Selection requirements.

Comment. Ten commenters suggested that the participant selection criteria in § 646.4 (a) and (b) were too restrictive. Three commenters suggested that participants be selected as follows: Two-thirds low-income individuals; one-third low-income or first-generation or physically handicapped. Several commenters said that participant selection should be based on the five current selection criteria: deprived educational, cultural, or economic background; physical handicap, and limited English-speaking ability.

Response. The law (Section 417D(c)(1) of the Higher Education Act of 1965 (HEA)) requires that two-thirds of the participants be physically handicapped persons or be low-income individuals who are first-generation college students. The remaining one-third may be low-income individuals, first-generation college students, or physically handicapped persons. There is no statutory authority to permit continued use of the current selection criteria.

Comment. Two commenters questioned how a project is to prove and document the educational status of the participant's parents (§ 646.4(d)).

Response. A grantee may satisfy this requirement if it obtains a written statement from the applicant or the applicant's parents attesting to that fact. This can be done on a participant eligibility form.

Comment. Six commenters suggested that § 646.4(b) of the proposed regulations should be dropped because that provision imposes a limitation on projects and contradicts the intent of the Congress. Many commenters suggested that executive orders on affirmative action already exist to help attain the goals suggested in that paragraph of the regulations.

Response. The Secretary has adopted the suggestion, and the paragraph has been deleted.

Other changes. Paragraph (a)(5)(ii) of the proposed regulations has been deleted. Although the list of physical disabilities was not all inclusive, it gave the appearance of being restrictive.

Section 646.6 Definitions that apply to the Special Services Program.

Comment. Two commenters noted that in § 646.6(b) the definition for "limited proficiency in English" used the term "* * * from a home * * *" rather than "* * * from an environment * * *" as stated in the law. The commenters suggested that this change of wording made the regulations more restrictive.

Response. A change has been made. The Secretary has revised the definition.

Section 646.10 Kinds of projects the Secretary assists under the Special Services Program.

Comment. A number of commenters suggested that in § 646.10(a) "shall" should be dropped and replaced with "may" as is used in the statute.

Response. A change has been made. The Secretary has made the services and activities in this section allowable, rather than required. The Secretary has reorganized this section. It now includes only those activities specified by the legislation, but notes that the Secretary does not preclude additional activities from consideration for funding. Examples of those types of activities appear in the preamble to these regulations.

Comment. One commenter stated that in § 646.10(f)(2) (of the proposed regulations) the language "* * * for a period of time sufficient for them to adjust" is vague. The commenter recommended retaining the current language, which states that students in Special Services projects should be retained two years at a four-year institution and one year at a two-year institution.

Response. A change has been made. The Secretary has deleted § 646.10(f)(2) from these final regulations to decrease the burden on the grantees.

Other changes. The requirement listed in the proposed regulations as § 646.10(f)(1) has been moved to a new § 646.20 (Assurances).

Requirements listed in the proposed regulations as § 646.10(f) (3), (6), and (8) relating to facilities, resources, and duplication of services have been deleted from these regulations by the Secretary to decrease the burden on the grantees. In addition, the requirement for a full-time project director listed in the proposed regulations as § 646.10(f)(5) has been moved to a new § 646.42 (Other requirements of a grantee) and is listed as paragraph (a).

Paragraph (d) of § 646.10 of the proposed regulations has been deleted because the requirement duplicated that of § 646.31(a)(2)(iii).

The requirement listed in the proposed regulations as § 646.10(f)(4) relating to the location of the project has been moved to § 646.31 (Selection criteria) and is listed as paragraph (g)(2)(iv).

Requirements listed in the proposed regulations as § 646.10(f) (6) and (7) relating to institutional commitment have been deleted from these final regulations because they were duplicative of the requirements in § 646.31(h)(2).

Requirements listed in the proposed regulations as § 646.10(c), (d), and (e) relating to prescribed project activities and project coordination have been deleted from these regulations to decrease the burden on grantees.

Section 646.11 (Educational component for students with limited proficiency in English.)

Comment. Two commenters suggested that § 641.11(b) of the proposed regulations be reworded to include a bilingual component in personal, career, and academic counseling; bilingual remedial instruction in reading, writing, and mathematics; and other bilingual supportive services necessary to meet the educational needs of participating students.

Response. A change has been made. The Secretary has deleted this section because the requirement is now covered in § 646.10(a)(8). It should be noted, however, that the Special Services Program is not a bilingual program. Rather, the provision of programs and activities "specially designed for students of limited English proficiency" is permitted under the statute. Thus, the Secretary recommends that each project take into account—if applicable—all the needs of eligible students with limited proficiency in English and provide a support program that meets those needs.

Comment. One commenter questioned the statutory authority for the provision in § 646.11(b)(3) of the proposed regulations which read: "If the project cannot serve all students eligible for the component, it should select for participation students who have the greatest difficulty understanding, speaking, reading, and writing English."

Response. A change has been made. The Secretary has deleted the paragraph in order to give institutions greater discretion in selecting participants.

Section 646.20 Assurances. (How to apply for funds.)

Comment. A number of commenters suggested that § 646.20 (§ 646.10(f)(1) of the proposed regulations) should be revised to read "assure that each participant enrolled in the project will receive help in applying for sufficient financial assistance to meet the student's full financial need". Several commenters stated that financial aid directors may not offer special consideration to students in a Special Services project because their

institutions' own regulations will not allow them to do so.

Response. No change has been made. Section 646.20 is a statutory requirement (417D(d) of the Higher Education Act, 20 U.S.C. 1070d–1b(d)).

Changes. Section 641.20 of the NPRM (How to apply for funds) has been omitted from these regulations because it duplicates § 646.5(a) regarding the applicability of EDGAR. A new § 646.20 (Assurances) has been added to the final regulations. Paragraph 464.10(f)(1) in the proposed regulations has been moved to this section.

Section 646.30 How the Secretary evaluates an application.

Comment. Two commenters questioned why consideration for experience was limited to the previous three years in § 646.30(b).

Response. The Secretary has determined that a three-year period is most feasible administratively: Project records are available on location and grant records are readily available in the Department. In addition, applicants that have had poor prior experience will not be penalized indefinitely.

Comment. Several commenters questioned why, in § 646.30(b), consideration was given only to adding points for experience. The commenters suggested that poor experience should receive a negative rating.

Response. Paragraph (b) has been revised. The sentence concerning the awarding of up to 30 points for experience has been deleted. Point assignment for past performance appeared in a separate notice of proposed rulemaking for § 646.32.

Section 646.31 Selection criteria the Secretary uses.

Comment. Several commenters suggested that clarification was needed in § 646.31(a)(2)(v) as to how an applicant will provide equal access to and treatment of eligible participants who are members of groups that have been traditionally underrepresented.

Response. No change has been made. It is the responsibility of the applicant to describe how it plans to provide equal access and treatment through its practices and policies.

Other changes. The Secretary has assigned points to each separate criterion in paragraphs (f), (g), and (h).

Paragraph (g) of this section has been retitled "Likelihood of success" to reflect more accurately the criteria being evaluated. The Secretary has deleted paragraphs (a)(2)(iii)(b) and (9)(2)(iv) of the proposed regulations from these final regulations because they duplicate the criteria in paragraph (h). The Secretary has transferred the criterion in paragraph (g)(2)(iv) from § 646.10(f)(4) of the proposed regulations.

Section 646.32 Past performance. (Prior experience.)

Changes. The Secretary has deleted the provisions of this section as it appeared in the NPRM. Instead the Secretary is publishing the section as a separate notice of proposed rulemaking in the **Federal Register**. The reference to § 646.32 of the NPRM has also been deleted because the Secretary has decided not to develop performance standards.

Section 646.40 Allowable costs.

Comment. A number of commenters expressed opposition to § 646.40(a) and suggested that this provision be revised. The commenters argued that if institutions have to share in the cost of remedial classes, the institutions will charge tuition for these classes; and if tuition is charged, the students will not elect to take the special classes.

Response. A change has been made. Section 646.40(a) has been revised to read: "(a) The cost of remedial and special classes if— (1) These classes are limited to project participants; and (2) The institution does not provide identical instruction— (i) As part of its program of instruction; or (ii) Through another Federal program or a State, local, or privately funded program."

Comment. Several commenters expressed concern over the requirement in § 646.40(c) that all in-service training needed prior approval by the Secretary. The commenters stated that once a project has an approved grant, there should be no need for further approval. In addition, they contended, it is impractical to expect the Secretary to be able to respond in a timely manner to requests made by project directors during the project year.

Response. A change has been made. The phrase "if approved by the Secretary" has been deleted. As long as in-service training activities conform to approved budgetary and programmatic guidelines, there will be no need for additional approval.

Section 646.42 Other requirements of a grantee. (Performance standards.)

Changes. Section 646.42 of the NPRM was titled "performance standards." As noted in the explanation for the change in § 646.32, the Secretary has dropped plans to develop performance standards. This section is now titled "Other requirements of a grantee." The requirement previously listed in the proposed regulations as § 646.10(f)(5) has been moved to this section as paragraph (a). The Secretary has added a new paragraph (b). The Secretary has determined that these requirements are more logically post-award requirements of a grantee and, therefore, belong in this subpart. (Formerly § 646.50) *(Recordkeeping.)*

Changes. To decrease the burden on grantees and to avoid the appearance of prescribing specific recordkeeping items through regulations, the Secretary has deleted this section. Grantees need only to conform to the EDGAR requirements. (See 34 CFR 75.730–75.734.)

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March 3, 1982

Part III

Department of Education

Upward Bound Program

DEPARTMENT OF EDUCATION

34 CFR Part 645

Upward Bound Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education is issuing final regulations for the Upward Bound Program. These regulations reflect the statutory changes contained in the Education Amendments of 1980. They also clarify and simplify requirements governing the program.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a future date the Secretary will publish a notice in the **Federal Register** stating the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT: Mary Kathleen Smith, Office of Postsecondary Education, Department of Education, (Room 3514, ROB–3), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245–2511.

SUPPLEMENTARY INFORMATION: On May 24, 1977, the Commissioner of Education published in the **Federal Register** the final regulations for the Upward Bound Program. Those regulations governed the grant awards made during fiscal year 1981. The Education Amendments of 1980 changed the Upward Bound Program in several respects, and proposed regulations that reflected these changes were published as a notice of proposed rulemaking in the **Federal Register** on December 31, 1980 (45 FR 86914–86920). These final regulations will govern grant awards made in fiscal year 1982 and thereafter.

These regulations incorporate by reference 34 CFR Parts 75 and 77 of the Education Department General Administrative Regulations (EDGAR); therefore, the regulations do not repeat certain types of information and requirements found in EDGAR. However, the general selection criteria found in EDGAR (34 CFR 75.202 through 75.206) have been repeated in these regulations for the convenience of the applicant (§ 645.31 (a) through (e)).

To avoid any implication of overregulation, the Secretary has deleted from these final regulations all of the non-required project activities that had been included in §§ 645.10 through 645.14 of the notice of proposed rulemaking.

However, as an aid to potential applicants, the following is a list of *examples* of activities the Secretary may consider for funding under this program—in addition to the required and statutorily stated optional activities in §§ 645.10 through 645.13. Projects may—

(1) Publicize in the target area, particularly in the target schools, the opportunity to participate in the project, informing interested students, parents, and veterans of the criteria for eligibility and selection;

(2) Develop and use procedures to identify, through a variety of sources, individuals who are eligible to participate;

(3) Develop and use procedures to select participants from among eligible individuals;

(4) Diagnose specific areas of academic strengths and weaknesses in each participant through the use of standardized tests or other recognized procedures;

(5) Develop an individualized plan of program support to improve each participant's skills;

(6) Identify and use institutional and community resources to diagnose in participants health problems that are impeding learning and, to the extent possible, use these resources to alleviate those problems;

(7)(i) Establish a relationship with service agencies in the target area so that the grantee is aware of the various services available; and

(ii) Refer participants to these service agencies as appropriate;

(8) Provide instruction in the use of the English language, either through the project or through other programs available in the area;

(9) Assist in preparing admission, financial aid, and other forms necessary to attend a postsecondary institution;

(10) Assist in preparing for national standardized tests required for postsecondary admission; and

(11) Provide a continuing evaluation of each participant's progress toward achieving adequate academic skills and motivation necessary for success in postsecondary education, including an assessment of each participant's realistic postsecondary educational opportunities and potential.

In addition, an applicant submitting an application for an Upward Bound project that would offer a bridge summer component may propose to carry out under its grant appropriate related activities. For example, projects may offer—

(1) Postsecondary educational courses that participants may take for credit;

(2) Postsecondary courses that participants may audit;

(3) Preview courses that anticipate postsecondary courses because they are taught by the lecture method, require notetaking, or have other characteristics of postsecondary courses; and

(4) Study skills seminars.

In the notice of proposed rulemaking, the Secretary invited comments on the proposed regulations. A summary of the substantive comments received and the Secretary's responses to these comments is contained in the appendix to these regulations.

The Secretary has made a number of other changes in these regulations in an effort to deregulate and to reduce burdens on applicants, participants, and grantees. Each of these changes is also described in the appendix, together with an explanation for the change.

In addition, some technical and editorial revisions have been made in the language of the regulations.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

Invitation to Comment

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.047, Upward Bound Program)

Dated: February 25, 1982.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 645 of Title 34 of the Code of Federal Regulations, to read as follows:

PART 645—UPWARD BOUND PROGRAM

Subpart A—General

Sec.
645.1 Upward Bound Program.
645.2 Eligible applicants.
645.3 Eligible project participants: general.
645.4 Eligible project participants: selection requirements.
645.5 Regulations that apply to the Upward Bound Program.
645.6 Definitions that apply to the Upward Bound Program.

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

645.10 Kinds of projects the Secretary assists under the Upward Bound Program.
645.11 Academic year component.
645.12 Summer component.
645.13 Veterans projects.
645.14 Project size.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

645.30 How the Secretary evaluates an application for a new award.
645.31 Selection criteria the Secretary uses.
645.32 Past performance.

Subpart E—What Conditions Must Be Met by a Grantee?

645.40 Allowable costs.
645.41 Nonallowable costs.
645.42 Stipends.
645.43 Other requirements of a grantee.

Authority: Secs. 417A and 417C of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d, 1070d–1a), unless otherwise noted.

Subpart A—General

§ 645.1 Upward Bound Program.

The Upward Bound Program provides Federal financial assistance to projects designed to generate in participants skills and motivation necessary for success in education beyond high school.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.2 Eligible applicants.

The following are eligible to apply for a grant to carry out an Upward Bound project:

(a) Institutions of higher education.

(b) Public and private agencies and organizations.

(c) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target areas to be served by the proposed projects.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.3 Eligible project participants: general.

(a) An individual is eligible to participate in an Upward Bound project if the individual—

(1) (i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands;

(2) Is, at the time of initial selection, a potential first-generation college student or a low-income individual;

(3) Has a need for academic support in order to successfully pursue a program of education beyond high school; and

(4) At the time of initial selection, has completed the eighth grade but has not entered the twelfth grade and is at least 13 years old but not older than 19. However, the project may serve individuals who are less than 13 or have not completed the eighth grade if the secondary schools in the project's target area have an unusually high dropout rate. In addition, the project may serve individuals who have entered the twelfth grade if there are no eligible unserved individuals in the project's target area who are in the eighth to the eleventh grades.

(b) *Veterans.* A veteran, regardless of age, is eligible to participate in an Upward Bound project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the requirements of paragraph (a)(4) of this section.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.4 Eligible project participants: selection requirements.

(a) At least two-thirds of the eligible individuals the applicant proposed to serve under an Upward Bound project must, at the time of initial selection, be low-income individuals who are also potential first-generation college students.

(b) The remaining individuals the applicant proposes to serve must, at the time of initial selection, qualify as either low-income individuals or potential first-generation college students.

(c) A "low-income individual" means an individual who family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(d)(1) A "potential, first-generation college student" means a person neither of whose parents received a bachelor's degree.

(2) With respect to an individual 18 years of age and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(3) With respect to an individual over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(20 U.S.C. 1070d, 1070d–1a; House Report 96–520, 96th Congress 1st. Sess. p. 26 (1979) and Senate Report 96–733, 96th Cong. 2nd Sess. p. 26 (1980))

§ 645.5 Regulations that apply to the Upward Bound Program.

The following regulations apply to the Upward Bound Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 645.

(20 U.S.C. 3474, 1070d and 1070d–1a)

§ 645.6 Definitions that apply to the Upward Bound Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant	Grantee
Application	Nonprofit
Award	Private
Budget	Project
EDGAR	Public
Equipment	Secondary school
Facilities	Secretary
Fiscal year	State
Grant	Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 *et seq.*)

"Institution of higher education" means an educational institution as defined in Section 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a); 1088)

"Limited proficiency in English," with reference to an individual, means an individual—

(1)(i) who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied upon for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in the English language; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which the language of instruction is English because he or she cannot adequately understand, speak, read, or write the English language.

(20 U.S.C. 3223(a)(1))

"Postsecondary education" means a program of education beyond the secondary school level.

(20 U.S.C. 1070d, 1070d–1a)

"Target area" means a discrete geographic area—as determined by the applicant—that is or would be served by an Upward Bound project.

(20 U.S.C. 1070d, 1070d–1a)

"Target school" means a secondary school that serves students residing in a target area and that is or would be served by an Upward Bound project.

(20 U.S.C. 1070d, 1070d–1a)

"Veteran" means a person as defined in 38 U.S.C. 1652(a).

(38 U.S.C. 1652(a))

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 645.10 Kinds of projects the Secretary assists under the Upward Bound Program.

(a) The Secretary assists two kinds of projects under the Upward Bound Program:

(1) Regular Upward Bound projects that provide services to qualified secondary school students.

(2) Veterans Upward Bound projects that provide services to veterans.

(b) Regular Upward Bound projects must have both an academic year component, as described in § 645.11, and a summer component, as described in § 645.12.

(c) An Upward Bound project, including a Veterans Upward Bound Project, may provide services such as—

(1) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond high school;

(2) Personal counseling;

(3) Academic advice and assistance in high school course selection;

(4) Tutorial services;

(5) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(6) Activities designed to acquaint youths participating in the project with the range of career options available to them;

(7) Instruction designed to prepare youths participating in the project for careers in which persons from disadvantaged backgrounds are particularly underrepresented;

(8) On-campus residential programs; and

(9) Programs and activities as described in paragraphs (c) (1) through (8) of this section that are specially designed for individuals with limited proficiency in English.

(d) The Secretary does not restrict activities under this program to the optional activities specified in paragraph (c) of this section if the activities support the purpose of the Upward Bound Program.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.11 Academic year component.

(a) During the academic year, regular Upward Bound projects shall provide to participants on a weekly basis services such as those described in § 645.10(c)

(b) To the extent possible, an Upward Bound project shall schedule services so that the project's activities do not interfere with a participant's full participation in the academic and nonacademic activities at the participant's secondary school.

(c) If the project location or the project staff are not readily accessible to participants because of distance or lack of transportation, the grantee may, with the Secretary's permission, provide services to participants every two weeks.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.12 Summer component.

(a)(1) Regular Upward Bound projects shall provide a summer component of six weeks duration.

(2) The Secretary may approve a shorter or longer summer component if the applicant can demonstrate that a shorter or longer session will not hinder the effectiveness of the project nor prevent the project from achieving its stated goals and objectives.

(b) The summer component may be either a residential program or a nonresidential program.

(c) The summer component shall be designed to simulate a college-going experience for the participants.

(d) During the summer component, a project shall provide to participants on a daily basis services such as those described in § 645.10(c).

(e) The project may offer a bridge summer component for those Upward Bound participants who have graduated from secondary school and intend to enroll at a postsecondary institution in the upcoming fall semester. The bridge summer component provides participants with services and activities that aid in the transition from high school to postsecondary education.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.13 Veterans projects.

(a) The Secretary may fund Upward Bound projects for veterans.

(b) In addition to the activities described in § 645.10(c), a Veterans Upward Bound project may—

(1) Provide intensive basic skills development in those academic subjects required for the successful completion of a high school equivalency program, if necessary, and for admission to postsecondary institutions;

(2) Provide short-term remedial-refresher courses for those veterans who are high school graduates but who have delayed pursuing postsecondary education. If the grantee is an institution of higher education, these courses may not duplicate courses otherwise available to veterans at the institution; and

(3) Assist veterans in securing services from other locally available resources such as the Veterans Administration, State veterans agencies, veterans associations, and other State and local agencies that serve veterans.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.14 Project size.

(a) Each regular Upward Bound project shall serve between 50 and 150 participants.

(b) Each Veterans Upward Bound project shall serve a minimum of 120 veterans during a project year.

(c) The Secretary may waive the requirements of paragraphs (a) and (b) of this section if the applicant can demonstrate that the project will be effective and consistent with the goals of the program.

(20 U.S.C. 1070d, 1070d–1a)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 645.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 645.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted an Upward Bound project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 645.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project.* (25 points)

(1) The Secretary reviews each application for information that shows a need for an Upward Bound project in the area the applicant plans to serve.

(2) (9 points) The Secretary looks for information that shows the extent to which the target area lacks the services and activities provided by a regular Upward Bound or a Veterans Upward Bound project.

(3) (16 points) To determine the extent of the need for a regular Upward Bound project, the Secretary also considers—

(i) The estimated number of students enrolled in target schools who are from low-income families;

(ii) The estimated number and percentage of those types of students who subsequently enroll in postsecondary education;

(iii) The ratio of secondary school counselors to students in the target schools; and

(iv) The dropout rate of students from the target schools.

(4) (16 points) To determine the extent of the need for a Veterans Upward Bound project, the Secretary also considers the number of veterans in the target area who are eligible for and need Upward Bound services.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success of the proposed project.

(2) (8 points) The Secretary looks for information that shows the extent to which the project is likely to—

(i) Generate academic skills and motivation that will enable the participants to complete a secondary educational program and to subsequently gain admission to postsecondary institutions; and

(ii) Enable the participants to attain those academic skills such as reading, writing, mathematics, and study skills, that are essential for postsecondary education and in which participants are deficient.

(3) (12 points) To determine the likelihood of success, the Secretary looks for information that shows the comprehensiveness of the applicant's plan for—

(i) Identifying and selecting eligible participants;

(ii) Diagnosing each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Developing a plan of program support to improve each participant's skills; and

(iv) Providing activities and services, such as those listed in §645.10(c) that

relate to the goals of the Upward Bound Program.

(h) *Institutional and community support.* (15 points)

(1) The Secretary reviews each application for information that shows how the applicant plans to increase the awareness of, and gain the support of, the institution and the local community in fulfilling project goals.

(2) The Secretary looks for information that shows—

(i) (10 points) The extent to which the applicant has identified institutional, community, and other resources to supplement authorized activities; and

(ii) (5 points) The existence of a plan to inform the residents of the target area, target schools, and the institutional community of—

(A) The goals and objectives of the Upward Bound project; and

(B) The selection criteria for acceptance into the project.

(20 U.S.C. 3474; 1070d, 1070d–1a)

§ 645.32 Past performance. [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 645.40 Allowable costs.

Allowable project costs not specifically covered by 34 CFR Part 74 may include the following costs reasonably related to carrying out an Upward Bound Project:

(a) In-service training of project staff.

(b) Rental of space if space is not available at the host institution and the space rented is not owned by the host institution.

(c) For participants in an Upward Bound residential summer component, room and board—computed on a weekly basis—not to exceed the weekly rate the host institution charges regularly enrolled students at the institution.

(d) Room and board for those persons responsible for dormitory supervision of participants during a residential summer component.

(e) Other means for Upward Bound participants while participating in project activities.

(f) Student activities fees for Upward Bound participants.

(g) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of participants.

(h) Costs for one project-sponsored banquet or ceremony.

(i) Tuition costs for postsecondary credit courses at the host institution for participants in the bridge summer component.

(j)(1) Accident insurance to cover any injuries to a project participant while participating in a project activity; and

(2) Medical insurance and health service fees for the project participants while participating full-time in the summer component.

(k) Courses in English language instruction for participants with limited proficiency in English if these classes are limited to project participants and if these classes are not otherwise available at a target school.

(l) Transportation costs of participants for regularly scheduled project activities.

(m) Transportation, meals, and overnight accommodations for staff members when they are required to accompany participants in project activities, such as field trips.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(b) Research not directly related to the evaluation or improvement of the project.

(c) Purchase of any equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(d) Meals for staff except as provided in § 645.40(d) and (m) and in paragraph (f) of this section.

(e) Clothing.

(f) Room and board for administrative and instructional staff personnel who do not have responsibility for dormitory supervision of project participants during a residential summer component unless these costs are approved by the Secretary.

(g) Room and board for participants in Veterans Upward Bound projects.

(h) Construction, renovation, or remodeling of any facilities.

(i) Tuition, stipends, or any other form of student financial support for project staff.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.42 Stipends.

(a) An Upward Bound project may provide stipends for all participants who participate on an essentially full-time basis.

(b) In order to receive the stipend, the participant must show evidence of satisfactory participation in activities of the project including—

(1) Regular attendance; and

(2) Performance in accordance with standards established by the grantee and described in the application.

(c) The grantee may prorate the amount of the stipend according to the number of scheduled sessions in which the student participated.

(d) The following rules govern the amounts of stipends a grantee is permitted to provide:

(1) *For regular Upward Bound projects*—

(i) For the academic year component, the stipend may not exceed $40 per month; and

(ii) For the summer component the stipend may not exceed $60 per month.

(2) *For veterans Upward Bound projects*, the stipend may not exceed $40 per month.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.43 Other requirements of a grantee.

Each grantee shall—

(a) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75–511; and

(b)(1) Determine the eligibility of each participant at the time that individual is selected to participate in the project.

(2) The grantee does not have to revalidate a participant's eligibility after this time.

(20 U.S.C. 1070d, 1070d–1a)

Note.—This Appendix is included for information only. It is not to be codified in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses

In the notice of proposed rulemaking published in the **Federal Register** on December 31, 1980 (45 FR 86914–86920) the Secretary invited comments on the proposed regulations.

The following includes a summary of the substantive public comments received and the Secretary's responses to those comments, including any changes. The comments and responses and any changes are organized in the same order as the referenced sections are organized in these final regulations.

Section numbers and section headings in parentheses are the numbers and headings that appeared in the notice of proposed rulemaking but that have been renumbered, retitled, or deleted in these final regulations.

Section 645.1 Upward Bound Program.

Comment. One commenter expressed concern that this section did not

adequately reflect the language of the legislation.

Response. A change has been made. The Secretary has revised § 645.1 to repeat the phrasing of the authorizing legislation.

Section 645.2 Eligible applicants. (Eligible grantees.)

Comment. One commenter noted that combinations of institutions of higher education (§645.2(b) of the proposed regulations) are not eligible to apply for an Upward Bound grant because the statute does not authorize them as eligible.

Response. A change has been made. The Secretary has deleted combinations of institutions of higher education from the list of eligible applicants.

Section 645.3 Eligible project participants: general.

Comment. Two commenters questioned the requirement that participants reside in a target area (§ 645.3(a)(2)(i) of the proposed regulations). The commenters noted that this requirement may restrict projects from serving needy students from areas that do not meet the definition of "target area" (§ 645.7(b)).

Response. A change has been made. The Secretary has deleted the requirement of residence in a target area or attendance at a target school as a requirement for participation in an Upward Bound project.

Comment. One commenter expressed concern over § 645.3(a)(2)(ii) of the proposed regulations, which qualifies dropouts committed to returning to secondary school. The commenter stated that unless the student is committed to or expressed an interest in pursuing education beyond secondary school, there is no authority for this regulation.

Response. A change has been made. The Secretary has deleted this requirement.

Comment. Two commenters expressed concern that § 645.3(a)(4) would preclude a project from serving a substantial number of Southeast Asian immigrants since it is not unusual to find a 20-year-old Asian student who is a high school junior. The commenters recommended raising the age requirement to 22 or making special provision for Asian students.

Response. No change has been made. As the paragraph now reads, an individual *at the time of initial selection* must not be older than 19. Therefore, students who are 19 and are in the 10th grade may be chosen for the project and may be served until they are graduated from high school.

Comment. One commenter noted an apparent discrepancy: The law states that, in order to participate, an individual must have completed eight years of elementary education. However, § 645.3(a)(4) of the regulations states that the individual must have completed the eighth grade. The commenter questioned why the change had been made.

Response. No change has been made. It was the interpretation of the Secretary that the authorizing statute intended for Upward Bound projects to serve high school students, except in unusual circumstances. The House and Senate Committee Reports state that this exception was included to allow projects to serve younger students if there is an unusually high secondary school attrition rate. In most instances, however, projects are intended to serve high schools and high school students only. If the regulations were changed to read "eight years of elementary education," it would be possible to have students who are still in the fourth or fifth grade eligible for a project.

Changes. The Secretary has revised the language of paragraph § 645.3 (a)(2) and (a)(4) so that the phrase "at the time of initial selection" is applicable to both potential first-generation college students and low-income individuals. This change was made to reduce the burden on the grantee to revalidate the eligibility of each participant every year. The grantee is required to make the verification only at the time an individual is selected for particpation in the Upward Bound project.

The Secretary has revised paragraph § 645.3(a)(4) so that projects may choose individuals who, at the time of selection, have entered the twelfth grade. This is permitted only when there are no eligible unserved individuals in the target area who are in grades eight to eleven.

Section 645.4 Eligible project participants: selection requirements.

Comments. Several commenters expressed concerns about the first-generation college student requirement (§ 645.4 (a) and (b)). Four commenters opposed a project's being able to enroll up to one-third of its participants solely on the basis of their being potential first-generation college students. The commenters were concerned that this would permit the project to serve middle- and upper-income individuals. One commenter asked how a project is to prove and document the educational status of the parents of participants.

Response. No change has been made. The legislation and, therefore, these regulations permit projects to serve up to one-third of the participants on the basis of their being potential first-generation college students.

A grantee may satisfy the potential first-generation college student requirement if it obtains a written statement from the applicant or the applicant's parents attesting to that fact. This can be done on a participant eligibility form.

Comment. Three commenters opposed using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce (§ 645.4(c) of these final regulations; § 645.4(a)(3) of the NPRM). They recommended that the Department of Education determine participant eligibility on the basis of data produced by the U.S. Department of Labor showing significant regional differences in the cost of living.

Response. No change has been made. The authorizing legislation states that the poverty level is determined by using criteria of poverty established by the Bureau of the Census.

Comment. One commenter suggested that the definition for low-income individual (§ 645.4(c) of these final regulations; § 645.4(a)(3) of the NPRM) be revised so that a ward of the State would be included in the definition.

Response. No change has been made. Wards of the State are not precluded from being served under the definition and would automatically meet the low-income criterion.

Comment. One commenter recommended that the definition of "potential first-generation college student" eligibility criteria (§ 645.4(d) of these final regulations) provide for situations involving children of single-parent families.

Response. No change has been made. The definition includes single-parent families since only the natural or adoptive parents who currently reside with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a potential first-generation college student.

Comment. Numerous commenters recommended that § 645.4(b) of the proposed regulations be deleted since it contradicts the intent of the legislation to provide project administrators at the local level the discretion to choose from among the eligible population those students who are most in need of services.

Response. A change has been made. The Secretary has deleted the paragraph from these final regulations and has renumbered or relettered the other paragraphs in this section.

Other changes. The Secretary has revised paragraphs (a) and (b) of this section to include the phrase: "at the time of initial selection." This change was made to reduce the burden on a grantee to revalidate the eligibility of each participant every year. The grantee is required to verify eligibility only at the time of a participant's initial selection.

(Section 645.5) (Target Area)

Comment. Two commenters questioned the requirement (§ 645.5(b)(1)) that no part of the target area may be more than fifty miles from the applicant as too restrictive of rural programs and likely to hinder all projects from reaching eligible students. One commenter questioned the statutory basis for the 50-mile requirement.

Response. A change has been made. The Secretary has deleted this section from the final regulations.

Section 645.6 (§ 645.7) Definitions

Comment. One commenter noted that in the definition of "limited proficiency in English," the term "who was not born in the United States" appears irrelevant and may cause some misinterpretation at the project level. The commenter recommended that the phrase be dropped.

Response. No change has been made. The statutory provision from which the definition is taken includes the term "who was not born in the United States."

Comment. Five commenters expressed concern over the definition of "target area." One commenter noted that the definition requires information that is not readily available because census tracts do not conform to school districts. In addition, pockets of poverty may be hidden in large census tracts. Other commenters stated that since projects will be serving participants who meet the low-income criteria, it should not be necessary that the geographic area have a minimum level of low-income families.

Another commenter noted that rural, sparsely populated areas would be hurt by the 20 percent low-income requirement. One commenter stated that the 20 percent requirement may limit the recruitment for Upward Bound projects for veterans.

Response. A change has been made. The Secretary has revised the definition of "target area" and has dropped the requirement that 20 percent of the resident families be low-income. However, the regulations retain the concept of a target area being a project's service area. The Secretary believes it is essential—for responsible program and project management—that each applicant define its proposed service area.

Comment. Two commenters disagreed with the definition of "veteran." They pointed out that the law defined a veteran according to Section 1652(a) of Title 38 U.S.C.

Response. A change has been made. The definition referred to by the commenters has been substituted for the definition that appeared in the NPRM.

Comment. One commenter requested that the regulations include a definition of "postsecondary education" since the regulations refer to postsecondary education and postsecondary educational programs.

Response. A change has been made. The Secretary has included in § 645.6(b) of these regulations a definition of "postsecondary education."

Section 645.10 Kinds of projects the Secretary assists under the Upward Bound Program

Comment. One commenter questioned the specific statutory authority for requiring Upward Bound projects to develop an individualized plan of program support to improve each participant's skills (§ 645.10(c)(7) of the proposed regulations).

Response. A change has been made. The Secretary has deleted this activity as a required activity. The activity appears in the preamble as an example of an activity the Secretary may consider for funding.

Comment. One commenter recommended that the regulations require each project to test each participant's vision and hearing to determine if there are any problems that impede learning (§ 645.10(c)(11) of the NPRM).

Response. A change has been made. The Secretary has deleted this requirement to avoid the appearance of prescribing non-required project activities. The Secretary regards as overregulation any provision that would require each project to conduct vision and hearing tests.

Comment. One commenter questioned the authority for requiring Upward Bound projects to make every effort to secure for each participant admission to an institution of postsecondary education (§ 645.10(c)(15) of the NPRM). The commenter noted that the authorizing legislation did not require this service.

Response. A change has been made. The Secretary has deleted this requirement from these final regulations to decrease the burden on grantees.

Comment. One commenter questioned the authority for requiring Upward Bound projects to assure that all the facilities of the grantee, both academic and non-academic, are made available to the project participants (§ 645.10(c)(10) of the NPRM).

Response. A change has been made. The Secretary has deleted this requirement from the final regulations.

Comment. Two commenters expressed concern over the requirement that the Upward Bound project implement a plan to follow participants through their postsecondary educational programs (§ 645.10(c)(13) of the proposed regulations). They noted that this kind of follow-up is very expensive, especially for Upward Bound projects for veterans. In addition, the commenters argued, retention in postsecondary education should not be a factor that determines a project's effectiveness because the project has no control over circumstances once a former participant enters a postsecondary educational program. The commenters also contended that this kind of follow-up is time-consuming.

Response. A change has been made. The Secretary has deleted this follow-up requirement from these final regulations.

Other changes. Paragraph (a)(2) of the proposed regulations has been deleted. This requirement is duplicative of paragraph (c)(9) of these final regulations that permits Upward Bound projects to provide activities and services that are specially designed for individuals with limited proficiency in English.

Paragraph (a)(1) has been revised to stress the distinction between a regular Upward Bound project and a Veterans Upward Bound project.

Paragraph (c)(6) of the proposed regulations has been deleted from these regulations. This requirement was duplicative of § 645.31(a)(2)(iii) of the regulations.

Paragraph (c)(8) of the proposed regulations has been moved to a new section, § 645.43: Other requirements of a grantee. The Secretary has determined that the requirement in this paragraph is more logically a post-award function.

Paragraphs (c) (1) through (5), (c) (9), (12) and (14) have been deleted. The Secretary has deleted these requirements to avoid the appearance of prescribing non-required activities and to permit applicants flexibility. Some of these activities appear in the preamble as examples of activities the Secretary may consider for funding.

A new paragraph (c) has been added that lists those activities in the authorizing legislation that the Secretary may consider for funding.

A new paragraph (d) has been added that informs applicants that the

Secretary does not restrict activities under this program to only those listed as optional activities.

Section 645.11 Academic year component

Comment. Four commenters expressed concern over the requirement that all the activities listed under § 645.11 had to be provided by all Upward Bound projects. They pointed out that the legislation stated that the activities were permitted, not required. In addition, the commenters said, the "shall" imposes an expectation that projects have not been funded to meet.

Two commenters noted that § 645.11(a)(1)(iii) of the NPRM may be interpreted as restricting the types of activities projects may provide. They recommended that the section be revised to read: "* * * These programs and activities may include, but are not limited to,* * *". Another commenter noted that although the Education Amendments of 1980 included cultural events in the listing of allowable activities, this was omitted from the regulations and should be added. The commenter also questioned the addition of the words "that have as their purpose the intellectual, social and cultural development of the particpants."

One commenter questioned the authority for permitting Upward Bound projects to assist participants in preparing admission, financial aid, and other forms necessary for enrollment in postsecondary education and to assist them in preparing for national standardized tests required for postsecondary education (§ 645.11(a)(2)(iii) and (iv) of the NPRM).

Two commenters questioned the wording of § 645.11(a)(4) of the NPRM. It appeared to the commenters that this paragraph, as worded in the NPRM, requires specific approval of any action taken by the project and, thus, was redundant with respect to the other requirements of § 645.11(a) of the NPRM. The commenters suggested that the paragraph be reworded to read: "Provide—with the specific approval of the Secretary—*such other* activities that have* * *."

Response. A change has been made. Section 645.11 has been revised and reorganized to more accurately reflect the legislation authorizing the program. Paragraphs (a)(1) (i) through (iii), and (a)(2) through (4) have been deleted from the regulations to avoid the appearance of prescribing non-required activities and to permit applicants flexibility. Some of these activities appear in the preamble as examples of activities the Secretary may consider for funding.

Other changes. Paragraph (a) of this section has been rewritten to reference the activities permitted by the authorizing legislation.

A new paragraph (b) has been added to this section. This paragraph requires a project to schedule services so that they do not interfere with the and nonacademic activities at the participant's secondary school.

The Secretary has relettered paragraph (b) of the NPRM. This paragraph is (c) in these regulations.

Section 645.12 Summer Component

Comment. Two commenters stated that the requirement that the summer component be at least six weeks in duration went beyond the law (§ 645.12(a)(i)). The commenters suggested that the paragraph be revised to read: "* * * an Upward Bound project may be at least six weeks."

Response. A change has been made. Although the suggestion of the commenters was not taken, the Secretary has included a waiver to the six-weeks requirement (§ 645.12(a)(ii)).

Comment. Two commenters noted that the requirement that an Upward Bound project maintain a waiting list for the summer component (§ 645.12(b) (1) and (2) of the proposed regulations) was overly prescriptive and specific.

Response. A change has been made. The Secretary has deleted this paragraph from these final regulations.

Comment. Four commenters requested that the regulations require the summer component to be residential. Four other commenters favored the flexibility and choice permitted by § 645.12(b) (paragraph (f)(1) of the NPRM); that is, that a project may be either a residential program or a nonresidential program.

Response. No change has been made. The authorizing legislation stated that the summer component may be residential. Therefore, to require the summer component to be residential would be overregulating.

Comment. Two commenters expressed concern about the requirement that a project provide meals to participants during the summer component (§ 645.12(e)(7) of the NPRM). One of the commenters stated that the regulations should not require three meals a day. The other commenter asked for clarification on how many meals per day a grantee would be required to provide.

Response. A change has been made. The Secretary has deleted the requirement that every project must provide meals to participants. However, the costs for meals for participants while engaged in project activities is an allowable cost and appears in § 645.40(e).

Comment. One commenter expressed concern about the requirement that teachers from target schools must be part of the summer staff (§ 645.12(e)(4)(i) of the NPRM). The commenters stated that teachers from target schools might not be the most appropriate teachers to meet the needs of participants.

Two commenters suggested that tutors and peer counselors (paragraph (e)(5) of the NPRM) should be from backgrounds similar to those of the project participants.

Three commenters suggested adding "emotional and psychological" to the list that appears in § 645.12(e)(3)(ii) of the NPRM so that the section reads "* * * that have as their purpose the intellectual, social, cultural, emotional, psychological, and career development of the participants." One commenter suggested adding Outward Bound-type activities to the list of activities named.

One commenter asked why § 645.12(e)(3)(ii) of the NPRM did not track the statutory language of "exposure to cultural events, academic programs and other activities * * * not usually available to disadvantaged youth."

Response. A change has been made. The Secretary has deleted paragraphs (d), (e) (1) through (6), and (f) (2) and (3) from these regulations to avoid the appearance of prescribing non-required activities and to permit applicants flexibility. Some of these activities appear in the preamble as examples of activities the Secretary may consider for funding.

Comment. Four commenters suggested that requiring a grantee to establish a bridge summer component went beyond the law. They suggested that § 645.12(e) (paragraph (c)(1) of the NPRM) be revised to read "may" since this component should be offered only for those for whom it would be appropriate. Other participants, the commenters said, might better benefit from internships and work study programs, for example.

Response. A change has been made. The Secretary has accepted the recommendation of the commenters and the paragraph has been revised to read: "The project *may* make special provisions * * *" The Secretary has deleted the list of examples of activities the project could provide to participants in the bridge summer component (paragraphs (c)(2) (i) through (iv) of the NPRM). These activities are listed in the preamble as examples of activities the Secretary may consider for funding.

Other changes. The Secretary has added two new paragraphs (c) and (d) to

the final regulations. Paragraph (c) requires projects to design a summer component that simulates a college-going experience. Paragraph (d) requires projects to provide services to participants on a daily basis.

Section 645.13 Veterans projects

Comment. One commenter questioned the authority for the regulations to permit a project to provide courses needed by participants for the completion of high school and for admission to postsecondary programs (§ 645.13(b)(1)). The commenter noted that unless a participant intends to proceed with postsecondary schooling, there is no authority for this activity.

Response. No change has been made. The purpose of Veterans Upward Bound projects is to prepare participating veterans to pursue postsecondary education successfully. Therefore, veterans accepted into the project must express the intent of pursuing postsecondary education.

Comment. Two commenters assumed that the intent of § 645.13(b)(2)(ii) would not restrict an institution of higher education from providing classes or instruction similar in content to other instruction offered at the institution but with techniques, intensity, or duration designed to better meet the needs of the target population.

Response. No change has been made. The commenters have accurately interpreted this paragraph.

Comment. One commenter pointed out the ambiguity of § 645.13(b)(6) of the proposed regulations. The commenter questioned what "certification for payment" meant, since two interpretations could be made: (1) certification by a school prior to a veteran's claim being sent to the Veterans Administration; or (2) adjudication of a claim by the Veterans Administration. Another commenter questioned the authority for a grantee to provide this service before a veteran begins educational activities.

Response. A change has been made. The Secretary has determined that the paragraph was ambiguous and that the requirement was overregulating. Therefore, the Secretary has deleted the paragraph from these final regulations.

Other changes. Paragraphs (b) (3), (5), and (7) have been deleted from these regulations. The Secretary wishes to avoid the appearance of prescribing non-required activities.

(Formerly § 645.14) (Educational component for participants with limited proficiency in English)

Changes. The Secretary has deleted this section from these regulations because it duplicates § 645.10(c)(9) regarding allowable services for participants of limited proficiency in English.

Section 645.14 (§ 645.15) Project size

Comment. Two commenters stated that the requirements of paragraph (a) and (b) of this section were too restrictive and requested a reduction in the minimum number of participants a project must serve in order to be eligible for a grant. Another commenter noted that the statute authorizing the Upward Bound Program makes no mention of size.

Response. A change has been made. The Secretary has revised § 645.14(a) so that the minimum number to be served in a regular Upward Bound project is 50 participants. However, no change has been made in § 645.14(b). It has been the experience of the Department that these numbers represent the optimum size for an efficient and effective Upward Bound project. The Secretary does permit a waiver to these requirements (§ 645.14(c)).

(Section 645.20) (How to apply for funds)

Changes. Section 645.20 of the NPRM (How to apply for funds) has been omitted from these regulations because it duplicates § 645.5(a) regarding the applicability of EDGAR.

Section 645.30 How the Secretary evaluates an application for a new award

Comment. One commenter asked why consideration for experience was limited to the previous three years (§ 645.30(b)). The commenter noted that no time limit was specified in the authorizing legislation.

Response. No change has been made. The Secretary has determined that a three-year period is most feasible administratively: project records are available on location and grant records are readily available in the Department. In addition, applicants that have had poor past performance will not be penalized indefinitely.

Comment. Two commenters expressed concern about § 645.30(c). One of the commenters stated that applicants should establish need in their area, not that it is more or less critical than need in other areas. To other commenters it appeared that heavily populated areas would receive an increased number of projects since no special consideration is given to rural communities and culturally isolated areas. The commenter recommended that the rurality and the cultural deprivation of an area be taken into consideration along with low-income data.

Response. No change is made. It is not the responsibility of an applicant to establish whether its need is more or less critical than the need in other areas. Only after all the applications have been evaluated and ranked does the Secretary consider the relative need for a project.

The need for a project in a particular area may change as funding decisions are made. For instance, an Upward Bound application is submitted to serve a particular target area; part of the need for the project is based on the lack of any similar services for disadvantaged youth. However, by the time the funding recommendation is made, the need for the project might change if an Educational Opportunity Center or a Talent Search project has been funded in the interim to serve parts of the same target area. The Secretary would take this into consideration when selecting applications for funding under the Upward Bound Program.

With regard to the commenters concern about rural and cultural isolation, these are not eligibility criteria for the Upward Bound Program. The law defines eligibility for project services on the basis of income level and parental educational attainment. These, therefore, are the principal factors in determining need for a project.

Changes. Paragraph (b) has been revised. The sentence concerning the awarding of up to 30 additional points for experience has been deleted. Point assignments for past performance appeared in a separate notice of proposed rulemaking for § 645.32.

Section 645.31 Selection criteria the Secretary uses

Comment. Three commenters suggested that §645.31(d)(2) be revised so that the evaluation plan would include data on such matters as high school retention, project retention, and postsecondary placement rate.

Response. No change has been made. Within the overall goals and objectives of the program (§ 645.1) each project may develop its unique goals and, therefore, develop additional data. To prescribe specific data that each project must collect would be overregulating.

Comment. Two commenters expressed concern over § 645.31(f)(2)(ii) (of the proposed regulations), (f)(3)(i), and (f)(3)(ii). They stated that the information requested was extremely difficult to obtain and document. They recommended that the regulations eliminate these requirements or require information that is uniformly available in all States.

Response. A change has been made. The Secretary has deleted paragraph (f)(2)(ii) of the proposed regulations because it in part duplicates paragraph (f)(3)(i) of this section and because information on potential first-generation college students is difficult to obtain. Paragraphs (f)(3) (i) and (ii) have been revised. The information provided by the applicant may be estimates based on the best available data. The paragraphs have been reworded to include the word "estimated." However, the Secretary has not deleted the requirements because the information is essential for determining the need for an Upward Bound project in the area proposed by the applicant.

Comment. One commenter suggested revising § 645.31(g)(2)(i) (§ 645.31(g)(2)(i)(A) of the proposed regulations) so as to stress the importance of completing secondary school. The commenter recommended rewording the paragraph to read: "* * * that will enable the participants to complete a secondary education and subsequently to gain admission to postsecondary institutions."

Response. A change has been made. The Secretary has revised the paragraph in light of the commenter's suggestion.

Other changes. Paragraph (g) of this section has been revised to more specifically detail the information the Secretary looks for to determine the likelihood of success of a proposed project.

Paragraph (h) of this section has been retitled to reflect more adequately the criteria being evaluated. The paragraph is now titled "Institutional and community support" instead of "Resources and organization."

The Secretary has also revised § 645.31(h) (1) and (2) to increase the emphasis on instututional support in addition to community support.

The Secretary has assigned points to each separate criterion in paragraphs (f), (g) and (h).

Section 645.32 Past performance. (Prior experience)

Changes. The Secretary has deleted the provisions of this section as it appeared in the NPRM. Instead, the Secretary is publishing the section as a separate notice of proposed rulemaking. The reference to § 645.43 of the NPRM has also been deleted because the Secretary has decided not to develop performance standards.

Section 645.40 Allowable costs

Comment. Three commenters expressed concern over the requirement (§ 645.40(a)) that all in-service training required prior approval by the Secretary. They felt that once a project has an approved grant there should be no need for further approval. In addition, the commenters said, it is impracticable to expect the Secretary to be able to respond in a timely manner to requests made by project directors during the project year.

Response. A change has been made. The phrase, "if approved by the Secretary", is deleted. As long as in-service training activities conform to approved budgetary and programmatic guidelines, there is no need for additional approval.

Comment. Two commenters questioned the requirements of § 645.40(h) (paragraph (i) of the NPRM) that limits the grantee to one project-sponsored banquet or ceremony. The commenters recommended that the cost of two project-sponsored activities be permitted.

Response. No change has been made. The Secretary believes that the grant money would be better spent in providing direct services to students, rather than on entertainment costs.

Comment. One commenter suggested that a maximum number of credits be stated so that the limits will be known (§ 645.40(i); paragraph (j) in the NPRM). Another commenter questioned the authority to permit the payment of tuition for postsecondary courses for Upward Bound participants.

Response. No change has been made. The intent is to permit a project sufficient flexibility to meet each participant's needs. The authority for the payment of tuition is inferred from the authority to expose participants to academic programs not usually available to disadvantaged youth.

Comment. Two commenters asked whether § 645.40(j)(2) (paragraph (k)(2) in the NPRM) permitted visits to health services as an allowable expense. If this is the intent, the commenters said the paragraph should state clearly that the payment of a health service fee is an allowable expense for a summer component.

Response. A change has been made. Section 645.40(j)(2) has been revised to include, as an allowable expense, health service fees for full-time participants in a summer component.

Section 645.41 Nonallowable costs

Comment. One commenter suggested that veterans participating in a Veterans Upward Bound project should be entitled to stipends since they have the same needs as high school students participating in Upward Bound (§ 645.41(j) in the NPRM).

Response. A change has been made. The Secretary has deleted paragraph (j) from these final regulations and has revised § 645.42 to permit stipends for veterans.

Section 645.42 Stipends

Comment. One commenter suggested raising the stipend amount given to Upward Bound participants during the summer component to $40 a week so as to compete with summer jobs.

Response. No change has been made. The legislation authorizing the Upward Bound Program limits amounts of stipends to be paid a participant in the summer component to $60 a month.

Comment. One commenter noted that the legislation contained no language restricting stipends only to those participating on an essentially full-time basis (§ 645.42(a)).

Response. No change has been made. The legislation states that those participating in an Upward Bound project may be paid stipends. It is the judgment of the Secretary that, for proper stewardship and program management, stipends should be paid only to those who participate essentially full-time in the project including its various activities.

Comment. Three commenters recommended that the criteria for receipt of a stipend by a participant in a summer component also be included for a participant in an academic year component.

Response. A change has been made. The Secretary has revised and reorganized § 645.42. The criteria of eligibility for a stipend and the authority to prorate the amount of the stipend are now applicable to both the summer component and the academic year component. In addition, a paragraph has been added to permit stipends for participants in Veterans Upward Bound projects.

Comment. One commenter noted that the statute authorized the payment of up to $60 per month during the months of June, July, and August. However, the regulations (§ 645.42(d)(1)(ii); § 645.42(b)(1) in the NPRM) do not specify that June, July, and August constitute a summer session. In addition, the commenter questioned the change from $60 per month which is in the legislation, to $15 per week which appears in the regulations.

Response. A change has been made. The Secretary has revised § 645.42(d)(1)(ii) to require that stipends not exceed $60 per month during the summer component. However, it is generally understood that the summer session occurs during the months of June, July, and August and, therefore, this is not repeated in the regulations.

Section 645.43 Other requirements of a grantee. (Performance standards)

Changes. Section 645.43 of the NPRM was titled "Performance standards." As noted in the explanation for the changes in § 645.32, the Secretary has dropped plans to develop performance standards. This section is now titled "Other requirements of a grantee." The requirement previously listed in the proposed regulations as § 645.10(c)(8) has been moved to this section as paragraph (a). The Secretary has determined that this requirement is more logically a post-award requirement of a grantee and, therefore, belongs in this subpart.

The Secretary has added a new paragraph (b) which states that projects need to determine the eligibility of each participant only at the time of initial selection of that participant. The Secretary has made this change to reduce the burden on a grantee by not requiring revalidation of the eligibility of each participant every year.

Section 645.50 Recordkeeping

Comment. One commenter expressed concern over the requirement of § 645.50(b)(3)(iii) in the NPRM that all Upward Bound projects must have on file copies of participants' high school transcripts. The commenter noted that transcripts are often difficult to obtain and that they rarely reflect the current educational needs of a veteran for example.

One commenter questioned the authority to require projects to develop and maintain an individualized plan of program support for each participant (§ 645.50(b)(4) in the NPRM).

Response. A change has been made. To decrease the burden on grantees and to avoid the appearance of prescribing specific recordkeeping items through regulations, the Secretary has deleted this section. Grantees need only conform to the EDGAR requirements (see 34 CFR Part 75.730–75.734).

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Part IV

Federal Communications Commission

Jurisdictional Separations; Amendment To Reflect Adoption of the Federal State Joint Board's Recommended Decisions

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286; FCC 82-98]

Jurisdictional Separations; Amendment To Reflect Adoption of the Federal State Joint Board's Recommended Decisions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting the Joint Board's recommended decision that the subscriber plant factor (SPF) used to allocate costs of non-traffic sensitive plant between the interstate and intrastate jurisdictions be frozen at its January 1, 1982 level as an interim measure pending adoption of future rule changes to the Separations Manual. It also adopts the Joint Board recommended decision to phase out customer-premises equipment from the jurisdictional separations process over a five-year period.

EFFECTIVE DATE: April 2, 1982.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James W. McConnaughey, Policy and Program Planning Division, Common Carrier Bureau, at (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Decision and Order

Adopted: February 24, 1982.

Released: February 26, 1982.

I. Introduction

1. The Commission convened a Federal-State Joint Board in this proceeding on June 11, 1980, pursuant to Section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), to recommend amendments to the jurisdictional cost Separations Manual. *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board,* 78 FCC 2d 837 (1980). The Joint Board was directed to propose changes to our Rules regarding the allocation of exchange plant investment between interstate and intrastate services in light of the increasing levels of such allocations and the Commission's decisions to prescribe access charges, *Second Supplemental Notice* (CC Docket No. 78-72), 77 FCC 2d 224 (1980); and detariff most customer premises equipment (CPE), *Memorandum Opinion and Order on Further Reconsideration* (CC Docket No. 20828), 88 FCC 2d 512 (1981).

2. On June 10, 1981, the Joint Board adopted an *Order Inviting Comments and Suggested Information Requests,* FCC 81-264 (released June 12, 1981), in which it solicited responses to a list of questions concerning the proper separations treatment of non-traffic sensitive (NTS) exchange plant (Appendix A to that Order), and a specific proposal to remove CPE from the separations process (Appendix B). On November 18, 1981, after analyzing the large number of comments and replies that had been filed, the Joint Board adopted, with minor modifications, the previously proposed plan to phase CPE out of separations over five years. *Recommended Decision and Order,* FCC 81-566 (released December 14, 1981). At the same meeting, the Joint Board also adopted a recommendation to freeze the subscriber plant factor (SPF) [1] at the average 1981 annual level effective January 1, 1982, as an interim measure pending the development of final, more comprehensive changes to separations procedures. *Recommended Interim Order,* FCC 81-565 (released December 14, 1981).

3. We considered the Joint Board's recommendations at our December 17, 1981 meeting. While we agreed that interim action on SPF was a pressing concern, we believed that further comments would be beneficial. Therefore, we adopted a *Further Notice of Proposed Rulemaking,* FCC 81-580 (released December 21, 1981), which established an expedited schedule for comments and replies on both the Joint Board's *Recommended Decision and Order* on CPE and its *Recommended Interim Order* on SPF. Comments were filed on January 18, 1982, and replies were filed on February 2, 1982 by a total of twenty-four parties.[2] We have given careful consideration to these comments, as well as those filed previously in this proceeding, and now adopt both of the Joint Board's recommended orders, subject to certain minor modifications set forth below.

II. Recommended Interim Order to Freeze SPF

A. Joint Board Recommendation

4. The Joint Board has, to date, received numerous filings from the parties regarding the complex issues involved in revising separations procedures applicable to the allocation of non-traffic sensitive exchange plant. The Joint Board has also either completed or is in the process of arranging and conducting several related research efforts intended to identify all viable proposals for changes which may reasonably be entertained, and to gather the data required to make a well-informed final recommendation on amendments to the Separations Manual.[3] However, the Joint Board is aware that, before a comprehensive plan is adopted, the magnifying effect of the SPF formula on interstate subscriber line usage will have caused further increases in interstate allocations beyond a level which, for most exchanges, may ultimately be determined to be reasonable.[4]

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[1] The subscriber plant factor is used to allocate investment in station equipment, subscriber lines and the non-traffic sensitive portion of central office equipment. It is derived through a formula set forth in Section 23.444 of the Separations Manual which is generally rendered as SPF = .85 SLU + (2 SLU × CSR). SLU is a measure of subscriber line usage, and CSR is the composite station rate, a ratio that combines measurements of average initial three-minute station charges and average lengths of haul for interstate toll calls.

[2] Ad Hoc Telecommunications Users Committee (the Ad Hoc Committee); Aeronautical Radio, Inc. (ARINC); American Telephone and Telegraph Co. and The Associated Bell System Companies (Bell System); People of the State of California and the Public Utilities Commission of the State of California (California); Computer and Business Equipment Manufacturers Association (CBEMA); Central Telephone and Utilities Corporation (Centel); Continental Telephone Corporation (Continental); State of Florida (Florida); Golden West Telephone Cooperative, Inc. (Golden West), GTE Telephone Companies (GTE); Granite State Telephone Company (Granite State); Roseville Telephone Company, Anchorage Telephone Utility, and Northern States Power Company (Independent Alliance); Kansas Corporation Commission (Kansas); MCI Telecommunications Corporation (MCI); Midway Telephone Company (Midway); North American Telephone Association (NATA); Pigeon Telephone Company (Pigeon); Rochester Telephone Corporation (Rochester); Rural Telephone Coalition (RTC); Southern Pacific Communications Company (SPCC); Satellite Business Systems (SBS); Texas Statewide Telephone Cooperative, Inc. (TSTCI); United States Independent Telephone Association (USITA); United Telephone System, Inc. (UTS).

[3] On January 5, 1982, the Joint Board Staff issued several information requests and is currently analyzing data on the relationship between exchange costs and subscriber density received from independent telephone companies. On February 2, 1982, meetings were held by the Joint Board Staff with various industry representatives to address major issues in this proceeding, including alternative mechanisms for the allocation of non-traffic sensitive plant between jurisdictions. The Joint Board is also considering a plan to hold regional hearings throughout the country to provide an additional opportunity for interested persons to present comments on the various allocative schemes under consideration.

[4] *See Recommended Interim Order,* para. 4. SPF generally results in a threefold increase over SLU, thereby magnifying the allocative impact of increases in interstate usage. AT&T estimates that by 1983 its company-wide SPF will have grown to 27% from the 1972 level of 18%. We do not interpret the Joint Board order as implying that the Joint Board has made a final decision to recommend interstate allocations that are no higher than 1981 allocations for any or all study areas. This Commission and the Joint Board will, of course,

Continued

5. In order to minimize the rate adjustments that local companies may have to make as a result of final separations changes and to preserve the *status quo* of percentage allocations of jointly used subscriber plant pending the development of a comprehensive separations plan, the Joint Board recommended the imposition, on January 1, 1982, of a percentage freeze of SPF. The freeze, as proposed by the Joint Board, would be effected through an amendment to the Separations Manual specifying that the annual average interstate subscriber line use ratio for the study area for the calendar year 1981 would be used in the SPF formula.[5] This percentage freeze was determined to be more equitable and administratively practical than other proposals for interim action, including a cap on the dollar level of interstate allocations, or a SPF cap for all companies whose interstate allocations of non-traffic sensitive plant exceed 125% of the national average SPF factor.[6]

B. Comments and Discussion

6. Thirteen of the twenty-four parties voice general agreement with the need for an interim SPF freeze,[7] and several specifically endorse the Joint Board's recommendation. The Bell System and USITA view a freeze as an essential first step toward the ultimate determination of the appropriate level of NTS costs to be allocated to interstate services. GTE and Rochester Telephone Corporation agree that there is an urgent need to halt the growth of SPF and the resultant increases in interstate allocations in order to minimize the difficulty of making the transition to a more competitive environment in interexchange services and to allow the development of access charges that are related to a realistic level of costs. The Ad Hoc Telecommunications Users Committee recognizes the need to maintain the *status quo* while a comprehensive plan is being devised, and believes that an interim SPF freeze, by itself, will not cause large local rate increases. SPCC and SBS emphasize that they are still of the view that SPF is neither lawful nor economically supportable, but find an interim freeze to be a reasonable measure which permits the continued examination of SPF without further exacerbating the cost burden placed on interstate services.

7. We agree that the continued growth and multiplicative effect of the SPF factor on interstate allocations has become a serious problem in the industry. The problem arises from the fact that SPF has apparently not performed in the way that was anticipated or intended when it was adopted in 1970.[8] A primary reason for this is the assumption, built into the formula, that interstate rate schedules have a deterrent effect on toll calling.[9] We are not yet prepared to say that any such deterrent effect should or should not be a prime factor in separations apportionment.[10] However, twelve years of experience have shown that the adjustment made in the present allocation formula for whatever deterrence that may exist is excessive. Interstate calling, as a percentage of total usage, has increased steadily since 1970 despite some movement toward measured local service. Although it may have increased even more, absent any deterrence caused by usage sensitive toll rate schedules, interstate usage has risen substantially enough to significantly inflate the non-traffic sensitive costs allocated to interstate above the level considered acceptable in 1970. Therefore, not only is the assumption regarding deterrence now subject to question, but it is also apparent that the proportion of subscriber plant costs assigned to interstate, which for the Bell System alone has grown by approximately 50% since 1970, far exceed the level originally envisioned. In combination with the growth in subscriber plant investment, rising SPF factors have resulted in a pronounced and continuing shift of revenue requirements from intrastate to the interstate jurisdiction. We note that, because the SPF formula is based upon a theory of toll deterrence, there is no logical or economic basis for increasing its departure from relative usage (i.e., SLU) solely because the ratio of interstate use to total use increases. Indeed, it would seem much more reasonable to freeze (or perhaps decrease) the incremental "toll deterrence" adjustment as relative interstate use increases. Had SPF been promulgated as an additive rather than a multiplicative factor, accepting the adjustment over SLU when the Ozark Plan was adopted and adjusting for the increased relative use since that time, the 1981 Bell System SPF would be approximately 18.56%.[11] On this basis, the Bell System SLU would have had to rise to approximately 14.46% to reach the frozen SPF level of approximately 26.09% adopted today, a circumstance that is most unlikely to occur before the Ozark Plan is revised.[12]

8. We were well aware of this phenomenon when we instituted this Joint Board. At that time, we noted both the undisputed increase in the allocation of NTS plant to interstate and the wide diversity of views among the parties as to the proper role of SPF in the separations process. 78 FCC 2d at 840–44. We instructed the Joint Board to consider all legal, economic or equitable arguments that may be advanced for the retention of the existing formula or the adoption of a new one. We suggested that the Joint Board examine the applicability of different cost allocation mechanisms such as relative use and cost causation, and to investigate the necessity and feasibility of incorporating various cost differentials and non-cost factors in its ultimate separations plan. As we have stated, the Joint Board is proceeding with its work as swiftly as possible, given the need to exercise due caution in such an important matter and to accommodate the diverse interests of affected persons. At this stage, it is clear that, even after a year and a half of activity, there is a substantial amount of work yet to be done before a satisfactory comprehensive plan can be finalized. It is therefore appropriate to at least halt

carefully weigh and consider arguments and evidence supporting higher as well as lower interstate allocations that may be presented during further proceedings in this docket.

[5] The amendment further specifies that the 1981 level may be calculated as the average interstate SLU for the customarily used twelve-month study period ending in 1981, or, for companies for which no such 1981 annual average SLU exists, as the annual average interstate SLU for the initial study period.

[6] *See Recommended Interim Order*, paras. 8–9.

[7] These parties include ARINC, the Bell System, CBEMA, Centel, the Ad Hoc Committee, Continental, Granite State, GTE, Rochester, SBS, SPCC, USITA, and UTS.

[8] *Separations Procedures* (Docket No. 18866), 26 FCC 2d 247 (1970).

[9] In its *Recommended Report and Order* proposing adoption of the current Separations Manual (the "Ozark Plan"), the 1970 Joint Board described the second part of the SPF formula (2 SLU × CSR) as a factor "to recognize the deterrent effect of the interstate toll rate schedule specifically related to interstate calls originating in each study area." *Separations Procedures* (Docket No. 18866), 26 FCC 2d 247, 251 (1970).

[10] We will address that question when the Joint Board submits a final plan. That question must, of course, be addressed by the Joint Board in the first instance.

[11] In 1970, the Bell System interstate SLU was 5.08% and the interstate SPF was 16.71%. As an additive, then, SPF originally would have represented a 11.63% increase over interstate usage. The significance of the growth of SPF beyond levels approved in 1970 is illustrated by the fact that, based on 1980 investment, the difference between NTS allocations based on an additive SPF of 18.56% and a multiplicative SPF of 26.09% is approximately $5 billion.

[12] The actual Bell System 1981 interstate SLU is approximately 7.93%. Although the exact percentages would differ, this analysis pertains equally to Independents.

the growth of SPF as an interim measure.

9. We emphasize that the imposition of a SPF freeze is a temporary and non-prejudicial action. It is important to maintain the allocative factors for NTS plant at current levels until we can implement a final plan. Any other course would benefit some users and prejudice others as a result of usage fluctuations during the course of Joint Board and Commission deliberations. Although our decision to adopt the Joint Board recommendation is motivated primarily by a desire to preserve the *status quo*, we also recognize that any final plan is more likely to reduce than increase the total interstate allocation. If we allowed SPF to grow, inequities may result for users of interstate services who may be required to bear a greater proportion of costs before the implementation of a final plan than will ultimately be determined to be reasonable. Failure to freeze SPF could also result in more difficult adjustments for exchange carriers and regulators when a final plan is adopted. Thus, a uniform freeze will best preserve the equities between exchange and interexchange carriers as well as among all local exchange companies. This plan does not prejudice the positions that any of the parties have presented to the Joint Board. The Joint Board is to remain committed to a full and fair examination of all points of view and to earnestly seek a solution that will most accurately reflect those interstate NTS costs that can be determined and achieve a proper distribution of NTS costs where no causation is readily apparent.

10. Centel and Continental have endorsed the concept of an interim freeze, but specify that such a freeze should be consistent with a previous proposal made jointly by the Bell System and USITA.[13] Under this proposal, SPF would be frozen for a minimum period of three years.[14] This frozen SPF would be applied to actual book amounts of CPF investment and expense, however the result produced would be reduced at the rate of one-sixtieth per month. Although the Bell System has incorporated this proposal by reference in its most recent comments, neither the Bell System nor USITA vigorously promote its adoption as the proper formulation of a SPF freeze. The original Bell/USITA proposal is an inappropriate solution to the problem that the Joint Board has addressed in its recommendation. We agree with the Joint Board's judgment that the need to curb the continuing increase of interstate allocations due to the SPF formula, and the necessity of implementing a reasonable plan for the removal of CPE from separations are, at least in the interim, somewhat separate considerations. It would be unwise to entangle any interim SPF freeze with a longer-term solution to the CPE issue. This would require a prejudgment of the Joint Board's final decision on SPF, and would frustrate the sort of open-minded pursuit of a proper allocation mechanism that we intend the adoption of an interim SPF freeze to facilitate. Furthermore, we cannot guarantee or require that SPF continue to be used for any specific period of time. Rather, we merely order it to be frozen until the Joint Board recommends that it be retained or replaced.

11. Some parties do not think that the Joint Board's proposal goes far enough. In particular, MCI argues that SPF is illegal since it is comprised of certain subsidy elements that are not related to cost and that contravene principles of actual use enunciated in *Smith* v. *Illinois Bell Telephone*, 282 U.S. 133 (1930). MCI also asserts that there is no evidence to support the presumption of toll calling deterrence which provided the original basis for certain aspects of the SPF formula, and that the formula is actually the end product of a "result-oriented compromise." MCI maintains that, even at a frozen level, SPF cannot legally be made applicable to the operations of other common carriers (OCCs) since they were not participants in the development of the formula. MCI argues that OCCs would be placed at a competitive disadvantage due to the control over the separations and settlements processes exercised by the Bell System,[15] and that the imposition by the FCC of surcharges on a competitor to Bell would "tend to make its business commercially impracticable," resulting in an unconstitutional "confiscation" of private property by the United States Government. SPCC and SBS share these views on the legality of SPF and its applicability to the OCCs. However, as noted by USITA, these remarks are misplaced in the narrow context of the question before us. All that is being considered here is an interim measure that will freeze an important allocative factor at a given level for a temporary period of time while the Joint Board conducts a thorough investigation of the very issues that the OCCs raise. We are simply being asked to take an action toward preserving the *status quo* until these questions can be answered. Absent further action by the Joint Board, we can neither entertain these basic issues nor predict their resolution.

12. For this same reason, we must decline to consider many of the other recommendations made by the parties. ARINC would have us mandate a transition from SPF to SLU over a period of five years, and institute a proceeding to develop a cost allocation system that would replace relative use with cost causation principles. SBS and MCI promote the concept of "actual use" as a basis for allocations, and Rochester urges us to proceed to develop a cost-based access charge plan. UTS reiterates its support for a seven-year transition to a total call minutes (TCM) usage measurement. USITA and Continental suggest that SPF ultimately be replaced by a revised relative use measure with an additive for low density/high cost exchanges.[16] Most of these recommendations have already been presented to the Joint Board and are being evaluated in the context of the design of a comprehensive, more permanent separations plan. The Joint Board should consider the comments filed here in addition to those it has already received and will solicit in the future concerning these issues. However, it would be imprudent and premature for us to comment on or endorse any of these proposals now. These are complicated matters of great significance to both exchange and interexchange carriers. They should not be approached in haste, but we urge the Joint Board to make all possible diligent efforts to complete its study and draft a

[13] This proposal was originally presented by letter, dated November 9, 1981, to the Chairman of the Commission. Since it had been received only nine days before the Joint Board was to meet to consider an order on the CPE issue, and was filed outside of the prescribed pleading cycle, it was not considered by the Joint Board in its *Recommended Decision and Order*.

[14] Bell did not actually concur in the recommendation that reductions of SPF be delayed for three years.

[15] The process for separation of jurisdictional costs is separate and distinct from the processes used to divide interstate revenues among carriers. Both operations are administered by AT&T. AT&T provides detailed instructions for the performance of cost studies, and works out many details, such as the choice of a study period, on a contractual basis with local carriers that perform such studies. While not all exchange companies conduct cost studies, all share in interstate revenues. The Bell Operating Companies and Long Lines participate in the "Division of Revenues" process. "Settlements" are arranged, contractually, between Long Lines and Independents. The largest Independents receive settlements on the basis of cost studies, but nearly two-thirds of all Independents settle, at least partially, on the basis of "average schedules." *See* Bell System response to Joint Board Information Request in Docket No. 20981, November 21, 1977.

[16] This proposal was originally made by the Wyoming Telephone Company in comments filed in an earlier phase of this proceeding. The proposal is currently the subject of an extensive empirical study that has been undertaken by the Joint Board Staff.

final recommendation as soon as possible.[17]

13. Several parties resist the imposition of a SPF freeze and offer a variety of reasons why the Commission should reject the Joint Board's recommendation. As an initial matter, some parties advocate that the Commission remand consideration of a SPF freeze to the Joint Board in light of the recent proposed modification of the 1956 Consent Decree.[18] Bolden West comments that the Modified Decree "greatly impacts" this docket. Midway, California, and Florida argue that a final decision on a SPF freeze should not be reached until there has been a thorough examination of the potential impact of the Modified Decree on the revenues of the BOC's and the rates to their customers. The Rural Telephone Coalition (RTC), and the Independent Alliance agree that the Modified Decree may lead to increased local revenue requirements, and urge us to reaffirm a commitment to the maintenance of "universal service" at reasonable rates. They suggest that we refer the question of a SPF freeze back to the Joint Board and request them to address access charges on a priority basis. Granite State also urges that a specific policy be adopted regarding "positive goals" for small telephone companies.

14. Other parties, including the Bell System, CBEMA and the Ad Hoc Committee maintain that the access charge provisions of the Modified Decree increase the urgency of reducing the allocation of NTS costs to interstate and render an interim SPF freeze even more important. The proposed Modified Decree would have little or no effect upon the desirability of an interim SPF freeze. The proposed Decree does not purport to affect jurisdictional separations rules that have been or will be prescribed by this Commission.[19] The Joint Board will undoubtedly examine any collateral effects of the proposed divestiture in formulating a final plan, but we see no reason to expect any collateral effects that would make an interim freeze undesirable. In any event, the interim freeze will probably be replaced by a permanent plan before divestiture occurs.[20]

15. As USITA has stated, many of the comments regarding access charges are misplaced in this proceeding, and reveal a misunderstanding as to the Joint Board's responsibilities in that matter. If the Modified Decree is eventually approved, access charges will, as many of the parties have pointed out, become an area of critical focus. However, the Joint Board has not been charged with the development of an access charge plan, and will not be responsible for the approval of access charge tariffs. The Joint Board has been instructed only to make any changes to the Separations Manual necessary to assure complete and proper allocation of costs between jurisdictions and consistency with the Commission's access charge plan.[21] There is no need for the Joint Board to delay the development of such changes, as CBEMA and the Ad Hoc Committee have suggested, until the divested property of the BOCs has been valued and transferred. The Joint Board has already received proposals on the separations treatment of exchange plant costs,[22] and is studying this issue concurrently with the other proposed separations changes in the context of the design of a comprehensive allocation plan. Thus, it is not necessary to delay consideration of separations issues until the access charge issue is fully resolved. In any case, those matters are independent of a SPF freeze and provide no reason for postponing its implementation.

16. In addition to raising concerns related to the proposed Modified Decree, some of the parties contend that procedural defects require that the Joint Board's recommendation be remanded. In particular, Kansas, the Independent Alliance, RTC, Golden West, and Midway argue that the Joint Board did not provide adequate notice and opportunity for comment on the substantive proposal to freeze SPF. These parties find support in Commissioner Gravelle's dissenting statement in which it is argued that the Joint Board failed to comply with its own established procedures and the Commission's Rules which generally require prior notice of a proposed rulemaking. 47 CFR 1.412(a).[23] Midway and RTC claim that most parties were unaware of the Joint Board's intent to consider the issue until the November 18, 1981 meeting, when the recommended order freezing SPF was adopted. RTC further argues that, in its *Order Inviting Comments and Suggested Information Requests*, FCC 81–286 (released June 12, 1981), the Joint Board merely solicited preliminary views on questions that it had tentatively decided to address, that it had never requested comment on a specific proposal to freeze SPF, and that the opportunity promised by the Joint Board "to present more comprehensive substantive comments with respect to particular possible changes in the Separations Manual" never materialized.

17. These comments mischaracterize the procedural context in which the SPF freeze is to be adopted, and, in light of the notice and comment period established by the Commission, are irrelevant. As Bell, USITA, ARINC and SBS have commented, since the Joint Board's June, 1981 order and the filing of comments in response to that order, all parties have been plainly aware that an interim SPF freeze may be considered in this proceeding. Five parties, including USITA, UTS, GTE, Kansas and Northeast Nebraska Telephone Company specifically remarked on or submitted proposals for such a freeze in pleadings filed in August and September of 1981. At its October 13, 1981 open meeting, the Joint Board explicitly requested that the Joint Board Staff

[17] We note that the Joint Board's most recent timetable projects completion by early 1983. We are confident the Joint Board can adhere to this schedule.

[18] Modification of Final Judgment, Civil Action No. 17–49 (D.D.C.). The proposed Modified Decree was transferred from the United States District Court for the Northern District of New Jersey to the District Court for the District of Columbia, where it is currently under review. The Modified Decree would require AT&T to divest all assets related to exchange telephone operations. The divested Bell Operating Companies would be required to provide all interexchange carriers and service providers exchange access, information access, and exchange services for such access on a tariffed basis equal to that provided AT&T. The BOCs would be prohibited from providing customer premises equipment or any interexchange or information services. AT&T would retain all of its other existing assets, including Western Electric and the Bell Telephone Laboratories, and would no longer be restricted as to the services, equipment or products that it could offer. Under the terms of the Modified Decree, AT&T must submit a detailed divestiture plan to the Justice Department for approval. The plan is to be effective within 18 months of the entry of the Modified Decree.

[19] Both parties to the Decree have acknowledged that this is the case. The AT&T comments in this proceeding state that the Decree will not affect separations and the Competitive Impact Statement that the Department of Justice filed with the United States District Court for the District of Columbia contains a similar statement.

[20] In this connection, we also note that it would be premature, at this time, to mandate the separate and indepependent participation of the BOCs in the Joint Board proceeding as has been recommended by Kansas and the Pigeon Telephone Company. We recognize that as divestiture plans proceed, the interests of AT&T and the BOCs may diverge. However, especially since the Decree has not been entered it would be inappropriate to address that potential problem in this particular order.

[21] *See Second Supplemental Notice* (CC Docket No. 78–72), 77 FCC 2d 224 (1980).

[22] Several parties made presentations on this issue at the February 2, 1982 meetings between the Joint Board Staff and industry representatives in Arlington, Texas.

[23] In an order adopted on November 12, 1980, the Joint Board said that it would "in general attempt to follow the Commission's Rules and Regulations pertaining to rulemaking." *See* 47 CFR 1.1–1.120 and 1.399–1.430. FCC 80–692 (released December 5, 1980). This order was subsequently approved by the Commission. *Southern Pacific Communications Company*, 86 FCC 2d 190 (1981).

prepare a recommendation for a SPF freeze that could be voted on at the November 18, 1981 meeting. All parties certainly knew at that time that the action was under consideration. Moreover as emphasized by ARINC, the parties were given official notice of the exact wording of the proposed rule change and an opportunity to comment in the Commission's *Further Notice of Proposed Rulemaking*, FCC 81-580 (released December 21, 1981). Therefore, all parties have had both effective and actual notice of the proposed SPF freeze, and have had several opportunities to make their views known over the past six months.

18. Moreover in this instance, even assuming, *arguendo*, that the Joint Board did circumvent its own established procedures in adopting a recommended SPF freeze, the order itself is not invalidated. This is true for several reasons. First, the SPF freeze is an interim measure that is not intended to prejudice the final resolution of the substantive issues being addressed. It is an action that the Joint Board, in its own best judgment based on the record before it, considered to be a matter of some urgency and necessity. By all indications, the Joint Board remains committed to the thorough examination of all positions and proposals related to changes in NTS allocations. The Joint Board, desiring to avoid undue pressures on both the substance and timing of its final recommendation due to the continued growth of SPF as well as to minimize inequities while its investigation proceeds, views an interim SPF freeze as a reasonable and warranted step. We are satisfied that it is. Second, we need not reach the question of whether we would have found it appropriate to remand this matter back to the Joint Board if the comments had presented substantial new issues, proposals, or data, that would most properly be analyzed by the Joint Board. In this case, the parties have not presented any additional information not already considered by the Joint Board which would require a reexamination of the essence of the proposal. Finally, the Administrative Procedure Act, 5 U.S.C. 553, does not require more than one notice and comment period for a particular rulemaking. Since a substantive recommendation by the Joint Board is not effective unless and until it is adopted by this Commission, [24] and since we believe there are no material issues that necessitate a remand of the proposal, the comment period provided by our *Further Notice* clearly satisfies the requirements of the Administrative Procedure Act.

19. Many of the same parties that would have us remand the Joint Board's recommendation for lack of proper notice and comment also argue that there is an insufficient record upon which a SPF freeze can be based. Bell, the Ad Hoc Committee, USITA, ARINC and SBS dispute this contention and point out that since its inception the Joint Board has had before it empirical evidence of the steady growth in SPF for the Bell System since 1972 and has received broad support in comments from both the Bell System and many Independents, for the proposition that SPF generally continues to grow throughout the industry. We recognized that there might be additional information that various parties might want to present to shed more light on the issue. It is for this reason that we issued our *Further Notice*. However, as SBS has noted, none of the parties has challenged the accuracy of the figures provided by the Bell System and GTE that were relied upon by the Joint Board. Moreover, ARINC correctly observes that the same parties that criticized the adequacy of the record failed to use the opportunity provided by the Commission to add to that record with substantiated arguments.

20. For example, RTC complains that the effect of the freeze is not known, and that local rates will increase as a result of the freeze, discouraging the improvement of service in rural areas. This claim is echoed by Kansas, Midway and TSTCI. The Independent Alliance submitted a chart prepared by the Bell System as an exhibit in its defense against the Government's antitrust suit, [25] that indicates, by demographic groups, the reduction in households with basic telephone service that will result from increased local rates. In referring to this chart, Kansas charges that the Joint Board's action "will spell the beginning of the end of universal service." Notwithstanding this statement we find nothing in the comments of these parties to support the contention that Independents in general or small, rural telephone companies or their customers in particular will be severely impacted or that rates will be forced to such a high level that local service actually will be imperiled. [26] In order for us to be convinced of such a result, it would have to be demonstrated that interstate SPFs in rural areas are expected to grow so rapidly over the next year that the implementation of a SPF freeze would impose an inordinate burden on the companies that serve them. Without such evidence, the conclusions offered by these parties are merely presumed by the assumptions that underlie them and therefore cannot be accepted here. Thus, we have received no useful information from these parties to counterbalance the weight of the existing factual record that indicates that SPF must at least be frozen, as an interim measure, nor are we provided any verifiable basis for concluding that standards for exemption from the general rules must be formulated.

21. In a corresponding vein, some of the parties argue that the actual form of the proposed SPF freeze will not maintain the *status quo* and that the Joint Board failed to evaluate the relative merits of different approaches. Specifically, Golden West, Florida, RTC, the Independent Alliance and TSTCI maintain that the Joint Board's recommendation inappropriately freezes subscriber line use (SLU), instead of the "additives" in the SPF formula that actually create the magnifying effect. They contend that such a plan would violate relative use principles and would fail to reflect actual increases in interstate toll calling. RTC and the Independent Alliance propose that the actual increases in SLU be added back into a formula to freeze SPF. [27] In response, Bell and USITA point out that SLU is an integral part of the SPF formula, and that if SLU is not held constant, the intent to freeze SPF would be completely frustrated. Bell further maintains that the other factors in the SPF formula, the .85 constant in the first part of the formula and the CSR ratio in the second half of the formula, have been virtually frozen since Ozark was first applied. [28] Thus, without a freeze of

[24] Section 410(c) of the Communications Act, 47 U.S.C. 410(c) specifies that a Joint Board "shall prepare a recommended decision for prompt review and action by the Commission."

[25] Defendant's Exhibit No. D-4-1518.

[26] In fact, many small companies currently receive settlements which are already effectively "frozen" by virtue of the Bell/USITA agreement regarding maximum allocations. *See* Letter No. 1187, April 9, 1971. This agreement serves to limit toll settlements to 75-85% of joint costs. In the absence of this agreement, the multiplicative nature of the Ozark Plan would produce the absurd result of assigning more than 100% of joint and common costs to toll services. Small companies with high interstate usage are the ones most frequently subject to the maximum allocation limits. Thus, these companies, which are currently the most dependent upon toll settlements, will be the least affected by the freeze adopted here.

[27] The Independent Alliance offers the following algorithm: SPF = (1981 SLU × .85 + (1981 SLU × 2 × CSR) + (Current Year SLU − 1981 SLU)

RTC's algorithm reaches the same result.

[28] The .85 factor has been held constant for both the Bell System and Independents. The CSRs, while

Continued

SLU, virtually nothing would be accomplished.

22. The arguments that a freeze of SLU would not maintain the *status quo* because actual relative use would not be recognized reveal a misunderstanding regarding the Joint Board's use of that term. There are several aspects of current NTS allocations, each of which conceivably could be viewed as the essential characteristics of the *status quo*: The reliance on a relative use measure, the percentage allocation currently generated by the SPF formula, the actual dollar level of NTS costs allocated or settlements received, or the percentage of the total revenue requirement met by interstate revenues. The Joint Board has explained that it defines the *status quo* as the percentage allocation generated by the 1981 annual average SPF. This approach allows the actual costs allocated and settlement dollars received to continue to grow with increased investment in subscriber plant. We agree with the Joint Board that this approach is superior to a freeze of actual dollar amounts since such an approach would not permit adjustments for increased costs and inflation.[29] We also believe that the percentage of total revenue requirements met by interstate revenues is an inappropriate basis for a freeze since this would represent a completely arbitrary choice of an allocative methodology that is nowhere supported by judicial or regulatory precedent or sound economic theory. Finally, we are not prepared, at this point, to base allocations on the relative increases in local loop costs and interexchange line costs.[30] This matter, along with the proper application of actual relative usage measures is under study by the Joint Board. Therefore, a percentage freeze of the nature recommended by the Joint Board appears to be the most reasonable and equitable interim action, and will be least likely to prejudice the eventual outcome of this proceeding.

23. The only other alternatives that the Joint Board is argued to have overlooked are the proposals by Kansas and RTC to provide exemptions from the freeze for certain companies that have above average costs or that cannot yet offer single party service to 100% of their customers. As previously discussed, we do not have evidence before us that would permit the conclusion that customers of such companies will experience significant hardship as a result of a SPF freeze. We also do not have the information necessary to construct reasonable standards for making such exemptions, and, as the Joint Board has noted, the administrative costs of presiding over request for exemptions may far outweigh any benefits such a plan might have.[31] We have not rejected the pleas of rural companies that cost differences be taken into account in any final separations plan. We simply find that there is no evidence presently available to support special considerations for such companies or to assist us in designing appropriate relief during the interim period. These issues are being diligently scrutinized by the Joint Board, and if it becomes clear that special adjustments in cost allocations are in fact warranted, they will be incorporated in the general plan for separations changes. However, we must point out that customers of the smallest local carriers that are most dependent on interstate settlements are the least likely to be affected by a SPF freeze. The freeze affects only the *separations* formula that is used by exchange companies that perform cost studies to be used as a basis for division of revenues or interstate settlements. We do not assert any direct control over the division of revenues or settlements processes themselves. We fully expect that actual transfers of interstate revenues will continue to be conducted under contractual arrangements between local carriers and Long Lines. Furthermore, not all local companies "settle" with Long Lines on a cost basis. A clear majority of the approximately 1500 Independents currently receive settlements at least partially, on the basis of "average schedules." [32] Average schedules are generally used by the smaller Independents, which usually do not have the resources with which to perform the extremely complex and expensive cost studies. The decision to freeze SPF on an interim basis does not presume that average schedules cannot continue to be used.

C. Technical Modifications to the Joint Board's Recommendation

24. Several of the parties have suggested minor changes in the wording of the amendments to Section 23.444 of the Separations Manual proposed by the Joint Board. Bell, Centel, and USITA all remarked that SPF would not be entirely frozen unless all parts of the formula reflect 1981 annual average levels. As we have already noted, a factor of .85 has been used in the first half of the formula for all companies since 1970, when present separations procedures were originally adopted.[33] However, it seems appropriate to reflect this convention in the wording of Separations Manual amendments freezing SPF, so that there will be no misunderstanding as to the intent and effect of the action. Similarly, the CSR ratios in the second half of the formula should be frozen explicitly. CSRs have not actually been held constant for the entire industry, and if they were allowed to continue to fluctuate, percentage allocations, for some companies, could deviate from the prescribed 1981 annual average level. This would be contrary to the result desired by the Joint Board and this Commission, which is to hold, as much as possible, the percentage allocation of all NTS plant that is achieved according to the Separations Manual to the 1981 level. Therefore, we have incorporated the words "annual average composite station rate ratio used for the calendar year 1981," as well as the specific .85 constant, within the amendments to be made to Section 23.444 of the Manual.

25. We have also been asked to clarify the time period for which the frozen SPF must be calculated. TSTCI indicates that most of its members use study years that terminate at the end of either the first, second, or third quarter of the calendar year. They recommend that individual companies be allowed to recast their traffic data to develop SPF on a 1981 calendar year basis. We believe that it was the intent of the Joint Board to hold SPF at 1981 annual average levels industry-wide, as much as possible. Therefore, each company should endeavor to calculate its frozen SPF through the use of annual average SLUs and CSRs that are derived for the calendar year 1981. However, we realize that there are many companies that have non-calendar year study periods that may not be able to convert their studies to a 1981 annual average. The Joint Board, in a footnote to revised Section 23.444, has provided an option for these companies to use "the average interstate SLU for the customarily used twelve month period ending in 1981." We have altered the footnote slightly in order to more clearly indicate that the

constant for the Bell System have been updated for the Independents.

[29] *See Recommended Interim Order*, para. 9.

[30] California mentions that failure to accommodate this phenomenon is a major infirmity of the Joint Board's plan.

[31] *See Recommended Interim Order*, para. 8.

[32] *See* note 15, *supra*.

[33] This part of the formula (.85 SLU), has been described as a means to develop the "basic subscriber plant costs of an exchange call and (assign) to each interstate holding time minute of use the same cost as assigned by the formula to an exchange minute of use." On the basis of industry studies, it was determined that the ratio used to achieve this result would be .85. *Separations Procedures*, 26 FCC 2d at 251 (1970).

use of a non-calendar year study period ending in 1981 is merely an option provided to certain companies for separations purposes. The modifications regarding the elements of the formula to be frozen and the optional periods for calculation of the 1981 SPF are set forth in Appendix A to this order.

26. As a final matter, we must consider the effective date of the Joint Board's order. Several of the parties, including Bell, Rochester, and UTS have urged that the implementation of the SPF freeze be made retroactive to January 1, 1982, the effective date recommended by the Joint Board. These parties do not specify the advantages that they believe would result from a retroactive effective date. Moreover, settlements under these contracts are regularly adjusted retroactively. Since they are not prescribed by rule and are not subject to the Administrative Procedure Act requirements for rulemakings, 5 U.S.C. 553, no inequities will result from allowing the rule to be effective prospectively.

27. A few of the parties, such as GTE, RTC and TSTCI have requested that the Joint Board's recommendation, if adopted, be made effective only prospectively. GTE suggests that the Commission allow the most recent available data to be used in calculating a frozen SPF. RTC and TSTCI indicate that a retroactive date would preclude them from securing the necessary rate relief to compensate for increased intrastate revenue requirements. We will not allow the use of cost data more recent than 1981 unless a particular company has begun its first cost study sometime after January 1, 1981. The Joint Board has chosen the 1981 annual average SPF as the appropriate allocative level to be maintained pending the completion of its work. We have no reason to alter that judgment, and have been presented no evidence that particular inequities or hardship would result if that level were required to be used for separations purposes thirty days after publication of this order. However, it is possible that, due to the close relationship between the separations and settlements processes, some economic dislocation may result for certain companies that settle on the basis of a new SPF each month. If such companies experience dramatic seasonal fluctuations in interstate calling, for the few months between January 1, 1982 and the effective date of this order, companies with markedly higher winter interstate SPFs may be unjustly enriched compared to companies with low winter interstate SPFs. We expect that this will be a problem, if at all, only for the Bell Operating Companies since Independents generally do not calculate SPF on a monthly basis. Since this is a problem of revenue distribution rather than cost allocation, we believe it is a situation that can properly be handled internally, through the division of revenues or settlements processes. GTE, USITA, and Continental have suggested that the Commission allow departures from 1981 SPF levels, for settlements purposes, when an Independent and Bell agree on a representative traffic study period. Inasmuch as we have never prescribed settlements or revenue division, our decision will not preclude the carriers from making any adjustments to these processes they deem appropriate. Because we believe that no substantial problems will result from a failure to make the rule retroactive, the rule providing for a SPF freeze at the 1981 annual average level will be effective thirty (30) days after publication in the **Federal Register.**

III. Recommended Decision and Order To Remove CPE From Separations

A. Joint Board Recommendation

28. The Joint Board has proposed a plan for the gradual removal of CPE from the separations process. The intent of the plan is to facilitate the implementation of the Commission's policies regarding detariffing of customer premises equipment,[34] as directed in our order establishing this Joint Board, 78 FCC 2d at 846, and to ensure that the detariffing does not result in abrupt rate increases. Under this plan, which is coordinated with the Commission's implementation date for the bifurcated detariffing of CPE, no investment or expenses associated with CPE incurred after January 1, 1983 would be allocated to interstate operations. The amounts in the CPE plant accounts on the books as of that date, and the average amounts in related expense accounts for the previous year, would constitute a "base amount" for separations purposes. The base amount would be reduced at the rate of one-sixtieth per month for a maximum of five years.

29. The Joint Board considered this plan in the context of a phased approach to the many separations issues before it. The Joint Board determined that the development of a plan for removal of CPE from separations was a matter of high priority, due to the fact that arrangements must be in place by January 1, 1983 when the Commission's detariffing plan takes effect. Since the CPE issue could be resolved with currently available information and only minor changes to the Separations Manual, the Joint Board viewed it as a discrete problem that should be addressed separately from the other more complex separations questions such as the proper allocative basis for non-traffic sensitive plant and any warranted adjustments to a general allocative scheme for certain local carriers with unique cost characteristics. Therefore, by presenting the CPE plan, the Joint Board recommends a preliminary solution to a distinct problem, which it believes can and should be examined apart from the other complex and time consuming issues involved in this proceeding. The Joint Board has specified that "adoption of a CPE plan which is interim in nature and narrow in scope will neither delay nor prejudice the resolution of other separation issues."[35] It is expected that the other necessary modifications to separations procedures will be devised as expeditiously as "diligent study" will permit, and that their implementation will be properly coordinated with the CPE plan already in place so that, overall, the most equitable result for all parties will be achieved.

B. Comments of the Parties and Discussion

30. The parties that favor adoption of the Joint Board's CPE plan include ARINC, the Ad Hoc Committee, and Rochester. The Bell System incorporates, by reference, its comments on this subject made previously to the Joint Board, as well as its November 9, 1981 joint proposal with USITA.[36] However, in its most recent pleadings, Bell generally requests that a CPE phase out plan be approved. Several other parties have voiced their support for the plan in previous comments to the Joint Board.[37] These parties view this approach as a reasonable and readily implementable means to effectuate detariffing policies while minimizing the

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[34] *See Amendment of § 64.702 of the Commission's Rules and Regulations* (The Second Computer Inquiry), 77 FCC 2d 384 (1980) *(Final Decision), modified on reconsideration,* 84 FCC 2d 50, (1980) *further reconsideration,* 88 FCC 2d 512 (1981), *appeal pending sub. nom CCIA v. FCC,* Case No. 80-1471 (D.C. Cir. 1980).

[35] *See Recommended Decision and Order,* para. 13.

[36] *See* note 13, *supra.*

[37] *See Recommended Decision and Order* para. 27. The other parties supporting the Joint Board proposal include the California, Pennsylvania and Colorado Public Utilities Commissions, and the New York State Department of Public Service. The Joint Board reported that UTS, Continental and USITA also supported the plan, but in their most recent pleadings, these parties advocate removal of CPE from separations on the basis of book costs.

financial impact of those policies. We agree. CPE represents a large portion of the non-traffic sensitive costs that are currently allocated to the interstate jurisdiction. Thus, the settlements received on the basis of these cost allocations represent, generally, a significant portion of overall revenues for local companies.[38] The reliance of most exchange carriers on these revenues is an effective impediment to the immediate implementation of our CPE detariffing requirements and the achievement of a fully competitive marketplace in terminal equipment. The public interest will not be served by inordinate delays in the development of a vigorously competitive environment for new CPE or in the availability of used CPE for purchase. Therefore, we must weigh our concerns regarding the possibility of placing undue pressure on local rates against our commitment to bringing the advantages of CPE competition to the public as soon as it is feasible. The Joint Board's plan provides a way of balancing these concerns and objectives. The CPE proposal is intended to serve as a reasonable transition mechanism that will allow regulators and the industry to adjust to new conditions without imposing hardship on consumers, either in the form of sudden and burdensome rate increases or the perpetuation of conditions under which the purchase of terminal equipment is either unattractive or impractical.

31. The Joint Board's plan alleviates these conditions in two ways. First, it establishes a schedule for the measured reduction of settlements payments based on CPE costs. The CPE base, to be used for separations purposes, will be reduced at the same rate for all local carriers. While this plan is in effect, no local company will face the sudden necessity of securing drastic rate increases as the result of lost settlements revenues due to the removal of large amounts of CPE from the rate base. This will protect customers of those carriers who experience swift reductions in CPE costs, through either transfer, retirement, or sale of equipment, from being unfairly disadvantaged under the Commission's detariffing policies. Second, the plan will eliminate disincentives toward timely removal of CPE from the rate base by guaranteeing a reduction in CPE related settlements at a particular measured rate. This will protect consumer interests by eliminating resistance to the transition to fully competitive CPE markets. Therefore, the Joint Board's plan appears to be the most reasonable way of achieving two seemingly conflicting objectives regarding the public interest, the maintenance of reasonable rates and the relatively swift implementation of new public policies regarding terminal equipment. The need to accommodate these conflicting objectives is a temporary phenomenon created by the confrontation between the long established industry practice of allocating CPE costs to the interstate jurisdiction, and the recent adoption of detariffing policies. An interim transition scheme is clearly required to allow us simultaneously to guide the industry through a difficult adjustment and continue to meet our statutory obligations to the public interest. For this reason, we find that a temporary departure from more familiar separations practices is necessary.

32. Some parties, such as Rochester, may feel that a reduction rate based on an estimate of a five year transition is too long. Others, such as the Independent Alliance believe that a ten year transition period is more appropriate. Many parties, such as the Bell System, USITA, Continental and Centel have endorsed a five year period as a reasonable estimate for the length of time that it should take to achieve our goals. The Ad Hoc Committee and CBEMA have suggested that we reserve judgment as to the proper phase out period. However, we believe that the rate of reduction chosen by the Joint Board is entirely appropriate. Furthermore, delay in establishing the phase out period would defeat the essential purpose of the plan. That purpose, as we perceive it, is to choose a rate at which CPE costs will be removed from separations, rather than a definite period of time over which the interstate allocation of some level of CPE costs will continue to be guaranteed. One-sixtieth per month is a realistic estimate of the average rate at which all local carriers will experience the removal of tariffed CPE from their rate bases.

33. Several of the parties believe that the divestiture plan in the proposed Modified Decree, which would require the transfer of CPE from the Bell Operating Companies (BOCs) to AT&T, so dramatically changes the industry conditions upon which the CPE plan has been based that the entire matter should be remanded to the Joint Board for further analysis. The Modified Decree would mandate the transfer of CPE to AT&T within eighteen months after the Decree is entered. Kansas, RTC, Midway, Pigeon, and SBS believe that the transfer timetable under the Decree conflicts with the bifurcation plan adopted by this Commission in the *Second Computer Inquiry*. They argue that this conflict may require a reexamination of the CPE plan should the Decree require flash-cut removal of terminal equipment from the Bell Operating Companies' rate bases, thereby removing any opportunity to utilize toll settlements on CPE as a buffer to mitigate local rate increases. NATA further argues that, since the terms of the Modified Decree will eradicate the "conceptual" foundation of the Joint Board's proposal, specifically the continuation of CPE regulation and settlements arrangements, it makes no sense to approve a phased removal of CPE from rate base regulation. GTE expresses concern that the Joint Board plan would permit the BOCs to earn revenues on a CPE base that, after transfer of the equipment to AT&T, would no longer actually exist. Kansas questions the impact of the Modified Decree on the present scheme of state and federal regulation of terminal equipment and the implications of access charge arrangements involving the BOCs for the industrywide applicability of the separations and settlements processes.

34. Other parties believe that, although the proposed Modified Decree raises substantial questions, Commission approval of the Joint Board's recommendations need not be delayed. UTS, while proposing certain modifications to the CPE plan and urging careful consideration of the impacts of the Modified Decree, cautions that the progress made so far must not be lost. USITA is concerned that the provisions of the Modified Decree and the Commission's detariffing policies must be reconciled into a plan that is fairly applicable to the entire industry but sees no need to delay this proceeding. The Ad Hoc Committee and CBEMA believe that the possibility of a flash-cut of terminal equipment from BOC rate bases make it even more critical to cap CPE accounts for separations purposes as soon as possible, and suggest that January 1, 1982 be adopted as the effective date. ARINC points out that a flash-cut for the Bell System should not require fundamental changes in the Joint Board's recommendation since the Independents would remain subject to a phase out plan. ARINC also disagrees that the plan should be remanded to the

[38] Apparently this is not the case for all local companies. Rochester reports that its CPE investment in Accounts 231 (Station Apparatus) and 234 (Large PBXs) represents less than 20% of its NTS allocations, and that CPE has already been excluded from intrastate toll allocations in New York State, on a flash-cut basis, without a major impact on local rates.

Joint Board pending clarification of the Decree since that would bring the proceeding to a "grinding halt" for nearly a year while the District Court reviews the provisions of the agreement and Bell develops its reorganization plan. ARNIC views the plan as an interim measure that must be ready to be put in place on the Commission's detariffing date while the more comprehensive revisions to separations procedures for non-traffic sensitive costs are being finalized. Finally, the Bell System observes that the effective date of divestiture is not yet known, and argues that, even if there is a conflict between the eighteen month transfer deadline and the Commission's bifurcation plan, actions to begin the removal of CPE from separations should not be postponed. Bell maintains that both the divestiture plan and the Joint Board's five year schedule require movement toward the removal of CPE from interstate allocations, and that delay in the initiation of the process would not be in the public interest. Bell recommends that we proceed with the plan and deal, as necessary, with further changes that may be occasioned by such presently unforeseeable factors as the final divestiture plan, legislative action, or the decision of the Court of Appeals on review of our final action in the *Second Computer Inquiry*.

35. We find that there are no compelling reasons to modify the Joint Board's CPE plan at this time, or to delay its adoption due to any uncertainties created by the proposed Decree. As an initial matter, the Modified Decree is, as yet, merely a proposed settlement, and has not been officially entered by the United States District Court for the District of Columbia, which now has jurisdiction. Even if the Decree is not modified before it is finally approved, the Court's reviewing process is projected to take at least three months, and Bell's reorganization plan will not be unveiled for an additional six months. Therefore, the exact contours of divestiture will not be revealed until late 1982. If we were to delay the development of a plan to remove CPE from separations until all of the details of divestiture are known, there would be insufficient time to design and implement such CPE plan on a schedule properly coordinated with our CPE detariffing date. This type of delay would impair the proper and timely achievement of regulatory objectives, and would not be in the public interest.

36. This is all the more true because, at this time, we find no reason to undertake revision of our bifurcated detariffing plan, or our schedule for its implementation in light of the proposed Modified Decree. We have established a bifurcated approach to detariffing CPE because there are complex and time consuming issues regarding the proper valuation of CPE currently "embedded" in the rate base that we believe should not delay the reasonably swift transition to a competitive market for new CPE. These problems remain under the terms of the Modified Decree, since the CPE belonging to Bell must be valued before it is transferred to AT&T's subsidiary. The schedule for this transfer may be accelerated under the Decree, but it does not impact the essential integrity of our approach. Furthermore, the bifurcation plan will continue to be applicable to independent telephone companies. Delay in the adoption of a CPE separations plan for these companies is clearly not required. Therefore, the Modified Decree does not demand substantial changes in our program for CPE detariffing, and since it is crucial to have a separations plan in place on January 1, 1983, it is unnecessary, and would be unwise, to remand this matter to the Joint Board. We also desire that the Joint Board move forward to attend to other equally pressing separations issues including the appropriate measurement of private line, FX and CCSA minutes of use, the replacement of five business day with seven calendar day usage studies, and the proper assignment of NTS costs to interstate services for exchange access. The Joint Board and its staff have limited resources to apply to these efforts, and should not be burdened with the necessity of reconsidering issues that have already been thoroughly examined. A remand of the CPE plan would only result in the delayed development of an urgently needed comprehensive separations plan.

37. There is also no reason to delay this proceeding or modify the Joint Board's objectives out of some apprehension that the Modified Decree will invalidate the entire separations and settlements process. Whether or not a system of access charges will replace settlements for the entire industry, the problem of the appropriate jurisdictional allocation of costs will remain. Interstate cost allocation is the only matter before the Joint Board, and it is essential that it complete its work expeditiously so that other necessary changes in carrier relationships can be made as circumstances require.

38. Although the Modified Decree does not require postponement of either of the actions that have been recommended by the Joint Board so far, we recognize that some uncertainty has been created, and that, at this stage, it is impractical to adopt the CPE plan as a final solution to the problem it is intended to address. Therefore, we approve it as an interim plan, to be in place on January 1, 1983. This is necessary to assure the prompt implementation of our detariffing policies and to protect both exchange and interexchange carriers as well as the public. However, the Joint Board should take into consideration the likely effects of the Modified Decree, especially the possibility of the sudden removal of CPE from the rate bases of the BOCs, in its final design of comprehensive revisions to the Separations Manual. The CPE plan, as here adopted, will probably have to be modified, with respect to the BOCs, or superseded by the comprehensive exchange plant revisions, to accommodate a restructuring of the industry which may take place a year or so after the CPE plan has begun to take effect. We believe that it would be most appropriate to make these changes, if any, in the context of the overall separations plan which is still being formulated for the allocation of non-traffic sensitive costs. What we adopt here is a rate at which CPE related costs should begin to be removed from the interstate jurisdiction, and charge the Joint Board with presenting a recommendation as to how this rate should finally be integrated with other changes to the separations process.

39. RTC claims that the Joint Board has "explicitly refused" to consider the relationship between jurisdictional cost allocations and the maintenance of reasonable local rates. This is a mischaracterization of the Joint Board's approach. The Joint Board has decided that a plan for CPE should be adopted on an expedited basis, so that it can be in place when it is needed, whether or not all separations issues have been completely resolved by the time that bifurcation takes effect. The proper timing of a CPE separations plan is critical to the effective implementation of our detariffing policies. However, this by no means indicates that the Joint Board has abandoned its responsibility to consider the overall impact of separations changes on local rates. In fact, the Joint Board has specifically stated that:

> The mere fact that a plan for removal of CPE from separations procedures is subject to the Joint Board's decision-making process on a priority basis in no way precludes the coordinated implementation of that plan with other separations changes. We fully intend to address all necessary modifications to the

Separations Manual as expeditiously as possible. The choice of a CPE separations plan provides a foundation upon which these other modifications can be built in a sequence that achieves the most equitable results for all parties concerned.[39]

40. Some parties still find fault with the Joint Board's plan on the basis that it does not allow the proper reflection of actual book costs of CPE. Continental and Centel say specifically that they support the adoption of the CPE plan to the extent that it is consistent with the original proposal made jointly by Bell and USITA.[40] Under this proposal, book costs of CPE and related expenses would be identified for separations purposes. However, the actual amount allocated to the interstate jurisdiction would be determined by the application of SPF or a substitute factor to the identified costs and the reduction of the resulting product by an additional one-sixtieth each month. Thus, after the first month, the proportion of CPE costs allocated to interstate would be based on an amount that is less than the CPE costs actually remaining in the rate base. Therefore, local carriers that experienced retirements, sales, or transfers more swiftly than other carriers would experience a double penalty. The proportion of book costs allocated would decline at a steady rate each month, and the actual cost base would also decline. This would clearly create great incentives for local carriers to maintain embedded CPE in the rate base for as long as possible. This result is contrary to our intentions, which are to reduce the penalties for the detariffing of CPE and promote favorable conditions for full competition in all CPE markets. Therefore, we find, as did the Joint Board, that this proposal is unacceptable.

41. GTE argues that essentially no changes need be made to allocation procedures to accommodate the detariffing of CPE. GTE maintains that the Joint Board's plan violates separations principles and that the allocation of CPE to interstate services must continue to be based on book costs. GTE also argues that separations changes prior to the resolution of the issues being addressed in the Implementation Proceeding are unnecessary, and that a CPE plan based on amounts fixed at a certain period of time would ignore the particular requirements of individual companies. Other parties, including the Independent Alliance, Golden West, USITA, UTS, Pigeon and Midway concur that book costs should be used to determine the interstate allocation of CPE. These parties are generally concerned that CPE separations revisions be complemented with adequate capital recovery, an equitable access charge plan, and reasonable implementation procedures for CPE deregulation. The Joint Board has already addressed these issues, and we concur with their analysis.[41]

42. The parties who advocate the use of book costs in the name of capital recovery do not actually claim that CPE is generally underpriced at the local level, and that interstate settlements are needed to recoup the full costs of CPE. Aside from the fact that interstate settlements are not tagged for CPE and that it would be impossible to determine that settlements are or will be used for such a purpose, none of the local carriers have disputed the Joint Board's assumption that terminal equipment rates are now generally set at or near full costs. It appears that these carriers promote the continued use of CPE book costs on the basis that such a practice is a fundamental "principle" of separations procedures. They believe that the Joint Board's plan, which relies on an approximation of average book costs over a five year period represents a contravention of this long-standing principle. We do not dispute the fact that the book costs of those portions of the telecommunications network subject to our jurisdiction under Title II of the Communications Act has been, and continues to be the appropriate basis for allocations among interstate services. However, the detariffing of CPE presents a unique situation and requires adjustments to separations procedures that have never before had to be made. In our decision in the *Second Computer Inquiry*, we determined that terminal equipment is no longer a proper subject of federal regulation under Title II of the Communications Act. Theoretically, under this determination, it would actually be most proper to eliminate CPE allocations entirely, regardless of the CPE book costs that remain in the rate bases of local carriers. However, we are constrained by our statutory mandate under Section 1 of the Communications Act to consider the impact of the full implementation of detariffing policies on the reasonableness of rates. Therefore, due to the contribution phenomenon that has developed as a result of CPE allocations to interstate, it is appropriate to coordinate the removal of CPE from separations with our bifurcation plan, and to introduce the necessary changes gradually. In order to guide the industry through a temporary transition period in an orderly and equitable manner, the adoption of the Joint Board proposal is warranted for two reasons. First, it will prevent sudden and uneven rate increases due to CPE detariffing policies, and will provide, as nearly as possible, equal conditions under which all local carriers will make the transition to an environment of detariffed CPE. Second, it will protect the public interest by promoting rather than impeding the achievement of our detariffing objectives. Since this is a temporary and interim plan, necessary for the achievement of an equitable and swift transition, it does not impair the general integrity of separations procedures.

43. The Independent Alliance has also argued that the elimination of settlements under the Joint Board's plan would constitute a form of confiscation of utility property and would violate certain bond covenants that require local carriers to use both local and toll revenues to meet their obligations. The Independent Alliance claims that interference with these contractual arrangements would impede their ability to recover invested capital fully. They suggest that a ten year rather than a five year time frame for the phase out of CPE allocations is required to provide sufficient time for present obligations to be met under the terms of these contracts. We find that this argument for the extension of the phase out period is completely without merit. Aside from the irrelevance of the capital recovery argument, which we have already addressed, we note that there is nothing about the Joint Board's plan that would violate bond covenants that require repayment of borrowed funds with both local and toll revenues. It is absurd to believe that these covenants require the identification of settlement revenues according to the particular types of equipment upon which the related cost allocations are based. As we have stated, this would be an unreasonably burdensome, if not impossible task. The Joint Board's plan certainly does not prevent the application of the toll settlements that will continue to be received toward repayment of debt financing. Therefore, there is no reason to believe that bond covenants will be violated. However, even if they were, this would not be a sufficient reason for the abandonment or inordinate postponement of important regulatory policies. It is well settled that governmental regulation is not invalidated simply because an entity

[39] *See Recommended Decision and Order*, para. 13.

[40] *See* note 13, *supra*.

[41] *See Recommended Decision and Order*, paras. 24–26.

subject to the regulation is a party to some contracts.[42]

44. Some parties are concerned that the Joint Board's plan may have antitrust implications or may actually promote anticompetitive behavior on the part of local carriers. NATA, a representative of competitive manufacturers, suppliers and distributors of CPE argues that, contrary to the assumptions made by the Joint Board, CPE is currently underpriced and that no contribution phenomenon is created by the combination of full cost pricing at the local level and the allocation of a portion of CPE costs to interstate. NATA submits a functional cost study of the Bell System to show that, at rates current in 1980, CPE operations lost $3.9 billion. NATA further contends that recent cost studies submitted by the Bell System in several states have indicated either negative or only marginally positive returns for CPE. NATA claims that these results demonstrate that there is no need for a phase out of separations support provided to local exchange operations via CPE allocations, and that the Joint Board's plan would only perpetuate opportunities for Bell companies to engage in predatory pricing of terminal equipment. NATA maintains that adequate depreciation, capital recovery, valuation and transfer prices will more than offset settlement revenue losses associated with the exclusion of CPE from separations.

45. Bell responds with the observation that NATA's cost study does not include an analysis of the combined effects on intrastate revenue requirements of separations allocations of CPE costs and pricing of CPE at the intrastate level; thus, it does not support NATA's conclusion that detariffing of CPE and the reduction of interstate allocations will not place upward pressure on local rates. We agree that NATA's study does not demonstrate that CPE is currently underpriced because of interstate settlement revenues. NATA has certainly not established a nexus between settlements and CPE pricing that compels us to believe that a phase out of CPE allocations to interstate will perpetuate any predatory pricing practices. There are other serious flaws in NATA's study. It is not at all clear how the study was constructed, since the assumptions on which it is based are not revealed. We have never prescribed a fully distributed cost study for CPE allocated to interstate services, and NATA does not identify any particular state requirements as the source of its methodology for the attribution of intrastate costs and revenues to CPE. The source of NATA's data is also unknown, although NATA rather vaguely implies that it used 1980 statistical information. In addition, the study allocates a variety of costs to CPE, such as outside plant, furniture and office equipment, and all categories of operating expenses, which are clearly unrelated to the cost of the equipment itself, and thus permits grossly distorted conclusions to be drawn regarding the adequacy of the returns currently earned by CPE. Finally, the study does not reach the relationship between costs and revenues for CPE owned by Independents. Although the Bell System does own the vast preponderance of CPE, the plan for removal of CPE from separations is based on industry-wide conditions. For all of these reasons, we find the NATA study to be misleading and unreliable, and of little help to us. We also note that, in contrast to NATA's position, CBEMA, which also represents competitive interests in terminal equipment, comments that the Joint Board's recommendation will facilitate our goals of enhancing the competitiveness of the CPE market. Inasmuch as we are adopting a phase out of CPE investment from interstate allocations rather than an offset that would maintain an existing interstate allocation on a perpetual basis, no purpose would be served by conducting elaborate studies to determine whether state commissions have succeeded in pricing all CPE at full cost. We are satisfied that the Joint Board phase out proposal is reasonable and equitable and that no useful purpose would be served by attempting to measure with greater precision the rate consequences of an abrupt removal of CPE from separations.

46. A few other parties have raised antitrust concerns from the viewpoint of local carriers. Kansas states that, although it does not agree that terminal equipment is generally tariffed below cost, the potential for anticompetitive practices is a serious question that the Joint Board has not adequately addressed and should consider on remand. The Independent Alliance argues that telephone companies which sell embedded CPE could become subject to complaints from customers who object to the telephone utility's power over pricing and provision of service as well as from interconnect companies that may view prices at or below market value as monopolization or unfair competition. We do not dispute the fact that compliance with antitrust laws is a factor which must be taken into account by local carriers and state regulatory commissions that wish to establish programs for the sale of used CPE to customers. However, the CPE plan we adopt here does not directly impact these concerns. The Joint Board's recommended plan accomplishes nothing more than the smooth and certain removal of CPE from separations at a measured rate. It does not require the sale of terminal equipment to the public, nor does it establish any particular prices for sale or transfer of CPE or specific standards by which those prices must be set. These are problems that must be resolved at the local level. The possible emergence of antitrust complaints or the creation of opportunities for non-compensatory pricing are neither necessary nor inevitable results of a transition mechanism that phases out jurisdictional CPE allocations over a limited period of time. If anything, the CPE plan will hasten the elimination of any opportunities for predatory pricing that may currently exist by removing CPE from separations as swiftly as we believe that public interest will allow.

C. Technical Modifications to the Joint Board's Recommendation

47. Bell, GTE, Centel and USITA have suggested a number of technical changes in the Separations Manual language recommended by the Joint Board. A number of these changes are desirable and will be incorporated in the revised Separations Manual as discussed below. Bell points out that the language proposed by the Joint Board appears to include federally tariffed CPE with other embedded CPE to be phased out of the separations process. As less of the CPE costs are allocated to the interstate jurisdiction more of them remain to be borne by the intrastate jurisdiction. Bell contends that this would create a cost-revenue mismatch in the case of federally tariffed CPE since the revenues involved will remain in the interstate jurisdiction. Centel and USITA also raise this point. We believe that they are correct in the contention that the recommended language could result in an improper allocation of federally tariffed CPE costs to the intrastate jurisdiction. Accordingly, we have modified § 25.32 to provide that federally tariffed CPE will be

[42] *See, e.g., Southern Terminal Corporation* v. *Environmental Protection Agency*, 504 F.2d 646, 679–680 (1st Cir. 1974). Moreover, it has long been held that the obligation of contracts clause of the United States Constitution, U.S.C.A. Const. Art. 1, § 10, cl. 1, does not apply to the federal government, *Sinking Fund Cases*, 99 U.S. 700, 718 (1878). This is true even though the freedom to contract is often diminished when an industry is under federal regulation. *Ames* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 567 F.2d 1174, 1179 (2d Cir. 1977).

apportioned as provided in paragraph 25.22 of the Separations Manual.

48. Bell also points out that the definition of customer premises equipment to be added to the Separations Manual under the Joint Board's recommendation is not fully consistent with the definition of CPE contained in the *Second Computer Inquiry*. Centel also raises this point, recommending a definition somewhat different from that of Bell. Since the changes in the separations treatment of CPE are being recommended by the Joint Board in large measure because of the Commission's decision in that proceeding, we believe that the definition of CPE contained in the revised Separations Manual should be as consistent as possible with that set out in our decision in the *Second Computer Inquiry*. Accordingly, the definition of CPE to be included in the Separations Manual has been modified to track our *Second Computer Inquiry* decision.

49. Bell suggests that the recommended language of Section 42.551 which caps the interstate allocation of CPE maintenance expenses be modified, as recommended by the Joint Board, to track that of Section 25.31 which caps the interstate allocation of CPE investment. We believe that this change in the language recommended by the Joint Board is desirable and will incorporate Bell's suggested language. Bell also proposes that Section 42.552 be modified by substituting existing Separations Manual terminology for similar language in the Joint Board's recommended changes. In addition, Bell suggests adding language to cover installations, disconnections and removals which have been added to Account 605. We believe that changing this language to be more consistent with existing Separations Manual terminology and adding the suggested additional terms is desirable and we have modified § 42.552 accordingly.[43]

50. We also believe that the language of § 51.22 proposed by the Joint Board should be modified as recommended by Centel, with certain changes, to specify that the depreciation reserve is to be apportioned between the interstate and intrastate jurisdictions in accordance with the procedures used for the separation of the related CPE plant. This change is desirable to ensure that the depreciation reserves properly track the CPE equipment to which they relate in light of the fact that different items of CPE are depreciated at different rates. We have also made one minor clarifying change in the introduction to the addendum suggested by Centel.

51. There were also a number of other suggested changes that we are not adopting. GTE advocates a number of technical changes in the Separations Manual language recommended by the Joint Board. GTE's first concern involves the apportionment of maintenance and depreciation expenses between the interstate and intrastate jurisdictions. GTE states that under §§ 42.552, 43.112 and 51.22 the amounts for maintenance expense, depreciation expense and depreciation reserves respectively are to be reduced by one-sixtieth per month and then apportioned to interstate on the basis of the related CPE plant. The related CPE plant amounts will also be reduced by one-sixtieth per month and GTE contends that the recommended separations language must be clarified to prevent it from being interpreted in a manner which would result in compounding the rate at which these expenses and reserves are removed from the separations process. We do not believe that the separations language recommended by the Joint Board is susceptible to the interpretation posited by GTE. It is amply clear that maintenance expense, depreciation expense and depreciation reserves are to be apportioned according to the methods used for apportioning the amount of the related investment, not according to the overall ratio of interstate to intrastate investment.

52. GTE also contends that the revised separations language should specifically address the treatment of CPE plant held in Account 100.2, Plant Under Construction. GTE argues that while CPE plant remains in Account 100.2 a portion of its costs will continue to be allocated to interstate, but that when construction is complete and the amounts are transferred to the appropriate CPE account, all of the related costs will be assigned to the intrastate jurisdiction because of the cap on CPE investment. Under our decision in the *Second Computer Inquiry* new CPE will be deregulated as of January 1, 1983 while embedded CPE will continue to be subject to regulation pending further proceedings. The definition of embedded CPE includes equipment which is already in place on the customer's premises as well as inventory. Since embedded CPE does not include units under production, CPE plant in Account 100.2 will be fully deregulated on January 1, 1983 and should not be included in the CPE investment to be phased out of the separations process over a five year period.

53. In addition, GTE contends that the definition of CPE recommended by the Joint Board should be clarified to exclude equipment designed as a functional part of network services and performing functions such as supervision, signalling and transmission enhancement, but currently included in the CPE accounts. USITA argues that Category 3 Station Identification Equipment costs should continue to be allocated in accordance with § 25.23 of the current Manual. Centel also raises this point. We believe that the recommended definition of CPE, as revised in response to Bell's comments, adequately deals with this question. If equipment is contained in items of CPE as defined in the *Second Computer Inquiry*, it will be phased out of separations. If it is not contained in the CPE, it will not be included in the phase out.

54. Centel also proposes a number of technical changes in the Separations Manual language recommended by the Joint Board. Centel observes that, pursuant to the Commission's Supplemental Opinion and Order in Docket No. 20188, AT&T has disaggregated Account 171 and now maintains depreciation reserves for each category of property for which the Commission prescribes depreciation rates. Centel contends that this process must continue to be used by all telephone companies for establishing the base amounts for CPE, and recommends elimination of the language which allows use of theoretical reserves for each account when figures based on an actual allocation are not available. While we agree that the use of depreciation figures allocated to each plant account on the basis of the company's books is preferable, some provision must be made for situations in which such amounts are not available. Therefore, we have retained the language allowing the use of theoretical reserves for each account when actual figures are not available.

55. Centel also suggests a number of changes in the Joint Board's recommended language to deal explicitly with the allocation of depreciation, amortization reserves, accumulated deferred income taxes and accelerated tax depreciation. We believe that the language recommended by the Joint Board adequately deals with these matters since these amounts will continue to follow the allocation of the related plant. Therefore, we do not believe that there is any reason to adopt

[43] In addition, Bell points out that Section 2, Part 5 of the recommended Addendum contains an erroneous reference to § 25.31 when § 25.111 is clearly intended. This was a typographical error and has been corrected.

the changes in this area recommended by Centel.

IV. Conclusion and Ordering Clauses

56. The two recommendations presented by the Joint Board represent significant steps toward the accomplishment of its designated tasks. The imposition of a SPF freeze will prevent the further aggravation of a long recognized problem regarding the interstate allocation of non-traffic sensitive costs. This action will not prejudice the Joint Board's final determination of the appropriate separations treatment of these costs. It will maintain current allocative proportions until more comprehensive Manual changes are finalized and will provide, for all carriers, the most equitable basis for adjustment to new separations procedures. The CPE plan will permit the prompt implementation of our detariffing policies. However, it will not prevent the development of an overall separations plan that accommodates any special cost conditions that may be found to exist in particular sectors of the industry. Now that the preliminary separations matters concerning the growth of SPF and the removal of CPE have been addressed, we expect the Joint Board to devote its full resources to the design of this overall plan. Although we have made minor technical adjustments in the wording of the actual amendments to be made to the Separations Manual, we see no reasons why the Joint Board's recommendations should not be adopted as originally proposed.

57. Accordingly, pursuant to Sections 4(i), 205(a), 221(c), 403 and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 205(a), 221(c), 403 and 410(c), as amended, it is ordered, That the recommendations of the Federal-State Joint Board, as modified herein, are hereby adopted.

58. It is further ordered, That the Amendments to the Separations Manual which is Incorporated by Reference in Part 67 of the Commission's Rules set forth in Appendix A of this *Decision and Order* are adopted, effective April 2, 1982.

59. It is further ordered, That the amendments to the Separations Manual, which is Incorporated by Reference in Part 67 of the Commission's rules set forth in Appendix B, of this *Decision and Order,* are adopted, effective April 2, 1982.

60. It is further ordered, that the Secretary shall cause this *Decision and Order* to be published in the **Federal Register,** and that this proceeding remains subject to further order by the Commission.

(Secs. 2, 3, 4, 5, 205, 301, 303, 307, 308, 309, 315, 317, 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1088, 1089; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Incorporation by Reference provisions were approved by the Director of the Federal Register on October 1, 1981.

Note.—The changes in appendices A and B will not be shown in the 1982 edition of 47 CFR.

Appendix A—Addendum to the Separations Manual

Section 2, Part 3

Revised paragraph 23.444 to read as follows:

23.444 The cost of subscriber line outside plant in Category 1.3 assigned to message telephone services in the study area, as determined in paragraph 23.444, is apportioned between state and interstate operations by the application, to the cost of such plant, of a subscriber plant factor, which is the sum of the following:

(a) *Annual average* interstate subscriber line use (SLU), *for the calendar year 1981,** representing the interstate use of the subscriber plant as measured by the ratio of interstate holding time minutes of use to total holding time minutes of use applicable to traffic originating and terminating in the study area, multiplied by *.85*, the nationwide ratio of (1) subscriber plant costs assignable to the exchange operation per minute of exchange use to (2) total subscriber plant cost per total minute of use of subscriber plant, plus

(b) Twice the *annual average* interstate subscriber line use ratio for the study area *for the calendar year 1981,** multiplied by the *annual average composite station rate ratio used for the calendar year 1981* (ratio of (1) the nationwide, industry-wide average interstate initial 3-minute station charge at the study area average interstate length of haul to (2) the nationwide, industry-wide average total toll initial 3-minute station charge at the nationwide average length of haul for all toll traffic for the total telephone industry).

Appendix B—Addendum to the Separations Manual

General

This addendum to the February, 1971 edition of the Separations Manual provides for the phase out and termination of the allocation to interstate of customer premises equipment in Accounts 231 and 234. No customer premises equipment investment, as defined in the Glossary of this Manual, which may be added to those accounts after December 31, 1982 shall be allocated to the interstate operation. The plant balances attributable to customer premises equipment on the books as of December 31, 1982 shall constitute a base amount for allocation between state and interstate operations during a phase out period of 60 months. Starting with January, 1983 the base amount shall be reduced by one-sixtieth each month, and all customer premises equipment subject to allocation between state and interstate operations shall terminate after 60 months. None of the reduction so occasioned shall be assigned to interstate operations or included in interstate revenue requirements. A consistent treatment is required for the expenses and reserves associated with customer premises equipment. The following revisions to the Manual are made:

Section 1, Part 1

A new paragraph 11.25 shall be added as follows:

11.25 The procedures set forth herein provide for the exclusion from the interstate allocation of all investments and associated reserves and expenses incurred in connection with customer premises equipment after December 31, 1982. Investments in customer premises equipment on the books as of December 31, 1982 will be phased out over a 60 month period for allocation to interstate operations. Consistent treatment is required for the reserves and expenses associated with the phase out of the investment in customer premises equipment.

Section 2, Part 5

A new Section 25.111 shall be added as follows:

25.111 The investments in Accounts 231 and 234 shall be segregated between customer premises equipment and other station equipment. Customer premises equipment shall be apportioned among the operations as set forth in Sections 25.31 and 25.32. (Other station equipment shall be apportioned *in accordance with section 25.2*)

A new section 25.3 shall be added as follows:

25.3 Phase out and termination of interstate apportionment of customer premises equipment in accounts 231 and 234.

25.31 New Customer Premises Equipment—No portion of any investment in customer premises equipment in Accounts 231 and 234 which may be entered on the books of the company after December 31, 1982 shall be apportioned to interstate operations.

25.32 Phase Out of Customer Premises Equipment Recorded as of December 31, 1982—The recorded investments of customer premises equipment in Accounts 231 and 234 which are on the books as of December 31, 1982 shall be assigned to the five categories set forth under § 25.2. Equipment assigned to category 2 shall be apportioned as provided in paragraph 25.22. The amount of plant investment so determined in all other categories, reduced by one-sixtieth, shall be apportioned between state and interstate operations in accordance with the procedures prescribed for each category under § 25.2 for the month of January, 1983. Each month thereafter, the base December 31, 1982

*In the case of a company that cannot calculate an average interstate subscriber line used (SLU) ratio for the calendar year 1981, the average interstate SLU for the customarily use twelve month study period ending in 1981 may be utilized. In the case of a company for which no such 1981 annual average SLU exists, the annual average interstate SLU for the initial study period will be utilized.

amount shall be reduced by one-sixtieth of the base amount in each category, and the apportionment between state and interstate operations shall be made in a similar manner. After 60 months the amounts in each category will be reduced to zero, and no apportionment of any such customer premises equipment to interstate operations shall thereafter be made. Companies that have a separations study period different than monthly may establish equal periods for reducing the base amounts consistent with such study periods to write off the base amount in 5 years.

Section 2, Part 9

The following sentence shall be added to Paragraph 29.11:

Starting with January 1, 1983 any amounts included in Account 122 associated with customer premises equipment shall be excluded from the amounts which are allocated to the interstate operation.

Section 4, Part 2

A new section 42.55 shall be added as follows:

42.55 Phase Out and Termination Provision.

42.551 No portion of any maintenance expense in Account 605 associated with new customer premises equipment in Accounts 231 and 234 except Category 2 equipment which may be entered on the books of the company after December 31, 1982 shall be apportioned to interstate operations.

42.552 The average monthly recorded maintenance expense in Account 605 associated with Ordinary Repairs plus Shop Repairs and Salvage Adjustments of customer premises equipment in Accounts 231 and 234 (excluding amounts for rearrangements and changes, installations, disconnections and removals) for the 12 months preceding the cut-off date shall be used as a base in connection with the phase out of interstate allocation of customer premises equipment. For the month of January, 1983 such base amount shall be reduced by one-sixtieth and apportioned among the operations in accordance with the procedures set forth above in paragraphs 42.521 through 42.542, as applicable.

42.553 Each month thereafter, the base amount shall be reduced by one-sixtieth of the original base amount, and the apportionment of such reduced amount among the operations shall be made in a similar manner. After 60 months the base amount will be reduced to zero, and no apportionment of customer premises equipment maintenance expense to interstate operations shall thereafter be made.

Section 4, Part 3

A new Section 43.112 shall be added as follows:

43.112 Depreciation expense associated with customer premises equipment in Accounts 231 and 234 except Category 2 equipment for the month of December, 1982 shall be expressed as a ratio to the plant in these accounts as recorded for December 31, 1982, and such ratio shall be applied to the phase out of plant in these accounts as described in Paragraph 25.32 in accordance with the procedure in paragraph 43.12.

Section 4, Part 7

The following sentence shall be added to Paragraph 47.211:

The wage portion of maintenance expense related to maintenance of customer premises equipment shall be determined in a manner consistent with the phase out of maintenance expense provided in § 42.55.

Section 5, Part 1

A new paragraph 51.22 shall be added as follows:

51.22 The depreciation reserve associated with customer premises equipment in Accounts 231 and 234 except Category 2 equipment shall be determned as of December 31, 1982 as a base for the phase out of customer premises equipment in those accounts. Starting with January, 1983 such base amount shall be reduced by one-sixtieth each month. Each amount so determined is then apportioned among the operations in accordance with the procedures used for the separation of the related CPE investment.

Glossary

The following definition shall be added:

Customer Premises Equipment—Items of telecommunications terminal equipment in Accounts 231 and 234 referred to as CPE in § 64.702 of the Federal Communications Commission's rules adopted in the *Second Computer Inquiry* such as telephone instruments, data sets, dialers and other supplemental equipment, and PBXs which are provided by common carriers and located on customer premises and inventory included in these accounts to be used for such purposes. Excluded from this classification are similar items of equipment located on telephone company premises and used by the company in the normal course of business as well as over voltage protection equipment, inside wiring, coin operated, public or pay telephones, multiplexing equipment to deliver multiple channels to the customer, mobile radio equipment and transmit earth stations.

[FR Doc. 82-5849 Filed 3-1-82; 3:49 pm]

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List of Public Laws

Last Listing February 25, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

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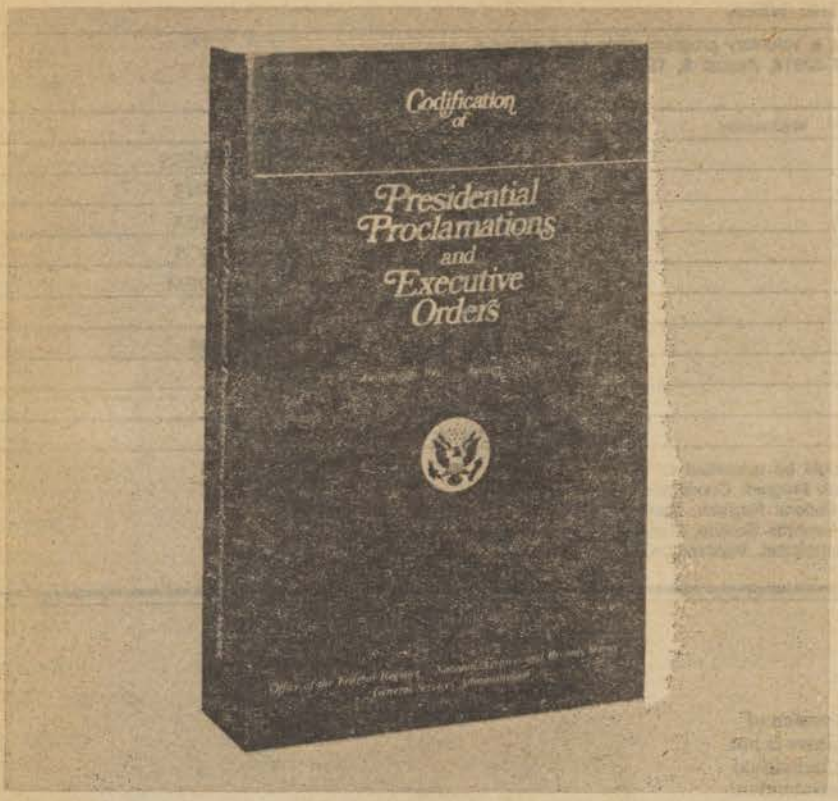

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