AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10-12-83
Vol. 48 No. 198
Pages 46259-46486

Federal Register

Wednesday
October 12, 1983

Selected Subjects

Agricultural Commodities
Environmental Protection Agency

Air Pollution Control
Environmental Protection Agency

Antibiotics
Food and Drug Administration

Authority Delegations (Government Agencies)
Agriculture Department

Banks, Banking
Federal Reserve System

Charter Flights
Civil Aeronautics Board

Coal
Surface Mining Reclamation and Enforcement Office

Endangered and Threatened Wildlife
Fish and Wildlife Service

Equal Employment Opportunity
Equal Employment Opportunity Commission

Flood Insurance
Federal Emergency Management Agency

Government Employees
Personnel Management Office

Income Taxes
Internal Revenue Service

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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

Selected Subjects

Insurance
Civil Aeronautics Board

Natural Gas
Federal Energy Regulatory Commission

Quarantine
Animal and Plant Health Inspection Service

Records
General Services Administration

Reporting and Recordkeeping Requirements
Civil Aeronautics Board

Surface Mining
Surface Mining Reclamation and Enforcement Office

Uniform System of Accounts
Federal Energy Regulatory Commission

Contents

Federal Register
Vol. 48, No. 198
Wednesday, October 12, 1983

The President
PROCLAMATIONS
46259 Schoolbus Safety Week, National (Proc. 5115)

Executive Agencies

African Development Foundation
NOTICES
46467 Meetings; Sunshine Act

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
46343 Central Arizona

Agricultural Stabilization and Conservation Service
NOTICES
Marketing quotas and acreage allotments:
46401 Tobacco; flue-cured

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service.
RULES
Authority delegations:
46261 General Counsel; settle claims against Government

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
46387 Mendocino, Calif.

Animal and Plant Health Inspection Service
RULES
Plant quarantine, domestic:
46262 Pink bollworm; final
PROPOSED RULES
Animal and poultry import restrictions:
46355 Bird quarantine facility; criteria for approval of applications

Arms Control and Disarmament Agency
NOTICES
Meetings:
46402 General Advisory Committee

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
46415 Wholesale power rates

Civil Aeronautics Board
RULES
46265 Audit and reconciliation reports submission; reporting and recordkeeping requirements, OMB approval
Air carriers:
46264 Aircraft accident liability insurance; OMB approval of reporting and recordkeeping requirements
Air taxi operators:
46265 Canadian charters; OMB approval of reporting and recordkeeping requirements
Charters:
46265 Public; special regulations; OMB approval of reporting and recordkeeping requirements
NOTICES
Hearings, etc.:
46403 Empire Airways
46403 Northern Air Lines, Inc.
46403 Pegasus Aviation, Inc.

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
46403 Louisiana

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.

Copyright Royalty Tribunal
NOTICES
Cable royalty fees:
46411 Distribution determination (1978)
46411 Distribution determination (1979)
46411 Distribution procedures (1981)
46412 Distribution procedures (1982)

Defense Department
See also Navy Department
NOTICES
Meetings:
46412 Electron Devices Advisory Group (3 documents)

Education Department
NOTICES
Grants; availability, etc.
46413 Special services for disadvantaged students
Meetings:
46413 Indian Education National Advisory Council
46413 Postsecondary Education Improvement Fund, National Board

Energy Department
See also Bonneville Power Administration; Energy Information Administration; Federal Energy Regulatory Commission.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
46419 European Atomic Energy Community et al.

Energy Information Administration
NOTICES
Meetings:
46418 American Statistical Association Committee on Energy Statistics

46419 National Petroleum Council

Environmental Protection Agency
RULES
Air pollution control; aircraft and aircraft engines:
46481 Emission standards and test procedures; visible smoke standards for aircraft; turbojet and turbofan engines; stay of effective date
Air quality implementation plans; approval and promulgation; various States, etc.:
46309 Pennsylvania
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions
46310 *N,N*-Diethyl-2-(1-Naphthalenyloxy) propionamide
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
46472 Nitrogen oxide emissions; reference methods
Air quality implementation plan; approval and promulgation; various States:
46391 California
46392 Oklahoma
Air quality planning purposes; designation of areas:
46393 Iowa
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
46396 Folic acid, nicotinamide, pyridoxine, cystein, glutamine, methionine, tryptophan, and adenosine
46395 Maleic hydrazide
46397 Pesticide products; restricted use classification
NOTICES
Pesticide programs:
46427 Interior Department; plan for certification of employees to apply restricted use pesticides
Pesticides; experimental use permit applications:
46428 BASF Wyandotte Corp. et al.
Toxic and hazardous substances control:
46429 Confidential information and data transfer to contractors (CRCS, Inc., et al.)

Equal Employment Opportunity Commission
RULES
Employment discrimination:
46298 Charges; designation of State and local fair employment practice agencies (706 agencies); Texas

Federal Aviation Administration
PROPOSED RULES
46358 Rulemaking petitions; summary and disposition

Federal Deposit Insurance Corporation
NOTICES
46467 Meetings; Sunshine Act (2 documents)

Federal Emergency Management Agency
RULES
Flood elevation determinations:
46312 Alabama et al.

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act; ceiling prices for high cost natural gas produced from tight formations; various States:
46266 Colorado
46266 Louisiana
46267 New Mexico
46267 Tennessee
46268 Wyoming
PROPOSED RULES
Natural gas companies (Natural Gas Act):
46361 Uniform system of accounts; technical amendments
NOTICES
Hearings, etc.:
46420 Carolina Power & Light Co.
46421 Cleveland Electric Illuminating Co.
46421 Columbia Gas Transmission Corp. (2 documents)
46421 Florida Power & Light Co.
46422 Iowa-Illinois Gas & Electric Co.
46422 K N Energy, Inc.
46423 Natural Gas Pipeline Co. of America et al.
46423 Natural Gas Pipe Line Co. of America et al.
46425 Northwest Arkansas Transmission Co.
46425 Oklahoma Natural Gas Co. et al.
46426 Olympic Hydro-Power (2 documents)
46426 Small Scale Hydropower
46426 Texas Gas Transmission Corp.
46426 Valero Interstate Transmission Co. et al.

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
46465 Monterey County, Calif.; intent to prepare

Federal Maritime Commission
NOTICES
46431 Agreements filed, etc.
Casualty and nonperformance, certificates:
46433 Premier Cruise Lines, Ltd.
Freight forwarder licenses:
46429 Airport Clearance Service
46430 Bar-Zel Expediters, Inc.
46431 Cione Forwarding
46430 Cosmopolitan Forwarders, Ltd.
46430 Hosea International Corp.
46430 Seatiger
46430 Worldwide
46431 Wyndham Co. et al.

Federal Reserve System
RULES
Interest on deposits (Regulation Q) and reserve requirements of depository institutions (Regulation D):
46262 Time deposits; reduction of minimum maturity period
NOTICES
46468 Meetings; Sunshine Act

Fish and Wildlife Service
RULES
Endangered and threatened species:
46332 American alligator; status change in Texas
46328 Carter's panicgrass
46337 Kentucky cave shrimp
46336 Santa Barbara song sparrow; removal from list

Food and Drug Administration
RULES
Human drugs:
46270 Antibiotic drugs; sterile ceftizoxime sodium

NOTICES
Animal drugs, feeds, and related products:
46433 Freedom of information summaries, draft guidelines; availability and inquiry; correction
Medical devices; premarket approval:
46433 New England Nuclear

General Services Administration
RULES
Property management:
46310 Copy management responsibilities; reproduction, selection, and use of records

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Social Security Administration
NOTICES
Meetings:
46433 Social Security Advisory Council

Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations:
46434 Associate Administrator for External Affairs Office et al.

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.
NOTICES
46449 Privacy Act; systems of records

Internal Revenue Service
RULES
Income taxes:
46272 Foreign taxes creditability against U.S. Income tax liability; final
46296 Gambling winnings; withholding of tax on payments
NOTICES
46465 Tax projects; solicitation for draft regulations

International Trade Administration
NOTICES
Antidumping:
46407 Impression fabric of man-made fiber from Japan
46408 Pig iron from Romania, U.S.S.R., and East Germany
Countervailing duties:
46406 Chains and parts, of iron or steel, from Spain
Scientific articles; duty free entry:
46403 East Carolina University
46404 Massachusetts Institute of Technology
46404 Northwestern University Medical School
46405 Pennsylvania State University
46405 Rowland Institute for Science, Inc.
46406 University of Florida
46405 Veterans Administration Medical Center

Interstate Commerce Commission
PROPOSED RULES
Motor carriers:
46399 Antitrust immunity for collective ratemaking on small shipments; withdrawn
NOTICES
Railroad operation, acquisition, construction, etc.:
46455 J. & J. Railroad, Inc.
Railroad services abandonment:
46454 Oregon Short Line Railroad Co. et al.

Justice Department
NOTICES
Meetings:
46485 Attorney General's Task Force on Violent Crime

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
46451 Chevron phosphate project, Wyo., et al.
Survey plat filings:
46451 New Mexico
Withdrawal and reservation of lands, proposed, etc.:
46451 Alaska

Legal Services Corporation
NOTICES
46468 Meetings; Sunshine Act

Minerals Management Service
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
46452 Conoco Inc.

National Aeronautics and Space Administration
NOTICES
Patent licenses, exclusive:
46455 Q-Med Research & Development Ltd. Partnership

National Bureau of Standards
NOTICES
Information processing standards, Federal:
46409 Geographic point locations for information interchange; correction

National Institutes of Health
NOTICES
Meetings:
46448 Clinical Applications and Prevention Advisory Committee
46448 Digestive Diseases National Advisory Board
46448 General Medical Sciences National Institute committees; amendment

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
46342 Spiny lobster fisheries, Western Pacific; interim; extension of effective date
NOTICES
Marine mammal permit applications, etc.:
46409 Associacao dos Armadores da Pesca Longinqua
46409 Mystic Marinelife Aquarium

National Park Service
RULES
46306 Historic Places National Register; nomination procedures

NOTICES
Historic Places National Register; pending nominations:
46452 Alabama et al.

National Science Foundation
NOTICES
Meetings:
46455 Engineering Advisory Committee

National Transportation Safety Board
NOTICES
46469 Meetings; Sunshine Act (2 documents)
Senior Executive Service:
46456 Performance Review Board; membership
46456 Position establishment

Navy Department
NOTICES
Meetings:
46412 Chief of Naval Operations Executive Panel Advisory Committee

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
46457 Consumers Power Co.
46458 Florida Power Corp. et al.
46459 Public Service Electric & Gas Co. et al.
46460 Tennessee Valley Authority
Meetings:
46456 Reactor Safeguards Advisory Committee; revised

Personnel Management Office
RULES
Excepted service:
46261 Entire executive civil service; stay-in-school; removal

Postal Service
NOTICES
46469 Meetings; Sunshine Act

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
46452 Fryingpan-Arkansas Project, Colo.

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
46461 American Stock Exchange, Inc.
46463 Midwest Securities Trust Co.
Self-regulatory organizations; unlisted trading privileges:
46464 Cincinnati Stock Exchange

Small Business Administration
NOTICES
Disaster loan areas:
46464 Georgia
License surrenders:
46464 ALPHA Financial Corp.
Meetings; regional advisory councils:
46465 Florida
46465 Washington

Social Security Administration
NOTICES
Grants; availability, etc.:
46448 Research grants, Titles II and XVI; correction

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
46299 Kentucky; correction
46301 Ohio
NOTICES
46454 Abandoned mine lands programs and State regulatory administration; annual evaluation reports for various States; availability

Textile Agreements Implementation Committee
NOTICES
46409 Bilateral agreement limits; cotton, wool, and man-made fiber textiles and apparel shipments in excess
Textile consultation; review of trade:
46410 China

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration.
PROPOSED RULES
46399 Nondiscrimination on basis of handicap

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service.

Separate Parts in This Issue

Part II
46472 Environmental Protection Agency

Part III
46481 Environmental Protection Agency

Part IV
46485 Department of Justice

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5115 46259

5 CFR
213 46261

7 CFR
2 46261
301 46262
Proposed Rules:
1131 46343

9 CFR
Proposed Rules:
92 46355

12 CFR
204 46262
217 46262

14 CFR
205 46264
248 46265
294 46265
380 46265
Proposed Rules:
Ch. I 46358

18 CFR
271 (5 documents) 46266–46268
Proposed Rules:
101 46361
104 46361
141 46361
154 46361
159 46361
201 46361
204 46361
260 46361

21 CFR
430 46270
436 46270
442 46270

26 CFR
1 (2 documents) 46272, 46296
4 46272
31 46296

27 CFR
Proposed Rules:
9 46387

29 CFR
1601 46298

30 CFR
917 46299
935 46301

36 CFR
60 46306

40 CFR
52 46309
87 46481
180 46310
Proposed Rules:
52 (3 documents) 46391–46393
60 46472
81 46393
162 46397
180 (2 documents) 46395, 46396

41 CFR
101–11 46310

44 CFR
67 46312

49 CFR
Proposed Rules:
Ch. X 46399
27 46399

50 CFR
17 (4 documents) 46328–46337
681 46342

Federal Register
Vol. 48, No. 198
Wednesday, October 12, 1983

Presidential Documents

Title 3—

The President

Proclamation 5115 of October 7, 1983

National Schoolbus Safety Week, 1983

By the President of the United States of America

A Proclamation

Schoolbus transportation serves a very special and important segment of this Nation—our children. More than twenty-two million young Americans use schoolbuses to get to school.

When we consider the millions of young people who are transported and the millions of trips schoolbuses make each year, we can take great pride in our safety record. Nevertheless, we must reaffirm our commitment to providing the safest possible transportation for our children. They are our most important resource, and their safe transport deserves to be one of our highest priorities.

In recognition of the national program which is underway to call public attention to the importance of schoolbus safety, and in recognition of the importance of safe transport of our young students to and from school, the Congress, by House Joint Resolution 137, has authorized and requested the President to issue a proclamation designating the week of October 2 through October 8, 1983, as National Schoolbus Safety Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning on October 2, 1983, as National Schoolbus Safety Week. I call upon the people of the United States and interested groups and organizations to observe that week with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc 83-27910
Filed 10-11-83; 11:16 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 48, No. 198
Wednesday, October 12, 1983

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing an amendment removing from Title 5 of the Code of Federal Regulations the Schedule B excepted appointing authority covering positions at the Social Security Administration, Department of Health and Human Services, for a 2-year pilot program for Stay-in-School students. This amendment is needed because the pilot has been completed and the authority has expired by its own terms.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole, 202–254–7540.

SUPPLEMENTARY INFORMATION: In 1979, the Social Security Administration was authorized to conduct a pilot career-related work-study program under provisions of E.O. 12015 for students employed under the Stay-in-School Program. Under this pilot, Stay-in-School students could be converted to competitive service entry level clerk-typist, clerk-stenographer, other general clerical positions, and technician positions related to computer science and the graphic arts. The appointing authority contained in Schedule B § 213.3202(g) provided that the pilot was limited to a 2-year period. Since the pilot has run its course, the Schedule B authority has expired by its own terms.

Pursuant to sections 553(b)(B) and 553(d)(3) of title 5, United States Code, I find that good cause exists to waive the general notice of proposed rulemaking and to make this amendment effective in less than 30 days. The regulation is being made effective immediately because it does not change the substance of the regulations issued in part 213, but merely removes from the regulations a paragraph which is no longer current.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it merely updates information on authorities used to appoint certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.
Donald J. Devine,
Director.

PART 213—[AMENDED]

Accordingly, the U.S. Office of Personnel Management is amending 5 CFR Part 213 by removing and reserving § 213.3202(g):

§ 213.3202 Entire executive civil service.

* * * * *

(g) [Reserved]

* * * * *

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 83-27727 Filed 10-11-83; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture to the General Counsel to delegate the authority to settle certain claims against the Government in accordance with the provisions of 31 U.S.C. 3723.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C., (202) 447–6035.

SUPPLEMENTARY INFORMATION: Under the provisions of 31 U.S.C. 3723, the Secretary of Agriculture may settle a claim for not more than $1,000 for damage to, or loss of privately owned property that is caused by the negligence of an officer or employee of the Department of Agriculture acting within the scope of employment and which may not be settled under the Federal Tort Claims Act. Since the General Counsel currently is delegated authority to settle and compromise claims pursuant to the Federal Tort Claims Act, it is believed that this authority should likewise be delegated to the General Counsel.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest and good cause is found for making this rule effective less than thirty days after publication in the **Federal Register.**

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise stated.

2. Section 2.31 is amended by adding a new paragraph (q) to read as follows:

§ 2.31 Delegations of authority to the General Counsel.

* * * * *

(q) Settle claims for damage to, or loss of, privately owned property pursuant to the provisions of 31 U.S.C. 3723.

Done this 6th day of October, 1983, at Washington, D.C.

John R. Block,

Secretary of Agriculture.

[FR Doc. 83-27757 Filed 10-11-83; 8:45 am]

BILLING CODE 3401-01-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 83-339]

Pink Bollworm Regulated Areas; Removal of Louisiana and Arkansas Counties From List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the pink bollworm quarantine and regulations: (1) By removing Natchitoches Parish from the list of regulated areas in Louisiana; (2) by removing all previously regulated areas in Clark, Dallas, Jefferson, Lafayette, Lonoke, Miller, Ouachita, and Pulaski Counties in Arkansas from the list of regulated areas; and (3) by removing Arkansas from the list of States quarantined because of pink bollworm. This action is taken because it has been determined that pink bollworm no longer occurs in Natchitoches Parish in Louisiana and no longer occurs in Arkansas. This action is necessary in order to remove unnecessary restrictions on articles moving interstate from these areas.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The amendments have been issued in conformance with Executive Order 12291, and have been determined not to be a "major rule". Based on information compiled by the Department, it has been determined that the amendments will have an estimated annual effect on the economy of less than $9,000; 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.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291. Also, the Assistant Secretary for Marketing and Inspection Services has waived the requirements of Secretary's Memorandum 1512-1.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, 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 Natchitoches Parish in Louisiana and Clark, Dallas, Jefferson, Lafayette, Lonoke, Miller, Ouachita, and Pulaski Counties in Arkansas. There are hundreds of small entities that move such articles interstate from nonaffected areas in the United States. However, based on information compiled by the Department, it has been determined that fewer than 19 small entities move such articles interstate from the affected areas in the above listed parish and counties. Further, the overall economic impact from this action is estimated to be less than $9,000.

Background

A document published in the **Federal Register** on June 22, 1983 (48 FR 28423-28424), set forth an interim rule amending § 301.52-2a of the pink bollworm quarantine and regulations (7 CFR 301.52-2a). The document amended the quarantine and regulations: (1) By removing Natchitoches Parish from the list of regulated areas in Louisiana; (2) by removing all previously regulated areas in Clark, Dallas, Jefferson, Lafayette, Lonoke, Miller, Ouachita, and Pulaski Counties in Arkansas from the list of regulated areas; and (3) by removing Arkansas from the list of States quarantined because of pink bollworm.

The amendment became effective on the date of publication. The document provided that the amendment was necessary as an emergency measure in order to remove unnecessary restrictions on the movement of regulated articles.

Comments were solicited for 60 days after publication of the amendment. No comments were received in response to the amendment. The factual situations which were set forth in the document of June 22, 1983, still provide a basis for the amendment.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Pink Bollworm.

Accordingly, it has been determined that the amendment to § 301.52-2a should remain effective as published in the **Federal Register** on June 22, 1983 (48 FR 28423-28424).

(Sec. 106, 71 Stat. 33; 7 U.S.C. 150ee; Secs. 8, 9, 37 Stat. 318; 7 U.S.C. 161, 162; 7 CFR 2.17, 2.51, 371.2(c))

Done at Washington, D.C., this 5th day of October 1983.

R. R. Backus,

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

[FR Doc. 83-27568 Filed 10-11-83; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 204 and 217

[Docket No. R-0417]

Reserve Requirements of Depository Institutions, Interest on Deposits; Definition of Time Deposits; Regulations D and Q

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rules.

SUMMARY: The Board of Governors has adopted final amendments to Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) and Regulation Q—Interest on Deposits (12 CFR Part 217) to reduce the minimum maturity of all time deposits to seven days. Comments from the public were favorable to adoption of this rule. The Board's action was taken in light of recent actions by the Depository Institutions Deregulation Committee ("DIDC") to authorize the Money Market Deposit Account ("MMDA") and removing the interest rate ceiling on time deposits of $2,500 or more with maturities of seven- to 31-days.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Paul S. Pilecki, Senior Counsel (202/452-3281), Legal Division, Board of Governors of

the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)) authorizes the Board to determine the types of obligations that constitute deposits. At present, the Board defines time deposits as deposits or accounts with a minimum maturity or required notice period of 14 days and deposits with maturities or required notice periods of seven to 13 days issued pursuant to 1204.121 of the rules of the DIDC (12 CFR 1204.121). Demand deposits are defined to include any deposit or account with a maturity or required notice period of less than 14 days of that does not meet the requirements of the DIDC for accounts issued under 12 CFR 1204.121

On August 24, 1982, the Board requested public comment on a proposal to reduce the minimum maturity or required notice period of all time deposits to seven days. The Board requested comments on the following specific issues:

1. Whether reducing the minimum maturity to seven days would broaden the market for certificates of deposit for depository institutions, thereby improving their competitive position;

2. Whether depository institutions would have more flexibility to vary the maturity mix of their liability structures;

3. Potential difficulties for interpreting the monetary aggregates because of diminished distinctions between transaction accounts and time deposits; and

4. Whether such a proposal would erode the liquidity position of depository institutions were they to rely more heavily on short-term funds.

The Board received a total of 57 comments on this proposal, distributed as follows: 45 commercial banks and bank holding companies, six savings and loan associations, eight Federal Reserve Banks, two business organizations, one credit union, and one commercial bank trade association. Of those commenting, 79 percent favored the proposal, 18 percent were opposed to further reducing the minimum maturity of time deposits, and two comments suggested that the minimum maturity of time deposits should be reduced further to one day.

Comments in favor of the proposal generally cited benefits to depository institutions such as an improved competitive position and providing more flexibility to vary the maturity mix of their liability structures, while not adversely affecting depository institution liquidity. However, those opposed to the proposal expressed the view that its adoption would have adverse implications for liquidity by leading to increases in the mismatch of assets and liabilities of depository institutions. With respect to the implications for monetary policy, 75 percent of those addressing the issue believed that the existence of seven-day time deposits would not lead to distortions of the monetary aggregates and, therefore, the conduct of monetary policy would not be impaired.

Since the Board issued its proposal to reduce the minimum maturity of time deposits, several significant actions have been taken by the DIDC to facilitate the ability of depository institutions to offer short-term deposit accounts. Effective December 14, 1982, depository institutions were authorized to offer MMDAs, which have a minimum denomination of $2,500, no interest rate ceiling, and are subject only to a reservation of the right of the depository institution to require seven days' notice prior to withdrawal. In addition, effective October 1, 1983, the DIDC removed interest rate ceilings on all time deposits with maturities of more than 31 days and on time deposits of $2,500 or more with maturities of seven to 31 days, whether issued in negotiable or nonnegotiable form. Consequently, in order to enable depository institutions to offer certificates of deposit with maturities of seven to 13 days, the Board has amended Regulations D and Q to reduce the minimum maturity of time deposits to seven days.

In addition, the Board has previously determined that eligible bankers' acceptances (those described in 12 U.S.C. 372) are not reservable deposits. The Board has issued a clarifying amendment to confirm that eligible bankers' acceptances held by certain foreign organizations are not deposits.

The impact of this proposal has been considered in accordance with section 605 of the Regulatory Flexibility Act (5 U.S.C. § 604; Pub. L. 96–354). This action will provide an additional tool for small banks to use in competing with larger institutions for short term, large denomination deposits. A seven day minimum maturity could enhance the attractiveness of CDs issued by small banks which normally do not trade in the secondary market.

Since this action relieves a restriction and because this action is necessary to conform the rules of the Board to those of the DIDC, the Board makes this action effective October 1, 1983.

List of Subjects

12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

PART 204—[AMENDED]

Pursuant to its authority under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)) to define deposits, the Board amends Regulation D (12 CFR Part 204) and Regulation Q (12 CFR Part 217), effective October 1, 1983, as follows:

1. Section 204.2 is amended by revising the first two sentences of paragraph (b)(1), by revising (b)(1)(viii), (b)(2), (c)(1) (i) and (ii), (d)(1)(i)(A) and (f)(1)(v) to read as follows.

§ 204.2 Definitions.

* * * * *

(b)(1) *"Demand deposit"* means a deposit that is payable on demand, or a deposit issued with an original maturity or required notice period of less than seven days, or a deposit representing funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. The term includes all deposits other than time and savings deposits. * * * (viii) an obligation to pay on demand or within seven days a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the depository institution, where the account of the institution'sd customer already has been debited. The term does not include an obligation that is a time deposit under § 204.2(c)(1)(ii).

(2) (A) "demand deposit" does not include checks or drafts drawn by the depository institution on the Federal Reserve or on another depository institution.

(c)(1) *"Time deposit"* means (i) a deposit that the depositor does not have a right to withdraw for a period of seven days or more after the date of deposit. "Time deposit" includes funds:

(A) Payable on a specified date not less than seven days after the date of deposit;

(B) Payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) Payable upon written notice which actually is required to be given by the depositor not less than seven days before the date of repayment;

(D) Such as "Christmas club" accounts and "vacation club" accounts, that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within seven days from the end of the period; or

(E) That constitute a "savings deposit" which is not regarded as a "transaction account" and

(ii) Borrowings, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by, any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States, to any office located outside the United States of a foreign bank, or to institutions whose time deposits are exempt from interest rate limitations under § 217.3(g) of Regulation Q (12 CFR 217.3(g)(e).

* * * * *

(d)(1) *"Savings deposit"* means a deposit or account:

(i)(A) With respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit; and

* * * * *

(f)(1) * * *

(v) A time deposit represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptances (other than the type described in 12 U.S.C. 372) of the depository institution held by, any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States, to any office located outside the United States of a foreign bank, or to institutions whose time deposits are exempt from interest rate limitations under § 217.3(g) of Regulation Q (12 CFR 217.3(g)).

* * * * *

PART 217—[AMENDED]

2. Section 217.1 is amended by revising paragraph (b)(1), the initial phrase in paragraph (e), and paragraphs (e)(2), (3)(ii), and (4) and footnote 1 to read as follows:

§ 217.1 Definitions.

* * * * *

(b)(1) *"Time deposit"* means (i) a deposit that the depositor does not have a right to withdraw for a period of seven days or more after the date of deposit. "Time deposit" includes funds:

(A) Payable on a specified date not less than seven days after the date of deposit;

(B) Payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) Payable upon written notice which actually is required to be given by the depositor not less than seven days before the date of repayment; [1] or

(D) Such as "Christmas club" accounts and "vacation club" accounts, that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than seven days from the end of the period; and

(ii) An "international banking facility time deposit."

* * * * *

(e) "Savings deposit" means a deposit—

* * * * *

(2) With respect to which the depositor is not required by the deposit contract but may at any time be required by the bank to give written notice of an intended withdrawal not less than seven days before such withdrawal is made,[1] and that is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(3) * * *

(ii) Deposits in which any beneficial interest is held by a corporation, partnership, association, or other organization that is operated for profit or is not operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes, or that is not a governmental unit described in paragraph (e)(3)(i)(C) may not be classified as deposits subject to negotiable orders of withdrawal, except as authorized by § 217.7(g).

(4) *"Savings deposit"* also means a deposit issued pursuant to § 217.7(c)(2)(ii) or § 217.7(g) with respect to which the member bank reserves the right to require at least seven days' notice prior to withdrawal or transfer.

* * * * *

§ 217.5 [Amended]

3. The second sentence of § 217.5(c)(2) is amended by removing "14" and inserting "seven" in its place.

By order of the Board of Governors, October 4, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-27484 Filed 10-11-83; 8:45 am]

BILLING CODE 6210-01-M

[1] A deposit with respect to which the bank merely reserves the right to require notice of not less than seven days before any withdrawal is made is not a "time deposit" within the meaning of the above definition.

CIVIL AERONAUTICS BOARD

14 CFR Part 205

[Regulation ER-1364; Amendment No. 4]

Aircraft Accident Liability Insurance; Approval by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the Office of Management and Budget (OMB) has approved the extension of CAB Form 205-A, "Policies of Insurance for Aircraft Accident Bodily Injury and Property Damage Liability," filed pursuant to Part 205 of the Board's Economic Regulations. This approval has been extended through September 30, 1986. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES: : Adopted: September 29, 1983. Effective: September 20, 1983.

FOR FURTHER INFORMATION CONTACT: Linda K. Koman, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

List of Subjects in 14 CFR Part 205

Air carriers, Aircraft, Freight, Insurance.

PART 205—[AMENDED]

Accordingly, the Civil Aeronautics Board amends Part 205 of its Economic Regulations (14 CFR Part 205) by adding a note at the end of the table of contents to Part 205 to read:

Note.—The reporting requirement contained in § 205.4 has been approved by the Office of Management and Budget under number 3024-0050.

This amendment is issued by the undersigned pursuant to delegation of

authority from the Board to the Secretary in 14 CFR Sec. 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-27730 Filed 10-11-83; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 248

[Reg. ER-1362; Economic Regs. Amdt. No. 5 to Part 248]

Submission of Audit and Reconciliation Reports; Notice of Approval by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the Office of Management and Budget (OMB) has approved the extension of reporting requirements contained in Part 248 of the Board's Economic Regulations, "Submission of Audit and Reconciliation Reports." The Board recently eliminated the reconciliation reports from these requirements (ER-1351, 48 FR 32756, July 19, 1983). This approval has been extended through September 30, 1986. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES:

Adopted: September 29, 1983.
Effective: September 20, 1983.

FOR FURTHER INFORMATION CONTACT: Linda K. Koman, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in Part 248

Accounting, Air carriers, Reporting requirements.

PART 248—[AMENDED]

Accordingly, the Civil Aeronautics Board amends Part 248 of its Economic Regulations (14 CFR Part 248) by revising the note at the end of the table of contents to Part 248 to read:

Note.—The reporting requirement contained in § 248.2 has been approved by the Office of Management and Budget under number 3024-0004.

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-27731 Filed 10-11-83; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 294

[Reg. ER-1363; Amdt. No. 3 to Part 294]

Canadian Charter Air Taxi Operators; Approval of Form by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY. This final rule gives notice that the Office of Management and Budget (OMB) has approved the extension of CAB Form 294-A, "Registration/Amendments under Part 294 of the Economic Regulations of the Civil Aeronautics Board." This approval has been extended through September 30, 1986. OMB approval is required under the Paperwork Reduction Act of 1980.

DATE: Adopted: September 29, 1983.
EFFECTIVE: September 20, 1983.

FOR FURTHER INFORMATION CONTACT: Linda K. Koman, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

List of Subjects in Part 294

Air taxis, Canada, Charter flights, Insurance, Trade names.

PART 294—[AMENDED]

Accordingly, the Civil Aeronautics Board amends Part 294 of its Economic Regulations (14 CFR 294) by adding a note at the end of the table of contents to Part 294 to read:

Note.—The reporting requirement contained in § 294.20 has been approved by the Office of Management and Budget under number 3024-0051.

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-27687 filed 10-11-83; 8:45 am]

Billing Code 6320-01-M

14 CFR Part 380

[Reg. SPR-193; Special Regs. Amdt. No. 17 to Part 380]

Public Charters; Notice of Approval by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the Office of Management and Budget (OMB) has approved the extension of CAB Form 300, "Registration or Amendments under Part 380 of the Special Regulations of the Civil Aeronautics Board." This approval has been extended through September 30, 1986. OMB approval is required under the Paperwork Reduction Act of 1980.

DATE: Adopted: September 29, 1983.

Effective: September 14, 1983.

FOR FURTHER INFORMATION CONTACT: Linda K. Koman, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in Part 380

Advertising, Antitrust, Charter flights, Consumer protection, Educational study programs, Surety bonds, Travel agents.

PART 380—[AMENDED]

Accordingly, the Civil Aeronautics Board amends Part 380 of its Special Regulations (14 CFR Part 380) by revising the note at the end of the table of contents to Part 380 to read:

Note.—The reporting requirements contained in §§ 380.25 and 380.28 have been approved by the Office of Management and Budget under number 3024-0029. The reporting requirement contained in § 380.62 has been approved by the Office of Management and Budget under number 3024-0052.

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board.
Phyllis T. Kaylor,
Secretary.

[FR Doc. 83-27732 Filed 10-11-83; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-197 (Colorado—36); Order No. 341]

High-Cost Gas Produced From Tight Formations; Colorado

Issued: October 7, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formation as high-cost gas which may receive an incentive price (18 CFR 271.703 (1982)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of Colorado that the Dakota Formation located in Mesa County, Colorado be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 7, 1983.

FOR FURTHER INFORMATION CONTACT: Kevin R. Rees, (202) 357-8476 or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1982)) to include the Dakota Formation as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued May 24, 1983 (48 FR 23,271) [1] based on a recommendation by the State of Colorado, Oil and Gas Conservation Commission, (Colorado) in accordance with § 271.703, that a portion of the Dakota Formation, located in Mesa County, Colorado, be designated as a tight formation.

Evidence submitted by Colorado supports the assertion that the Dakota Formation located in Mesa County, Colorado meets the guidelines contained in § 271.703(c)(2). [2] The Commission adopts the Colorado recommendation.

This amendment shall become effective November 7, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(153) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(153) *Dakota Formation in Colorado.* RM79-76-197 (Colorado—36)

(i) *Delineation of formation.* The Dakota Formation is located at Township 11 South, Range 95 West, 6th P.M., Sections 1 through 36 inclusive and Township 11 South, Range 96 West, 6th P.M., Sections 1 through 36, inclusive. The designated area is roughly rectangular in shape and consists of approximately 50,830 acres.

(ii) *Depth.* The average depth to the top of the Dakota Formation is 8,100 feet.

[FR Doc. 83-27604 Filed 10-11-83; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-193 (Louisiana 10); Order No. 340]

High-Cost Gas Produced From Tight Formations; Louisiana

Issued: October 7, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of Louisiana that the Mid Cockfield Sand located in St. Landry Parish, Louisiana be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 7, 1983.

FOR FURTHER INFORMATION CONTACT: Kevin R. Rees, (202) 357-8476 or Walter Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983) (to include the Mid Cockfield Sand as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued May 27, 1983 (48 F.R. 24,730) [1] based on a recommendation by the State of Louisiana Office of Conservation, (Louisiana) in accordance with § 271.703, that the Mid Cockfield Sand, located in St. Landry Parish, Louisiana be designated as a tight formation.

Evidence submitted by Louisiana supports the assertion that the Mid Cockfield Sand located in St. Landry Parish, Louisiana meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Louisiana recommendation.

This amendment shall become effective November 7, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

[2] The United States Department of the Interior, Minerals Management Service concurs with Colorado's recommendation.

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d) (151) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(151) *Mid Cockfield Sand in Louisiana.* RM79-76-193 (Louisiana-10).

(i) *Delineation of formation.* The Mid Cockfield Sand is found in the Krotz Springs Field in St. Landry Parish, Louisiana. The area includes all or parts of Township 6 South, Range 7 East, Sections 12, 13, 14, and 19 through 24; Township 7 South, Range 7 East, Sections 5 and 6; Township 6 South Range 6 East, Sections 24, 25, 26, 35 and 36; and Township 7 South, Range 6 East, Section 1.

(ii) *Depth.* The depth to the top of the structure in Section 21, Township 6 South Range 7 East, the top of the Mid Cockfield Sand is found at 10,670 feet and the base at 10,740 feet (log depths) on a type log located on the eastern flank of a large domal structure, the Gulf Oil Corporation KZS SU FU No. 51 well located in Section 20, Township 6 South, Range 7 East. On the top of the structure in Section 21, Township 6 South, Range 7 East, the top of the Mid Cockfield Sand is at an approximate log depth of 10,410 feet. The approximate thickness of the sand is 70 feet.

[FR Doc. 83-27605 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

---

18 CFR Part 271

High-Cost Gas Produced From Tight Formations; New Mexico

[Docket No. RM79-76-199 (New Mexico-24); Order No. 342]

Issued: October 7, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1982)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of New Mexico that the Morrow Formation located in Eddy County, New Mexico be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 7, 1983.

FOR FURTHER INFORMATION CONTACT:

Kevin R. Rees, (202) 357-8476

or

Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983)) to include the Morrow Formation as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued May 24, 1983 (48 FR 23, 274)[1] based on a recommendation by the New Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico) in accordance with § 271.703, that the Morrow Formation, located in Eddy County, New Mexico, be designated as a tight formation.

Evidence submitted by New Mexico supports the assertion that the Morrow Formation located in Eddy County, New Mexico meets the guidelines contained in § 271.703(c)(2).[2]

This amendment shall become effective November 7, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.;* Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(152) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(152) *The Morrow Formation in New Mexico.* RM79-76-199 (New Mexico-24)

(i) *Delineation of formation.* The Morrow Formation underlies all of Sections 25 and 36, Township 23 South, Range 26 East.

(ii) *Depth.* The top of the Morrow Formation is found at an average depth of 11,553 feet and the Morrow Formation is approximately 190 feet in thickness.

[FR Doc. 83-27607 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

---

18 CFR Part 271

[Docket No. RM79-76-191 (Tennessee-1); Order No. 339]

High Cost Gas Produced From Tight Formations; Tennessee

Issued: October 7, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Tennessee State Oil and Gas Board that the Monteagle Formation located in Morgan, Scott, and portions of Fentress Counties, Tennessee, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 7, 1983.

---

[1] Comments on the proposed rule were invited and one comment supporting the recommendation was received. No party requested a public hearing and no hearing was held.

[2] The United States Department of the Interior, Minerals Management Service concurs with New Mexico's recommendation. The Commission adopts the New Mexico recommendation.

FOR FURTHER INFORMATION CONTACT:
Tom Rattray (202) 357–5447

or

Walter W. Lawson (202) 357–8556.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983)) to include the Monteagle Formation as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued May 19, 1983 (48 FR 23275, May 24, 1983)[1] based on a recommendation by the Tennessee State Oil and Gas Board (Tennessee) in accordance with § 271.703, that the Monteagle Formation, located in Morgan, Scott, and portions of Fentress Counties, Tennessee, be designated as a tight formation.

Evidence submitted by Tennessee supports the assertion that the Monteagle Formation located in Morgan, Scott, and portions of Fentress Counties, Tennessee, meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Tennessee recommendation.

This amendment shall become effective November 7, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(150) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(150) *Monteagle Formation in Tennessee.* RM79–76 (Tennessee–1)

(i) *Delineation of formation.* The Monteagle Formation is found in Morgan, Scott, and portions of Fentress Counties located in the north-central part of the State of Tennessee.

(ii) *Depth.* The average depth to the top of the Monteagle Formation is 1,100 feet. The thickness varies from 180 to 250 feet.

[FR Doc. 83-27606 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

---

18 CFR Part 271

[Docket Nos. RM79–76–151 (Wyoming–14), RM79–76–152 (Wyoming–15); Order No. 338]

High-Cost Gas Produced From Tight Formations; Wyoming

Issued: October 7, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the United States Department of the Interior, Bureau of Land Management, that the Frontier Formation, and the Muddy, Dakota and Lakota Formations located in Fremont County, Wyoming, be designated as tight formations under § 271.703 (d).

EFFECTIVE DATE: This rule is effective November 7, 1983.

FOR FURTHER INFORMATION CONTACT:
Tom Rattray, (202) 357–5447

or

Victor H. Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983)) to include the Frontier Formation, and the Muddy, Dakota and Lakota Formations as designated tight formations eligible for incentive pricing under § 271.703. The amendments were proposed in Notices of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued November 22, 1982 (47 FR 53742 and 53743, November 29, 1982) based on a recommendation by the United States Department of the Interior, Bureau of Land Management (BLM), in accordance with § 271.703, that portions of the Frontier Formation, and the Muddy, Dakota and Lakota Formations, located in Fremont County, Wyoming, be designated as tight formations.

Comments on the proposed rule were invited and two comments were received. Champlin Petroleum Company filed a comment supporting the recommendations. The other comment, contributed by Montana-Dakota Utilities Co. (MDU), opposed both recommendations. MDU raised a number of arguments in opposition to the proposed rules.

MDU raised several questions concerning the permeabiltiy guideline found in § 271.703(c)(2)(i)(A). MDU first argued that the averge permeability values submitted in the recommendations are too low, and should be adjusted by the use of a correction factor in conjunction with the recommended formations. MDU estimated the correction factor by comparing the permeability calculated through pressure build-up testing with the corresponding permeability derived through core analysis testing. However, BLM states that MDU's correction factor for the adjustment of core analysis data is not applicable for the two recommendations because the cored intervals and the pressure build-up tested intervals are not identical. The Commission finds that substantial evidence in the record supports BLM's position.

MDU also noted that the permeability calculations were derived by using geometric mean, rather than arithmetic averaging in determinig the formations' average permeability values. However, using the data submitted by BLM in support of its recommendations, the Commission has determined that the arithmetic averages for permeability values for the subject formations will also satisfy the Commission's guidelines in §271.703(c)(2). Thus, the Commission need not address the issue of appropriate methodology in this order.

Section 271.703(c)(2)(i)(B) specifies according to the average depth to the top of the formation the maximum allowable stabilized production rate to be expected from the formation before stimulation. MDU contended that certain data concerning pre-stimulation flow rates which showed flow rates in excess of those permittted by § 271.703(c)(2)(i)(B) was not submitted to BLM. However, the data referred to by MDU, available on Petroleum Information (P.I.) scout cards, is based on drill stem testing in which the flow

rate had not been established as required by § 271.703(c)(2)(i)(B). One of these reports was also determined to be a misprint. The Commission therefore agrees with BLM's findings that the information in question is not persuasive.

MDU next proposed that the flow rates from different formations tapped by the same well should be added together to obtain a single flow rate for each well. MDU contended that these aggregate flow rates exceed the flow rates allowed in § 271.703(c)(2)(i)(B) of the Commission's regulations. Section 271.703(c)(2)(i)(B) calls for the use of pre-stimulation flow data, and, in the instant case, the aggregation of pre-stimulation flow rates will not exceed the limits prescribed in the Commission's regulations. Therefore, the Commission need not address the merits of MDU's aggregation proposal.

MDU further contended that infill drilling is present in the recommended areas, which requires the exclusion of certain spacing units from tight formation designation. However, the recommended area is located entirely within the Wind River Indian Reservation, which is not subject to any spacing rules, and is thus not subject to infill drilling as defined in § 271.703(b)(6) of the Commission's regulations. In addition, each well drilled in the recommended formations has been assigned a 320-acre parcel, in accordance with local custom and practice. There have been no infill wells drilled within the designated 320-acre parcels that would qualify as infill drilling even if the recommended areas were subject to state jurisdictional agency spacing rules. Therefore, no units within the recommended areas are subject to exclusion from tight formation designation under § 271.703(c)(2)(i)(D) of the Commission's regulations.

In addition, MDU objected to the inclusion of certain "flank" areas within the recommended area unless more evidence is presented to show that these areas exhibit tight formation characteristics. The scarcity of data regarding the "flank" areas, however, is due to a lack of commercially productive wells in the area. The geological information available on the "flank" areas supports the view that the sections meet the guidelines set forth in the Commission's regulations. Therefore, absent any conflicting data, the available evidence supports inclusion of the "flank" areas.

Finally, MDU contended that incentive pricing is not necessary in the recommended areas due to the production history of the wells and the past development of the formations without certain availability of the tight formation incentive price. Under the procedures set out in § 271.703(c)(2)(i), no finding of incentive price necessity is required, unless the formation does not meet the permeability standard set out in § 271.703(c)(2)(i)(A) and the recommendation is filed under the alternative guidelines contained in § 271.703(c)(2)(ii). Where the formation meets all of the guidelines in § 271.703(c)(2)(i), the Commission has already made a generic finding, in Order No. 99, that the incentive price is necessary under NGPA section 107(b). The Commission will not use individual tight formation recommendations to reopen Order No. 99.

On September 9, 1983, MDU filed out of time additional comments concerning the instant dockets. While these comments need not be considered as they were late filed, the Commission has reviewed the comments and will address them. These comments reiterate MDU's position regarding flow data on Petroleum Information scout cards, geometic mean averaging, infill drilling and the need for incentive pricing. Previous discussion of these issues adequately addresses MDU's objections and these issues therefore will not be discussed further.

In its September 9th comments, MDU again suggested that the average permeability values obtained from core analysis testing be adjusted by a correction factor to obtain more accurate readings. MDU also contended that the cored intervals and the pressure build-up test intervals need not be identical to arrive at a valid correction factor. The Commission finds that this question need not be decided in this Order. The evidence shows that pressure build-up data is available from only three of the seven sands in the recommended formations and that core analysis data is available from six of the seven sands. On the basis of this evidence, we find it impossible to establish a reliable relationship between permeabilities derived from pressure build-up tests and core analysis tests. Accordingly, in this case we believe that it is appropriate to give greater weight to the core analysis data, and since these permeabilities are below 0.1 millidarcy for all core samples, the Commission concludes that these formations satisfy the guidelines established in § 271.703(c)(2)(i)(A).

Finally, MDU, in its September 9th comments, questions the accuracy of adjustments of core permeability values derived in the laboratory in order to obtain permeability values which more accurately express actual "in-situ" characteristics. The method used here is a standard that has been accepted in previous tight formation orders.[1] The Commission believes that this method of adjustment to in-situ conditions is acceptable for the data submitted.

Based upon the above discussion and a review of the evidence submitted by BLM, the Commission finds that the record supports the assertion that the Frontier Formation, and the Muddy, Dakota and Lakota Formations, located in Fremont County, Wyoming, meet the guidelines contained in § 271.703(c)(2). The Commission adopts the BLM recommendation.

This amendment shall become effective November 7, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administration Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraphs (d) (146), (147), (148) and (149) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(146) *Frontier Formation in Wyoming.* FM79–76–151 (Wyoming–14).

(i) *Delineation of formation.* The Frontier Formation is located in Fremont County, Wyoming, in the Wind River Basin of central Wyoming. The Frontier Formation underlies Township 1 South, Range 4 East, Sections 13 through 15, 22 through 27, and 34 through 36; Township 1 South, Range 5 East, Sections 16 through 21 and 28 through 33; Township 2 South, Range 4 East, Sections 1 through 3 and 10 through 12; and Township 2 South, Range 5 East, Sections 4 through 9.

(ii) *Depth.* The Frontier Formation has an average gross thickness of 950 feet. The average depth to the top of the first productive sandstone member of the Frontier Formation is 8,188 feet.

[1] *See* Order No. 105, High Cost Gas Produced From Tight Formations, Docket No. RM79-76 (Texas-1) (October 24, 1980).

(147) *Muddy Formation in Wyoming.* RM79–76–152 (Wyoming–15).

(i) *Delineation of formation.* The Muddy Formation is located in Fremont County, Wyoming, in Township 1 South, Range 4 East, Sections 13 and 14, 23 through 26, 35 and 36; Township 1 South, Range 5 East, Sections 17 through 20, and 29 through 32; Township 2 South, Range 4 East, Sections 1, 2, 11 and 12; Township 2 South, Range 5 East, Sections 5 through 8.

(ii) *Depth.* The Muddy Formation lies between the base of the Shell Creek Formation and the top of the Dakota Formation. The average depth to the top of the Muddy Formation is 9,337 feet.

(148) *Dakota Formation in Wyoming.* RM79–76–152 (Wyoming–15).

(i) *Delineation of formation.* The Dakota Formation is located in Fremont County, Wyoming, in Township 1 South, Range 4 East, Sections 13 and 14, 23 through 26, 35 and 36; Township 1 South, Range 5 East, Sections 17 through 20, and 29 through 32; Township 2 South, Range 4 East, Sections 1, 2, 11 and 12; Township 2 South, Range 5 East, Sections 5 through 8.

(ii) *Depth.* The Dakota Formation lies between the base of the Muddy Formation and the top of the Lakota Formation. The average depth to the top of the Dakota Formation is 9,514 feet.

(149) *Lakota Formation in Wyoming.* RM79–76–152 (Wyoming–15).

(i) *Delineation of formation.* The Lakota Formation is located in Fremont County, Wyoming, in Township 1 South, Range 4 East, Sections 13 and 14, 23 through 26, 35 and 36; Township 1 South, Range 5 East, Sections 17 through 20, and 29 through 32; Township 2 South, Range 4 East, Sections 1, 2, 11 and 12; Township 2 South, Range 5 East, Sections 5 through 8.

(ii) *Depth.* The Lakota Formation lies between the base of the Dakota Formation and the top of the Morrison Formation. The average depth to the top of the Lakota Formation is 9,639 feet.

[FR Doc. 83-27603 Filed 10-11-83; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 83N-0302]

Antibiotic Drugs; Sterile Ceftizoxime Sodium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile ceftizoxime sodium. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 12, 1983; comments, notice of participation, and request for hearing by November 14, 1983; data, information, and analyses to justify a hearing by December 12, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, National Center for Drugs and Biologics (HFN–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, sterile ceftizoxime sodium. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 442 (21 CFR Parts 430, 436, and 442) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics—cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.5 by adding paragraphs (a)(79) and (b)(79) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(79) *Ceftizoxime.* The term "ceftizoxime master standard" means a specific lot of ceftizoxime that is designated by the Commissioner as the standard of comparison in determining the potency of the ceftizoxime working standard.

(b) * * *

(79) *Ceftizoxime.* The term "ceftizoxime working standard" means a specific lot of a homogeneous preparation of ceftizoxime.

b. In § 430.6 by adding paragraph (b)(81) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(81) *Ceftizoxime.* The term "microgram" applied to ceftizoxime means the ceftizoxime activity (potency) contained in 1.011 micrograms of the ceftizoxime master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended by adding new § 436.345 to read as follows:

§ 436.345 High-pressure liquid chromatographic assay for ceftizoxime.

(a) *Equipment.* A suitable high-pressure liquid chromatograph equipped with:

(1) A low dead volume cell 8 to 20 microliters;

(2) A light path length of 1 centimeter;

(3) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers;

(4) A suitable recorder of at least 25.4 centimeter deflection;

(5) A suitable integrator; and

(6) A 30-centimeter column having an inside diameter of 4.0 millimeters and packed with octadecyl silane chemically bonded to porous silica or ceramic microparticles, 5 to 10 micrometers in diameter, USP XX.

(b) *Reagents*—(1) *pH 3.6 buffer solution.* Transfer 2.31 grams of sodium

phosphate dibasic dodecahydrate and 1.42 grams of citric acid monohydrate to a 1-liter volumetric flask. Dissolve and dilute to volume with distilled water.

(2) *pH 7.0 buffer solution.* Transfer 14.33 grams of sodium phosphate dibasic dodecahydrate and 3.63 grams of potassium phosphate monobasic to a 1-liter volumetric flask. Dissolve and dilute to volume with distilled water.

(3) *Mobile phase.* Mix pH 3.6 buffer solution:acetonitrile (9:1). Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(4) *Internal standard solution.* Place 1.2 grams of salicyclic acid in a 200-milliliter volumetric flask. Dissolve in 10 milliliters of methyl alcohol, dilute to volume with pH 7.0 buffer solution and mix.

(c) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 2.0 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale.

(d) *Preparation of working standard solution.* Dissolve an accurately weighed portion of the ceftizoxime working standard with sufficient pH 7.0 buffer solution to obtain a solution containing 1,000 micrograms of ceftizoxime activity per milliliter. Transfer 2.0 milliliters of this solution to a 100-milliliter volumetric flask, add 5.0 milliliters of internal standard solution, dilute to volume with pH 7.0 buffer solution and mix.

(e) *Preparation of sample solutions*—(1) *Product not packaged for dispensing (micrograms of ceftizoxime per milligram).* Dissolve an accurately weighed portion of the sample with sufficient pH 7.0 buffer solution to obtain a concentration of 1.0 milligram per milliliter. Transfer 2.0 milliliters of this solution to a 100-milliliter volumetric flask, add 5.0 milliliters of internal standard solution, dilute to volume with pH 7.0 buffer solution and mix. Using this sample solution, proceed as directed in paragraph (f) of this section.

(2) *Product packaged for dispensing.* Determine both micrograms of ceftizoxime per milligram of the sample and milligrams of ceftizoxime per container. Use separate containers for preparation of each sample solution as described in paragraph (e)(2) (i) and (ii) of this section.

(i) *Micrograms of ceftizoxime per milligram.* Dissolve an accurately weighed portion of the sample with sufficient pH 7.0 buffer solution to obtain a concentration of 1.0 milligram of ceftizoxime per milliliter. Transfer 2.0 milliliters of this solution to a 100-milliliter volumetric flask, add 5.0 milliliters of internal standard solution, dilute to volume with pH 7.0 buffer solution and mix. Using this sample solution, proceed as directed in paragraph (f) of this section.

(ii) *Milligrams of ceftizoxime per container.* Reconstitute the sample as directed in the labeling. Then using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency is a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Further dilute an aliquot of the solution thus obtained with sufficient pH 7.0 buffer solution to obtain a concentration of 1.0 milligram per milliliter. Transfer 2.0 milliliters of this solution to a 100-milliliter volumetric flask, add 5.0 milliliters of internal standard solution, dilute to volume with pH 7.0 buffer solution and mix. Using this sample solution, proceed as directed in paragraph (f) of this section.

(f) *Procedure.* Using the equipment, reagents, and operating conditions as listed in paragraphs (a), (b), and (c) of this section, inject 10 microliters of the working standard solution into the chromatograph. Allow an elution time sufficient to obtain satisfactory separation of the expected components. The elution order is void volume, ceftizoxime, and internal standard. After separation of the working standard solution has been completed, inject 10 microliters of the sample solution as described in paragraph (e)(1) of this section into the chromatograph and repeat the procedure described for the working standard solution. If the sample is packaged for dispensing, repeat the procedure for each sample solution prepared as described in paragraph (e)(2) (i) and (ii) of this section.

(g) *Calculations.*—(1) Calculate the micrograms of ceftizoxime per milligram of sample as follows:

$$\text{Micrograms of ceftizoxime per milligram} = \frac{R_u \times P_s \times 100}{R_s \times C_u \times (100 - m)}$$

Where:

R_u = Area of the ceftizoxime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard)/Area of internal standard peak;

R_s = Area of the ceftizoxime peak in the chromatogram of the ceftizoxime working standard/Area of internal standard peak;

P_s = Ceftizoxime activity in the ceftizoxime working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

m = Percent moisture content of the sample.

(2) Calculate the ceftizoxime content of the vial as follows:

$$\text{Milligrams of ceftizoxime per vial} = \frac{R_u \times P_s \times d}{R_s \times 1{,}000}$$

where:

R_u = Area of the ceftizoxime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard)/Area of internal standard peak;

R_s = Area of the ceftizoxime peak in the chromatogram of the ceftizoxime working standard/Area of internal standard peak;

P_s = Ceftizoxime activity in the ceftizoxime working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

PART 442—CEPHA ANTIBIOTIC DRUGS

3. Part 442 is amended:

a. By adding new § 442.17a to read as follows:

§ 442.17a Sterile ceftizoxime sodium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftizoxime sodium is the sodium salt of [6*R*-[6α,7β(*Z*)]]-7-[[(2,3-dihydro-2-imino-4-thiazolyl) (methoxyimino) acetyl]amino]-8-oxo-5-thia-1-azabicyclo [4.2.0]oct-2-ene-2-carboxylic acid. It is so purified and dried that:

(i) If the ceftizoxime is not packaged for dispensing, its ceftizoxime content is not less than 850 micrograms and not more than 995 micrograms of ceftizoxime per milligram on an anhydrous basis. If the ceftizoxime is packaged for dispensing, its ceftizoxime content is not less than 850 micrograms and not more than 995 micrograms of ceftizoxime per milligram on an anhydrous basis and also, each container contains not less than 90 percent and not more than 115 percent of the number of milligrams of ceftizoxime that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 8.5 percent.

(v) Its pH in an aqueous solution containing 100 milligrams per milliliter is not less than 6.0 and not more than 8.0.

(vi) It gives a positive identity test.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for ceftizoxime content, sterility, pyrogens, moisture, pH, identity, and crystallinity.

(ii) Samples, if required by the Director, National Center for Drugs and Biologics:

(*a*) If the batch is packaged for repacking or for use in the manufacture of another drug:

(*1*) For all tests except sterility: 10 packages, each containing at least 500 milligrams.

(*2*) For sterility testing: 20 packages, each containing equal portions of approximately 300 milligrams.

(*b*) If the batch is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 10 immediate containers; or if each container contains less than 1 gram of ceftizoxime, a minimum of 20 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Ceftizoxime content.* Proceed as directed in § 436.345 of this chapter.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 50 milligrams of ceftizoxime per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams per milliliter.

(6) *Identity.* From the high-pressure liquid chromatograms of the sample and the ceftizoxime working standard determined as directed in paragraph (b)(1) of this section, calculate the adjusted retention times of the ceftizoxime in the sample and standard solutions as follows:

Adjusted retention time of ceftizoxime $= t - t^a$

where:

t = Retention time measured from point of injection into the chromatograph until the maximum of the ceftizoxime sample or working standard peak appears on the chromatogram; and

t_a = Retention time measured from point of injection into the chromatograph until the maximum of nonretarded solute appears in the chromatogram.

The sample and the cefizoxime working standard should have corresponding adjusted ceftizoxime retention times.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

§ 442.217 Sterile ceftizoxime sodium.

The requirements for certification and the tests and methods of assay for sterile ceftizoxime sodium packaged for dispensing are described in § 422.17a.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective October 12, 1983. Interested persons may, however, on or before November 14, 1983, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 14, 1983, a written notice of participation and request for hearing, and (2) on or before December 12, 1983, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective October 12, 1983.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))).

Dated: October 5, 1983.

Philip L. Pacquin,

Acting Assistant Director for Regulatory Affairs.

[FR Doc. 83-27855 Filed 10-11-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 4

[T.D. 7918; LR-100-78]

Creditability of Foreign Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations setting forth the conditions that must be met in order for a levy imposed by a foreign country or a possession of the United States to qualify as an income, war profits, or excess profits tax or a tax in lieu of such a tax otherwise generally imposed. These final regulations also relate to the determination of the amount of a qualifying foreign tax that is paid or accrued and thus, subject to certain limitations, creditable against U.S. income tax liability. These final regulations supersede the temporary regulations published in the Federal Register on November 17, 1980 (45 FR 75695).

EFFECTIVE DATE: The regulations are effective for taxable years beginning after November 14, 1983. In addition, a person may elect to apply the

regulations to earlier open taxable years.

FOR FURTHER INFORMATION CONTACT: Herman B. Bouma of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1978, the Legislation and Regulations Division of the Office of Chief Counsel of the Internal Revenue Service opened a regulations project for the purpose of promulgating regulations that would give taxpayers greater guidance with respect to the creditability of foreign taxes under sections 901 and 903 of the Internal Revenue Code. On August 28, 1978, a notice was published in the **Federal Register** (43 FR 38429) inviting public comments on the creditability of foreign taxes and recommendations for the regulations. A Notice of Proposed Rulemaking was published on June 20, 1979 (44 FR 36071), and a public hearing was held on October 11, 1979. On November 17, 1980, temporary and proposed regulations were published (45 FR 75647 and 45 FR 75695, respectively) and a public hearing was held on May 28, 1981. On April 5, 1983, another Notice of Proposed Rulemaking was published (48 FR 14641) and a public hearing was held on June 23, 1983. After consideration of all comments received on the proposed regulations of April 5, 1983, the regulations, with revisions, are adopted by this Treasury Decision.

Discussion

Section 1.901-2

Section 901 allows a credit for the amount of income, war profits, or excess profits taxes paid or accrued by or on behalf of a taxpayer to a foreign country or possession of the United States. A foreign levy is a creditable tax only if it is a tax and its predominant character is that of an income tax in the U.S. sense.

A levy is a tax under these final regulations if it requires a compulsory payment pursuant to the foreign country's authority to levy taxes. A payment for a specific economic benefit (defined in §1.901-2(a)(2)(ii)(B)) is not a tax. A taxpayer who directly or indirectly receives a specific economic benefit from a foreign government (a "dual capacity taxpayer") must establish under § 1.901-2A the portion, if any, of his payment to the foreign government that is a payment of tax.

Under these final regulations, the predominant character of a foreign tax is that of an income tax in the U.S. sense if the foreign tax is likely to reach net gain in the normal circumstances in which it applies. This standard, found in § 1.901-2(a)(3)(i), adopts the criterion for creditability set forth in *Inland Steel Company v. U.S.*, 677 F.2d 72 (Ct. Cl. 1982), *Bank of America National Trust and Savings Association v. U.S.*, 459 F.2d 513 (Ct. Cl. 1972), and *Bank of America National Trust and Savings Association v. Commissioner*, 61 T.C. 752 (1974). The regulations set forth three tests for determining if a foreign tax is likely to reach net gain: the realization test, the gross receipts test, and the net income test. All of these tests must be met in order for the predominant character of the foreign tax to be that of an income tax in the U.S. sense.

Paragraph (b)(2) of § 1.901-2 states that the realization test is met if the predominant character of the foreign tax is that of tax imposed on income at the time or after the time income would be realized under the Internal Revenue Code. The test can also be satisfied even if the tax is imposed prior to a realization event if the tax recaptures a tax deduction, tax credit or other tax allowance previously accorded the taxpayer. In addition, the test can be satisfied if the foreign tax is imposed on the appreciation in value of property or on the value of certain inventory property at the time of transfer, processing, or export, but only if such amounts are not subject to foreign tax at a later time, or, if they are subject to tax, a credit is given for the earlier tax. Certain foreign taxes imposed on the deemed distribution of profits also satisfy the realization test.

Several changes were made to the realization test of the proposed regulations in response to comments made by the public. The test was expanded to cover a tax on the appreciation of any type of property and not just stock, securities, and readily marketable securities. In addition, it was clarified that the imposition of a second tax does not disqualify a tax on a prerealization event if a credit is given for the first tax. The proposed regulations had a rule pertaining to certain distributions and deemed distributions. The rule has been rewritten to apply only to deemed distributions since a tax clearly meets the realization test if it is imposed on an actual distribution of amounts that meet the realization test.

The gross receipts test set forth in paragraph (b)(3) of § 1.901-2 is satisfied if the predominant character of the foreign tax is that of a tax imposed on the basis of gross receipts. The regulations also allow a tax imposed on a base of estimated gross receipts if the method used is likely to produce an amount that is not greater than fair market value. The proposed regulations would have allowed a tax imposed on estimated gross receipts only in the case of: (1) Transactions with respect to which it is reasonable to believe that gross receipts may not otherwise be clearly reflected, or (2) certain prerealization events. In response to comments made by the public, these restrictions have been deleted.

The third test of the regulations is whether the predominant character of the foreign tax is that of a tax on net income. Paragraph (b)(4) of § 1.902-2 states that a tax imposed on a base of gross receipts reduced by significant costs and expenses (including capital expenditures) attributable to that income is a tax on net income. Certain formulary methods of computing taxable income satisfy this test. In rare cases where income is of a type (such as wages) that generally does not have significant related expenses, a foreign tax may be considered to be imposed on net income even if no deductions are allowed.

The net income test has been clarified in several respects in response to comments received. A sentence has been added at the end of paragraph (b)(4)(i) specifically stating that a tax need not give a deduction for another tax that meets the realization, gross receipts, and net income requirements. In addition, the rules concerning the consolidation of profits and losses have been clarified by the insertion of examples of separate activities within a trade or business (separate contract areas in the case of oil and gas exploration). The regulations also make clear that oil and gas extraction constitutes a separate trade or business from oil and gas refining and processing. Some persons requested that example 24 of § 4.901-2(e) of the temporary regulations be included in the final regulations. The example lists certain deductions that are not allowed by a foreign tax and concludes that the tax meets the net income test, nothwithstanding the disallowance. It was decided not to include the example in the final regulations in order to avoid the possible implication that a tax that disallowed additional deductions would not meet the net income test. Such a tax may or may not meet the net income test, depending on the additional deductions that are disallowed.

Even though a foreign tax satisfies the three tests of realization, gross receipts, and net income, the predominant character of the tax is not that of an income tax in the U.S. sense to the extent the foreign tax liability is dependent on the availability of a credit against the taxpayer's liability to another country. This rule is contained in paragraphs (a)(3)(ii) and (c) of § 1.901–2. Several comments recommended the regulations be revised to deny a credit only to the extent the foreign tax is dependent on the availability of a credit against U.S. tax liability. This recommendation was not followed.

Under the regulations, the tests for determining creditability are applied to each separate foreign levy. Paragraph (d) of § 1.901–2 provides that a levy consists of separate levies if it is imposed on a base that differs in kind, and not merely in degree, for different classes of persons subject to the levy. Taxes imposed by different levels of a government are always separate levies. A tax imposed under foreign law as modified by a contract is a separate tax imposed on those persons subject to the contractual modification. Special rules with respect to levies imposed on dual capacity taxpayers are found in § 1.901–2A(a).

Amounts of foreign income, war profits, or excess profits taxes that are creditable must be paid or accrued to the foreign country by or on behalf of the taxpayer. Paragraph (e) of § 1.901–2 contains rules with respect to the amount of a qualifying tax that is creditable, subject to limitations such as those contained in section 904. Amounts of tax paid or accrued to a foreign country do not include amounts that are: (1) Reasonably certain to be refunded, credited, rebated, abated, or forgiven, or (2) used directly or indirectly as a subsidy to the taxpayer, or (3) not compulsory payments. To the extent a taxpayer does not make reasonable efforts to minimize its foreign tax liability over time, the payment is not compulsory and is therefore not an amount of tax paid. A taxpayer is not required to change the form of a transaction in order to minimize its foreign tax liability.

The proposed regulations provided that an amount was not paid or accrued if it was reasonably likely to be refunded, credited, rebated, or forgiven. Following the recommendation of certain comments, these final regulations substitute the word "certain" for "likely". Also in response to certain comments, the regulations give further guidance as to how far a taxpayer has to go to reduce his tax liability.

Paragraph (e) of § 1.901–2 also provides rules with respect to multiple levies. If the initial amount of one foreign liability is reduced by the amount of another levy, the amount of the first liability that is paid or accrued is the excess of the initial liability over the other levy. This is the rule of *Helvering v. Queen Insurance Co.*, 115 F.2d 341 (2d Cir. 1940), *cert. den.* 312 U.S. 706 (1941). The amount of the other levy that is paid or accrued is not reduced due to its use as an offset. If the taxpayer's liability is the greater or lesser of two amounts, the taxpayer is considered to pay or accrue only the levy for which he is liable for that period. Thus, if the taxpayer is liable for the greater of an income tax or an excise tax and for one period the income tax liability is larger, the taxpayer is considered to be liable only for the income tax, and not for the excise tax, for that period.

Various comments criticized the results of the two situations described above. If a person pay the greater of an income tax and an excise tax, he gets a full credit if the income tax is greater. However, if the person had been given a credit against his income tax for the amount of the excise tax, he would only get a credit for the difference between the income tax and the excise tax. It was suggested that in the latter situation the excise tax should be creditable as an in-lieu-of tax. It was decided to retain the rules of the proposed regulations, which respect foreign law in determining which levy or levies are paid.

The rules of the temporary regulations involving advance corporation taxes (§ 4.901–2(f)(4)(iv)) have been deleted because they apply to only one type of integrated tax system. The final regulations reserve a paragraph to contain more general rules for the treatment of taxes under integrated tax systems.

The final regulations also do not contain the rule of the temporary regulations regarding the accrual of contested foreign taxes (§ 4.901–2(f)(6)). No reason could be found for giving a credit when a person is contesting a tax and has not yet paid it. Thus, Revenue Rulings 58–55, 1958–1 C.B. 266; 70–290, 1970–1 C.B. 160; and 77–487, 1977–2 C.B. 479, again state the position of the Internal Revenue Service on this issue. It is anticipated that in the near future another Revenue Ruling will be issued, consolidating and expanding on the cited rulings.

Paragraph (f) of § 1.901–2 contains the general rule that a foreign income tax can be paid or accrued only by or on behalf of a taxpayer who is liable for the amount under foreign law. The final regulations, however, include an exception not found in the proposed regulations. A recipient of wages will be considered to be subject to legal liability for pension, unemployment, disability fund, and other similar payments if such amounts are deducted from the wages under provisions comparable to section 3102 (a) and (b) of the Internal Revenue Code. Paragraph (f) also contains specific rules with respect to: (1) A contractual agreement under which the income tax liability of the taxpayer is paid by another person, and (2) joint and several liability for income tax.

Paragraph (g) of § 1.901–2 contains definitions of the terms "paid," "foreign country," and "foreign levy" for purposes of §§ 1.901–2, 1.901–2A, and 1.903–1.

Paragraph (h) contains the effective date provision for §§ 1.901–2, 1.901–2A, and 1.903–1. Generally, the regulations are effective for taxable years beginning after November 14, 1983. However, taxpayers may elect to have the regulations apply to any open taxable year on a country-by-country basis. If the election is made with the respect to one country, it applies to all levies imposed by the country and any of its political subdivisions for the year for which the election is made and all subsequent years. The election cannot be revoked.

Section 1.901–2A

Under § 1.901–2 (a)(2)(i), a payment to a foreign government in exchange for a specific economic benefit is not a tax. A taxpayer who receives a specific economic benefit ("dual capacity taxpayer") must establish the portion (if any) of his payment to the foreign government that is tax. Rules pertaining to this burden are contained in § 1.901–2A.

Under paragraph (a)(1) of § 1.901–2A, no portion of a payment by a dual capacity taxpayer is considered to be compensation for a specific economic benefit if the payment is pursuant to a levy that is imposed on both dual capacity taxpayers and other taxpayers. A levy imposed on dual capacity taxpayers is also imposed on other taxpayers only if the levy is applied, by its terms and in practice, in the same manner to other taxpayers as to dual capacity taxpayers.

Paragraph (b)(2) of § 1.901–2A confirms that a dual capacity taxpayer entitled to the benefits of a tax treaty to

which the United States is a party and which provides for the creditability of a foreign tax for U.S. tax purposes, may choose the benefits of the treaty, subject to any terms, conditions, and limitations contained in the treaty.

Paragraph (c) sets forth the two methods available to a dual capacity taxpayer if the taxpayer is not subject to the same levy as other taxpayers and is not claiming a credit under a treaty. The first method is to establish by all of the relevant facts and circumstances, the portion, if any, of the levy that is not paid in exchange for a specific economic benefit. Neither the methodology of the elective safe harbor method described below nor the results that would have obtained if the safe harbor method had been elected may be taken into account as relevant facts or circumstances under this method.

The second method, the elective safe harbor method, is described in paragraph (c)(3) of § 1.901–2A. A dual capacity taxpayer may elect to use this method in accordance with paragraph (d) on a country-by-country basis. A taxpayer who elects the safe harbor method applies the formula set forth in paragraph (e). The formula is intended to provide a credit under section 901 or 903 for an amount approximating the amount of generally imposed income tax that would have been paid if the taxpayer had not been a dual capacity taxpayer and if the amount considered to be paid for the specific economic benefit had been deductible in determining the foreign income tax liability. However, if a country that imposes a levy based on realized net income on a dual capacity taxpayer does not have a generally imposed income tax, the dual capacity taxpayer may use the lower of the rate specified in section 11(b)(5) of the Internal Revenue Code or the rate of the foreign levy in applying the safe harbor formula. An election to use the safe harbor method for a country is effective for the taxable year for which it is made and all subsequent years unless revoked with the consent of the Commissioner of Internal Revenue. The making of a safe harbor election constitutes a waiver of the right to use the facts and circumstances method with respect to any levy imposed by countries covered by the election.

If a payment by a dual capacity taxpayer to the foreign country is determined to have two elements—an amount that is income tax or tax in lieu of income tax and an amount that is paid in exchange for a specific economic benefit—the amount paid in exchange for the specific economic benefit is characterized (as royalty, purchase price, etc.) according to the nature of the transaction. Such characterization applies for all purposes of Chapter 1 of the Code, except that any determination by reason of the safe harbor method that an amount is not tax shall not be taken into account in determining whether or not such amount is to be characterized and treated as tax for purposes of computing an allowance for percentage depletion under sections 611 and 613.

The proposed regulations allowed a safe harbor election to be made retroactively only with respect to taxable years beginning before the general effective date of the regulations. The final regulations also allow a retroactive election if: (1) A person reasonably believed that he was not a dual capacity taxpayer or was not subject to a qualifying levy and the Commissioner consents to the retroactive election, or (2) a person originally deducted taxes for the taxable year with respect to which he now wishes to make the election. The final regulations also provide the following additional situations in which the Commissioner will normally consent to a revocation of a safe harbor election: (1) The Internal Revenue Service has issued a letter ruling to the electing person which adversely affects the person's application of the safe harbor method, and (2) a corporation that is a dual capacity taxpayer becomes a member of an affiliated group that already contains a member that is a dual capacity taxpayer with respect to the same country, and immediately prior thereto one of such dual capacity taxpayers had a safe harbor election in effect with respect to the country and the other did not.

Under the proposed regulations, a provision of the general tax (*e.g.*, treatment of an income item, a deduction, or a rate) cannot be applied in using the safe harbor method if the provision does not apply in practice to persons other than dual capacity taxpayers. A number of comments indicated that in many cases it would be extremely burdensome for a dual capacity taxpayer to establish that a provision applies in practice to non-dual capacity taxpayers. Paragraph (e)(4)(ii) of the final regulations states that a provision (including tax rate) that by its terms applies to persons other than dual capacity taxpayers will generally be assumed to be reasonably likely to apply in practice to such other persons unless the person claiming credit knows or has reason to know otherwise.

Many comments criticized the proposed regulations for not allowing a credit under the safe harbor method if the foreign country does not have a general tax. They suggested that either the facts and circumstances method explicitly deal with this situation or the safe harbor method be modified so that the tax rate of a neighboring country or of the U.S. could be applied. The final regulations provide that if a country that does not have a general tax imposes a levy based on realized net income on a dual capacity taxpayer, the safe harbor formula may be applied using the lower of the rate of that levy or the rate specified in section 11(b)(5) of the Internal Revenue Code (currently 46%).

Section 1.903–1

Section 903 provides that the credit granted by section 901 shall also be available for a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by a foreign country or U.S. possession. The regulations under section 903 describe these taxes. The rules under section 901 for determining the amount of tax paid or accrued by or on behalf of a taxpayer also apply to section 903 taxes.

To qualify as a tax in lieu of a tax on income, war profits, or excess profits, a levy must satisfy the definition of a tax in § 1.901–2(a)(2). The tax must also be in substitution for, and not in addition to, a generally imposed income tax. To the extent that the amount of the foreign tax liability is contingent upon the availability of a credit against the amount of income tax owed to another country, a tax is not in substitution for an otherwise generally imposed income tax. The comparability requirement in temporary regulation § 4.903–1(c) is not contained in these final regulations.

Creditability under § 1.903–1 is not dependent on administrative difficulty in applying the generally imposed income tax. The base of the tax need not bear any relation to realized net income; a section 903 tax may be imposed on gross receipts, gross income, or a base that bears no resemblance to income. A taxpayer may be entitled to credit under section 903 for a tax with respect to certain of its activities, even though the taxpayer is also subject to a generally imposed income tax on its income from other activities. As under section 901, each separate levy is evaluated in its entirety for all persons subject to the tax, and the rules of § 1.901–2A apply to dual capacity taxpayers.

Removal of Temporary Regulations

These final regulations supersede the temporary regulations published in the **Federal Register** (45 FR 75647) on November 17, 1980; thus, the temporary

regulations are removed from 26 CFR. The temporary regulations continue to apply, however, to taxable years ending after June 15, 1979, and beginning on or before November 14, 1983 (if a revenue ruling in effect on November 16,1980, is inconsistent with the temporary regulations, then a taxpayer may choose to apply the ruling for any taxable year ending on or before December 31, 1980).

Regulatory Flexibility Act and Executive Order 12291

The Internal Revenue Service has concluded that these regulations are interpretative and thus the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that these regulations are not subject to Executive Order 12291.

Paperwork Reduction Act of 1980

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

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

List of Subjects

26 CFR §§ 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, Sources of income, United States investments abroad.

26 CFR Part 4

Income taxes, United States investments abroad, Foreign tax credit.

Adoption of amendments to the regulations

The following amendments to 26 CFR Part 1 and 4 are hereby adopted:

PART 1—[AMENDED]

Paragraph 1. A new § 1.901–2 is added immediately after § 1.901–1 to read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

(a) *Definition of income, war profits, or excess profits tax.*—(1) *In general.* Section 901 allows a credit for the amount of income, war profits or excess profits tax (referred to as "income tax" for purposes of this section and §§ 1.901–2A and 1.903–1) paid to any foreign country. Whether a foreign levy is an income tax is determined independently for each separate foreign levy. A foreign levy is an income tax if and only if—

(i) It is a tax; and

(ii) The predominant character of that tax is that of an income tax in the U.S. sense.

Except to the extent otherwise provided in paragraphs (a)(3)(ii) and (c) of this section, a tax either is or is not an income tax, in its entirety, for all persons subject to the tax. Paragraphs (a), (b) and (c) of this section define an income tax for purposes of section 901. Paragraph (d) of this section contains rules describing what constitutes a separate foreign levy. Paragraph (e) of this section contains rules for determining the amount of tax paid by a person. Paragraph (f) of this section contains rules for determining by whom foreign tax is paid. Paragraph (g) of this section contains definitions of the terms "paid by," "foreign country," and "foreign levy." Paragraph (h) of this section states the effective date of this section.

(2) *Tax.*—(i) *In general.* A foreign levy is a tax if it requires a compulsory payment pursuant to the authority of a foreign country to levy taxes. A penalty, fine, interest, or similar obligation is not a tax, nor is a customs duty a tax. Whether a foreign levy requires a compulsory payment pursuant to a foreign country's authority to levy taxes is determined by principles of U.S. law and not by principles of law of the foreign country. Therefore, the assertion by a foreign country that a levy is pursuant to the foreign country's authority to levy taxes is not determinative that, under U.S. principles, it is pursuant thereto. Notwithstanding any assertion of a foreign country to the contrary, a foreign levy is not pursuant to a foreign country's authority to levy taxes, and thus is not a tax, to the extent a person subject to the levy receives (or will receive), directly or indirectly, a specific economic benefit (as defined in paragraph (a)(2)(ii)(B) of this section) from the foreign country in exchange for payment pursuant to the levy. Rather, to that extent, such levy requires a compulsory payment in exchange for such specific economic benefit. If, applying U.S. principles, a foreign levy requires a compulsory payment pursuant to the authority of a foreign country to levy taxes and also requires a compulsory payment in exchange for a specific economic benefit, the levy is considered to have two distinct elements: a tax and a requirement of compulsory payment in exchange for such specific economic benefit. In such a situation, these two distinct elements of the foreign levy (and the amount paid pursuant to each such element) must be separated. No credit is allowable for a payment pursuant to a foreign levy by a dual capacity taxpayer (as defined in paragraph (a)(2)(ii)(A) of this section) unless the person claiming such credit establishes the amount that is paid pursuant to the distinct element of the foreign levy that is a tax. See paragraph (a)(2)(ii) of this section and § 1.901–2A.

(ii) *Dual capacity taxpayers.*—(A) *In general.* For purposes of this section and §§ 1.901–2A and 1.903–1, a person who is subject to a levy of a foreign state or of a possession of the United States or of a political subdivision of such a state or possession and who also, directly or indirectly (within the meaning of paragraph (a)(2)(ii)(E) of this section) receives (or will receive) a specific economic benefit from the state or possession or from a political subdivision of such state or possession or from an agency or instrumentality of any of the foregoing is referred to as a "dual capacity taxpayer." Dual capacity taxpayers are subject to the special rules of § 1.901–2A.

(B) *Specific economic benefit.* For purposes of this section and §§ 1.901–2A and 1.903–1, the term "specific economic benefit" means an economic benefit that is not made available on substantially the same terms to substantially all persons who are subject to the income tax that is generally imposed by the foreign country, or, if there is no such generally imposed income tax, an economic benefit that is not made available on substantially the same terms to the population of the country in general. Thus, a concession to extract government-owned petroleum is a specific economic benefit, but the right to travel or to ship freight on a government-owned airline is not, because the latter, but not the former, is made generally available on substantially the same terms. An economic benefit includes property; a

service; a fee or other payment; a right to use, acquire or extract resources, patents or other property that a foreign country owns or controls (within the meaning of paragraph (a)(2)(ii)(D) of this section); or a reduction or discharge of a contractual obligation. It does not include the right or privilege merely to engage in business generally or to engage in business in a particular form.

(C) *Pension, unemployment, and disability fund payments.* A foreign levy imposed on individuals to finance retirement, old-age, death, survivor, unemployment, illness, or disability benefits, or for some substantially similar purpose, is not a requirement of compulsory payment in exchange for a specific economic benefit, as long as the amounts required to be paid by the individuals subject to the levy are not computed on a basis reflecting the respective ages, life expectancies or similar characteristics of such individuals.

(D) *Control of property.* A foreign country controls property that it does not own if the country exhibits substantial indicia of ownership with respect to the property, for example, by both regulating the quantity of property that may be extracted and establishing the minimum price at which it may be disposed of.

(E) *Indirect receipt of a benefit.* A person is considered to receive a specific economic benefit indirectly if another person receives a specific economic benefit and that other person—

(*1*) Owns or controls, directly or indirectly, the first person or is owned or controlled, directly or indirectly, by the first person or by the same persons that own or control, directly or indirectly, the first person; or

(2) Engages in a transaction with the first person under terms and conditions such that the first person receives, directly or indirectly, all or part of the value of the specific economic benefit.

(3) *Predominant character.* The predominant character of a foreign tax is that of an income tax in the U.S. sense—

(i) If, within the meaning of paragraph (b)(1) of this section, the foreign tax is likely to reach net gain in the normal circumstances in which it applies,

(ii) But only to the extent that liability for the tax is not dependent, within the meaning of paragraph (c) of this section, by its terms or otherwise, on the availability of a credit for the tax against income tax liability to another country.

(b) *Net gain.*—(1) *In general.* A foreign tax is likely to reach net gain in the normal circumstances in which it applies if and only if the tax, judged on the basis of its predominant character, satisfies each of the realization, gross receipts, and net income requirements set forth in paragraphs (b)(2), (b)(3) and (b)(4), respectively, of this section.

(2) *Realization.*—(i) *In general.* A foreign tax satisfies the realization requirement if, judged on the basis of its predominant character, it is imposed—

(A) Upon or subsequent to the occurrence of events ("realization events") that would result in the realization of income under the income tax provisions of the Internal Revenue Code;

(B) Upon the occurrence of an event prior to a realization event (a "prerealization event") provided the consequence of such event is the recapture (in whole or part) of a tax deduction, tax credit or other tax allowance previously accorded to the taxpayer; or

(C) Upon the occurrence of a prerealization event, other than one described in paragraph (b)(2)(i)(B) of this section, but only if the foreign country does not, upon the occurrence of a later event (other than a distribution or a deemed distribution of the income), impose tax ("second tax") with respect to the income on which tax is imposed by reason of such prerealization event (or, if it does impose a second tax, a credit or other comparable relief is available against the liability for such a second tax for tax paid on the occurrence of the prerealization event) and—

(1) The imposition of the tax upon such prerealization event is based on the difference in the values of property at the beginning and end of a period; or

(2) The prerealization event is the physical transfer, processing, or export of readily marketable property (as defined in paragraph (b)(2)(iii) of this section).

A foreign tax that, judged on the basis of its predominant character, is imposed upon the occurrence of events described in this paragraph (b)(2)(i) satisfies the realization requirement even if it is also imposed in some situations upon the occurrence of events not described in this paragraph (b)(2)(i). For example, a foreign tax that, judged on the basis of its predominant character, is imposed upon the occurrence of events described in this paragraph (b)(2)(i) satisfies the realization requirement even though the base of that tax also includes imputed rental income from a personal residence used by the owner and receipt of stock dividends of a type described in section 305(a) of the Internal Revenue Code. As provided in paragraph (a)(1) of this section, a tax either is or is not an income tax, in its entirety, for all persons subject to the tax; therefore, a foreign tax described in the immediately preceding sentence satisfies the realization requirement even though some persons subject to the tax will on some occasions not be subject to the tax except with respect to such imputed rental income and such stock dividends. However, a foreign tax based only or predominantly on such imputed rental income or only or predominantly on receipt of such stock dividends does not satisfy the realization requirement.

(ii) *Certain deemed distributions.* A foreign tax that does not satisfy the realization requirement under paragraph (b)(2)(i) of this section is nevertheless considered to meet the realization requirement if it is imposed with respect to a deemed distribution (*e.g.*, by a corporation to a shareholder) of amounts that meet the realization requirement in the hands of the person that, under foreign law, is deemed to distribute such amount, but only if the foreign country does not, upon the occurrence of a later event (*e.g.*, an actual distribution), impose tax ("second tax") with respect to the income on which tax was imposed by reason of such deemed distribution (or, if it does impose a second tax, a credit or other comparable relief is available against the liability for such a second tax for tax paid with respect to the deemed distribution).

(iii) *Readily marketable property.* Property is readily marketable if—

(A) It is stock in trade or other property of a kind that property would be included in inventory if on hand at the close of the taxable year or if it is held primarily for sale to customers in the ordinary course of business, an

(B) It can be sold on the open market without further processing or it is exported from the foreign country.

(iv) *Examples.* The provisions of paragraph (b)(2) of this section may be illustrated by the following examples:

Example (1). Residents of country X are subject to a tax of 10 percent on the aggregate net appreciation in fair market value during the calendar year of all shares of stock held by them at the end of the year. In addition, all such residents are subject to a country X tax that qualifies as an income tax within the meaning of paragraph (a)(1) of this section. Included in the base of the income tax are gains and losses realized on the sale of stock, and the basis of stock for purposes of determining such gain or loss is its cost. The operation of the stock appreciation tax and the income tax as applied to sales of stock is exemplified as follows: T3A, a resident of country X, purchases stock in June, 1983 for 100u (units of country X currency) and sells it

in May, 1985 for 160u. On December 31, 1983, the stock is worth 120u and on December 31, 1984, it is worth 155u. Pursuant to the stock appreciation tax, *A* pays 2u for 1983 (10 percent of (120u−100u)), 3.5u for 1984 (10 percent of (155u−120u)), and nothing in 1985 because no stock was held at the end of that year. For purposes of the income tax, *A* must include 60u (160u−100u) in his income for 1985, the year of sale. Pursuant to paragraph (b)(2)(i)(C) of this section, the stock appreciation tax does not satisfy the realization requirement because country X imposes a second tax upon the occurrence of a later event (*i.e.*, the sale of stock) with respect to the income that was taxed by the stock appreciation tax and no credit or comparable relief is available against such second tax for the stock appreciation tax paid.

Example (2). The facts are the same as in example (1) except that if stock was held on the December 31 last preceding the date of its sale, the basis of such stock for purposes of computing gain or loss under the income tax is the value of the stock on such December 31. Thus, in 1985, A includes only 5u (160u—155u) as income from the sale for purposes of the income tax. Because the income tax imposed upon the occurrence of a later event (the sale) does not impose a tax with respect to the income that was taxed by the stock appreciation tax, the stock appreciation tax satisfies the realization requirement. The result would be the same if, instead of a basis adjustment to reflect taxation pursuant to the stock appreciation tax, the country X income tax allowed a credit (or other comparable relief) to take account of the stock appreciation tax. If a credit mechanism is used, see also paragraph (e)(4)(i) of this section.

Example (3). Country X imposes a tax on the realized net income of corporations that do business in country X. Country X also imposes a branch profits tax on corporations organized under the law of a country other than country X that do business in country X. The branch profits tax is imposed when realized net income is remitted or deemed to be remitted by branches in country X to home offices outside of country X. The branch profits tax is imposed subsequent to the occurrence of events that would result in realization of income (*i.e.*, by corporations subject to such tax) under the income tax provisions of the Internal Revenue Code; thus, in accordance with paragraph (b)(2)(i)(A) of this section, the branch profits tax satisfies the realization requirement.

Example (4). Country X imposes a tax on the realized net income of corporations that do business in country X (the "country X corporate tax"). Country X also imposes a separate tax on shareholders of such corporations (the "country X shareholder tax"). The country X shareholder tax is imposed on the sum of the actual distributions received during the taxable year by such a shareholder from the corporation's realized net income for that year (*i.e.*, income from past years is not taxed in a later year when it is actually distributed) plus the distributions deemed to be received by such a shareholder. Deemed distributions are defined as (A) a shareholder's pro rata share of the corporation's realized net income for the taxable year, less (B) such shareholder's pro rata share of the corporation's country X corporate tax for that year, less (C) actual distributions made by such corporation to such shareholder from such net income. A shareholder's receipt of actual distributions is a realization event within the meaning of paragraph (b)(2)(i)(A) of this section. The deemed distributions are not realization events, but they are described in paragraph (b)(2)(ii) of this section. Accordingly, the country X shareholder tax satisfies the realization requirement.

(3) *Gross receipts.*—(i) *In general.* A foreign tax satisfies the gross receipts requirement if, judged on the basis of its predominant character, it is imposed on the basis of—

(A) Gross receipts; or

(B) Gross receipts computed under a method that is likely to produce an amount that is not greater than fair market value.

A foreign tax that, judged on the basis of its predominant character, is imposed on the basis of amounts described in this paragraph (b)(3)(i) satisfies the gross receipts requirement even if it is also imposed on the basis of some amounts not described in this paragraph (b)(3)(i).

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section may be illustrated by the following examples:

Example (1). Country X imposes a "headquarters company tax" on country X corporations that serve as regional headquarters for affiliated nonresident corporations, and this tax is a separate tax within the meaning of paragraph (d) of this section. A headquarters company for purposes of this tax is a corporation that peforms administrative, management or coordination functions solely for nonresident affiliated entities. Due to the difficulty of determining on a case-by-case basis the arm's length gross receipts that headquarters companies would charge affiliates for such services, gross receipts of a headquarters company are deemed, for purposes of this tax, to equal 110 percent of the business expenses incurred by the headquarters company. It is established that this formula is likely to produce an amount that is not greater than the fair market value of arm's length gross receipts from such transactions with affiliates. Pursuant to paragraph (b)(3)(i)(B) of this section, the headquarters company tax satisfies the gross receipts requirement.

Example (2). The facts are the same as in Example (1), with the added fact that in the case of a particular taxpayer, *A*, the formula actually produces an amount that is substantially greater than the fair market value of arm's length gross receipts from transactions with affiliates. As provided in paragraph (a) (l) of this section, the headquarters company tax either is or is not an income tax, in its entirety, for all persons subject to the tax. Accordingly, the result is the same as in example (1) for all persons subject to the headquarters company tax, including *A*.

Example (3). Country X imposes a separate tax (within the meaning of paragraph (d) of this section) on income from the extraction of petroleum. Under that tax, gross receipts from extraction income are deemed to equal 105 percent of the fair market value of petroleum extracted. This computation is designed to produce an amount that is greater than the fair market value of actual gross receipts; therefore, the tax on extraction income is not likely to produce an amount that is not greater than fair market value. Accordingly, the tax on extraction income does not satisfy the gross receipts requirement. However, if the tax satisfies the criteria of § 1.903–1(a), it is a tax in lieu of an income tax.

(4) *Net income.*—(i) *In general.* A foreign tax satisfies the net income requirement if, judged on the basis of its predominant character, the base of the tax is computed by reducing gross receipts (including gross receipts as computed under paragraph (b)(3)(i(B) of this section) to permit—

(A) Recovery of the significant costs and expenses (including significant capital expenditures) attributable, under reasonable principles, to such gross receipts; or

(b) Recovery of such significant costs and expenses computed under a method that is likely to produce an amount that approximates, or is greater than, recovery of such significant costs and expenses.

A foreign tax law permits recovery of significant costs and expenses even if such costs and expenses are recovered at a different time than they would be if the Internal Revenue Code applied, unless the time of recovery is such that under the circumstances there is effectively a denial of such recovery. For example, unless the time of recovery is such that under the circumstances there is effectively a denial of such recovery, the net income requirement is satisfied where items deductible under the Internal Revenue Code are capitalized under the foreign tax system and recovered either on a recurring basis over time or upon the occurrence of some future event or where the recovery of items capitalized under the Internal Revenue Code occurs less rapidly under the foreign tax system. A foreign tax law that does not permit recovery of one or more significant costs or expenses, but that provides allowances that effectively compensate for nonrecovery of such significant costs or expenses, is considered to permit recovery of such costs or expenses. Principles used in the foreign tax law to attribute costs and expenses to gross receipts may be reasonable even if they differ from principles that apply under the Internal Revenue Code (e.g., principles that apply

under section 265, 465 or 861(b) of the Internal Revenue Code). A foreign tax whose base, judged on the basis of its predominant character, is computed by reducing gross receipts by items described in paragraph (b)(4)(i)(A) or (B) of this section satisfied the net income requirement even if gross receipts are not reduced by some such items. A foreign tax whose base is gross receipts or gross income does not satisfy the net income requirement except in the rare situation where that tax is almost certain to reach some net gain in the normal circumstances in which it applies because costs and expenses will almost never be so high as to offset gross receipts or gross income, respectively, and the rate of the tax is such that after the tax is paid persons subject to the tax are almost certain to have net gain. Thus, a tax on the gross receipts or gross income of businesses can satisfy the net income requirement only if businesses subject to the tax are almost certain never to incur a loss (after payment of the tax). In determining whether a foreign tax satisfied the net income requirement, it is immaterial whether gross receipts are reduced, in the base of the tax, by another tax, provided that other tax satisfies the realization, gross receipts and net income requirements.

(ii) *Consolidation of profits and losses.* In determining whether a foreign tax satisfies the net income requirement, one of the factors to be taken into account is whether, in computing the base of the tax, a loss incurred in one activity (e.g., a contract area in the case of oil and gas exploration) in a trade or business is allowed to offset profit earned by the same person in another activity (e.g., a separate contract area) in the same trade or business. If such an offset is allowed, it is immaterial whether the offset may be made in the taxable period in which the loss is incurred or only in a different taxable period, unless the period is such that under the circumstances there is effectively a denial of the ability to offset the loss against profit. In determining whether a foreign tax satisfies the net income requirement, it is immaterial that no such offset is allowed if a loss incurred in one such activity may be applied to offset profit earned in that activity in a different taxable period, unless the period is such that under the circumstances there is effectively a denial of the ability to offset such loss against profit. In determining whether a foreign tax satisfies the net income requirement, it is immaterial whether a person's profits and losses from one trade or business (*e.g.*, oil and gas extraction) are allowed to offset its profits and losses from another trade or business, (*e. g.*, oil and gas refining and processing) or whether a person's business profits and losses and its passive investment profits and losses are allowed to offset each other in computing the base of the foreign tax. Moreover, it is immaterial whether foreign law permits or prohibits consolidation of profits and losses of related persons, unless foreign law requires separate entities to be used to carry on separate activities in the same trade or business. If foreign law requires that separate entities carry on such separate activities, the determination whether the net income requirement is satisfied is made by applying the same considerations as if such separate activities were carried on by a single entity.

(iii) *Carryovers.* In determining whether a foreign tax satisfies the net income requirement, it is immaterial, except as otherwise provided in paragraph (b)(4)(ii) of this section, whether losses incurred during one taxable period may be carried over to offset profits incurred in different taxable periods.

(iv) *Examples.* The provisions of this paragraph (b)(4) may be illustrated by the following examples:

Example (1). Country X imposes an income tax on corporations engaged in business in country X; however, that income tax is not applicable to banks. Country X also imposes a tax (the "bank tax") of 1 percent on the gross amount of interest income derived by banks from branches in country X; no deductions are allowed. Banks doing business in country X incur very substantial costs and expenses (e.g. interest expense) attributable to their interest income. The bank tax neither provides for recovery of significant costs and expenses nor provides any allowance that significantly compensates for the lack of such recovery. Since such banks are not almost certain never to incur a loss on their interest income from branches in country X, the bank tax does not satisfy the net income requirement. However, if the tax on corporations is generally imposed, the bank tax satisfies the criteria of § 1.903–1(a) and therefore is a tax in lieu of an income tax.

Example (2). Country X law imposes an income tax on persons engaged in business in country X. The base of that tax is realized net income attributable under reasonable principles to such business. Under the tax law of country X, a bank is not considered to be engaged in business in country X unless it has a branch in country X and interest income earned by a bank from a loan to a resident of country X is not considered attributable to business conducted by the bank in country X unless a branch of the bank in country X performs certain significant enumerated activities, such as negotiating the loan. Country X also imposes a tax (the "bank tax") of 1 percent on the gross amount of interest income earned by banks from loans to residents of country X if such banks do not engage in business in country X or if such interest income is not considered attributable to business conducted in country X. For the same reasons as are set forth in example (1), the bank tax does not satisfy the net income requirement. However, if the tax on persons engaged in business in country X is generally imposed, the bank tax satisfies the criteria of § 1.903–1(a) and therefore is a tax in lieu of an income tax.

Example (3). A foreign tax is imposed at the rate of 40 percent on the amount of gross wages realized by an employee; no deductions are allowed. Thus, the tax law neither provides for recovery of costs and expenses nor provides any allowance that effectively compensates for the lack of such recovery. Because costs and expenses of employees attributable to wage income are almost always insignificant compared to the gross wages realized, such costs and expenses will almost always not be so high as to offset the gross wages and the rate of the tax is such that, under the circumstances, after the tax is paid, employees subject to the tax are almost certain to have net gain. Accordingly, the tax satisfies the net income requirement.

Example (4). Country X imposes a tax at the rate of 48 percent of the "taxable income" of nonresidents of country X. "Taxable income" for purposes of the tax is defined as gross receipts received from residents of country X who furnish specified types of services to customers who are residents of country X (regardless of whether the services to which the receipts relate are performed within or outside country X) less deductions that permit recovery of the significant costs and expenses (including significant capital expenditures) attributable under reasonable principles to such gross receipts. The country X tax satisfies the net income requirement.

Example (5). Each of country X and province Y (a political subdivision of country X) imposes a tax on corporations, called the "country X income tax" and the "province Y income tax," respectively. Each tax has an identical base, which is computed by reducing a corporation's gross receipts by deductions that, based on the predominant character of the tax, permit recovery of the significant costs and expenses (including significant capital expenditures) attributable under reasonable principles to such gross receipts. The country X income tax does not allow a deduction for the province Y income tax for which a taxpayer is liable, nor does the province Y income tax allow a deduction for the country X income tax for which a taxpayer is liable. As provided in paragraph (d)(1) of this section, each of the country X income tax and the province Y income tax is a separate levy. Both of these levies satisfy the net income requirement; the fact that neither levy's base allows a deduction for the other levy is immaterial in reaching that determination.

(c) *Soak-up taxes.*—(1) *In general.* Pursuant to paragraph (a)(3)(ii) of this section, the predominant character of a foreign tax that satisfies the requirement of paragraph (a)(3)(i) of this section is that of an income tax in the U.S. sense only to the extent that liability for the foreign tax is not dependent (by its terms or otherwise) on the availability of a credit for the tax against income tax liability to another country; Liability for foreign tax is dependent on the availability of a credit for the foreign tax against income tax liability to another country only if and to the extent that the foreign tax would not be imposed on the taxpayer but for the availability of such a credit. See also § 1.903–1(b)(2).

(2) *Examples.* The provisions of paragraph (c)(1) of this section may be illustrated by following examples:

Example (1). Country X imposes a tax on the receipt of royalties from sources in country X by nonresidents of country X. The tax is 15 percent of the gross amount of such royalties unless the recipient is a resident of the United States or of country A, B, C, or D, in which case the tax is 20 percent of the gross amount of such royalties. Like the United States, each of countries A, B, C, and D allows its residents a credit against the income tax otherwise payable to it for income taxes paid to other countries. Because the 20 percent rate applies only to residents of countries which allow a credit for taxes paid to other countries and the 15 percent rate applies to residents of countries which do not allow such a credit, one-fourth of the country X tax would not be imposed on residents of the United States but for the availability of such a credit. Accordingly, one-fourth of the country X tax imposed on residents of the United States who receive royalties from sources in country X is dependent on the availability of a credit for the country X tax against income tax liability to another country.

Example (2). Country X imposes a tax on the realized net income derived by all nonresidents from carrying on a trade or business in country X. Although country X law does not prohibit other nonresidents from carrying on business in country X, United States persons are the only nonresidents of country X that carry on business in country X in 1984. The country X tax would be imposed in its entirety on a nonresident of country X irrespective of the availability of a credit for country X tax against income tax liability to another country. Accordingly, no portion of that tax is dependent on the availability of such a credit.

Example (3). Country X imposes tax on the realized net income of all corporations incorporated in country X. Country X allows a tax holiday to qualifying corporations incorporated in country X that are owned by nonresidents of country X, pursuant to which no country X tax is imposed on the net income of a qualifying corporation for the first ten years of its operations in country X. A corporation qualifies for the tax holiday if it meets certain minimum investment criteria and if the development office of country X certifies that in its opinion the operations of the corporation will be consistent with specified development goals of country X. The development office will not so certify to any corporation owned by persons resident in countries that allow a credit (such as that available under section 902 of the Internal Revenue Code) for country X tax paid by a corporation incorporated in country X. In practice, tax holidays are granted to a large number of corporations, but country X tax is imposed on a significant number of other corporations incorporated in country X (*e.g.*, those owned by country X persons and those which have had operations for more than 10 years) in addition to corporations denied a tax holiday because their shareholders qualify for a credit for the country X tax against income tax liability to another country. In the case of corporations denied a tax holiday because they have U.S. shareholders, no portion of the country X tax during the period of the denied 10-year tax holiday is dependent on the availability of a credit for the country X tax against income tax liability to another country.

Example (4). The facts are the same as in example (3), except that corporations owned by persons resident in countries that will allow a credit for country X tax at the time when dividends are distributed by the corporations are granted a provisional tax holiday. Under the provisional tax holiday, instead of relieving such a corporation from country X tax for 10 years, liability for such tax is deferred until the corporation distributes dividends. The result is the same as in example (3).

(d) *Separate levies.*—(1) *In general.* For purposes of sections 901 and 903, whether a single levy or separate levies are imposed by a foreign country depends on U.S. principles and not on whether foreign law imposes the levy or levies in a single or separate statutes. A levy imposed by one taxing authority (*e.g.*, the national government of a foreign country) is always separate for purposes of sections 901 and 903 from a levy imposed by another taxing authority (*e.g.*, a political subdivision of that foreign country). Levies are not separate merely because different rates apply to different taxpayers. For example, a foreign levy identical to the tax imposed on U.S. citizens and resident alien individuals by section 1 of the Internal Revenue Code is a single levy notwithstanding the levy has graduated rates and applies different rate schedules to unmarried individuals, married individuals who file separate returns and married individuals who file joint returns. In general, levies are not separate merely because some provisions determining the base of the levy apply, by their terms or in practice, to some, but not all, persons subject to the levy. For example, a foreign levy identical to the tax imposed by section 11 of the Internal Revenue Code is a single levy even though some provisions apply by their terms to some but not all corporations subject to the section 11 tax (*e.g.*, section 465 is by its terms applicable to corporations described in sections 465(a)(1)(B) and 465(a)(1)(C), but not to other corporations), and even though some provisions apply in practice to some but not all corporations subject to the section 11 tax (*e.g.*, section 611 does not, in practice, apply to any corporation that does not have a qualifying interest in the type of property described in section 611(a)). However, where the base of a levy is different in kind, and not merely in degree, for different classes of persons subject to the levy, the levy is considered for purposes of sections 901 and 903 to impose separate levies for such classes of persons. For example, regardless of whether they are contained in a single or separate foreign statutes, a foreign levy identical to the tax imposed by section 871(b) of the Internal Revenue Code is a separate levy from a foreign levy identical to the tax imposed by section 1 of the Internal Revenue Code as it applies to persons other than those described in section 871(b), and foreign levies identical to the taxes imposed by sections 11, 541, 881, 882, 1491 and 3111 of the Internal Revenue Code are each separate levies, because the base of each of those levies differs in kind, and not merely in degree, from the base of each of the others. Accordingly, each such levy must be analyzed separately to determine whether it is an income tax within the meaning of paragraph (a)(1) of this section and whether it is a tax in lieu of an income tax within the meaning of paragraph (a) of § 1.903–1. Where foreign law imposes a levy that is the sum of two or more separately computed amounts, and each such amount is computed by reference to a separate base, separate levies are considered, for purposes of sections 901 and 903, to be imposed. A separate base may consist, for example, of a particular type of income or of an amount unrelated to income, e.g., wages paid. Amounts are not separately computed if they are computed separately merely for purposes of a preliminary computation and are then combined as a single base. In the case of levies that apply to dual capacity taxpayers, see also § 1.901–2A(a).111 (2) *Contractual modifications.* Notwithstanding paragraph (d)(1) of this section, if foreign law imposing a levy is modified for one or more persons subject to the levy by a contract entered into by such person or persons and the foreign country, then foreign law is considered for purposes of sections 901

and 903 to impose a separate levy for all persons to whom such contractual modification of the levy applies, as contrasted to the levy as applied to all persons to whom such contractual modification does not apply. In applying the provisions of paragraph (c) of this section to a tax as modified by such a contract, the provisions of § 1.903–1(b)(2) shall apply.

(3) *Examples.* The provisions of paragraph (d)(1) of this section may be illustrated by the following examples:

Example (1). A foreign statute imposes a levy on corporations equal to the sum of 15% of the corporation's realized net income plus 3% of its net worth. As the levy is the sum of two separately computed amounts, each of which is computed by reference to a separate base, each of the portion of the levy based on income and the portion of the levy based on net worth is considered, for purposes of sections 901 and 903, to be a separate levy.

Example (2). A foreign statute imposes a levy on nonresident alien individuals analogous to the taxes imposed by section 871 of the Internal Revenue Code. For the same reasons as set forth in example (1), each of the portion of the foreign levy analogous to the tax imposed by section 871(a) and the portion of the foreign levy analogous to the tax imposed by sections 871 (b) and 1, is considered, for purposes of sections 901 and 903, to be a separate levy.

Example (3). A single foreign statute or separate foreign statutes impose a foreign levy that is the sum of the products of specified rates applied to specified bases, as follows:

Bases	Rate (percent)
Net income from mining	45
Net income from manufacturing	55
Net income from technical services	60
Net income from Other services	45
Net income from investment	15
All other net income from	50

In computing each such base, deductible expenditures are allocated to type of income they generate. If allocated deductible expenditures exceed the gross amount of a specified type of income, the excess may not be applied against income of a different specified type. Accordingly, the levy is the sum of several separately computed amounts, each of which is computed by reference to a separate base. Each of the levies on mining net income, manufacturing net income, technical services net income, other services net income, investment net income and other net income is, therefore considered for purposes of sections 901 and 903, to be a separate levy.

Example (4). The facts are the same as in example (3), except that excess deductible expenditures allocated to one type of income are applied against other types of income to which the same rate applies. The levies on mining net income and other services net income together are considered, for purposes of sections 901 and 903, to be a single levy since, despite a separate preliminary computation of the bases, by reason of the permitted application of excess allocated deductible expenditures, the bases are not separately computed. For the same reason, the levies on manufacturing net income, technical services net income and other net income together are considered, for purposes of sections 901 and 903, to be a single levy. The levy on investment net income is considered, for purposes of sections 901 and 903, to be a separate levy. These results are not dependent on whether the application of excess allocated deductible expenditures to a different type of income, as described above, is permitted in the same taxable period in which the expenditures are taken into account for purposes of the preliminary computation, or only in a different (e.g., later) taxable period.

Example (5). The facts are the same as in example (3), except that excess deductible expenditures allocated to any type of income other than investment income are applied against the other types of income (including investment income) according to a specified set of priorities of application. Excess deductible expenditures allocated to investment income are not applied against any other type of income. For the reason expressed in example (4), all of the levies are together considered, for purposes of sections 901 and 903, to be a single levy.

(e) *Amount of Income tax that is creditable.—In general.* Credit is allowed under section 901 for the amount of income tax (within the meaning of paragraph (a)(1) of this section) that is paid to a foreign country by the taxpayer. The amount of income tax paid by the taxpayer is determined separately for each taxpayer.

(2) *Refunds and credits.–(i) In general.* An amount is not tax paid to a foreign country to the extent that it is reasonably certain that the amount will be refunded, credited, rebated, abated, or forgiven. It is not reasonably certain that an amount will be refunded, credited, rebated, abated, or forgiven if the amount is not greater than a reasonable approximation of final tax liability to the foreign country.

(ii) *Examples.* the provisions of paragraph (e)(2)(i) of this section may be illustrated by the following examples:

Example (1). The internal law of country X imposes a 25 percent tax on the gross amount of interest from sources in country X that is received by a nonresident of country X. Country X law imposes the tax on the nonresident recipient and requires any resident of country X that pays such interest to a nonresident to withhold and pay over to country X 25 percent of such interest, which is applied to offset the recipient's liability for the 25 percent tax. A tax treaty between the United States and country X overrides internal law of country X and provides that country X may not tax interest received by a resident of the United States from a resident of country X at a rate in excess of 10 percent of the gross amount of such interest. A resident of the United States may claim the benefit of the treaty only by applying for a refund of the excess withheld amount (15 percent of the gross amount of interest income) after the end of the taxable year. *A*, a resident of the United States, receives a gross amount of 100u (units of country X currency) of interest income from a resident of country X, from source in country X in the taxable year 1984, from which 25u of country X tax is withheld. *A* files a timely claim for refund of the 15u excess withheld amount. 15u of the amount withheld (25u–10u) is reasonably cetrain to be refunded; therefore 15u is not considered an amount of tax paid to country X.

Example (2). A's initial income tax liability under country X law is 100u (units of country X currency). However, under country X law *A's* initial income tax liabilify is reduced in order to compute its final tax liability by an investment credit of 15u and a credit for charitable contributions of 5u. The amount of income tax paid by *A* is 80u.

Example (3). A computes his income tax liability in country X for the taxable year 1984 as 100u (units of country X currency), files a tax return on that basis, and pays 100u of tax. The day after *A* files that return, *A* files a claim for refund of 90u. The difference between the 100u of liability reflected in *A's* original return and the 10u of liability reflected in *A's* refund claim depends on whether a particular expenditure made by *A* is nondeductible or deductible, respectively. Based on an analysis of the country X tax law, *A's* country X tax advisors have advised *A* that it is not clear whether or not that expenditure is deductible. In view of the uncertainty as to the proper treatment of the item in question under country X tax law, no portion of the 100u paid by *A* is reasonably certain to be refunded. If *A* receives a refund, *A* must treat the refund as required by section 905(c) of the Internal Revenue Code.

Example (4). A levy of country X, which qualifies as an income tax within the meaning of paragraph (a)(1) of this section, provides that each person who makes payment to country X pursuant to the levy will receive a bond to be issued by country X with an amount payable at maturity equal to 10 percent of the amount paid pursuant to the levy. *A* pays 38,000u (units of country X currency) to country X and is entitled to receive a bond with an amount payable at maturity of 3800u. It is reasonably certain that a refund in the form of property (the bond) will be made. The amount of that refund is equal to the fair market value of the bond. Therefore, only the portion of the 38,000u payment in excess of the fair market value of the bond is an amount of tax paid.

(3) *Subsidies.*—(i) *General rule.* An amount is not an amount of income tax paid by a taxpayer to a foreign country to the extent that—

(A) The amount is used, directly or indirectly, by the country to provide a subsidy by any means (such as through a refund or credit) to the taxpayer; and

(B) The subsidy is determined, directly or indirectly, by reference to the amount of income tax, or the base used

to compute the income tax, imposed by the country on the taxpayer.

(ii) *Indirect subsidies.* A foreign country is considered to provide a subsidy to a taxpayer if the country provides a subsidy to another person that—

(A) Owns or controls, directly or indirectly, the taxpayer or is owned or controlled, directly or indirectly, by the taxpayer or by the same persons that own or control, directly or indirectly, the taxpayer, or

(B) Engages in a transaction with the taxpayer, but only if the subsidy received by such other person is determined, directly or indirectly, by reference to the amount of income tax, or the base used to compute the income tax, imposed by the country on the taxpayer with respect to such transaction.

(iii) *Example.* The provisions of this paragraph (e)(3) may be illustrated by the following example:

Example. Country X imposes a 30-percent tax on interest received by nonresident lenders from borrowers who are residents of country X, and it is established that this tax is a tax in lieu of an income tax within the meaning of § 1.903–(1)(a). Country X remits to resident borrowers an incentive payment for engaging in foreign loans, which payment is an amount equal to 20 percent of the interest paid to nonresident lenders. Because the incentive payment is based on such interest, it is determined by reference to the base used to compute the tax in lieu of an income tax that is imposed on the nonresident lender. Under paragraph (e)(3)(ii)(B) of this section, the incentive payment is considered a subsidy provided indirectly to the nonresident lender since it is provided to a person (the borrower) that engaged in a business transaction with the lender and is based on the amount of tax in lieu of an income tax that is imposed on the lender with respect to this transaction. Therefore, two-thirds (20 percent/30 percent) of the amount withheld by a resident borrower from interest payments to a nonresident lender is not tax in lieu of an income tax that is paid by the lender under paragraph (e)(3)(i) of this section and § 1.903–1(a).

(4) *Multiple levies.*—(i) *In general.* If under foreign law, a taxpayer's tentative liability for one levy (the "first levy") is or can be reduced by the amount of the taxpayer's liability for a different levy (the "second levy"), then the amount considered paid by the taxpayer to the foreign country pursuant to the second levy is an amount equal to its entire liability for that levy, and the remainder of the amount paid is considered paid pursuant to the first levy. This rule applies regardless of whether it is or is not likely that liability for one such levy will always exceed liability for the other such levy. For an example of the application of this rule, see example (5) of § 1.903–1(b)(3). If, under foreign law, the amount of a taxpayer's liability is the greater or lesser of amounts computed pursuant to two levies, then the entire amount paid to the foreign country by the taxpayer is considered paid pursuant to the levy that imposes such greater or lesser amount, respectively, and no amount is considered paid pursuant to such other levy.

(ii) *Integrated tax systems.* [Reserved]

(5) *Noncompulsory amounts.*—(i) *In general.* An amount paid is not a compulsory payment, and thus is not an amount of tax paid, to the extent that the amount paid exceeds the amount of liability under foreign law for tax. An amount paid does not exceed the amount of such liability if the amount paid is determined by the taxpayer in a manner that is consistent with a reasonable interpretation and application of the substantive and procedural provisions of foreign law (including applicable tax treaties) in such a way as to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax, and if the taxpayer exhausts all effective and practical remedies, including invocation of competent authority procedures available under applicable tax treaties, to reduce, over time, the taxpayer's liability for foreign tax (including liability pursuant to a foreign tax audit adjustment). Where foreign tax law includes options or elections whereby a taxpayer's tax liability may be shifted, in whole or part, to a different year or years, the taxpayer's use or failure to use such options or elections does not result in a payment in excess of the taxpayer's liability for foreign tax. An interpretation or application of foreign law is not reasonable if there is actual notice or constructive notice (*e.g.*, a published court decision) to the taxpayer that the interpretation or application is likely to be erroneous. In interpreting foreign tax law, a taxpayer may generally rely on advice obtained in good faith from competent foreign tax advisors to whom the taxpayer has disclosed the relevant facts. A remedy is effective and practical only if the cost thereof (including the risk of offsetting or additional tax liability) is reasonable in light of the amount at issue and the likelihood of success. A settlement by a taxpayer of two or more issues will be evaluated on an overall basis, not on an issue-by-issue basis, in determining whether an amount is a compulsory amount. A taxpayer is not required to alter its form of doing business, its business conduct, or the form of any business transaction in order to reduce its liability under foreign law for tax.

(ii) *Examples.* The provisions of paragraph (e)(5)(i) of this section may be illustrated by the following examples:

Example (1). *A*, a corporation organized and doing business solely in the United States, owns all of the stock of *B*, a corporation organized in country X. In 1984 *A* buys merchandise from unrelated persons for $1,000,000, shortly thereafter resells that merchandise to *B* for $600,000, and *B* later in 1984 resells the merchandise to unrelated persons for $1,200,000. Under the country X income tax, which is an income tax within the meaning of paragraph (e)(1) of this section, all corporations organized in country X are subject to a tax equal to 3 percent of their net income. In computing its 1984 country X income tax liability *B* reports $600,000 ($1,200,000—$600,000) of profit from the purchase and resale of the merchandise referred to above. The country X income tax law requires that transactions between related persons be reported at arm's length prices, and a reasonable interpretation of this requirement, as it has been applied in country X, would consider *B*'s arm's length purchase price of the merchandise purchased from *A* to be $1,050,000. When it computes its country X tax liability *B* is aware that $600,000 in not an arm's length price (by country X standards). *B*'s knowing use of a non-arm's length price (by country X standards) of $600,000, instead of a price of $1,050,000 (an arm's length price under country X's law), is not consistent with a reasonable interpretation and application of the law of country X, determined in such a way as to reduce over time *B*'s reasonably expected liability for country X income tax. Accordingly, $13,500 (3 percent of $450,000 ($1,050,000—$600,000)), the amount of country X income tax paid by *B* to country X that is attributable to the purchase of the merchandise from *B*'s parent at less than an arm's length price, is in excess of the amount of *B*'s liability for country X tax, and thus is not an amount of tax.

Example (2). *A*, a corporation organized and doing business solely in the United States, owns all of the stock of *B*, a corporation organized in country X. Country X has in force an income tax treaty with the United States. The treaty provides that the profits of related persons shall be determined as if the persons were not related. *A* and *B* deal extensively with each other. *A* and *B*, ,with repect to a series of transactions involving both of them, treat *A* as having $300,000 of income and *B* as having $700,000 of income for purposes of *A*'s United States income tax and *B*'s country X income tax, respectively. *B* has no actual or constructive notice that its treatment of these transactions under country X law is likely to be erroneous. Subsequently, the Internal Revenu Service reallocates $200,000 of this income from *B* to *A* under the authority of section 482 and the treaty. This reallocation constitutes actual notice to *A* and constructive notice to *B* that *B*'s interpretation and application of country X's law and the tax treaty is likely to be erroneous. *B* does not exhaust all effective and practical remedies to obtain a refund of the amount of country X income tax paid by *B* to country X that is attributable to the reallocated $200,000 of income. This amount

is in excess of the amount of *B*'s liability for country X tax and thus is not an amount of tax.

Example (3). The facts are the same as in example (2), except that *B* files a claim for refund (an administrative proceeding) of country X tax and *A* or *B* invokes the competent authority procedures of the treaty, the cost of which is reasonable in view of the amount at issue and the likelihood of success. Nevertheless, *B* does not obtain any refund of country X tax. The cost of pursuing any judicial remedy in country X would be unreasonable in light of the amount at issue and the likelihood of *B*'s success, and *B* does not pursue any such remedy. The entire amount paid by *B* to country X is a compulsory payment and thus is an amount of tax paid by *B*.

Example (4). The facts are the same as in example (2), except that, when the Internal Revenue Service makes the reallocation, the country X statute of limitations on refunds has expired; and neither the internal law of the country X nor the treaty authorizes the the country X tax authorities to pay a refund that is barred by the statute of limitations. *B* does not file a claim for refund, and neither *A* nor *B* invokes the competent authority procedures of the treaty. Because the country X tax paying a refund, *B* has no effective and practicable remedies. The entire amount paid by *B* to country X is a compulsory payment and thus is an amount of tax paid by *B*.

Example (5). *A* is a U.S. person doing business in the country X. In computing its income tax liability to the country X, *A* is permitted, at its election to recover the cost of machinery used in its business either by deducting that cost in the year of acquisition or by depreciating that cost on the straight line method over a period of 2, 4, 6 or 10 years. *A* elects to depreciate machinery over 10 years. This election merely shifts *A*'s tax liability to different years (compared to the timing of *A*'s tax liability under a different depreciation period); it does not result in a payment in excess of the amount of *A*'s liability for the country X income tax in any year since the amount of the country X tax paid by *A* is consistent with a reasonable interpretation of the country X law in such a way as to reduce over time *A*'s reasonably expected liability for the country X tax. Because the standard of paragraph (e)(5)(i) of this section refers to *A*'s reasonably expected liability, not its actual liability, events actually occurring in subsequent years (e.g. whether *A* has sufficient profit in such years so that such depreciation deductions actually reduce *A*'s the country X tax liability or whether the country X tax rates change) are immaterial.

Example (6). The internal law of the country X imposes a 25 percent tax on the gross amount of interest from sources in the country X that is received by a nonresident of the country X, the country X law imposes the tax on the nonresident recipient and requires any resident of the country X that pays such interest to a nonresident to withhold and pay over to the country X 25 percent of such interest which is applied to offset the recipient's liability for the 25 percent tax. A tax treaty between the United States and the country X overrides internal law of the country X and provides that the country X may not tax interest received by a resident of the United States from a resident of the country X at a rate in excess of 10 percent of the gross amount of such interest A resident of the United States may claim the benefit of the treaty only by applying for a refund of the excess withheld amount (15 percnet of the gross amount of tnterest income) after the end of the taxable year. A, a resident of the United States, receives a gross amount of 100u (units of the country X currency) of interest income from a resident of country X from sources in country X in the taxable year 1984 from which 25u of country X tax is withheld. *A* does not file a timely claim for refund. 15u of the amount withheld (25u–10u) is not a compulsory payment and hence is not an amount of tax.

(f) *Taxpayer*–(1) *In general.* The person by whom tax is considered paid for purposes of sections 901 and 903 is the person on whom foreign law imposes legal liability for such tax even if another person (e.g., a withholding agent) remits such tax. For purposes of this section § 1.901–2A and § 1.903–1, the person on whom foreign law imposes such liability is referred to as the "taxpayer." A foreign tax of a type described in paragraph (a)(2)(ii)(c) of this section is considered to be imposed on the recipients of wages if such tax is deducted from such wages under provisions that are comparable to section 3102 (a) and (b) of the Internal Revenue Code.

(2) Party undertaking tax obligation as part of transaction.—(i) *In general.* Tax is considered paid by the taxpayer even if another party to a direct or indirect transaction with the taxpayer agrees, as a part of the transaction, to assume the taxpayer's foreign tax liability. The rules of the foregoing sentence apply notwithstanding anything to the contrary in paragraph (e)(3) of this section. See § 1.901–2A for additional rules regarding dual capacity taxpayers.

(ii) *Examples.* The provisions of paragraphs(f)(1) and (f)(2)(i) of this section may be illustrated by the following examples:

Example (1). Under a loan agreement between *A*, a resident of county X, and *B*, a United States person, *A* agrees to pay *B* a certain amount of interest net of any tax that country X may impose on *B* with respect to its interest income. Country X imposes a 10 percent tax on the gross amount of interest income received by nonresidents of country X from sources in country X and it is established that this tax is a tax in lieu of an income tax within the meaning of § 1.903–1(a). Under the law of country X this tax is imposed on the nonresident recipient, and any resident of country X that pays such interest to a nonresident is required to withhold and pay over to country X 10 percent of the amount of such interest, which is applied to offset the recipient's liability for the tax. Because legal liability for the tax is imposed on the recipient of such interest income, *B* is the taxpayer with respect to the country X tax imposed on *B*'s interest income from B's loan to A. Accordingly, B's interest income for federal income tax purposes includes the amount of country X tax that is imposed on *B* with respect to such interest income and that is paid on *B*'s behalf by *A* pursuant to the loan agreement, and, under paragraph (f)(2)(i) of this section, such tax is considered for purposes of section 903 to be paid by *B*.

Example (2). The facts are the same as in example (1), except that in collecting and receiving the interest *B* is acting as a nominee for, or agent of, *C*, who is a United States person. Because *C* (not *B*) is the beneficial owner of the interest, legal liability for the tax is imposed on *C*, not *B* (*C*'s nominee or agent). Thus, *C* is the taxpayer with respect to the country X tax imposed on *C*'s interest income from *C*'s loan to *A*. Accordingly, *C*'s interest income for federal income tax purposes includes the amount of country X tax that is imposed on *C* with respect to such interest income and that is paid on *C*'s behalf by *A* pursuant to the loan agreement. Under paragraph (f)(2)(i) of this section, such tax is considered for purposes of section 903 to be paid by *C*. No such tax is considered paid by *B*.

Example (3). Country X imposes a tax called the "country X income tax." *A*, a United States person engaged in construction activities in country X, is subject to that tax. Country X has contracted with *A* for *A* to construct a naval base. *A* is a dual capacity taxpayer (as defined in paragraph (a)(2)(ii)(A) of this section) and, in accordance with paragraphs (a)(1) and (c)(1) of § 1.901–2A, *A* has established that the country X income tax as applied to dual capacity persons and the country X income tax as applied to persons other than dual capacity persons together constitute a single levy. *A* has also established that that levy is an income tax within the meaning of paragraph (a)(1) of this section. Pursuant to the terms of the contract, country X has agreed to assume any country X tax liability that *A* may incur with respect to *A*'s income from the contract. For federal income tax purposes, *A*'s income from the contract includes the amount of tax liability that is imposed by country X on *A* with respect to its income from the contract and that is assumed by country X; and for purposes of section 901 the amount of such tax liability assumed by country X is considered to be paid by *A*. By reason of paragraph (f)(2)(i) of this section, country X is not considered to provide a subsidy, within the meaning of paragraph (e)(3) of this section, to *A*.

(3) *Taxes paid on combined income.* If foreign income tax is imposed on the combined income of two or more related persons (for example, a husband and wife or a corporation and one or more of its subsidiaries) and they are jointly and severally liable for the income tax under foreign law, foreign law is considered to impose legal liability on each such

person for the amount of the foreign income tax that is attributable to its portion of the base of the tax, regardless of which person actually pays the tax.

(g) *Definitions.* For purposes of this section and §§ 1.901–2A and 1.903–1, the following definitions apply:

(1) The term "paid" means "paid or accrued"; the term "payment" means "payment or accrual"; and the term "paid by" means "paid or accrued by or on behalf of."

(2) The term "foreign country" means any foreign state, any possession of the United States, and any political subdivision of any foreign state or of any possession of the United States. The term "possession of the United States" includes Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa.

(3) The term "foreign levy" means a levy imposed by a foreign country.

(h) *Effective date.*—(1) *In general.* This section, § 1.901–2A, and § 1.903–1 apply to taxable years beginning after November 14, 1983. In addition, a person may elect to apply the provisions of this section, § 1.901–2A, and § 1.903–1 to earlier years. See paragraph (h)(2) of this section.

(2) *Election to apply regulations to earlier years.*—(i) *Scope of election.* An election to apply the provisions of this section,§ 1.901–2A, and § 1.903–1 to taxable years beginning on or before November 14, 1983, is made with respect to one or more foreign states and possessions of the United States with respect to a taxable year of the person making the election beginning on or before November 14, 1983. Such election requires all of the provisions of this section, § 1.901–2A, and § 1.903–1 to be applied to such taxable year and to all subsequent taxable years of the person making the election ("elected years"). If an election applies to a foreign state or to a possession of the United States ("election country"), it applies to all taxes of the election country and to all taxes of all political subdivisions of the election country. An election does not apply to foreign taxes carried forward to any elected year from any taxable year to which the election does not apply. Such election does apply to foreign taxes carried back or forward from any elected year to any taxable year.

(ii) *Effect of election.* An election to apply the regulations to earlier years has no effect on the limitations on assessment and collection or on the limitations on credit or refund (see Chapter 66 of the Internal Revenue Code).

(iii) *Manner of making election.* An election to apply the regulations to one or more earlier taxable years is made by attaching a statement to a return, amended return, or claim for refund for the earliest taxable year to which the election relates. Such statement shall state that the election is made and, unless the election is to apply to all foreign countries, the statement shall designate the election countries. In the absence of such a designation of the election countries, all foreign countries shall be election countries.

(iv) *Time for making election.* An election to apply the regulations to earlier taxable years must be made by October 12, 1984, except that if a person who has deducted (instead of credited) foreign taxes in its United States income tax return for such an earlier taxable year validly makes an election to credit (instead of deduct) such taxes in a timely filed amended return for such earlier taxable year and such amended return is filed after such date, an election to apply the regulations to such earlier taxable year must be made in such amended return.

(v) *Revocation of election.* An election to apply the regulations to earlier taxable years may not be revoked.

(vi) *Affiliated groups.* A member of an affiliated group that files a consolidated United States income tax return may apply the regulations to earlier years only if an election to so apply them has been made by the common parent of such affiliated group on behalf of all members of the group.

Approved by the Office of Management and Budget under control number 1545–0746.

Par. 2. A new § 1.901–2A is added immediately after § 1.901–2 to read as follows:

§ 1.901–2A Dual capacity taxpayers.

(a) *Application of separate levy rules as applied to dual capacity taxpayers.*—(1) *In general.* If the application of a foreign levy (as defined in § 1.901–2(g)(3)) is different, either by the terms of the levy or in practice, for dual capacity taxpayers (as defined in § 1.901–2(a)(2)(ii)(A)) from its application to other persons, then unless the only such difference is that a lower rate (but the same base) applies to dual capacity taxpayers, such difference is considered to be related to the fact that dual capacity taxpayers receive, directly or indirectly, a specific economic benefit (as defined in § 1.901–2(a)(2)(ii)(B)) from the foreign country and thus to be a difference in kind, and not merely of degree. In such a case, notwithstanding any contrary provision of § 1901–2(d), the levy as applicable to such dual capacity tax payers is a separate levy (within the meaning of § 1.901–2(d)) from the levy as applicable to such other persons, regardless of whether such difference is in the base of the levy, in the rate of the levy, or both. In such a case, each of the levy as applied to dual capacity taxpayers and the levy as applied to other persons must be analyzed separately to determine whether it is an income tax within the meaning of § 1.901–2(a)(1) and whether it is a tax in lieu of an income tax within the meaning of § 1.903–1(a). However, if the application of the levy is neither different by its terms nor different in practice for dual capacity taxpayers from its application to other persons, or if the only difference is that a lower rate (but the same base) applies to dual capacity taxpayers, then, in accordance with § 1.901–2(d), such foreign levy as applicable to dual capacity taxpayers and such levy as applicable to other persons together constitute a single levy. In such a case, no amount paid (as defined in § 1.901–2(g)(1)) pursuant to such levy by any such dual capacity taxpayer is considered to be paid in exchange for a specific economic benefit, and such levy, as applicable in the aggregate to such dual capacity taxpayers and to such other persons, is analyzed to determine whether it is an income tax within the meaning of § 1.901–2(a)(1) or a tax in lieu of an income tax within the meaning of § 1.903–1(a). Application of a foreign levy to dual capacity taxpayers will be considered to be different in practice from application of that levy to other persons, even if no such difference is apparent from the terms of the levy, unless it is established that application of that levy to dual capacity taxpayers does not differ in practice from its application to other persons.

(2) *Examples.* The provisions of paragraph (a)(1) of this section may be illustrated by the following examples:

Example (1). Under a levy of country X called the country X income tax, every corporation that does business in country X is required to pay to country X 40 percent of its income from its business in country X. Income for purposes of the country X income tax is computed by subtracting specified deductions from the corporation's gross income derived from its business in country X. The specified deductions include the corporation's expenses attributable to such gross income and allowances for recovery of the cost of capital expenditures attributable to such gross income, except that under the terms of the country X income tax a corporation engaged in the exploitation of minerals K, L or M in country X is not permitted to recover, currently or in the future, expenditures it incurs in exploring for those minerals. In practice, the only corporations that engage in exploitation of the specified minerals in country X are dual capacity taxpayers. Thus, the application of

the country X income tax to dual capaacity taxpayers is different from its application to other corporations. The country X income tax as applied to corporations that engage in the exploitation of minerals K, L or M (dual capacity taxpayers) is, therefore, a separate levy from the country X income tax as applied to other corporations. Accordingly, each of (i) the country X income tax as applied to such dual capacity taxpayers and (ii) the country X income tax as applied to such other persons, must be analyzed separately to determine whether it is an income tax within the meaning of § 1.901–2(a)(1) and whether it is a tax in lieu of an income tax within the meaning of § 1.903–1(a).

Example (2). The facts are the same as in example (1), except that it is demonstrated that corporations that engage in exploitation of the specified minerals in country X and that are subject to the levy include both dual capacity taxpayers and other persons. The country X income tax as applied to all corporations is, therefore, a single levy. Accordingly, no amount paid pursuant to the country X income tax by a dual capacity taxpayer is considered to be paid in exchange for a specific economic benefit; and, if the country X income tax is an income tax within the meaning of § 1.901–2(a)(1) or a tax in lieu of an income tax within the meaning of § 1.903–1(a), it will be so considered in its entirely for all corporations subject to it.

Example (3). Under a levy of country Y called the country Y income tax, each corporation incorporated in country Y is required to pay to country Y a percentage of its worldwide income. The applicable percentage is greater for such corporations that earn more than a specified amount of income than for some corporations that earn less than that amount. Income for purposes of the levy is computed by deducting from gross income specified types of expenses and specified allowances for capital expenditures. The expenses for which deductions are permitted differ depending on the type of business in which the corporation subject to the levy is engaged, *e.g.*, a deduction for interest paid to a related party is not allowed for corporations engaged in enumerated types of activities. In addition, carryover of losses from one taxable period to another is permitted for corporations engaged in specified types of activities, but not for corporations engaged in other activities. By its terms, the foreign levy makes no distinction between dual capacity taxpayers and other persons. It is established that in practice the higher rate of the country Y income tax applies to both dual capacity taxpayers and other persons and that in practice the differences in the base of the country Y income tax (*e.g.*, the lack of a deduction for interest paid to related parties for some corporations subject to the levy and the lack of a carryover provision for some corporations subject to the levy) apply to both dual capacity taxpayers and other persons. The country Y income tax as applied to all corporations incorporated in country Y is therefore a single levy. Accordingly, no amount paid pursuant to the country Y income tax by a dual capacity taxpayer is considered to be paid in exchange for a specific economic benefit; and if the country Y income tax is an income tax within the meaning of § 1.901–2(a)(1) or a tax in lieu of an income tax within the meaning of § 1.903–1(a), it will be so considered in its entirety for all persons subject to it.

Example (4). The facts are the same as in example (3), except that it is not established that in practice the higher rate does not apply only to dual capacity taxpayers. By reason of such higher rate, application of the country Y income tax to dual capacity taxpayers is different in practice from application of the country Y income tax to other persons subject to it. The country Y income tax as supplied to dual capacity taxpayers is therefore a separate levy from the country Y income tax as applied to other corporations incorporated in country Y. Accordingly, each of (i) the country Y income tax as applied to dual capacity taxpayers and (ii) the country Y income tax as applied to other corporations incorporated in country Y, must be analyzed separately to determine whether it is an income tax within the meaning of § 1.901–2(a)(1) and whether it is a tax in lieu of an income tax within the meaning of § 1.903–1(a).

Example (5). Under a levy of country X called the country X tax, all persons who do not engage in business in country X and who receive interest income from residents of country X are required to pay to country X 25 percent of the gross amount of such interest income. It is established that the country X tax applies by its terms and in practice to certain banks that are dual capacity taxpayers and to persons who are not dual capacity taxpayers and that application to such dual capacity taxpayers does not differ by its terms or in practice from application to such other persons. The country X tax as applied to all such persons (both the dual capacity taxpayers and the other persons) is, therefore, a single levy. Accordingly, no amount paid pursuant to the country X tax by such a dual capacity taxpayer is considered to be paid in exchange for a specific economic benefit; and, if the country X tax is a tax in lieu of an income tax within the meaning of § 1.903–1(a), it will be so considered in its entirety for all persons subject to it.

Example (6). Under a levy of country X called the country X tax, every corporation incorporated outside of country X ("foreign corporation") that maintains a branch in country X is required annually to pay to country X 52 percent of its net income attributable to that branch. It is established that the application of the country X tax is neither different by its terms nor different in practice for certain banks that are dual capacity taxpayers from its application to persons (which may, but do not necessarily, include other banks) that are not dual capacity taxpayers. The country X tax as applied to all foreign corporations with branches in country X (*i.e.*, both those banks that are dual capacity taxpayers and the foreign corporations that are not dual capacity taxpayers) is, therefore, a single levy. Accordingly, no amount paid pursuant to the country X tax by a bank that is a dual capacity taxpayer is considered to be paid in exchange for a specific economic benefit; and, if the country X tax is an income tax within the meaning of § 1.901–2(a)(1) or a tax in lieu of an income tax within the meaning of § 1.903–1(a), it will be so considered in its entirety for all persons subject to it.

Example (7). Under a levy of country H called the country H tax, all corporations that are organized outside country H and that do not engage in business in country H are required to pay to country H a percentage of the gross amount of interest income derived from residents of country H. The percentage is 30 percent, except that it is 15 percent for a specified category of corporations. All corporations in that category are dual capacity taxpayers. It is established that the country H tax applies by its terms and in practice to dual capacity taxpayers and to persons that are not dual capacity taxpayers and that the only difference in application between such dual capacity taxpayers and such other persons is that a lower rate (but the same base) applies to such dual capacity taxpayers. The country H tax as applied to all such persons (both the dual capacity taxpayers and the other persons) is, therefore, a single levy. Accordingly, no amount paid pursuant to the country H tax by such a dual capacity taxpayer is considered to be paid in exchange for a specific economic benefit, and if the country H tax is a tax in lieu of an income tax within the meaning of § 1.903–1(a), it will be so considered in its entirety for all persons subject to it.

(b) *Burden of proof for dual capacity taxpayers.*—(1) *In general.* For credit to be allowable under section 901 or 903, the person claiming credit must establish that the foreign levy with respect to which credit is claimed is an income tax within the meaning of § 1.901–2(a)(1) or a tax in lieu of an income tax within the meaning of § 1.903–1(a), respectively. Thus, such person must establish, among other things, that such levy is a tax. See § 1.901–2(a)(2)(i) and § 1.903–1(a). Where a person claims credit under section 901 or 903 for an amount paid by a dual capacity taxpayer pursuant to a foreign levy, § 1.901–2(a)(2)(i) and § 1.903–1(a), respectively, require such person to establish the amount, if any, that is paid pursuant to the distinct element of the levy that is a tax. If, pursuant to paragraph (a)(1) of this section and § 1.901–2(d), such levy as applicable to dual capacity taxpayers and such levy as applicable to other persons together constitute a single levy, then no amount paid pursuant to that levy by any such dual capacity taxpayer is considered to be paid in exchange for a specific economic benefit. Accordingly, such levy has only one distinct element, and the levy either is or is not, in its entirety, a tax. If, however, such levy as applicable to dual capacity taxpayers is a separate levy from such

levy as applicable to other persons, then a person claiming credit under section 901 or 903 for an amount paid by a dual capacity taxpayer pursuant to such separate levy may establish the amount, if any, that is paid pursuant to the distinct element of the levy that is a tax only by the facts and circumstances method or the safe harbor method described in paragraph (c) of this section. If such person fails to so establish such amount, no portion of the amount that is paid pursuant to the separate levy by the dual capacity taxpayer to such foreign country shall be treated as an amount of tax. Any amount that, either by reason of application of the methods of paragraph (c) of this section or by reason of the immediately preceding sentence, is not treated as an amount of tax shall (i) be considered to have been paid in exchange for a specific economic benefit; (ii) be characterized (*e.g.*, as royalty, purchase price, cost of sales, reduction of the proceeds of a sale, or reduction of interest income) according to the nature of the transaction and of the specific economic benefit received; and (iii) be treated according to such characterization for all purposes of Chapter 1 of the Internal Revenue Code, except that any determination that an amount is not tax for purposes of section 901 or 903 by reason of application of the safe harbor method shall not be taken into account in determining whether or not such an amount is to be characterized and treated as tax for purposes of computing an allowance for percentage depletion under sections 611 and 613.

(2) *Effect of certain treaties.* If, irrespective of whether such credit would be allowable under section 901 or 903 in the absence of a treaty, the United States has in force a treaty with a foreign country that treats a foreign levy as an income tax for purposes of allowing credit for United States tax and if the person claiming credit is entitled to the benefit of such treaty, then, unless such person claims credit not under the treaty but under section 901 or 903, and except to the extent the treaty provides otherwise and subject to all terms, conditions and limitations provided in the treaty, no portion of an amount paid with respect to such levy by a dual capacity taxpayer shall be considered to be paid in exchange for a specific economic benefit. If, however, such person claims credit not under such treaty but rather under section 901 or 903 (*e.g.*, so as not to be subject to a limitation contained in such treaty), the provisions of this section apply to such levy.

(c) *Satisfaction of burden of proof.*—(1) *In general.* This paragraph (c) sets out the methods by which a person who claims credit under section 901 or 903 for an amount paid by a dual capacity taxpayer pursuant to a foreign levy that satisfies all of the criteria of section 901 or 903 other than the determination of the distinct element of the levy that is a tax and of the amount that is paid pursuant to that distinct element (a "qualifying levy") may establish such distinct element and amount. Such person must establish the amount paid pursuant to a qualifying levy that is paid pursuant to the distinct element of the levy that is a tax (which amount therefore is an amount of income tax within the meaning of § 1.901–2(a)(1) or an amount of tax in lieu of income tax within the meaning of § 1.903–1(a) (a "qualifying amount")) only by the facts and circumstances method set forth in paragraph (c)(2) of this section or the safe harbor method set forth in paragraph (c)(3) of this section. A levy is not a qualifying levy, and neither the facts and circumstances method nor the safe harbor method applies to an amount paid by a dual capacity taxpayer pursuant to a foreign levy, if it has been established pursuant to § 1.901–2(d) and paragraph (a)(1) of this section that that levy as applied to that dual capacity taxpayer and that levy as applied to persons other than dual capacity taxpayers together constitute a single levy, or if it has been established in accordance with the first sentence of paragraph (b)(2) of this section that credit is allowable by reason of a treaty for an amount paid with respect to such levy.

(2) *Facts and circumstances method.*—(i) *In general.* If the person claiming credit establishes, based on all of the relevant facts and circumstances, the amount, if any, paid by the dual capacity taxpayer pursuant to the qualifying levy that is not paid in exchange for a specific economic benefit, such amount is the qualifying amount with respect to such qualifying levy. In determining the qualifying amount with respect to a qualifying levy under the facts and circumstances method, neither the methodology nor the results that would have obtained if a person had elected to apply the safe harbor method to such qualifying levy is a relevant fact or circumstance. Accordingly, neither such methodology nor such results shall be taken into account in applying the facts and circumstances method.

(ii) *Examples.* The application of the facts and circumstances method is illustrated by the following examples:

Example (1). Country A which does not have a generally imposed income tax, imposes a levy called the country A income tax, on corporations that carry on the banking business through a branch in country A. All such corporations lend money to the government of country A, and the consideration (interest) paid by the government of country A for the loans is not made available by the government on substantially the same terms to the population of country A in general. Thus, the country A income tax is imposed only on dual capacity taxpayers. *L*, a corporation that carries on the banking business through a branch in country A and that is a dual capacity taxpayer, establishes that all of the criteria of section 901 are satisfied by the country A income tax, except for the determination of the distinct element of the levy that is a tax and of *L*'s qualifying amount with respect thereto. The country A income tax is, therefore a qualifying levy. *L* establishes that, although all persons subject to the country A income tax are dual capacity taxpayers, the country A income tax applies in the same manner to income from such persons' transactions with the government of country A as it does to income from their transactions with private persons; that there are significant transactions (either in volume or in amount) with private persons; and that the portion of such persons' income that is derived from transactions with the government of country A on the one hand or private persons on the other varies greatly among persons subject to the country A income tax. By making this showing, *L* has demonstrated that no portion of the amount paid by it to country A pursuant to the levy is paid in exchange for a specific economic benefit (the interest income). Accordingly, *L* has demonstrated under the facts and circumstances method that the entire amount it has paid pursuant to the country A income tax is a qualifying amount.

Example (2). *A*, a domestic corporation that is a dual capacity taxpayer subject to a qualifying levy of country X, pays 1000u (units of country X currency) to country X in 1986 pursuant to the qualifying levy. *A* does not elect to apply the safe harbor method to country X, but if had so elected, 800u would have been *A*'s qualifying amount with respoect to the levy. Based on all of the relevant facts and circumstances (which do not include either the methodology of the safe harbor method or the qualifying amount that would have obtained under that method), *A* establishes that 628u of such 1000u is not paid in exchange for a specific economic benefit. *A* has demonstrated under the facts and circumstances method that 628u is a qualifying amount. Pursuant to paragraph (b)(1) of this section, 372u (1000u–628u) is considered to have been paid by *A* in exchange for a specific economic benefit. That amount is characterized and treated as provided in paragraph (b)(1) of this section.

Example (3). The facts are the same as in example (2) except that under the safe harbor method 580u would have been *A*'s qualifying amount with respect to the levy. That amount is not a relevant fact or circumstance and the result is the same as in example (2).

(3) *Safe harbor method.* Under the safe harbor method, the person claiming credit makes an election as provided in paragraph (d) of this section and, pursuant to such election, applies the safe harbor formula described in paragraph (e) of this section to the qualifying levy or levies to which the election applies.

(d) *Election to use the safe harbor method.—(1) Scope of election.* An election to use the safe harbor method is made with respect to one or more foreign states and possessions of the United States with respect to a taxable year of the person making the election (the "electing person"). Such election applies to such taxable year and to all subsequent taxable years of the electing person ("election years"), unless the election is revoked in accordance with paragraph (d)(4) of this section. If an election applies to a foreign state or possession of the United States ("elected country"), it applies to all qualifying levies of the elected country and to all qualifying levies of all political subdivisions of the elected country with respect to which the electing person claims credit for amounts paid (or deemed to be paid) by any dual capacity taxpayer. A member of an affiliated group that files a consolidated United States income tax return may use the safe harbor method for a foreign state or U.S. possession only if an election to use the safe harbor method for that state or possession has been made by the common parent of such affiliated group on behalf of all members of the group. Similarly, a member of an affiliated group that does not file a consolidated United States income tax return may elect to use the safe harbor method for a foreign state or U.S. possession only if an election to use the safe harbor method for that state or possession is made by each member of the affiliated group which claims credit for taxes paid to such state or possession or to any political subdivision thereof. An election to use the safe harbor method for an elected country does not apply to foreign taxes carried back or forward to any election year from any taxable year to which the election does not apply. Such election does apply to foreign taxes carried back or forward from any election year to any taxable year. A person who elects to use the safe harbor method for one or more foreign countries may, in a later taxable year, also elect to use that method for other foreign countries.

(2) *Effect of election.* An election to use the safe harbor method described in paragraph (c)(3) of this section requires the electing persons to apply the safe harbor formula of paragraph (e) of this section to all qualifying levies of all elected countries and their political subdivisions, and constitutes a specific waiver by such person of the right to use the facts and circumstances method described in paragraph (c)(2) of this section with respect to any levy of any elected country or any political subdivision thereof.

(3) *Time and manner of making election.*—(i) *In general.* To elect to use the safe harbor method, an electing person must attach a statement to its United States income tax return for the taxable year for which the election is made and must file such return by the due date (including extensions) for the filing thereof. Such statement shall state—

(A) That the electing person elects to use the safe harbor method for the foreign states and the possessions of the United States designated in the statement and their political subdivisions, and

(B) That the electing person waives the right, for any election year, to use the facts and circumstances method for any levy of the designated states, possessions and political subdivisions. Notwithstanding the foregoing, a person may, with the consent of the Commissioner, elect to use the safe harbor method for a taxable year for one or more foreign states or possessions of the United States, at a date later than that specified in the first sentence of this paragraph (d)(3)(i) *e.g.*, upon audit of such person's United States income tax return for such taxable year. The Commissioner will normally consent to such a later election if such person demonstrates that it failed to make a timely election for such a foreign state or possession for such taxable year because such person reasonably believed either that it was not a dual capacity taxpayer with respect to such state or possession or any political subdivisin thereof was possession or any political subdivision thereof was a qualifying levy (for example, because it reasonably, but incorrectly, believed that the levy it paid was not a separate levy from that applicable to persons other than dual capacity taxpayers). The Commissioner will not, however, consent to such a later election with respect to any state or possession for a taxable year if such person (or any other member of an affiliated group of which such person is a member) applied the facts and circumstances method to any levy of such state or possession or any political subdivision thereof for such taxable year.

(ii) Certain retroactive elections. Not withstanding the requirements of paragraph (d)(3)(i) of this section relating to the time and manner of making an election, an election may be made for a taxable year beginning on or before November 14, 1983, provided the electing person elects in accordance with § 1.901–2(h) to apply all of the provisions of this section, § 1.901–2 and § 1.903–1 to such taxable year and provided all of the requirements set forth in this paragraph (d)(3)(ii) are satisfied. Such an election shall be made by timely (including extensions) filing a federal income tax return or an amended federal income tax return for such taxable year; by attaching to such return a statement containing the statements and information set forth in paragraph (d)(3)(i) of this section; and by filing amended income tax returns for all subsequent election years for which income tax returns have previously been filed in which credit is claimed under section 901 or 903 and applying the safe harbor method in such amended returns. All amended returns referred to in the immediately preceding sentence must be filed on or before October 12, 1984, (unless the Commissioner consents to a later filing in circumstances similar to those provided in paragraph (d)(3)(i)) and at a time when neither assessment of a deficiency for any of such election years nor the filing of a claim for any refund claimed in any such amended return is barred.

(iii) *Election to credit taxes made in amended return.* If a person has filed a United States income tax return for a taxable year to which this § 1.901–2A applies (including application by reason of the election provided in § 1.901–2(h)(2)) in which such person has deducted (instead of credited) qualifying foreign taxes and such person validly makes an election to credit (instead of deduct) such taxes in a timely filed amended return for such taxable year, an election to use the safe harbor method may be made in such amended return provided all of the requirements of paragraph (d)(3)(ii) of this section are satisfied other than the requirement that such amended return and the other amended returns referred to in that paragraph be filed on or before October 12, 1984.

(4) *Revocation of election.* An election to use the safe harbor method described in paragraph (c)(3) of this section may not be revoked without the consent of the Commissioner. An application for consent to revoke such election with respect to one or more elected countries shall be made to the Commissioner of Internal Revenue, Washington, D.C.

20224. Such application shall be made not later than the 30th day before the due date (including extensions) for the filing of the income tax return for the first taxable year for which the revocation is sought to be effective, except in the case of an event described in (i), (ii), (iii), or (iv) below, in which case an application for revocation with retroactive effect may be made within a reasonable time after such event. The Commissioner may make his consent to any revocation conditioned upon adjustments being made in one or more taxable years so as to prevent the revocation from resulting in a distortion of the amount of any item relating to tax liability in any taxable year. The Commissioner will normally consent to a revocation (including, in the case of (i), (ii), (iii) or (iv) below, one with retroactive effect), if—

(i) An amendment to the Internal Revenue Code or the regulations thereunder is made which applies to the taxable year for which the revocation is to be effective and the amendment substantially affects the taxation of income from sources outside the United States under subchapter N of Chapter 1 of the Internal Revenue Code; or

(ii) After a safe harbor election is made with respect to a foreign state, a tax treaty between the United States and that state enters into force; that treaty covers a foreign tax to which the safe harbor election applies; and that treaty applies to the taxable year for which the revocation is to be effective; or

(iii) After a safe harbor election is made with respect to a foreign state or possession of the United States, a material change is made in the tax law of that state or possession or of a political subdivision of that state or possession; and the changed law applies to the taxable year for which the revocation is to be effective and has a material effect on the taxpayer; or

(iv) With respect to a foreign country to which a safe harbor election applies, the Internal Revenue Service issues a letter ruling to the electing person and that letter ruling (A) relates to the availability or application of the safe harbor method to one or more levies of such foreign country; (B) does not relate to the facts and circumstances method described in paragraph (c)(2) of this section; and (C) fails to include a ruling requested by the electing person or includes a ruling contrary to one requested by such person (in either case, other than one relating to the facts and circumstances method) and such failure or inclusion has a material adverse effect on the amount of such electing person's credit for taxes paid to such foreign country for the taxable year for which the revocation is to be effective; or

(v) A corporation ("new member") becomes a member of an affiliated group; the new member and one or more pre-existing members of such group are dual capacity taxpayers with respect to the same foreign country; and, with respect to such country, either the new member or the pre-existing members (but not both) have made a safe harbor election; and the Commissioner in his discretion determines that obtaining the benefit of the right to revoke the safe harbor election with respect to such foreign country was not the principal purpose of the affiliation between such new member and such group; or

(vi) The election has been in effect with respect to at least three taxable years prior to the taxable year for which the revocation is to be effective. The Commissioner may, in his discretion, consent to a revocation even if none of the foregoing subdivisions (i) through (vi) is applicable, if an election has been revoked with respect to an elected country, a subsequent election to apply the safe harbor method with respect to such elected country may be made only with the consent of the Commissioner and upon such terms and conditions as the Commissioner in his discretion may require.

(e) *Safe harbor formula.*—(1) *In general.* The safe harbor formula applies to determine the distinct element of a qualifying levy that is a tax and the amount paid by a dual capacity taxpayer pursuant to such qualifying levy that is the qualifying amount with respect to such levy. Under the safe harbor formula the amount paid in a taxable year pursuant to a qualifying levy that is the qualifying amount with respect to such levy is an amount equal to:

$$(A-B-C)\times D/(1-D)$$

where: (except as otherwise provided in paragraph (e)(5) of this section)

A = the amount of gross receipts as determined under paragraph (e)(2) of this section

B = the amount of costs and expenses as determined under paragraph (e)(2) of this section

C = the total amount paid in the taxable year by the dual capacity taxpayer pursuant to the qualifying levy (the "actual payment amount")

D = the tax rate as determined under paragraph (e)(3) of this section

In no case, however, shall the qualifying amount exceed the actual payment amount; and the qualifying amount is zero if the safe harbor formula yields a qualifying amount less than zero. The safe harbor formula is intended to yield a qualifying amount equal to the amount of generally imposed income tax within the meaning of paragraphs (a) and (b)(1) of § 1.903–1 ("general tax") of the foreign country that would have been required to be paid in the taxable year by the dual capacity taxpayer if it has not been a dual capacity taxpayer and if the base of the general tax had allowed a deduction in such year for the amount ("specific economic benefit amount") by which the actual payment amount exceeds the qualifying amount. See, however, paragraph (e)(5) of this section if an elected country has no general tax. The specific economic benefit amount is considered to be the portion of the actual payment amount that is paid pursuant to the distinct portion of the qualifying levy that imposes an obligation in exchange for a specific economic benefit. The specific economic benefit amount is therefore considered to be an amount paid by the dual capacity taxpayer in exchange for such specific economic benefit, which amount must be treated for purposes of chapter 1 of the Internal Revenue Code as provided in paragrpah (b)(1) of this section.

(2) *Determination of gross receipts and costs and expenses.* For purposes of the safe harbor formula, gross receipts and costs and expenses are, except as otherwise provided in this paragraph (e), the gross receipts and the deductions for costs and expenses, respectively, as determined under the foreign law applicable in computing the actual payment amount of the qualifying levy to which the safe harbor formula applies. However, except as otherwise provided in this paragraph (e), if provisions of the qualifying levy increase or decrease the liability imposed on dual capacity taxpayers compared to the general tax liability of persons other than dual capacity taxpayers by reason of the determination or treatment of gross receipts or of costs or expenses, the provisions generally applicable in computing such other persons' tax base under the general tax shall apply to determine gross receipts and costs and expenses for purposes of computing the qualifying amount. If provisions of the qualifying levy relating to gross receipts meet the requirements of § 1.901–2(b)(3)(i), such provisions shall apply to determine gross receipts for purposes of computing the qualifying amount. If neither the general tax nor the qualifying levy permits recovery of one or more costs or expenses, and by reason of the failure to permit such recovery the qualifying levy does not satisfy the net income requirement of

§ 1.901–2(b)(4) (even though the general tax does satisfy that requirement), then such cost or expense shall be considered a cost or expense for purposes of computing the qualifying amount. If the qualifying levy does not permit recovery of one or more significant costs or expenses, but provides allowances that effectively compensate for nonrecovery of such significant costs or expenses, then, for purposes of computing the qualifying amount, costs and expenses shall not include the costs and expenses under the general tax whose nonrecovery under the qualifying levy is compensated for by such allowances but shall instead include such allowances. In determining costs and expenses for purposes of computing the qualifying amount with respect to a qualifying levy, the actual payment amount with respect to such levy shall not be considered a cost or expense. For purposes of this paragraph, the following differences in gross receipts and costs and expenses between the qualifying levy and the general tax shall not be considered to increase the liability imposed on dual capacity taxpayers compared to the general tax liability of persons other than dual capacity taxpayers, but only if the general tax would be an income tax within the meaning of § 1.901–2(a)(1) if such different treatment under the qualifying levy had also applied under the general tax:

(i) Differences in the time of realization or recognition of one or more items of income or in the time when recovery of one or more costs and expenses is allowed (unless the period of recovery of such costs and expenses pursuant to the qualifying levy is such that it effectively is a denial of recovery of such costs and expenses, as described in § 1.901–2(b)(4)(i)); and

(ii) Differences in consolidation or carryover provisions of the types described in paragraphs (b)(4)(ii) and (b)(4)(iii) of § 1.901–2.

(3) *Determination of tax rate.* The tax rate for purposes of the safe harbor formula is the tax rate (expressed as a decimal) that is applicable in computing tax liability under the general tax. If the rate of the general tax varies according to the amount of the base of that tax, the rate to be applied in computing the qualifying amount is the rate that applies under the general tax to a person whose base is, using the terminology of paragraph (e)(1) of this section, "A" minus "B" minus the specific economic benefit amount paid by the dual capacity taxpayer pursuant to the qualifying levy, provided such rate applies in practice to persons other than dual capacity taxpayers, or, if such rate does not so apply in practice, the next lowest rate of the general tax that does so apply in practice.

(4) *Determination of applicable provisions of general tax.*—(i) *In general.* If the general tax is a series of income taxes (*e.g.*, on different types of income), or if the application of the general tax differs by its terms for different classes of persons subject to the general tax (*e.g.*, for persons in different industries), then, except as otherwise provided in this paragraph (e), the qualifying amount small be computed by reference to the income tax contained in such series of income taxes, or in the case of such different applications the application of the general tax, that by its terms and in practice imposes the highest tax burden on persons other than dual capacity taxpayers. Notwithstanding the preceding sentence, the general tax amount shall be computed by reference to the application of the general tax to entities of the same type (as determined under the general tax) as the dual capacity taxpayer and to persons of the same resident or nonresident status (as determined under the general tax) as the dual capacity taxpayer; and, if the general tax treats business income differently from non-business (*e.g.*, investment) income (as determined under the general tax), the dual capacity taxpayer's business and non-business income shall be treated as the general tax treats such income. If, for example the dual capacity taxpayer would, under the general tax, be treated as a resident (*e.g.*, because the general tax treats an entity that is organized in the foreign country or managed or controlled there as a resident) and as a corporation (*i.e.*, because the rules of the general tax treat an entity like the dual capacity taxpayer as a corporation), and if some of the dual capacity taxpayer's income would, under the general tax, be treated as business income and some as non-business income, the dual capacity taxpayer and its income shall be so treated in computing the qualifying amount.

(ii) *Establishing that provisions apply in practice.* For purposes of the safe harbor formula a provision (including tax rate) shall be considered a provision of the general tax only if it is reasonably likely that that provision applies by its terms and in practice to persons other than dual capaciaty taxpayers. In general, it will be assumed that a provision (including tax rate) that by its terms applies to persons other than dual capacity taxpayers is reasonably likely to apply in practice to such other persons, unless the person claiming credit knows or has reason to know otherwise. However, in cases of doubt, the person claiming credit may be required to demonstrate that such provision is reasonably likely so to apply in practice.

(5) *No general tax.* If a foreign country does not impose a general tax (and thus a levy, in order to be a qualifying levy must satisfy all of the criteria of section 901 (because section 903 cannot apply), other than the determination of the distinct element of the levy that is a tax and of the amount that is paid pursuant to that distinct element), paragraphs (e)(2), (3) and (4) of this section do not apply to a qualifying levy of such country, and the terms of the safe harbor formula set forth in paragraph (e)(1) of this section are defined with respect to such levy as follows:

A = the amount of gross receipts as determined under the qualifying levy;
B = the amount of deductions for costs and expenses as determined under the qualifying levy;
C = the actual payment amount; and
D = the lower of the rate of the qualifying levy, or the rate of tax specified in section 11(b)(5) (or predecessor or successor section, as the case may be) of the Internal Revenue Code as applicable to the taxable year in which the actual payment amount is paid.

(6) *Certain taxes in lieu of an income tax.* To the extent a tax in lieu of an income tax (within the meaning of § 1.903–1(a)) that applies in practice to persons other than dual capacity taxpayers would actually have been required to be paid in the taxable year by a dual capacity taxpayer if it had not been a dual capacity taxpayer (*e.g.*, in substitution for the general tax with respect to a type of income, such as interest income, dividend income, royalty income, insurance income), such tax in lieu of an income tax shall be treated as if it were an application of the general tax for purposes of applying the safe harbor formula of this paragraph (e) to such dual capacity taxpayer, and such formula shall be applied to yield a qualifying amount that is approximately equal to the general tax (so defined) that would have been required to be paid in the taxable year by such dual capacity taxpayer if the base of such general tax had allowed a deduction in such year for the specific economic benefit amount.

(7) *Multiple levies.* If, in any election year of an electing person, with respect to any elected country and all of its political subdivisions,

(i) Amounts are paid by a dual capacity taxpayer pursuant to more than one qualifying levy or pursuant to one or

more levies that are qualifying levies and one or more levies that are not qualifying levies by reason of the last sentence of paragraph (c)(1) of this section but with respect to which credit is allowable, or

(ii) More than one general tax (including a tax treated as if it were an application of the general tax under paragraph (e)(6)) would have been required to be paid by a dual capacity taxpayer (or taxpayers) if it (or they) had not been a dual capacity taxpayer (or taxpayers), or

(iii) Credit is claimed with respect to amounts paid by more than one dual capacity taxpayer, the provisions of this paragraph (e) shall be applied such that the aggregate qualifying amount with respect to such qualifying levy or levies plus the aggregate amount paid with respect to levies referred to in (e)(7)(i) that are not qualifying levies shall be the aggregate amount that would have been required to be paid in the taxable year by such dual capacity taxpayer (or taxpayers) pursuant to such general tax or taxes if it (or they) had not been a dual capacity taxpayer (or taxpayers) and if the base of such general tax or taxes had allowed a deduction in such year for the aggregate specific economic benefit amount (except that, if paragraph (e)(5) applies to any levy of such elected country or any political subdivision thereof, the aggregate qualifying amount for qualifying levies of such elected country and all of its political subdivisions plus the aggregate amount paid with respect to levies referred to the paragraph (e)(7)(i) that are not qualifying levies shall not exceed the greater of the aggregate amount paid with respect to levies referred to in paragraph (e)(7)(i) that are not qualifying levies and the amount determined in accordance with paragraph (e)(5) where "D" is the rate of tax specified in section 11(b)(5) (or predecessor or successor section, as the case may be) of the Internal Revenue Code as applicable to the taxable year in which the actual payment amount is paid). However, in no event shall such aggregate amount exceed the aggregate actual payment amount plus the aggregate amount paid with respect to levies referred to in (e)(7)(i) that are not qualifying levies, nor be less than the aggregate amount paid with respect to levies referred to in (e)(7)(i) that are not qualifying levies. In applying (e)(7)(ii) a person who is not subject to a levy but who is considered to receive a specific economic benefit by reason of § 1.901–2(a)(2)(ii)(E) shall be treated as a dual capacity taxpayer. See example (12) in paragraph (e)(8) of this section.

(8) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example (1). Under a levy of country X called the country X income tax, every corporation that does business in country X is required to pay to country X 40% of its income from its business in country X. Income for purposes of the country X income tax is computed by subtracting specified deductions from the corporation's gross income derived from its business in country X. The specified deductions include the corporation's expenses attributable to such gross income and allowances for recovery of the cost of capital expenditures attributable to such gross income, except that under the terms of the country X income tax a corporation engaged in the exploitation of minerals K, L or M in country X is not permitted to recover, currently or in the future, expenditures it incurs in exploring for those minerals. Under the terms of the country X income tax interest is not deductible to the extent it exceeds an arm's length amount (*e.g.*, if the loan to which the interest relates is not in accordance with normal commercial practice or to the extent the interest rate exceeds an arm's length rate). In practice, the only corporations that engage in exploitation of the specified minerals in country X are dual capacity taxpayers. Because no other persons subject to the levy engage in exploitation of minerals K, L or M, in country X, the application of the country X income tax to dual capacity taxpayers is different from its application to other corporations. The country X income tax as applied to corporations that engage in the exploitation of minerals K, L, or M (dual capacity taxpayers) is, therefore, a separate levy from the country X income tax as applied to other corporations.

A is a U.S. corporation that is engaged in country X in exploitation of mineral K. Natural deposits of mineral K in country X are owned by country X, and *A* has been allowed to extract mineral K in consideration of payment of a bonus and of royalties to an instrumentality of country X. Therefore, *A* is a dual capacity taxpayer. In 1984, *A* does business in country X within the meaning of the levy. *A* has validly elected the safe harbor method for country X for 1984. In 1984, as determined in accordance with the country X income tax as applied to *A*, *A* has gross receipts of 120u (units of country X currency), deducts 20u of costs and expenses, and pays 40u (40% of (120u–20u)) to country X pursuant to the levy. *A* also incurs in 1984, 10u of nondeductible expenditures for exploration for mineral K and 2u of nondeductible interest costs attributable to an advance of funds from a related party to finance an undertaking relating to the exploration for mineral K for which normal commercial financing was unavailable because of the substantial risk inherent in the undertaking. *A* establishes that the country X income tax as applied to persons other than dual capacity taxpayers is an income tax within the meaning of § 1.901–2(a)(1), that it is the generally imposed income tax of country X and hence the general tax, and that all of the criteria of section 903 are satisfied with respect to the country X income tax as applied to dual capacity taxpayers, except for the determination of the distinct element of the levy that is a tax and of *A*'s qualifying amount with respect thereto. (No conclusion is reached whether the country X income tax as applied to dual capacity taxpayers is an income tax within the meaning of § 1.901–2(a)(1). Such a determination would require, among other things, that the country X income tax as so applied, judged on the basis of its predominant character, meets the net income requirement of § 1.901–2(b)(4) notwithstanding its failure to permit recovery of exploration expenses.) *A* has therefore demonstrated that the country X income tax as applied to dual capacity taxpayers is a qualifying levy.

In applying the safe harbor formula, in accordance with paragraph (e)(2), the amount of *A*'s costs and expenses includes the 10u of nondeductible exploration expenses. The failure to permit recovery of interest in excess of arm's length amounts, a provision of both the general tax and the qualifying levy, does not cause the qualifying levy to fail to satisfy the net income requirement of § 1.901–2(b)(4); therefore, the amount of *A*'s cost and expenses does not include the 2u of nondeductible interest costs. Thus, under the safe harbor method, *A*'s qualifying amount with respect to the levy is 33.33u ((120u–30u–40u) x .40/(1–.40)). *A*'s specific economic benefit amount is 6.67u (*A*'s actual payment amount (40u) less *A*'s qualifying amount (33.33u)). Under paragraph (a) of this section, this 6.67u is considered to be consideration paid by *A* for the right to extract mineral K. Pursuant to paragraph (b) of this section, this amount is characterized according to the nature of *A*'s transactions with country X and its instrumentality and of the specific economic benefit received (the right to extract mineral K), as an additional royalty or other business expesnse paid or accrued by *A* and is so treated for all purposes of Chapter 1 of the Internal Revenue Code, except that if an allowance for percentage depletion is allowable to *A* under sections 611 and 613 with respect to *A*'s interest in mineral K, the determination whether this 6.67u is tax or royalty for purposes of computing the amount of such allowance shall be made under sections 611 and 613 without regard to the determination that under the safe harbor formula such 6.67u is not tax for purposes of section 901 or 903.

Example (2). Under a levy of country Y called the country Y income tax, each corporation incorporated in country Y is required to pay to country Y a percentage of its worldwide income. The applicable percentage is 40 percent of the first 1,000u (units of country Y currency) of income and 50 percent of income in excess of 1,000u. Income for purposes of the levy is computed by deducting from gross income specified types of expenses and specified allowances for capital expenditures. The expenses for which deductions are permitted differ depending on the type of business in which the corporation subject to the levy is engaged, *e.g.*, a deduction for interest paid to a related party is not allowed for corporations engaged in enumerated types of

activities. In addition, carryover of losses from one taxable period to another is permitted for corporations engaged in specified types of activities, but not for corporations engaged in other activities. By its terms, the foreign levy makes no distinction between dual capacity taxpayers and other persons. In practice the differences in the base of the country Y income tax (*e.g.*, the lack of a deduction for interest paid to related parties for some corporations subject to the levy and the lack of a carryover provision for some corporations subject to the levy) apply to both dual capacity taxpayers and other persons, but the 50 percent rate applies only to dual capacity taxpayers. By reason of such higher rate, application of the country Y income tax to dual capacity taxpayers is different in practice from application of the country Y income tax to other persons subject to it. The country Y income tax as applied to dual capacity taxpayers is therefore a separate levy from the country Y income tax as applied to other corporations incorporated in country Y.

B is a corporation incorporated in country Y that is engaged in construction activities in country Y. *B* has a contract with the government of country Y to build a hospital in country Y for a fee that is not made available on substantially the same terms to substantially all persons who are subject to the general tax of country X. Accordingly, *B* is a dual capacity taxpayer. *B* has validly elected the safe harbor method for country Y for 1985. In 1985, as determined in accordance with the country Y income tax as applied to *B*, *B* has gross receipts of 10,000u, deducts 6,000u of costs and expenses, and pays 1900u [(1,000u×40%) + (3,000u×50%)] to country Y pursuant to the levy.

It is asssumed that *B* has established that the country Y income tax as applied to persons other than dual capacity taxpayers is an income tax within the meaning of § 1.901–2(a)(1) and is the general tax. It is further assumed that *B* has demonstrated that all of the criteria of section 901 are satisfied with respect to the country Y income tax as applied to dual capacity taxpayers, except for the determination of the distinct element of such levy that is a tax and of *B*'s qualifying amount with respect to that levy, and therefore that the country Y income tax as applied to dual capacity taxpayers is a qualifying levy.

In applying the safe harbor formula, in accordance with paragraph (e)(3), the 50 percent rate is not used because it does not apply in practice to persons other than dual capacity taxpayers. The next lowest rate of the general tax that does apply in practice to such persons, 40 percent, is used. Accordingly, under the safe harbor formula, *B*'s qualifying amount with respect to the levy is 1400u [(10,000u–6000u–1900u) x .40/(1–40)]. *B*'s specific economic benefit amount is 500u (B's actual payment amount (1900u) less *B*'s qualifying amount (1400u)). Pursuant to paragraph (b) of this section, *B*'s specific economic benefit amount is characterized according to the nature of *B*'s transactions with country Y and of the specific economic benefit received, as a reduction of *B*'s proceeds of its contract with country Y; and this amount is so treated for all purposes of Chapter 1 of the Code, including the computation of *B*'s accumulated profits for purposes of section 902.

Example (3). The facts are the same as in example (2), with the following additional facts: The contract between *B* and country Y is a cost plus contract. One of the costs of the contract which country Y is required to pay or for which it is required to reimburse *B* is any tax of country Y on *B*'s income or receipts from the contract. Instead of reimbursing *B* therefor, country Y agrees with *B* to assume any such tax liability. Under country Y tax law, *B* is not considered to have additional income or receipts by reason of country Y's assumption of *B*'s country Y tax liability. In 1985, *B*'s gross receipts of 10,000u include 3000u from the contract, and its costs and expenses of 6000u include 2000u attributable to the contact. *B*'s other gross receipts and expenses do not relate to any transaction in which B receives a specific economic benefit. In accordance with the contract, country Y, and not *B*, is required to bear the amount of *B*'s country Y income tax liability on *B*'s 1000u (3000u–2000u) income from the contract. In accordance with the contract *B* computes its country Y income tax without taking this 1000u into account and therefore pays 1400u [(1000u x 40%) + (2000u x 50%)] to country Y pursuant to the levy.

In accordance with § 1.901–2(f)(2)(i), the country Y income tax which country Y is, under the contract, required to bear is considered to be paid by country Y on behalf of *B*. *B*'s proceeds of its contract, for all purposes of Chapter 1 of the Code (including the computation of *B*'s accumulated profits for purposes of section 902), therefore, are increased by the additional 500u (1900u computed as in example (2) less 1400u as computed above) of B's liability under the country Y income tax that is assumed by country Y and such 500u is considered to be paid pursuant to the levy by country Y on behalf of *B*. In applying the safe harbor formula, therefore, the computation is exactly as in example (2) and the results are the same as in example (2).

Example (4). Country L issues a decree (the "April 11 decree."), in which it states it is exercising its tax authority to impose a tax on all corporations on their "net income" from country L. "Net income" is defined as actual gross receipts less all expenses attributable thereto, except that in the case of income from extraction of petroleum, gross receipts are defined as 105 percent of actual gross receipts, and no deduction is allowed for interest incurred on loans whose proceeds are used for exploration for petroleum. Under the April 11 decree, wages paid by corporations subject to the decree are deductible in the year of payment, except that corporations engaged in the extraction of petroleum may deduct such wages only by amortization over a 5-year period and, to the extent such wages are paid to officers, they may be deducted only by amortization over a period of 50 years. The April 11 decreee permits related corporations subject to the decree to file consolidated returns in which net income and net losses of related corporations offset each other in computing net income for purposes of the April 11 decree, except that corporations engaged in petroleum exploration or extraction activities are not eligible for inclusion in such a consolidated return. The law of country L does not require separate entities to carry on separate activities in connection with exploring for or extracting petroleum. Net losses of a taxable year may be carried over for 10 years to offset income, except that no more than 25% of net income (before deducting the loss carryover) in any such future year may be offset by a carryover of net loss, and, in the case of any corporation engaged in exploration or extraction of petroleum, losses incurred prior to such a corporation's having net income from production may be carried forward for only 8 years and no more than 15% of net income in any such future year may be offset by such a net loss. The rate to be paid under the April 11 decree is 50% of net income (as defined in the levy), except that if net income exceeds 10,000u (units of country L currency), the rate is 75% of the corporation's net income (including the first 10,000u thereof). In practice, no corporations other than corporations engaged in extraction of petroleum have net income in excess of 10,000u. All petroleum resources of country L are owned by the government of country L, whose petroleum ministry licenses corporations to explore for and extract petroleum in consideration for payment of royalties as petroleum is produced.

J is a U.S. corporation that is engaged in country L in the exploration and extraction of petroleum and therefore is a dual capacity taxpayer. *J* has validly elected the safe harbor method for country L for the year 1986, the year that *J* commenced activities in country L, and has not revoked such election. For the years 1983 through 1988, *J*'s gross receipts, deductions and net income before application of the carryover provisions, determined in accordance with the April 11 decree, are as follows:

Year	Gross receipts (105 percent of actual gross receipts)	Deductions other than wages	Wages paid other than to officers (amortizable at 20 percent)	Wages paid to officers (amortizable at 2 percent)	Nondeductible exploration interest expense	Net income (loss) (B–C amortization of cumulative D-amortization of cumulative E)
A.	B.	C.	D.	E.	F.	G.
1983	0	13,000u	100u	50u	1,000u	(13,021u)
1984	0	17,000u	100u	50u	2,800u	(17,042u)
1985	42,000u	15,000u	100u	50u	2,800u	26,937u
1986	105,000u	20,000u	100u	50u	2,800u	84,916u

After application of the carryover provisions, *f*'s net income and actual payment amounts pursuant to the April 11 levy are as follows:

Year	Net income (loss)	Actual payment amount (tax 75 percent)
H	*L*	*J*
1983	(13,021u)	0
1984	(17,042u)	0
1985	22,896u	17,172u
1986	72,179u	54,134u

Pursuant to paragraph (a)(1) of this section, the April 11 decree as applied to corporations engaged in the exploration or extraction of petroleum in country L is a separate levy from the April 11 decree as applied to all other corporations. *J* establishes that the April 11 decree, as applied to such other corporations, is an income tax within the meaning of § 1.901–2(a)(1) and that the decree as so applied is the general tax.

The April 11 decree as applied to corporations engaged in the exploration or extraction of petroleum in country L does not meet the gross receipts requirement of § 1.901–2(b)(3); therefore, irrespective of whether it meets the other requirements of § 1.901–2(b)(1), it is not an income tax within the meaning of § 1.901–2(a)(1). However, the April 11 decree as applied to such corporations is a qualifying levy because *J* has demonstrated that all of the criteria of section 903 are satisfied with respect to the April 11 decree as applied to such corporations, except for the determination of the distinct element of such levy that imposes a tax and of *f*'s qualifying amount with respect thereto.

In applying the safe harbor formula, in accordance with paragraph (e)(2), gross receipts are computed by reference to the general levy, and thus are 100%, not 105%, of actual gross receipts. Similarly, costs and expenses include exploration interest expense. In accordance with paragraph (e)(2)(i) of this section the difference between the general tax and the qualifying levy in the timing of the deduction for wages, other than wages of officers, is not considered to increase the liability of dual capacity taxpayers because the general tax would not have failed to be an income tax within the meaning of § 1.901–2(a)(1) if it had provided for 5-year amortization of such wages instead of for current deduction. *See* § 1.901–2(b)(4)(i). However, amortization of wages paid to officers over a 50-year period is such A deferred recovery of such wages that it effectively is a denial of the deduction of the excess of such wages paid in any year over the amortization of such cumulative wages permitted in such year. See § 1.901–2(b)(4)(i). The different treatment of wages paid to officers under the general tax and the qualifying levy is thus not merely a difference in timing within the meaning of paragraph(e)(2)(i) of this section. Accordingly, the difference between the amount of wages paid by *J* to officers in any year and *f*'s deduction (in computing the actual payment amount) for amortization of such cummulative wages allowed in such year is, pursuant to paragraph (e)(2) of this section, treated as a cost and expense in computing *f*'s qualifying amount for such year with respect to the April 11 decree. The differences in the consolidation and carryover provisions between the general tax and the qualifying levy are of the types described in paragraph (e)(2)(ii) of this section and pursuant to paragraphs (b)(4)(ii) and (b)(4)(iii) of § 1.901–2, the general tax would not fail to be an income tax within the meaning of § 1.901–2(a)(i) even if it contained the consolidation and carryover provisions of the qualifying levy. Thus such differences are not considered to increase the liability of dual capacity taxpayers pursuant to the qualifying levy as compared to the general tax liability of persons other than dual capacity taxpayers.

Accordingly, in applying the safe harbor formula to the qualifying levy for 1985 and 1986, gross receipts and costs and expenses are computed as follows:

Gross receipts

1985: 42,000u × (100/105 = 40,000u
1986: 105,000u × (100/105 = 100,000u

COSTS AND EXPENSES

Item	1985	1986
1. Deductions other than wages (column C in the preceding chart)	15,000u	20,000u
2. Amortization of cumulative wages paid in 1983 and thereafter other than to officers	80u	80u
3. Deduction of wages to officers paid in current year, instead of amortization allowed in current year of such cumulative wages paid in 1983 and thereafter	50u	50u
4. Deduction of exploration interest expense	2,800u	2,800u
5. Costs and expenses before carryover of net loss (sum of lines 1 through 4)	17,910u	22,930u
6. Recalculation of loss carryover by recalculating 1983 and 1984 net income (loss) to reflect current deduction of wages to officers and exploration interest expense: 1983 adjusted net loss carryover (13,021u) + (49u) + (1000u) = (14,070u) 1984 adjusted net loss carryover: (17,042u) + (48u) + (28.00u) = (19,890u)		
7. Recalculation of limitation on use of net loss carryover deduction:		
Gross receipts	40,000u	100,000u
Loss costs and expenses	(17,910u)	(22,930)
Total	22,090u	77,070u
Times 15 percent limitation	3,314u	11,561u
8. Costs and expenses including net loss carryover deduction (line 5 plus line 7	21,224u	34,491u

In years after 1986, costs and expenses for purposes of determining the qualifying amount would reflect net loss carryforward deductions based on the recomputed losses carried forward from 1983 and 1984 (14,070u and 19,890u, respectively) less the amounts thereof that were utilized in determining costs and expenses for 1985 and 1986 (3,314u and 11,561u, respectively). The 1983 and 1984 loss carryforwards would be considered utilized in accordance with the order of priority in which such losses are utilized under the terms of the qualifying levy.

In applying the safe harbor formula, the tax rate to be used, in accordance with paragraph (e)(3) of this section, is .50.

Accordingly, under the safe harbor method, *f*'s qualifying amounts with respect to the April 11 decree for 1985 and 1986 are computed as follows:

1985: (40,000u–21,224u–17,172u) × .50/(1–.50) = 1604u
1986: (100,000u–34,491u–54,134u) × .50/(1–.50) = 11,375u

Under the safe harbor method *f*'s qualifying amounts with respect to the April 11 decree for 1985 and 1986 are thus 1604u and 11,375u, respectively; and its specific economic benefit amounts are 15,568u (17,172u–1604u) and 42,759uc, 54.134u–11,375u), respectively. Pursuant to paragraph (b) of this section *f*'s specific economic benefit amounts are characterized according to the nature of *f*'s transactions with country L and of the specific economic benefit received by L as additional royalties paid to country L with respect to the petroleum extacted by *J* in country L in 1985 and 1986, and these amounts are so treated for all purposes of Chapter 1 of the Code.

Example (5). Country E, which has no generally imposed income tax, imposes a levy called the country E income tax only on corporations carrying on the banking a business through a branch in country E and on corporations engaged in the extraction of petroleum in country E. All of the petroleum resources of country E are owned by the government of country E, whose petroleum ministry licenses corporations to explore for petroleum and extract petroleum in consideration of payment of royalties as petroleum is extracted. The base of the country E income tax is a corporation's actual gross receipts from sources in country E less all expenses attributable, on reasonable principles, to such gross receipts; the rate of tax is 29 percent.

A is a U.S corporation that carries on the banking business through a branch in country E. *B* is a U.S. corporation (unrelated to *A*) that is engaged in the extraction of petroleum in country E. In 1984 *A* receives interest on loans it has made to 160 borrowers in country E, seven of which are agencies and instrumentalities of the government of country E. The economic benefits received by *A* and *B* (*i.e.*, the interest received by *A* from the government and B's license to extract petroleum owned by the government) are not made available on substantially the same terms to the population of country E in general.

A and *B* are dual capacity taxpayers. Each of them has validly elected the safe harbor method for country E for 1984. *A* demonstrates that the country E income tax, as applied to it (a dual capacity taxpayer) is not different by its terms or in practice from the country E income tax as applied to persons (in this case other banks) that are not dual capacity taxpayers. *A* has therefore established pursuant to paragraph (a)(1) of this section and § 1.901–2(d) that the country

E income tax as applied to it and the country E income tax as applied to persons other than dual capacity taxpayers are together a single levy. *A* establishes that such levy is an income tax within the meaning of § 1.901–2(a)(1). In accordance with paragraph (a)(1) of this section, no portion of the amount paid by *A* pursuant to such levy is considered to be paid in exchange for a specific economic benefit. Thus, the entire amount paid by *A* pursuant to this levy is an amount of income tax paid.

B does not demonstrate that the country E income tax as applied to corporations engaged in the extraction of petroleum in country E (dual capacity taxpayers) is not different by its terms or in practice from the country E income tax as applied to persons other than dual capacity taxpayers (*i.e.*, banks that are not dual capacity taxpayers). Accordingly, pursuant to paragraph (a)(1) of this section and § 1.901–2(d), the country E income tax as applied to corporations engaged in the extraction of petroleum in country E is a separate levy from the country E income tax as applied to other persons.

B demonstrates that all of the criteria of section 901 are satisfied with respect to the country E income tax as applied to corporations engaged in the exploration of petroleum in country E, except for the determination of the distinct element of such levy that imposes a tax and of *B*'s qualifying amount with respect to the levy. Pursuant to paragraph (e)(5) of this section, in applying the safe harbor formula to *B*, "A" is the amount of *B*'s gross receipts as determined under the country E income tax as applied to *B*; "B" is the amount of *B*'s costs and expenses as determined thereunder; "C" is *B*'s actual payment amount; and "D" is .29, the lower of the rate (29 percent) of the qualifying levy (the country E income tax as applied to corporations engaged in the extraction of petroleum in country E) or the rate (46 percent) of tax specified for 1984 in section 11(b)(5) of the Internal Revenue Code. Thus, *B*'s qualifying amount is equal to its actual payment amount.

Example (6). The facts are the same as in example (5), except that the rate of the country E income tax is 55 percent. For the reasons stated in example (5), the results with respect to *A* are the same as in example (5). In applying the safe harbor formula to *B*, "A," "B," and "C" are the same as in example (5), but "D" is .46, as that rate is less than .55. Thus, *B*'s qualifying amount is less than *B*'s actual payment amount, and the difference is *B*'s specific economic benefit amount.

Example (7). Country E imposes a tax (called the country E income tax) on the realized net income derived by corporations from sources in country E, except that, with respect to interest income received from sources in country E and certain insurance income, nonresident corporations are instead subject to other levies. With respect to such interest income a levy (called the country E interest tax) requires nonresident corporations to pay to country E 20 percent of such gross interest income unless the nonresident corporation falls within a specified category of corporations ("special corporations"), all of which are dual capacity taxpayers, in which case the rate is instead 25 percent. With respect to such insurance income nonresident corporations are subject to a levy (called the country E insurance tax), which is not an income tax within the meaning of § 1.901–2(a)(1).

The country E interest tax applies at the 20 percent rate by its terms and in practice to persons other than dual capacity taxpayers. The country E interest tax as applied at the 25 percent rate to special corporations applies only to dual capacity taxpayers; therefore, the country E interest tax as applied to special corporations is a separate levy from the country E interest tax as applied at the 20 percent rate.

A is a U.S. corporation which is a special corporation subject to the 25 percent rate of the country E interest tax. *A* does not have any insurance income that is subject to the country E insurance tax. *A*, a dual capacity taxpayer, has validly elected the safe harbor formula for 1984. In 1984 *A* receives 100u (units of country E currency) of gross interest income subject to the country E interest tax and pays 25u to country E.

A establishes that the country E income tax is the generally imposed income tax of country E; that all of the criteria of section 903 are satisfied with respect to the country E interest tax as applied to special corporations except for the determination of the distinct element of the levy that is a tax and of *A*'s qualifying amount with respect thereto. *A* has therefore demonstrated that the country E interest tax as applied to speical corporations is a qualifying levy. *A* establishes that the country E interest tax at the 20 percent rate is a tax in lieu of an income tax within the meaning of § 1.903–1(a). Pursuant to paragraph (e)(6) of this section the country E interest tax at the 20 percent rate is treated as if it were an application of the general tax for purposes of the safe harbor formula of this paragraph (e), since that tax would actually have been required to have been paid by *A* with respect to its interest income had *A* not been a dual capacity taxpayer (special corporation) instead subject to the qualifying levy (the country E interest tax at the 25 percent rate).

Even if the country E insurance tax is a tax in lieu of an income tax within the meaning of § 1.903–1(a), that tax is not treated as if it were an application of the general tax for purposes of applying the safe harbor formula to *A* since *A* had no insurance income in 1984 and hence such tax would not actually have been required to be paid by *A* had *A* not been a dual capacity taxpayer.

Example (8). Under a levy of country S called the country S income tax, each corporation operating in country S is required to pay country S 50 percent of its income from operations in country S. Income for purposes of the country S income tax is computed by subtracting all attributable costs and expenses from a corporation's gross receipts derived from its business in country S. Among corporations on which the country S income tax is imposed are corporations engaged in the owned by country S, and all corporations engaged in the exploitation of mineral K in country S. Natural deposits of mineral K in country S are exploitation thereof do so under concession agreements with an instrumentality of country S. Such corporations, in addition to the 50 percent country S income tax, are also subject to a levy called a surtax, which is equal to 60 percent of posted price net income less the amount of the contry S income tax. The surtax is not deductible in computing the country S income tax of corporations engaged in the exploitation of mineral K in country S.

A is a U.S. corporation engaged in country S in the exploitation of mineral K, and *A* has been allowed to extract mineral K under a concession agreement with an instrumentality of country S. Therefore, *A* is a dual capacity taxpayer. In accordance with a term of the concession agreement, certain of *A*'s income (net of expenses attributable thereto) is exempted from the income tax and surtax.

The results for *A* in 1984 are as follows:

	Income tax	Surtax
Gross Receipts:		
Realized Taxable	120u	—
Realized -Exempt	15u	—
Posted Price Taxable	—	145u
Costs:		
Attributable to Taxable Receipts	20u	20u
Attributable to Exempt Receipts	5u	—
Taxable Income	100u	125u
Tentative Surtax (60 percent)	—	75u
Petroleum Levy at 50 percent	50u	50u
Surtax	—	25u

Because of the difference (nondeductibility of the surtax) in the country S income tax as applied to dual capacity taxpayers from its application to other persons, the country S income tax as applied to dual capacity taxpayers and the country S income tax as applied to persons other than dual capacity taxpayers are separate levies. Moreover, because *A*'s concession agreement provides for a modification (exemption of certain income) of the country S income tax and surtax as they otherwise apply to other persons engaged in the exploitation of mineral K in country S, those levies (contractual levies) as applied to *A* are separate levies from those levies as applied to other persons engaged in the exploitation of mineral K in country S.

A establishes that the country S income tax as applied to persons other than dual capacity taxpayers is an income tax within the meaning of § 1.901–2(a)(1) and is the general tax. *A* demonstrates that all the criteria of section 903 are satisfied with respect to the country S income tax as applied to *A* and with respect to the surtax as applied to *A*, except for the determination of the distinct elements of such levies that are taxes and of *A*'s qualifying amounts with respect to such levies. Therefore, both the country S income tax as applied to *A* and the surtax as applied to *A* are qualifying levies.

In applying the safe harbor formula, in accordance with paragraph (e)(2), the amount of *A*'s gross receipts includes the exempt realized income, and the amount of *A*'s costs and expenses includes the costs attributable to such exempt income. In accordance with paragraph (e)(7)(i), the amount of the qualifying levy for purposes of the formula is the sum of *A*'s liability for the country S

income tax and *A*'s liability for the surtax. Accordingly, under the safe harbor formula, *A*'s qualifying amount with respect to the country S income tax and the surtax is 35u ((135u−25u−75u)×.50/(1−.50)). *A*'s specific economic benefit amount is 40u (*A*'s actual payment amount (75u) less *A*'s qualifying amount (35u)).

Example (9). Country T imposes a levy on corporations, called the country T income tax. The country T income tax is imposed at a rate of 50 percent on gross receipts less all costs and expenses, and affiliated corporations are allowed to consolidate their results in applying the country T income tax. Corporations engaged in the exploitation of mineral L in country T are subject to a levy that is identical to the country T income tax except that no consolidation among affiliated corporations is allowed. The levy allows unlimited loss carryforwards.

C and *D* are affiliated U.S. corporations engaged in country T in the exploitation of mineral L. Natural deposits of mineral L in country T are owned by country T, and *C* and *D* have been allowed to extract mineral L in consideration of certain payments to an instrumentality of country T. Therefore, *C* and *D* are dual capacity taxpayers.

The results for *C* and *D* in 1984 and 1985 are as follows:

	1984		1985	
	C	*D*	*C*	
Gross Receipts	120u	0	120u	120u
Costs	20u	50u	20u	20u
Loss Carryforward				50u
Net Income (Loss)	100u	(50u)	100u	50u
Income Tax	50u		50u	25u

C and *D* establish that the country T income tax as applied to persons other than dual capacity taxpayers is an income tax within the meaning of § 1.901–2(a)(1) and is the general tax. *C* and *D* demonstrate that all of the criteria of section 901 are satisfied with respect to the country T income tax as applied to dual capacity taxpayers, except for the determination of the distinct element of such levy that is a tax and of *C* and *D*'s qualifying amounts with respect to that levy. Therefore, the country T income tax as applied to dual capacity taxpayers is a qualifying levy.

In applying the safe harbor formula, in accordance with paragraphs (e)(2)(ii) and (e)(7)(iii), the gross receipts, costs and expenses, and actual payment amounts of *C* and *D* are aggregated, except that in *D*'s loss year (1984) its gross receipts and costs and expenses are disregarded. The results of any loss year are disregarded since the country T income tax as applied to dual capacity taxpayers does not allow consolidation, and, pursuant to paragraph (e)(2)(ii), differences in consolidation provisions between such levy and the country T income tax as applied to persons that are not dual capacity taxpayers are not considered. Accordingly, in 1984 the qualifying amount with respect to the country T income tax is 50u ((120u−20u−50u)×.50/(1−.50)), all of which is considered paid by *C*. In 1985 the qualifying amount is 75u ((120u+120u−20u−20u−50u (loss carry forward)—50u—25u)×.50/(1−.50)), of which 50u is considered to be paid by *C* and 25u by *D*.

Example (10). Country W imposes a levy called the country W income tax on corporations doing business in country W. The country W income tax is imposed at a 50 percent rate on gross receipts less all costs and expenses. Corporations engaged in the exploitation of mineral M in country W are subject to a levy that is identical in all respects to the country W income tax except that it is imposed at a rate of 80 percent (the "80 percent levy").

A is a U.S. corporation engaged in country W in exploitation of mineral M and is subject to the 80 percent levy. Natural deposits of mineral M in country W are owned by country W, and *A* has been allowed to extract mineral M in consideration of certain payments to an instrumentality of country W. Therefore, *A* is a dual capacity taxpayer. *B*, a U.S. corporation affiliated with *A*, also is engaged in business in country W, but has no transactions with country W. *B* is subject to the country W income tax. *B* is a dual capacity taxpayer within the meaning of § 1.901–2(a)(2)(ii)(A) by virtue of its affiliation with *A*.

The results for *A* and *B* in 1984 are as follows:

	A	*B*
Gross Receipts	120u	100u
Costs	20u	40u
Net Income	100u	60u
Tax Rate	.80	.50
Tax	80u	30u

A and *B* establish that the country W income tax as applied to persons other than dual capacity taxpayers is an income tax within the meaning of § 1.901–2(a)(1) and is the general tax. It is assumed that *B* has demonstrated that the country W income tax as applied to *B* does not differ by its terms or in practice from the country W income tax as applied to persons other than dual capacity taxpayers and hence that the country W income tax as applied to *B*, a dual capacity taxpayer, and the country W income tax as applied to such other persons is a single levy. Thus, with respect to *B*, the country W income tax is not a qualifying levy by reason of the last sentence of paragraph (c)(1) of this section. *A* demonstrates that all the criteria of section 901 are satisfied with respect to the 80 percent levy, except for the determination of the distinct element of such levy that is a tax and of *A*'s qualifying amount with respect thereto. Accordingly, the 80 percent levy as applied to *A* is a qualifying levy.

In applying the safe harbor formula in accordance with paragraphs (e)(7)(i) and (e)(7)(iii) in the instant case, it is not necessary to incorporate *B*'s results in the safe harbor formula because *B*'s taxation in country W is identical to the taxation of persons other than dual capacity taxpayers and because neither *A*'s and *B*'s results nor their taxation in country W interact in any way to change *A*'s taxation. All of the amount paid by *B*, 30u, is an amount of income tax paid by *B* within the meaning of § 1.901–2(a)(1). Accordingly, under the safe harbor formula, the qualifying amount for *A* with respect to the 80 percent levy is 20u ((120u − 20u − 80u) × .50/(1 − .50)). The remaining 60u paid by *A* (80u − 20u) is *A*'s specific economic benefit amount.

Example (11). The facts are the same as in example (10), except that it is assumed that *B* has not demonstrated that the country W income tax as applied to *B* does not differ by its terms or in practice from the country W income tax as applied to persons other than dual capacity taxpayers. In addition, *A* and *B* demonstrate that all the criteria of section 901 are satisfied with respect to each of the country W income tax and the 80 percent levy as applied to dual capacity taxpayers, except for the determination of the distinct elements of such levies that are taxes of *A* and *B*'s qualifying amounts with respect to such levies. Therefore, the country W income tax and 80 percent levy as applied to dual capacity taxpayers are qualifying levies.

In applying the safe harbor formula in accordance with paragraphs (e)(7)(i) and (e)(7)(iii), the results of *A* and *B* are aggregated. Accordingly, under the safe harbor formula, the aggregate qualifying amount for *A* and *B* with respect to the country W income tax and 80 percent levy is 50u ([(120u + 100u) − (20u + 40u) − (80u + 30u)] × .50/(1− .50)).

Example (12). Country Y imposes a levy on corporations operating in country Y, called the country Y income tax. Income for purposes of the country Y income tax is computed by subtracting all costs and expenses from a corporation's gross receipts derived from its business in country Y. The rate of the country Y income tax is 50 percent. Country Y also imposes a 20 percent tax (the "withholding tax") on the gross amount of certain income, including dividends, received by persons who are not residents of country Y from persons who are residents of country Y and from corporations that operate there. Corporations engaged in the exploitation of mineral K in country Y are subject to a levy (the "75 percent levy") that is identical in all respects to the country Y income tax except that it is imposed at a rate of 75 percent. Dividends received from such corporations are not subject to the withholding tax.

C, a wholly-owned country Y subsidiary of *D*, a U.S. corporation, is engaged in country Y in the exploitation of mineral K. Natural deposits of mineral K in country Y are owned by country Y, and *C* has been allowed to extract mineral K in consideration of certain payments to an instrumentality of country Y. Therefore, *C* is a dual capacity taxpayer. *D* has elected the safe harbor method for country Y for 1984. In 1984, *C*'s gross receipts are 120u (units of country Y currency), its costs and expenses are 20u, and its liability under the 75 percent levy is 75u. *C* distributes the amount that remains, 25u, as a dividend to *D*.

D establishes that the country Y income tax as applied to persons other than dual capacity taxpayers is an income tax within the meaning of § 1.901–2(a)(1) and the general tax, and that all the criteria of section 901 are satisfied with respect to the 75 percent levy, except for the determination of the distinct element of such levy that is tax and of *C*'s

qualifying amount with respect thereto. Accordingly, the 75 percent levy is a qualifying levy.

Pursuant to paragraph (e)(7), *D* (which is not subject to a levy of country Y but is considered to receive a specific economic benefit by reason of § 1.901–2(a)(2)(ii)(E)) is treated as a dual capacity taxpayer in applying paragraph (e)(7)(ii). *D* demonstrates that the withholding tax is a tax in lieu of an income tax within the meaning of § 1.903–1, which tax applies in practice to persons other than dual capacity taxpayers, and that such tax actually would have applied to *D* had *D* not been a dual capacity taxpayer (*i.e.*, had *C* not been a dual capacity taxpayer, in which case *D* also would not have been one). Accordingly, the withholding tax is treated for purposes of the safe harbor formula as if it were an application of the general tax.

In applying the safe harbor formula to this situation in accordance with paragraph (e)(7)(ii), the rates of the country Y income tax and the withholding tax are aggregated into a single effective general tax rate. In this case, the rate is .60 (.50+[(1−.50)×.20]). Accordingly, under the safe harbor formula, *C*'s qualifying amount with respect to the 75 percent levy is 37.5u [(120u − 20u − 75u) ×.60/(1−.60)], the aggregate amount that *C* and *D* would have paid if *C* had been subject to the country Y income tax and had distributed to *D* as a dividend subject to the withholding tax the entire amount that remained for the year after payment of the country Y income tax. Because *C* is in fact the only taxpayer, the entire qualifying amount is paid by *C*.

Example (13). The facts are the same as in example (12), except that dividends received from corporations engaged in the exploitation of mineral K in country Y are subject to the withholding tax. Thus, *C*'s liability under the 75 percent tax on the 75u, and *D*'s liability under the withholding tax on the 25u distribution is 5u.

D, which is a dual capacity taxpayer, demonstrates that the withholding tax as applied to *D* does not differ by its terms or in practice from the withholding tax as applied to persons other than dual capacity taxpayers and hence that the withholding tax as applied to *D* and that levy as applied to such other persons is a single levy. *D* demonstrates that all of the criteria of section 903 are satisfied with respect to the withholding tax. The withholding tax is not a qualifying levy by reason of the last sentence of paragraph (c)(1) of this section.

Paragraphs (e)(7)(i), (e)(7)(ii) and (e)(7)(iii) all apply in this situation. As in example (10), it is not necessary to incorporate the withholding tax into the safe harbor formula. All of the amount paid by *D*, 5u, is an amount of tax paid by *D* in lieu of an income tax. In applying the safe harbor formula to *C*, therefore, with respect to the 75 percent levy, "A" is 120, "B" is "20", "C" is 75 and "D" is .50. Accordingly, *C*'s qualifying amount with respect to the 75 percent levy is 25u; the remaining 50u that it paid is its specific economic benefit amount.

Example (14). The facts are the same as in example (12), except that dividends received from corporations engaged in the exploitation of mineral K in country Y are subject to a 10 percent withholding tax (the "10 percent withholding tax"). Thus, *C*'s liability under the 75 percent levy is 75u, and *D*'s liability under the 10 percent withholding tax on the 25u distribution is 2.5u.

The only difference between the withholding tax and the 10 percent withholding tax applicable only to dual capacity taxpayers (including *D*) is that a lower rate (but the same base) applies to dual capacity taxpayers. Although the withholding tax and the 10 percent withholding tax are together a single levy, this difference makes it necessary, when dealing with multiple levies, to incorporate the withholding tax and *D*'s payment pursuant to the 10 percent withholding tax in the safe harbor formula. Accordingly, as in example (12), the safe harbor formula is applied by aggregation.

The aggregate effective rate of the general taxes for purposes of the safe harbor formula is .60 (.50+[(1−.50)×.20]). Pursuant to paragraph (e)(7), the aggregate actual payment amount of the qualifying levies for purposes of the formula is the sum of *C* and *D*'s liability for the 75 percent levy and the 10 percent withholding tax. Accordingly, under the safe harbor formula, the aggregate qualifying amount with respect to the 75 percent levy on *C* and the 10 percent withholding tax on *D* is 33.75u ((120u − 20u − [75u + 2.5u]) × .60/(1 − .60)), which is the aggregate amount of tax that *C* and *D* would have paid if *C* had been subject to the country Y income tax and had paid out its entire amount remaining after payment of that tax to *D* as a dividend subject to the withholding tax.

Example (15). The facts are the same as in example (5), except that the rate of the country E income tax is 45 percent and a political subdivision of country E also imposes a levy, called the "local tax," on all corporations subject to the country E income tax. The base of the local tax is the same as the base of the country E income tax; the rate is 10 percent.

The reasoning of example (5) with regard to the country E income tax as applied to *A* and *B*, respectively, applies equally with regard to the local tax as applied to *A* and *B*, respectively. Accordingly, the entire amount paid by *A* pursuant to each of the country E income tax and the local tax is an amount of income tax paid, and both the country E income tax as applied to *B* and the local tax as applied to *B* are qualifying levies.

Pursuant to paragraph (e)(7), in applying the safe harbor formula to *B*, "A" is the amount of *B*'s gross receipts as determined under the (identical) country E income tax and local tax as applied to *B*; "B" is the amount of *B*'s costs and expenses thereunder; and "C" is the sum of *B*'s actual payment amounts with respect to the two levies. Pursuant to paragraph (e)(7), in applying the safe harbor formula to *B*, *B*'s aggregate qualifying amount with respect to the two levies is limited to the amount determined in accordance with paragraph (e)(5) where "D" is the rate of tax specified in section 11(b)(5) of the Internal Revenue Code. Accordingly, "D" is .46, which is the lower of the aggregate rate (55 percent) of the qualifying levies or the section 11(b)(5) rate (46 percent). *B*'s aggregate qualifying amount is, therefore, identical to *B*'s qualifying amount in example (6), which is less than its aggregate actual payment amount, and the difference is *B*'s specific economic benefit amount.

(f) *Effective date.* The effective date of this section is as provided in § 1.901–2(h).

Approved by the office of Management and Budget under control number 1545–0746.

Par. 3. A new § 1.903–1 is added immediately after § 1.902–2 to read as follows:

§ 1.903–1 Taxes in lieu of income taxes.

(a) *In general.* Section 903 provides that the term "income, war profits, and excess profits taxes', shall include a tax paid in lieu of a tax on income, war profits, or excess profits ("income tax") otherwise generally imposed by any foreign country. For purposes of this section and §§ 1.901–2 and 1.901–2A, such a tax is referred to as a "tax in lieu of an income tax"; and the terms "paid" and "foreign country" are defined in § 1.901–2(g). A foreign levy (within the meaning of § 1.901–2(g)(3)) is a tax in lieu of an income tax if and only if—

(1) It is a tax within the meaning of § 1.901–2(a)(2); and

(2) It meets the substitution requirement as set forth in paragraph (b) of this section.

The foreign country's purpose in imposing the foreign tax (*e.g.*, whether it imposes the foreign tax because of administrative difficulty in determining the base of the income tax otherwise generally imposed) is immaterial. It is also immaterial whether the base of the foreign tax bears any relation to realized net income. The base of the tax may, for example, be gross income, gross receipts or sales, or the number of units produced or exported. Determinations of the amount of a tax in lieu of an income tax that is paid by a person and determinations of the person by whom such tax is paid are made under § 1.901 2 (e) and (f), respectively, substituting the phrase "tax in lieu of an income tax" for the phrase "income tax" wherever the latter appears in those sections. Section 1.901–2A contains additional rules applicable to dual capacity taxpayers (as defined in § 1.901–2(a)(2)(ii) (A)). The rules of this section are applied independently to each separate levy (within the meaning of §§ 1.901–2(d) and 1.901–2A (a)) imposed by the foreign country. Except as otherwise provided in paragraph (b)(2) of this section, a foreign tax either is or is not a tax in lieu of an income tax in its entirety for all persons subject to the tax.

(b) *Substitution.—(1) In general.* A foreign tax satisfies the substitution requirement if the tax in fact operates as a tax imposed in substitution for, and not in addition to, an income tax or a series of income taxes otherwise generally imposed. However, not all income derived by persons subject to the foreign tax need be exempt from the income tax. If, for example, a taxpayer is subject to a generally imposed income tax except that, pursuant to an agreement with the foreign country, the taxpayer's income from insurance is subject to a gross receipts tax and not to the income tax, then the gross receipts tax meets the substitution requirement notwithstanding the fact that the taxpayer's income from other activities, such as the operation of a hotel, is subject to the generally imposed income tax. A comparison between the tax burden of this insurance gross receipts tax and the tax burden that would have obtained under the generally imposed income tax is irrelevant to this determination.

(2) *Soak-up taxes.* A foreign tax satisfies the substitution requirement only to the extent that liability for the foreign tax is not dependent (by its terms or otherwise) on the availability of a credit for the foreign tax against income tax liability to another country. If, without regard to this paragraph (b)(2), a foreign tax satisfies the requirement of paragraph (b)(1) of this section (including for this purpose any foreign tax that both satisfies such requirement an also is and income tax within the meaning of § 1.901–2(a)(1)), liability for the foreign tax is dependent on the availability of a credit for the foreign tax against income tax liability to another country only to the extent of the lesser of—

(i) The amount of foreign tax that would not be imposed on the taxpayer but for the availability of such a credit to the taxpayer (within the meaning of § 1.901–2(c)), or

(ii) The amount, if any, by which the foreign tax paid by the taxpayer exceeds the amount of foreign income tax that would have been paid by the taxpayer if it had instead been subject to the generally imposed income tax of the foreign country.

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). Country X has a tax on realized net income that is generally imposed except that nonresidents are not subject to that tax. Nonresidents are subject to a gross income tax on income from country X that is not attributable to a trade or business carried on in country X. The gross income tax imposed on nonresidents satisfies the substitution requirement set forth in this paragraph (b). See also examples (1) and (2) of § 1.901–2(b)(4)(iv).

Example (2). The facts are the same as in example (1), with the additional fact that payors located in country X are required by country X law to withhold the gross income tax from payments they make to nonresidents, and to remit such withheld tax to the government of country X. The result is the same as in example (1).

Example (3). The facts are the same as in example (2), with the additional fact that the gross income tax on nonresidents applies to payments for technical services performed by them outside of country X. The result is the same as in example (2).

Example (4). Country X has a tax that is generally imposed on the realized net income of nonresident corporations that is attributable to trade or business carried on in country X. The tax applies to all nonresident corporations that engage in business in country X except for such corporations that engage in contracting activities, each of which is instead subject to two different taxes. The taxes applicable to nonresident corporations that engage in contracting activities satisfy the substitution requirement set forth in this paragraph (b).

Example (5). Country X imposes both an exise tax and an income tax. The excise tax, which is payable independently of the income tax,is allowed as a credit against the income tax. For 1983 *A* has a tentative income tax liability of 100u (units of country X currency) but is allowed a credit for 30u of excise tax that it has paid. Pursuant to paragraph (e)(4)(i) of § 1.901–2, the amount of excise tax *A* has paid to country X is 30u and the amount of income tax *A* has paid to country X is 70u. The excise tax paid by *A* does not satisfy the substitution requirement set forth in this paragraph (b) because the excise tax is imposed on *A* in addition to, and not insubstitution for, the generally imposed income tax.

Example (6). Pursuant to a contract with country X, *A*, a domestic corporation engaged in manufacturing activities in country X, must pay tax to country X equal to the greater of (i) 5u (units of country X currency) per item produced, or (ii) the maximum amount creditable by *A* against its U.S. income tax liability for that year with respect to income from its country X operation. Also pursuant to the contract, *A* is exempted from otherwise generally imposed income tax. *A* produces 16 items in 1984 and the maximum amount creditable by *A* against its U.S. income tax liability for 1984 is 125u. If *A* had been subject to country X's otherwise generally imposed income tax it would have paid a tax of 150u. Pursuant to paragraph (b)(2) of this section, the amount of tax paid by *A* that is dependent on the availability of a credit against income tax of another country is 0 (lesser of (i) 45u, the amount that would not be imposed but for the availability of a credit (125u–80u) or (ii) 0, the amount by which the contractual tax (125u) exceeds the generally imposed income tax (150u)).

Example (7). The facts are the same as in example (6) except that, of the 150u *A* would have paid if it had been subject to the otherwise generally imposed income tax, 60u is dependent on the availability of a credit against income tax of another country. The amount of tax actually paid by *A* (i.e., 125u) that is dependent on the availability of a credit against income tax of another country is 35u (lesser of (i) 45u, computed as in example (6), or (ii) 35u, the amount by which the contractual tax (125u) exceeds the amount *A* would have paid as income tax if it had been subject to the otherwise generally imposed income tax (90u, i.e., 150u–60u).

(c) *Effective date.* The effective date of this section is as provided in § 1.901–2(h).

PART 4—[AMENDED]

§§ 4.901–2 and 4.903–1 [Removed]

Par. 4. Sections 4.901–2 and 4.903–1 of 26 CFR Part 4 are removed.

This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: September 28, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83–27466 Filed 10–6–83; 12:10 p.m.]

BILLING CODE 4830–01–M

---

26 CFR Parts 1 and 31

[T.D. 7919]

Employment and Income Taxes; Information From Recipients of Gambling Winnings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to withholding on certain payments of gambling winnings and to statements furnished by their recipients. These rules are necessary to implement the withholding of tax on certain payments of winnings and will affect both payers and recipients of winnings.

DATE: The regulations generally apply to payments of winnings made after November 14, 1983.

FOR FURTHER INFORMATION CONTACT: John P. MacMaster 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) (202–566–3294)

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1981, the Federal Register published proposed amendments both of the Income Tax Regulations (26 CFR Part 1) under section 6011 of the Internal Revenue Code and of the Employment Tax Regulations (26 CFR Part 31) under Code section 3402(q). The amendments to the regulations under section 3402(q) were a revision of part of an earlier proposal (44 FR 65777) concerning the withholding of tax on certain payments of gambling winnings. Treasury Decision 7787 (46 FR 46906) adopted that earlier proposal, reserving those portions re-proposed in the notice of proposed rulemaking of September 23, 1981.

A public hearing was held on January 20, 1982. After consideration of the comments, this Treasury decision adopts the proposed amendments with one change.

Explanation of Provision

Section 3402(q) requires payers of gambling winnings to deduct and withhold 20 percent of payments in certain circumstances, generally depending on the type of wagering transaction, the total amount of winnings, and in some cases the odds of the wager. For example, withholding generally is required on winnings from a wager in a parimutuel pool on a horse race if the total amount of the winnings exceeds $1,000. Under § 31.3402(q)–1 winnings on identical bets must be aggregated to determine if the $1,000 floor has been exceeded. This ensures that bettors are treated the same, whether or not a wager is divided into several small components. Identical bets are those in which winning depends on the occurrence (or non-occurrence) of the same event or events. For example, two wagers on a horse to win a particular race generally are identical.

Payers of gambling winnings generally are liable for any tax required to be deducted and withheld. The responsibility for identifying payments subject to withholding would, therefore, devolve to payers. In view of the expense of eliciting the information necessary to determine whether a payment is subject to withholding solely by reason of identical wagers, the regulations provide that payers may, in certain circumstances, require payees to supply information concerning any identical, or fragmented, wagers and then rely upon that information in determining whether the payment is subject to withholding. Generally, such information may be required of payees with respect to any payment subject to information reporting requirements under section 6041, *i.e.*, payments of $600 or more, but only if the payment by itself does not exceed the statutory floor of $1,000 ($5,000 in certain circumstances). If the payment either is subject to withholding without regard to winnings from identical wagers or is made with respect to a type of transaction not subject to withholding under section 3402(q) (*i.e.*, slot machine plays, bingo, or keno) the payer may not require the additional information. Indeed, it would have no application.

The final regulations differ from the rules as proposed in two respects—§ 31.3402(q)–1 makes clear that wagers in different wagering pools are not identical wagers, even if identical in other respects. Thus, for example, if an individual places a bet of $10 at the track for a horse to win a race and also places a $10 bet through an off-track betting operation on that horse to win the same race, those wagers are not aggregated for purposes of sections 3402(q) and 6011, provided the two operations conduct separate pools. Second, an example is added to indicate clearly that wagers containing different elements, *e.g.*, and "exacta" and a "trifecta" are not identical.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury Department, other governmental agencies, and the public. These regulations impose no burdensome reporting or record keeping requirements, but rather provide a less burdensome, optional procedure for fully implementing section 3402(q).

Non-Application of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury or OMB implementation of the Order dated April 29, 1983.

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 Treasury decision as it will not have a significant impact on a substantial number of small entities. The regulations merely provide payers of gambling winnings an optional procedure for fulfilling the requirements of withholding pursuant to section 3402(q). Payers are not precluded from using other means to ascertain the necesssary information to implement the withholding requirement. As already explained, this procedure is designed to provide a less burdensome means of assuring proper withholding on gambling winnings. It does not create a significantly increased reporting burden inasmuch as payees of gambling winnings should have the necessary information readily available for payers, and the optional procedure applies only as a concomitant of existing reporting requirements.

Drafting Information

The principal author of this regulation is John P. MacMaster 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 substantively and stylistically.

List of Subjects

26 CFR §§ 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 31 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The following new section is added immediately after § 1.6011–2:

§ 1.6011–3 Requirement of statement from payees of certain gambling winnings.

(a) *General rule.* Except as provided in paragraph (c) of this section, any person receiving a payment with respect to a wager in a sweepstakes, wagering pool, lottery, or other wagering transaction (including a parimutuel pool with respect to horse races, dog races, or jai alai) shall make a statement to the payer of such winnings upon the payer's demand. Such statements shall accompany the payer's return made with respect to the payment as required pursuant to section 3402(q) or 6041, as the case may be.

(b) *Contents of statement.* The statement referred to in paragraph (a) shall contain information (in addition to that required under section 6041(c)) as to the amount, if any, of winnings from identical wagers to which the recipient is entitled. If any person other than the recipient is entitled to all or a portion of

the payment, the statement shall also include information as to the amount, if any, of winnings from identical wagers to which each such person is entitled. The statement shall be provided on Form W-2G or, if persons other than the recipient are entitled to all or a portion of such payment, on Form 5754.

(c) *Exception.* The requirement of paragraph (a) of this section does not apply with respect to any payment of winnings—

(1) From a slot machine play, or a bingo or keno game,

(2) Which is subject to withholding under section 3402(q) without regard to the existence of winnings from identical wagers, or

(3) For which no return of information under section 6041 is required of the payer.

(d) *Meaning of terms.* For purposes of this section, the terms "sweepstakes", "wagering pool", "lottery", "other wagering transaction" and "identical wagers" shall have the same meanings as ascribed to them under § 31.3402(q)-1.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 2. Paragraphs (c)(1)(ii), and (d) *Example (3),* and (f)(1)(vi) of § 31.3402 (q)-1 are revised to read as set forth below, and a new paragraph (d) *Example (4)* is added to read as set forth below:

§ 31.3402(q)-1 Extension of withholding to certain gambling winnings.

* * * * *

(c) *Definitions; special rules*—(1) *Rules for determining amount of proceeds from a wager.* * * *

(ii) Amounts paid after November 14, 1983, with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager. For example, amounts paid on two bets placed in a parimutuel pool on a particular horse to win a particular race are treated as paid with respect to the same wager. However, those two bets would not be identical were one "to win" and the other "to place", or if the bets were placed in different parimutuel pools, *e.g.*, a pool conducted by the racetrack and a separate pool conducted by an off-track betting establishment in which the wagers are not pooled with those placed at the track. Tickets purchased in a lottery generally are not identical wagers, because the designation of each ticket as a winner generally would not be based on the occurrence of the same event, *e.g.*, the drawing of a particular number. If the recipient makes the statement which may be required pursuant to § 1.6011-3, indicating whether or not the recipient (and any other persons entitled to a portion of the winnings) is entitled to winnings from identical wagers and indicating the amount of such winnings, if any, then the payer may rely upon such statement in determining the total amount of proceeds from the wager under paragraph (c)(1) of this section attributable to identical wagers.

* * * * *

(d) *Examples.* * * *

Example (3). On December 1, 1983, B makes two $2 bets in a parimutuel pool for a horse race. Each bet is on the same horse to win a particular race. B wins a total of $1,300 on those bets. B cashes the tickest at different cashier windows indicating on the statement demanded by each cashier the amount of winnings from identical wagers. Although the payment by each cashier ($650) is less than the $1,000 floor for the withholding requirement on payments of winnings from horse race parimutuel pools, each cashier is required to deduct and withhold tax from B's winnings equal to $129.60 (($650 − $2) × 20 percent = $129.60) based on the information B submitted indicating that the aggregated proceeds from the identical wagers ($1,300 − $4 = $1,296) exceed $1,000 and the amount is at least 300 times as great as the amount wagered ($4 × 300 = $1,200). Had B refused to make the statements, the payer would have no basis provided by the payee upon which to rely in determining whether the payment is subject to withholding. Under these circumstances, the payer would be required to deduct and withhold tax from the payment.

Example (4). C makes two $2 bets in the same parimutuel pool for a horse race. One bet is an "exacta" in which C bets on horse M to win and horse N to "place". The other bet is a "trifecta". C bets on horse M to win, horse N to "place" and horse O to "show". C wins both bets and is paid $800 with respect to the "exacta" and $900 with respect to the "trifecta". The bets are not identical wagers, however, and on these facts neither payment is subject to withholding.

* * * * *

(f) *Return of payer*—(1) *In general.* * * *

(vi) With respect to amounts paid after November 4, 1983, the amount of winnings from identical wagers. * * *

* * * * *

This Treasury decision is issued under the authority contained in sections 6011 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 732, 917; 26 U.S.C. 6011, 7805).

[Approved by the Office of Management and Budget under control number 1545-0238]

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 5, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-27891 Filed 10-11-83; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Handling of Employment Discrimination Charges; 706 Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the Texas Commission on Human Rights as a 706 Agency.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Hollis Larkins, Equal Employment Opportunity Commission, Office of Program Operations, Special Services Staff, 2401 E Street, NW., Washington, D.C. 20507, telephone 202/634-6806.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

Accordingly, Title 29, Chapter XIV of the Code of Federal Regulations, 29 CFR 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * * Texas Commission on Human Rights

* * * * *

(Sec. 713(a) 78 Stat. 265 (42 U.S.C. 2000e 12(a))

Signed at Washington, D.C. this Sixth day of October, 1983.

For the Commission.

Odessa M. Shannon,

Director, Office of Program Operations.

[FR Doc. 83-27728 Filed 10-11-83; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Permanent State Regulatory Program of Kentucky

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

ACTION: Final rule and correction.

SUMMARY: This document amends 30 CFR Part 917 by: (1) Removing condition (a) concerning stocking plans for non-commercial forest land of the approval of the Kentucky permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), (2) approving the program amendment consisting of Technical Reclamation Memorandum #9 (TRM #9) and (3) correcting the text to reflect findings of the Secretary published in the **Federal Register** on January 4, 1983 and May 20, 1983. The corrections reflect the removal of condition (c) concerning cumulative bonding crediting and a numbering error.

EFFECTIVE DATE: The corrections, the removal of this condition and the approval of the program amendment are effective on October 12, 1983.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7320.

SUPPLEMENTARY INFORMATION: On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982, **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, **Federal Register** notice.

Corrections

In the January 4, 1983, **Federal Register** (48 FR 245-252) the Secretary approved the amendment submitted to satisfy condition (c) of the approval of the Kentucky program relating to cumulative bond crediting. In amending § 917.11, paragraph (c) was not removed and reserved. Section 917.11(c) is amended at this time by a correction notice removing and reserving paragraph (c).

In the May 20, 1983, **Federal Register** (48 FR 22711-22715), the Secretary approved amendments to the Kentucky program relating to changing department names, the definition of "existing structure," the definition of "incidental boundary revision," citizen participation in inspection and enforcement activities, effluent limitations, buffer zone requirements, sediment storage volume, ponds designed with single spillways, monitoring for water discharges, alternative materials used under drains, water diversion for coal waste banks, bridge and approach fills, and petitions to designate lands unsuitable for surface coal mining.

In amending Part 917 of Title 30 (48 FR 22715) to add these amendments, a paragraph (c) was added when the paragraph should have been titled (d). Section 917.15 is amended at this time by renumbering paragraph (c) to paragraph (d) for the approval of the above amendments to the Kentucky program.

Submission of Material To Satisfy Condition

Condition (a) of the Kentucky program required Kentucky to submit copies of promulgated regulations eliminating the discretionary stocking plan approval for noncommercial forest land or otherwise amend its program to set standards for stocking when the post mining land use is forest land other than commercial forest. Additionally, the Secretary required that Kentucky utilize the reference area concept for these areas until condition (a) is removed.

Kentucky submitted material dated May 4, 1983, to OSM pursuant to 30 CFR 732.17 intended to satisfy condition (a). The State has developed "Technical Reclamation Memorandum #9" (TRM #9) to provide technical guidance procedures for reforested areas and to establish technical standards for ground cover, productivity, and stocking rates that may be used in lieu of the reference area method.

OSM published a notice in the June 10, 1983, **Federal Register** (48 FR 26839) announcing receipt of the information intended to satisfy condition (a) and inviting public comment on whether the proposed program amendment corrrected the deficiency, and whether the Secretary should approve the amendment and remove condition (a) from the approval of the State program. The public comment period ended July 11, 1983. The public hearing scheduled for June 30, 1983, was not held because no one expressed a desire to present testimony.

Secretary's Findings

The Secretary finds the program amendment submitted by Kentucky consisting of Technical Reclamation Memorandum # 9 (TRM # 9) satisfies condition (a) by providing standards for stocking when the postmining land use is forest land other than commercial forest. Additionally, the Secretary finds pursuant to 30 CFR 732.17 that the program amendment supplements the approved Kentucky program by establishing certain stocking rates for commercial forest land and by establishing minimum requirements for reference areas.

It should be noted that OSM promulgated revised regulations for revegetation by publishing Parts 701, 816 and 817 in the **Federal Register** dated September 2, 1983 (48 FR 40140-40162). These regulations become effective on October 3, 1983. The Director, OSM, pursuant to 30 CFR 732.17(d) will notify Kentucky if these revised regulations require an additional amendment to bring the State program into conformance with the new Federal standards.

Finding 1

The technical standards that are required at time of bond release for reforested areas established by TRM # 9 to meet condition (a) of the Kentucky program are:

1. 500 trees or shrubs/acre or 670 on steep slopes;

2. Minimum of four species of trees and shrubs that are appropriate for the post mining land uses;

3. Ground cover adequate to control erosion (at least 70% cover with 90% statistical confidence and no evidence of significant erosion); and

4. Live woody plant stocking shall be ninety percent (90%) of these standards with 80% statistical confidence.

The approved State rules, 405 KAR 16/18:200, Section 7(2) (a) and (b) establish a minimum tree and shrub stocking of 450 live woody plants per acre when the primary post mining vegetation is woody plants. The minimum ground cover requirement as set forth in 405 KAR 16/18:200

(6)(2)(c)(4) is seventy percent (70%) with ninety percent (90%) statistical confidence. The TRM as a supplement to these approved regulations contains standards consistent with those established in the approved State regulations.

The TRM standards for woody species are equal to the respective Federal standard counterparts, hence, the standards for woody plants in TRM # 9 are no less effective than 30 CFR 816.117.

By establishing a minimum standard of 500 trees or shrubs/acre or 670 on steep slopes, requiring four species and 70% ground cover for both non-commercial forest land and commercial forest land, the State has satisfied condition (a) of 30 CFR 917.11.

Finding 2

With respect to crops, grasses and legumes, the State is proposing to adopt yields that can be expected under a high level of management, as contained in Soil Conservation Service (SCS) soil surveys, as the technical standard. When productivity (expected yields) data is not available in a soil survey for the specific vegetation the reference area concept will be required.

The approved State regulations at 405 KAR 16/18:200(6)(1), provide for use of technical guidance documents published by United States Department of Agriculture (USDA) or the United States Department of the Interior (USDI) when developing standards. Kentucky is proposing to utilize one such document, SCS soil surveys, as a standard for productivity of crops, grasses and legumes. The survey provides yields (productivity) that can be expected under a high level of management for soils and crops commonly grown on those soils.

TRM #9 further explains that the regulations require ground cover and productivity of at least 90% of the technical standards. The TRM provides ground cover requirements specific to the eastern and western coal regions of the State. These respective standards, 90% and 100%, are adequate to assure control of erosion since the minimum ground cover acceptable in the eastern region would be 80% (.90×90%) and for the western 90% (.90×100%). Therefore, yield from the reclaimed site must be 90% of the yield contained in the soil survey and ground cover must be 90% of the ground cover established for the respective coal regions of the State. For permits of 40 acres or less the regulations currently require a minimum of 70% ground cover. Other ground cover requirements must be equal to or greater than that found on reference areas. The ground cover requirements of TRM #9 are no less effective than the Federal rule at 30 CFR 816.116(d) and are acceptable for use as a technical standard.

Finding 3

The TRM provides "technical standards" for areas where the postmining land use is commercial forest, thereby supplementing the approved Kentucky regulations at 405 KAR 16:200(7). The State uses the term "[a]t the time of bond release" as the time at which success of revegetation is measured. However, there are two relevant times at which bond may be released. Phase II bond release is after the reclaimed area has been revegetated, in this case, after the seedlings have been planted. Section 519(c)(2) of the Surface Mining Act authorizes an additional release of bond, but requires retention of an amount sufficient to reclaim the area should the revegetation, i.e., seedlings and other ground cover, fail. Phase II comes before commencement of the extended liability period. Phase III bond release comes at the end of the liability period when all the remaining bond may be released.

In the approved program at 405 KAR 10:040E(4), the reclamation phases are defined and paragraph (C) provides that reclamation phase III will be deemed to be complete only after the level is capable of supporting the postmining land use and the operator has achieved compliance with Kentucky Reclamation Statute (KRS) Chapter 350 and 405 and the permit, and the applicable liability period under 405 KAR 10:020(E) has expired. Additionally, the State has assured OSM that revegetation success must be achieved at a phase III bond release and that could require no less than a culmination of the requirements for Phase I, II and III. The period of liability begins again whenever substantial augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release.

TRM #9, as a supplement to 405 KAR 16:200(7), taken together with sections 405 KAR 10:020(e) and 10:040(E) provide a standard no less effective than applicable Federal standards at 30 CFR 800.15 and 800.40 and in accordance with section 519(c) of SMCRA.

Finding 4

Minimum requirements for approving an area as a reference area are contained in TRM #9. While not required by the condition, this explanation should benefit operators when they are attempting to establish reference areas. These requirements are no less effective than 30 CFR 816.116(a).

Public Comments

1. The Tennessee Valley Authority (TVA) offered support of the TRM as a method other than the reference area in determining the success of revegetation efforts in some instances. OSM is approving the standards that the TRM established for use in lieu of a reference area. TVA also suggested that the term "steep slope" as it relates to reforestation be quantified to mean 20° or more. Kentucky's approved program at 405 KAR 7:020 defines "steep slope" as any slope of more than 20° or such lesser slope as may be designated by the department after consideration of soil, climate, and other characteristics of a region. OSM believes the term is adequately quantified in the approved State program at 405 KAR 7:020.

2. The Appalachian Research and Defense Fund of Kentucky, Inc. (ARDFK) and the U.S. Department of Agriculture commented that the program amendment does not describe the measurement techniques that will be used to judge success. The Federal regulation and the approved State program (405 KAR 18:200E) specify that the success of revegetation shall be measured by techniques approved by the department after consultation with appropriate State and Federal agencies. The State is currently developing measurement techniques and will address measurement techniques in a future technical reclamation memorandum. The Secretary did not require the State to develop measurement techniques to satisfy condition (a).

3. ARDFK comments that the minimum size of a reference as one acre is inadequate where the operation is large in surface disturbance. ARDFK suggested that the reference area size be determined by a factor representing a percentage of the mined area. Federal standards at 30 CFR Parts 816 and 817 do not address "minimum requirements" for reference areas. The Secretary can not require the State to include in its program provisions not included in the Act or the Federal permanent program rules.

4. The Kentucky Coal Association (KCA) objected to TRM #9 in that it alleged that the memorandum is an illegal attempt to establish technical standards which are regulatory in force. When the Secretary placed condition (a) on his approval of the Kentucky State program, he required the State to either promulgate regulations or otherwise amend its program to set standards to

be used in lieu of the area. The Secretary finds that TRM #9 satisfies the requirements placed on the State by condition (a). The TRM is being approved as part of Kentucky's program.

5. The Department of the Army commented that some measure should be taken to avoid situations where a permit holder declares all or large areas of the lands involved as row crops. The approved State program at 405 KAR 16:200E provides standards for success of revegetation for areas used as cropland. The commenter also believes the phrase "no evidence of significant erosion" is too subjective for consistent enforcement. The State has defined the standard for success for ground cover to be at least 70% cover with ninety (90) percent confidence. OSM has no standard to address the term significant erosion and believes the term in itself is clear when taken together with the standards for successful revegetation. By establishing a minimum standard of 500 trees or shrubs/acre or 670 on steep slopes, requiring four species and 70% ground cover for forest land other than commercial forest land, the State has satisfied condition (a) by adopting standards no less effective than 30 CFR 816.117.

6. Peabody Coal Company commented that TRM #9 limits the flexibility needed to develop and implement successful reforestation reclamation plans by specifying stocking rates that are inordinately high. The standard established by the TRM does not conflict with the approved State program and the Secretary finds the standard is no less effective than 30 CFR 816.117. The State is adopting a technical standard to be utilized in lieu of a reference area. These technical standards are equal to or greater than the standards in the approved Kentucky program. The Secretary finds that it is appropriate and reasonable to use stocking density when determining revegetation success for woody plants that are used to achieve the post-mining land use. The Secretary has, therefore, determined that Kentucky's requirements for evaluation of revegetation success are no less effective than those required by 30 CFR 816.117.

7. The United States Department of Agriculture suggested that ground cover standards be calculated by using the percent ground cover to the percent slope rather than a straight standard percent. Federal regulations do not require ground cover standards to be calculated by the slope percentage, therefore the Secretary can not require that Kentucky use such a method.

8. The Soil Conservation Service commented that when "commercial forest land" is defined as land producing or capable of producing crops of industrial wood, that shrubs should not be counted as commercial forest species. The Federal standard at 30 CFR 816.117(b) provides for shrubs to be included as commercial forest land stocking with a minimum of 75% of the countable trees or shrubs to be of commercial tree species. The Secretary, therefore, has no legal basis for requiring more of the State.

Approval of Amendment To Satisfy Condition

Accordingly, condition (a) is hereby removed. The amendment to the Kentucky program as provided in Technical Reclamation Memorandum #9 is hereby approved pursuant to 30 CFR 732.17.

30 CFR Part 917.11 is amended to indicate approval of the program amendment and removal of condition (a).

Additional Findings

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 917 is amended as set forth herein.

Dated: October 4, 1983.

William P. Pendley,

Deputy Assistant Secretary for Energy and Minerals.

PART 917—KENTUCKY

§ 917.11 [Amended]

1. 30 CFR 917.11 is amended by removing and reserving paragraphs (a) and (c).

2. 30 CFR 917.15 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 917.15 Approval of Amendments to State Regulatory Program.

* * * * *

(c) The following amendments are approved effective on May 13, 1983. Revisions submitted on May 28, 1982, to KRS 350.062(9) and KRS 350.093 Section 2, contained in Senate Bill No. 218; Revisions submitted on May 28, 1982, to 405 KAR 16:020 Section 4.

(d) The following amendments are approved effective on May 20, 1983: Revisions submitted on January 11, 1983, to 405 KAR 7:020 Section 1 (13), (27), (34), and (57), 12:010 Section 6, 16:060 Section 9(2), 18:060 Section 7(3), 16:060 Section 11(1), 18:060 Section 9(1), 16:060 Section 1(3), 18:060 Section 9(3), Section 16:090 Section 2, 18:090 Section 2, 16:090 Section 5(5), 18:090 Section 5(5), 16:110 Section 2(2), 18:110 2(2), 16:130 Section 2(2), 18:130 Section 2(2), 16:220 Section 4, 18:230 Section 4, and 24:030 Section 3.

(e) The following amendment is approved effective on October 12, 1983:

Technical Reclamation Memorandum #9, dated February 1, 1983.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 83–27560 Filed 10–11–83; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Approval of Permanent Program Amendments From the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining

Control and Reclamation Act of 1977 (SMCRA).

On June 10, 1983, August 11, 1983, and August 22, 1983, the State of Ohio submitted to OSM revised regulations to amend the permitting and subsidence control requirements for underground coal mine operators.

After providing opportunity for public comment, holding a hearing on the amendments, and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendments.

The Federal rules at 30 CFR 935 which codify decisions on the Ohio program are being amended to implement these actions.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227, Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 1, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

II. Discussion of the Amendments

On June 10, 1983, OSM received a set of regulation amendments from the Ohio Division of Reclamation intended to revise the permitting and subsidence control requirements for underground coal mine operators. The amendments revised the following sections of the Ohio Administrative Code (OAC): (1) OAC 1501:13-1-02 *Definitions;* (2) OAC 1501:13-4-04 *Permit application requirements for information on environmental resources;* (3) OAC 1501:13-4-05 *Permit application requirements for reclamation and operations plans;* and (4) OAC 1501:13-9-04 *Protection of the hydrologic system;* and added new sections: (1) OAC 1501:13-4-13 *Underground mining permit application requirements for information on environmental resources;* (2) OAC 1501:13-4-14 *Underground mining permit application requirements for reclamation and operations plans;* and (3) OAC 1501:13-12-02 *Subsidence control.*

OSM published a notice in the **Federal Register** on July 13, 1983, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments. (48 FR 32031). The notice stated that a public hearing would be held only if requested. Following receipt of several requests for a hearing, OSM announced in the **Federal Register** on August 3, 1983, that a public hearing would be held on August 11, 1983, in Columbus, Ohio (48 FR 35146). The public comment period ended on August 12, 1983.

On August 11 and 22, 1983, Ohio submitted additional modifications to the June 10, 1983 set of regulations. The modifications were made to OAC Sections 13-1-02, 13-4-04, 13-4-13, 13-4-14, 13-9-04, 13-12-02 (renumbered 13-12-03) and a new Section, 13-12-04 *Underground mine entry and access discharges,* was added.

OSM published a notice in the **Federal Register** on September 1, 1983, reopening the public comment period to provide an opportunity for comment on the supplemental material submitted by Ohio on August 11 and 22, 1983, the extended comment period closed September 16, 1983.

In response to OSM's request for concurrence on the amendments, on August 25, 1983, OSM received a letter from the Environmental Protection Agency (EPA) stating that because the modifications do not concern air or water quality standards, EPA would have no objection to their approval.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on June 10, August 11, and August 22, 1983, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed in the findings below. However, the Ohio rules have not been promulgated as final rules. The Chief of the Division has indicated that Ohio intends to adopt the rules by emergency rulemaking as soon as they are approved by OSM. The Director is approving the rules provided that they are fully promulgated in identical form to the rules submitted to and reviewed by OSM.

A. OAC Section 1501:13-1-02 Definitions

1. *OAC 1501:13-1-02(D)*—Ohio has amended the definition of "adjacent area" to mean the area outside the affected area or permit area where protected resources are, or reasonably could be expected to be, adversely impacted by coal mining operations, including probable impacts from undergound workings. With respect to underground mining operations, the definition includes, at a minimum, the surface areas above full coal recovery areas. The Federal rule at 30 CFR 701.5 defines adjacent area to include probable impacts from underground workings. Therefore, the Director finds that the Ohio rule is no less effective than the Federal regulations.

2. *OAC 1501:13-1-02(E)*—Ohio has amended the definition of "affected area" to mean any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations, except surface disturbance attributable solely to underground mine subsidence is excluded. The definition explicitly states that this exception shall not be construed to limit the authority of the Chief of the Division to require submission of information about, or take enforcement action in regard to subsidence disturbances and conditions existing in areas overlying underground workings before, during and after mining, which areas are not within the permit or affected area. Because the Ohio statute requires all the affected area to be permitted, the State has excluded the area located above underground workings. The Federal definition of affected area at 30 CFR 701.5 includes the area located above undergound workings. However, the State rule is consistent with the Federal rule in that areas overlying undergound workings are not required to be permitted and bonded. The areas overlying underground workings are included in the Ohio definition of "adjacent area." Therefore, the Director finds the amended Ohio definiton to be no less effective than the Federal regulations.

3. *OAC 1501:13-1-02(R)*—Ohio has added definition of "developed spring" to mean a spring regularly being used for domestic or agricultural purposes. The term is used in the underground permit application requirements for information on ground water. Ohio requires the applicant to list all developed springs on the proposed permit and adjacent area. The Federal rules do not use this term. As such, the Ohio rule is an additional requirement not found in the Federal regulations. Therefore, the Director finds that the Ohio definition is not inconsistent with the Federal regulations.

4. *OAC 1501:13-1-02(AA)*—Ohio has added a definition of "full coal recovery" to mean recovery of a high percentage of the in-place coal reserve by pillar removal, longwall mining, or other underground method in which support is removed from the roof of the mine under a large enough area that a full or partial collapse or subsidence of the mine roof is planned as part of the method of mining. The Federal rules do not define this term, but the Director finds that it is not inconsistent with the Federal regulations.

5. *OAC 1501:13-1-02(TT)*—Ohio has amended the definition of "permit area" to mean the area of land and water to be affected as indicated on the approved map submitted by the applicant. The area includes all areas which are or will be affected by coal mining and reclamation operations during the term of the permit. With respect to underground mining operations, the definition does not include those surface areas overlying underground workings and not included within the affected area. Thus, the State rule includes the area to be affected while the Federal rule at 30 CFR 701.5 defines the permit area as the area to be bonded. The Federal rule considers areas overlying underground workings as affected area, but not part of the permit area. The Director finds that the State rule is consistent with the Federal rule in not requiring areas overlying underground workings to be permitted.

6. *OAC 1501:13-1-02(AAA)*—Ohio has added a definition of "public roadway" to parallel a similar amendment recently made to the Ohio statute which is the subject of a separate rulemaking and notice in the **Federal Register**. The Director finds that the definition of public roadway is consistent with the Federal criteria used to determine when a road will be excluded from being considered part of the affected area of an operation, as specified in the definition of affected area at 30 CFR 701.5.

7. *OAC 1501:13-1-02(AAAA)*—Ohio has added a definition of "underground mining operations" which includes both "underground mining surface operations" and "underground workings." The latter two definitions are already part of the approved Ohio program. The Director finds the new definition consistent with the Federal standards.

B. OAC Section 1501:13-4-04 Permit application requirements for information on environmental resources

1. *OAC 1501:13-4-04*—Ohio has revised this rule to remove all references to underground mining operations. All permitting requirements for underground mining are now contained in Rules 1501:13-4-13 and 1501:13-4-14. The Director finds these changes are consistent with the Federal regulations.

2. *OAC 1501:13-4-04(I)*—Ohio has amended this rule to require that the permit application map be prepared by or under the direction of and certified by a qualified registered professional engineer with appropriate certification by a registered professional surveyor. The effect of the amendment is to require dual certification of application maps by engineers and surveyors. The Director finds that the amended rule is consistent with SMCRA and the Federal regulations at 30 CFR 779 and 780, which specify those instances where preparation and certification by a registered professional engineer is required.

3. *OAC 1501:13-4-04(J)(1)*—Ohio has amended this rule to require that supplementary maps, cross-sections, and plans be prepared and certified by a qualified registered professional engineer for sedimentation ponds and spoil disposal facilities. The amendment removes the discretion for a registered surveyor to prepare and certify such maps, cross-sections and plans. The Director finds the amendment to be consistent with SMCRA and 30 CFR 780.14(c).

4. *OAC 1501:13-4-04(J)(2) and (3)*—Ohio has amended these rules to require that supplementary maps, cross-sections, and plans be prepared by or under the direction of and certified by a qualified registered professional engineer with appropriate certification by a registered surveyor showing the location of sediment ponds, impoundments, waste banks, and other information required by 30 CFR 779.25 and 780.14. The effect of the amendment is to require dual certification by engineers and surveyors. The Director finds that the amendments are consistent with SMCRA and the Federal regulations which specify those instances where preparation and certification by a registered professional engineer is required.

5. *OAC 1501:13-4-04(L)*—Ohio has amended this rule to require that the detailed design plan and map for sediment ponds, impoundments, and other such structures be prepared by or under the direction of and certified by a registered professional engineer or professional geologist. The amendment removes the authority for a registered surveyor to prepare and certify the map and design plan. The Director finds that the amendment is consistent with SMCRA and 30 CFR 780.25, which requires that such plans be prepared by, or under the direction of, and certified by a qualified registered professional engineer or professional geologist.

C. OAC Section 1501:13-4-05 Permit application requirements for reclamation and operations plans

Ohio has revised this rule to remove all references to underground mining operations. All permitting requirements for underground mining are now contained in Rules 1501:13-4-13 and 1501:13-4-14. The Director finds these changes are consistent with the Federal regulations.

D. OAC Section 1501:13-4-13

Underground mining permit application requirements for information on environmental resources

1. *OAC 1501:13-4-13*—Ohio has added a new section for underground mining permit application requirements. This section corresponds to rule 1501:13-4-04 which specifies similar requirements for surface coal mining operations. The section includes permit application requirements for: hydrology and geology descriptions; ground water information; surface water information; alternative water supply information; climatological information; land use information; maps, cross-sections and plans; prime farmland investigation; and detailed designs of impoundments and other structures. The Director finds that the information requirements are no less effective than 30 CFR Part 783.

Parts of the new rule for which specific findings are made are as follows:

2. *OAC 1501:13-4-13(I)*—This rule requires that the permit application include a map prepared by, or under the direction of and certified by a qualified registered professional engineer with appropriate certifications by a registered professional surveyor. The rule thus requires dual certification. The Director finds that the rule is consistent with SMCRA and no less effective than 30 CFR 783.25, which requires that maps be prepared by, or under the direction of, and certified by a qualified registered professional engineer or professional geologist.

3. *OAC 1501:13-4-13(J)*-This rule requires, in subparagraph (J)(1), that the permit application include supplementary maps, cross-sections, and plans prepared and certified by a qualified registered professional engineer for sedimentation ponds and spoil disposal facilities. The rule also requires, in subparagraphs (J) (2) and (3), that maps, cross-sections, and plans be prepared by or under the direction of and certified by a qualified registered

professional engineer with appropriate certification by a registered surveyor showing the locations of a number of structures or permit area features. The Director finds that these provisions are consistent with SMCRA and no less effective than 30 CFR 783.24 and 783.25.

4. *OAC 1501:13–4–13(L)*–This rule requires each application to include a detailed design plan and map prepared by, or under the direction of, and certified by a registered professional engineer or professional geologist, for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area and, if appropriate, a timetable and plans to remove each structure. The Director finds this rule to be consistent with SMCRA and no less effective than 30 CFR 784.16.

E. OAC Section 1501:13–4–14 Underground mining permit application requirements for reclamation and operations plans

Ohio has added a new permitting section for underground mining reclamation and operations plans. This section corresponds to rule 1501:13–4–05 which specifies similar requirements for surface coal mining operations. The section includes permit application requirements for: general operating plan; operating plans for existing structures and blasting; a general reclamation plan; reclamation plans for protection of the hydrologic balance and postmining land uses; and plans for stream diversions, protection of public parks and historic places, relocation and use of public roads, transportation facilities, subsidence control, return of coal processing wastes to abandoned underground workings, underground development waste, and disposal of excess spoil. The Director finds that the application requirements are no less effective than 30 CFR Part 784.

F. OAC Section 1501:13–9–04 Protection of the hydrologic system

Ohio has amended this section to better specify the water monitoring requirements for underground mines. The amendment to 1501:13–9–04(M)(1) requires underground mine operators to monitor both the quality and quantity of ground water, and specifies the timing, frequency and duration of the required monitoring. The amendment to 1501:13–9–04(M)(2) requires the operator to monitor the quality and quantity of intermittent or perennial streams which flow through or originate on adjacent areas. The Director finds these amendments to be consistent with SMCRA and 30 CFR 817.52.

G. OAC Section 1501:13–12–03 Subsidence control

Ohio has added a new section on performance standards for subsidence control to replace its previous rules at 1501:13–12–02. The revised rules are intended to correspond to the revised Federal rules on subsidence control at 30 CFR 817.121 and 817.122 (48 FR 24638, June 1, 1983). The Federal regulations require the operator to correct any material damage resulting from subsidence caused to surface lands, and to the extent required by State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner of such structures or facilities in the full amount of the diminution of value resulting from the subsidence.

The Federal rules were clarified because the previous Federal subsidence rules did not provide for a situation where the operator has purchased a structure overlying the underground workings or where the operator has purchased the right, by waiver or other means, to cause subsidence under a structure. The revised Federal rule recognizes and accommodates such situations.

The Ohio rules define the operator's liability for subsidence damage under Ohio law. The Ohio rule requires the operator to correct material damage to surface lands, and either correct the damage or compensate the owner for damage to structures or facilities. The operator is not required to correct damage to structures or compensate the owner if the permittee or operator presents documentation to the Chief showing clearly and convincingly that: (1) the owner of the structure or facility is the permittee or operator; or (2) the permittee or operator by property conveyance or other agreement with the owner of the structure or facility or with the predecessor in title, has been relieved of all liability for damage other than that liability, if any, specified in the conveyance or agreement. The Ohio rules thus provide for waiver of liability for damage to structures or facilities. As under the Federal rules, no waiver of liability is allowed for damage to surface lands. The Director finds that the revised subsidence control provisions are consistent with SMCRA and no less effective than 30 CFR 817.121 and 817.122.

H. OAC Section 1501:13–12–04 Underground mine entry and access discharges

Ohio has added a new section on performance standards for underground mine entry and access discharges. The Director finds that the rule is substantively identical to 30 CFR 817.50 and, therefore, is no less effective than the Federal regulations.

I. Non-substantive corrections to Ohio's regulations

Ohio has revised certain parts of the rules discussed above to make non-substantive, primarily typographical, changes. The Director finds the corrections consistent with SMCRA and 30 CFR Chapter VII.

IV. Public Comments

The responses to public comments received are set forth below.

1. Several commenters stated that Ohio should adopt the Federal standards requiring a description in the permit application of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage. The August 22 revisions to the Ohio rules added this requirement at OAC 1501:13–4–14(K)(2)(c).

2. Several commenters requested that Ohio adopt consistent definitions for the terms "affected area", "adjacent area", and "permit area". The State revised the definitions of "affected area" and "adjacent area" in the August 11 revisions to its regulations. The Director has found these definitions to be consistent with the Federal regulations (See Findings A.1, A.2., and A.5. above).

3. One commenter stated that Ohio should require performance bonds to be posted to pay for damages that occur after the mining operation has stopped. Ohio does require bonding for the permit area, and a subsidence control plan for areas outside the permit area.

4. One commenter requested that the State require a separate waiver of subjacent support instead of allowing such a waiver in a deed. The Federal rules do not specify waiver requirements, except that such requirements must be in accordance with State law. Therefore, the Director cannot require the State to adopt a specific form of waiver.

5. Several commenters objected to the provision in the Ohio regulations recognizing waivers of liability for damage to structures. One commenter noted that if any waiver is to be recognized it should only be one which specifically waives all rights of subjacent support. The commenter also states that recognition of waivers is not required by Federal law and the State

should ensure surface owner protection. As noted above under Finding G, the Director has found such waivers to be consistent with the Federal regulations.

6. One commenter stated that the Ohio regulations should provide for notice to landowners of underground mining schedules. Surface owner notification of underground mining schedules is required at OAC 1501:13-12-03(J).

7. One commenter stated that the effective date of the surface owner notification requirement of OAC 1501:13-12-03(J) should not be delayed until six months after the rule goes into effect. Ohio has changed its rule to provide that the effective date of the surface owner notification requirement will be the same as the effective date of the other rules included in this program amendment. The six-month notification requirement is not new and has been a part of the approved Ohio program since primacy. The commenter also suggested that the notice should include measures to be taken to prevent or control adverse surface effects because the former Federal regulations required information. The revised Federal regulations no longer require this information. However, both the Federal rules and the Ohio rules require the notice to contain the location where the operator's subsidence control plan may be reviewed.

8. Commenters stated that the Ohio rules omitted from the permit application requirements a description of the measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface. This language was added at OAC 1501:13-4-14(K)(2)(b)(iv) by the August 11 revisions to the Ohio rules.

9. One commenter stated that the Ohio rules excepted from the permit application requirements a description for *planned* subsidence areas of the measures to be taken to control subsidence, and the commenter suggested language to be added. The requirement and language suggested by the commenter was added at OAC 1501:13-4-14(K)(2)(b) by the August 22 revisions to the Ohio rules.

10. Several commenters stated that it was not clear why the Ohio rules limit the blasting, reclamation, postmining land use, stream channel diversion and transportation facilities plans to the permit area, and expressed the hope that when the definitions of "permit area" and "affected area" are read together, these plans would be required for the entire area to be mined. Under the Ohio rules, the definition of permit area includes the area to be affected. Thus, the plans are required for the permit and affected areas.

11. Several commenters objected generally to the longwall mining method, or commented on provisions of the Federal Act and the Ohio program not within the scope of the present rulemaking. Comments outside the scope of this rulemaking are not being addressed.

12. One commenter stated that Ohio appears to be requiring more than is required by the Federal law and regulations, and does not properly recognize private contractural rights between landowners and coal operators. The State may adopt such standards as it deems appropriate, as long as the standards are consistent with the Federal law and regulations.

13. One commenter stated that the Federal law exempts planned subsidence and therefore the Ohio regulations should not require extensive permitting information for the areas where planned subsidence is to occur. The Federal law does not exempt planned subsidence from all regulation. Rather, it exempts planned subsidence from the requirement to adopt measures to prevent subsidence from occurring. The Director has found the Ohio regulations to be consistent with the Federal law and regulations.

14. One commenter objected to the standard in OAC 1501:13-12-03(D)(2) which requires the applicant to demonstrate clearly and convincingly that he is entitled to an exemption from the requirement to correct material damage to structures caused by subsidence. The Director has found the Ohio rule to be consistent with the Federal regulations.

15. One commenter objected to the Ohio rules requiring dual certification by engineers and surveyors as unnecessary. The Director has found the Ohio rules requiring dual certification to be consistent with the Act and the Federal regulations.

Acknowledgments were received from the following Federal agencies: Environmental Protection Agency, Army Corps of Engineers, Soil Conservation Service, Farmers Home Administration, and Mine Safety and Health Administration. The disclosure of Federal agency comments is made pursuant to Section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the June 10, 1983 amendments as modified by the August 11 and 22 regulations. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendments. However, as noted above, because the Ohio rules have not been fully promulgated, the rules will not take effect for purposes of the Ohio program until the revised rules have been promulgated as final rules by Ohio.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1982, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempted from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 935 is amended as set forth herein.

Dated: October 6, 1983.

James R. Harris,

Director, Office of Surface Mining.

PART 935—OHIO

1. 30 CFR 935.15 is amended by adding a new paragraph (f) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(f) The following amendments submitted to OSM on June 10, August 11 and August 22, 1983, are approved effective upon promulgation of the revised rules by the State, provided the rules are adopted in identical form as

submitted to OSM: Ohio Administrative Code Sections 1501:13-1-02, 13-4-04, 13-4-05, 13-4-13, 13-4-14, 13-9-04, 13-12-03, and 13-12-04.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83-27858 Filed 10-11-83; 8:45 am]
BILLING CODE 4310-05-M

National Park Service

36 CFR Part 60

National Register of Historic Places

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) publishes herein certain sections of the final regulations for processing nominations to the National Register of Historic Places. The National Register regulations have been revised in this rulemaking to incorporate changes required by the National Historic Preservation Act Amendments of 1980, and to update and revise in other minor respects the procedures for processing National Register nominations and listings. The sections being made final here are being published now in order to make effective the procedures for appeals of, and requests for, nominations proposed as published in the **Federal Register** on November 16, 1981. The sections of this final rule give the public more opportunity to participate in the National Register programs.

EFFECTIVE DATES: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: Carol D. Shull, Chief of Registration, National Register of Historic Places, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240. Telephone No. (202) 343-9539.

SUPPLEMENTARY INFORMATION: The purpose of the National Register of Historic Places is to identify districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering and culture. The Secretary of the Interior maintains this list under the authority of Section 101(a)1(A) of the National Historic Preservation Act of 1966, as amended.

On December 12, 1980, the National Historic Preservation Act was amended, to direct the Secretary to promulgate or revise regulations relating to the nomination and listing process for the following:

a. Nominating properties for inclusion in, and removal from, the National Register and considering the recommendations of properties by certified local governments;

b. Considering appeals from such recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate).

On November 16, 1981, interim regulations for amended Sections 60.1, 2, 3, 4, 5, 6 (except subsections (i) and (m)), 9, 10, 13, 14, 15 were published in the **Federal Register**, effective as of that date. Also on November 16, 1981, proposed regulations for amended Sections 60.6(m), 8, 11 and 12 of 36 CFR 60 were published elsewhere in the **Federal Register**. The NPS requested comments on the interim and proposed rules. These comments have been considered in the preparation of the final rulemaking. These regulations have been written in consultation with State Historic Preservation Offices (SHPOs), Federal Preservation Officers (FPOs), the National Trust for Historic Preservation, Committee staff of the United States Congress, and others with concerns about the program. Although these procedures provide for the consideration of appeals of any nominating authority's refusal to nominate properties to the National Register, the NPS is particularly concerned that appeals not be encouraged in cases where there is a general consensus of opinion among involved State and/or Federal officials that a property is not eligible.

Comments and Response to Comments on November 16, 1981 Publication of Proposed Rules

General comments or comments that did not address specific language in the proposed rules. Numerous technical and editorial revisions were recommended, and all have been carefully considered. The rules have been revised where deemed appropriate by the NPS. Revised language, particularly in 60.12(a), reflects the concern on the part of the NPS that this appeals process not become an administrative burden.

Requests for Nominations (§ 60.11)

One comment recommended deleting the section concerning requests for nominations and instead requiring that the provision for public participation in the nomination process be required as a prerequisite for approval of State historic preservation programs. The NPS has retained this section because of the need to ensure that States respond to all requests for nominations and that the appeals process in Section 60.12 is applied equitably in all cases.

Section 60.11(a) allows the SHPO 60 days to respond to an applicant submitting a completed National Register nomination form. One comment stated that it is not clear if failure to respond within the time allowed is justification for appeal under subsection 60.12(a). The final regulations have been amended to make failure of the SHPO to comply with any of the requirements in Section 60.11 adequate basis for an appeal.

Section 60.11(c): One comment urged that the NPS clarify that the SHPO is required to comply with the notification requirements outlined in Section 60.6 prior to scheduling the property for presentation to the State Review Board. The language has been revised to clarify this requirement.

Section 60.11(e): One SHPO suggested that the requirement that the SHPO shall submit a nomination to the NPS no later than 75 days after the State Review Board meeting is partially redundant and contradictory to the provision in 60.12(c)(1) whereby the Keeper will consider the eligibility of a property under appeal. In 60.12(c)(1), the SHPO or FPO is requested to submit the applicable nomination form to the Keeper within 15 days, or within 15 days after completion of *all* requirements in Section 60.6 or 60.9. These two provisions are not contradictory because the 15 day time period applies only to formally appealed nominations.

Section 60.11(f): One comment cited the concern that the SHPO is given discretion not to submit substantially revised nominations to the State Review Board. Subsection (f) merely assumes that a substantially revised nomination will be treated as a new request for nomination and processed again in accord with this section.

Section 60.11(g): One comment urged changing the time periods in (g) to provide more time for the FPO to get the SHPO's comments. This has been done.

Nomination Appeals (§ 60.12)

Several comments proposed that appellants be allowed to appeal nominations as they go through the nomination process as well as being able to appeal the failure of a nominating authority to nominate. The regulations already provide owners and the public the opportunity to comment on a nomination and to petition for substantive review during the nomination process in §§ 60.6(t) and 60.9(i).

One commenter urged that a new ground for appeal be added to provide that the Keeper will consider an appeal where there is disagreement with the judgment of the SHPO or FPO that the nomination does not appear to be

adequately documeted. This is permitted under § 60.12. However, the NPS has determined that it is appropriate that the decision concerning whether a nomination has been adequately documented should rest principally with the nominating authority after applying relevant standards and guidelines issued by the Secretary of the Interior.

One SHPO asked if appellants were required to have "standing". Because the National Historic Preservation Act states that any person or local government may appeal to the Secretary a nomination of any historic property for inclusion in the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property, standing is not required.

One comment suggested there was redundancy between the formal appeals process in § 60.12 and the provision in § 60.6 concerning disputed nominations. Section 60.6(l) is limited to nominations where the SHPO and the State Review Board disagree.

One comment suggested that this rule specify whether the SHPO or FPO should sign a nomination as described in §§ 60.6(o) or (p) or 60.9 (d) or (e) prior to submitting it to the NPS. In § 60.12(c)(1), the SHPO and FPO are requested to comply with *all* of the requirements in §§ 60.6 or 60.9, whichever is appropriate.

One association was concerned that the proposed regulations do not establish a clear time period during which the SHPO would be required to submit appealed nominations to the State Review Board and urged that there be a maximum time period of six months for this to occur. The NPS regulations, 36 CFR Part 61, require that State Review Boards meet at least 3 times a year. With this requirement and the requirements in § 60.11(c) that the SHPO shall "schedule the property for presentation at the earliest possible State Review Board meeting" and that "scheduling shall be consistent with the State's established priorities for processing nominations," the NPS does not see any need to establish a specific time frame in the final regulations.

Revisions

After consideration of comments and careful review, the NPS has made the following revisions to 60.6 (m), 11, and 12 of 36 CFR 60. Numerous editorial changes have also been made and the order and codification of specific subsections has been adjusted.

Section 60.11(a): The first phrase "adequately documented" has been replaced in the first sentence with "completed" and the second phrase deleted.

Section 60.11(a): The phrase "adequately documented" has been added in the second sentence.

Section 60.11(c): The phrase "comply with the notification requirements in § 60.6" has been added.

Section 60.11(d): The words "on the prority list" have been replaced with "in accord with the State's priorities for processing nominations."

Section 60.11(d): The phrase "as well as complying with the notification requirements in § 60.6" has been added to the end of the second sentence.

Section 60.11(e): The time period within which the State Historic Preservation Officer shall submit a nomination to the National Park Service has been extended from 75 to 90 days after State Review Board consideration.

Section 60.11(f): This subsection has been revised to include references to the Federal Preservation Officer.

Section 60.11(g): The 60 day time period for notification to an applicant after receipt of an adequately documented nomination form has been changed to 90 days.

Section 60.11(g): A sentence has been added. "The Federal Preservation Officer shall submit an adequately documented nomination to the National Park Service unless in his or her opinion the property is not eligible for the National Register."

Section 60.12: This section has been renamed "Nomination appeals."

Section 60.12(a): Two sentences have been added: "This action differs from the procedure for appeals during the review of a nomination by the National Park Service where an individual or organization may "petition the Keeper during the nomination process," as specified in §§ 60.6 (t) and 60.9 (i). Upon receipt of such petition, the normal 45 day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review."

Section 60.12(a): The categories of appeal have been reduced to two: One, for cases where the appellant disagrees with the State Historic Preservation Officer and/or the State Review Board or Federal Preservation Officer on the question of eligibility for the National Register; and, two, where the State or Federal official has not complied with the requirements in Section 60.11. Although there are fewer categories of appeal, the grounds for appeal remain basically the same.

Section 60.12(c): The final regulations provide that the Keeper will respond to applicants in 45 days rather than the 30 days provided for in the proposed regulations.

Section 60.12(c): This subsection has been revised to specify that the Keeper will either support or deny an appeal and the specific actions that the Keeper will take in either case.

Section 60.12(d): This subsection (formerly (c)) has been revised to specify that the Secretary reserves the right to list properties in the National Register or determine properties eligible for listing and describes procedures for such actions.

Section 60.12(e): A sentence has been added to this subsection. "With respect to the appeals outlined in this section, the decision of the Keeper is the final administrative decision."

Authority: This rulemaking is developed under the authority of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

Classification: In accordance with Executive Order 12291, the Department of the Interior has determined that these rules are not a "major". In accordance with the Regulatory Flexibility Act, the Department of the Interior has determined that these rules do not have a significant economic effect on a substantial number of small entities. These revisions are procedural not substantive. They tell the public how to appeal nominations of, or the failure to nominate, properties to the National Register. The information collection requirements contained in this part have been approved by the Office of Mangement and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0018.

Environmental Impact Statement: This regulation does not significantly impact the environment. Because these rules have to do with procedural aspects of the National Register program and have no impact upon the environment, an environmental impact statement is not required.

List of Subjects in 36 CFR Part 60

Historic preservation.

The originators of these procedures are Carol D. Shull and Steve Sheffield of the Interagency Resources Division of the National Park Service (202/343–9505).

Dated: August 16, 1983.

G. Ray Arnett,

Assistant Secretary, Fish and Wildlife and Parks.

(National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et. seq.*).

PART 60—NATIONAL REGISTER OF HISTORIC PLACES

Accordingly, 36 CFR Part 60 is amended as follows:

1. Section 60.6 is amended by adding paragraph (m) as follows:

§ 60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation Programs.

* * * * *

(m) The State Historic Preservation Officer shall also submit to the Keeper nominations if so requested under the appeals process in Section 60.12.

* * * * *

2. Sections 60.11 and 60.12 are added as follows:

§ 60.11 Requests for nominations.

(a) The State Historic Preservation Officer or Federal Preservation Officer as appropriate shall respond in writing within 60 days to any person or organization submitting a completed National Register nomination form or requesting consideration for any previously prepared nomination form on record with the State or Federal agency. The response shall provide a technical opinion concerning whether or not the property is adequately documented and appears to meet the National Register criteria for evaluation in § 60.4. If the nomination form is determined to be inadequately documented, the nominating authority shall provide the applicant with an explanation of the reasons for that determination.

(b) If the nomination form does not appear to be adequately documented, upon receiving notification, it shall be the responsibility of the applicant to provide necessary additional documentation.

(c) If the nomination form appears to be adequately documented and if the property appears to meet the National Register criteria for evaluation, the State Historic Preservation Officer shall comply with the notification requirements in Section 60.6 and schedule the property for presentation at the earliest possible State Review Board meeting. Scheduling shall be consistent with the State's established priorities for processing nominations. If the nomination form is adequately documented, but the property does not appear to meet National Register criteria for evaluation, the State Historic Preservation Officer need not process the nomination, unless so requested by the Keeper pursuant to § 60.12.

(d) The State Historic Preservation Officer's response shall advise the applicant of the property's position in accord with the State's priorities for processing nominations and of the approximate date the applicant can expect its consideration by the State Review Board. The State Historic Preservation Officer shall also provide notice to the applicant of the time and place of the Review Board meeting at least 30 but not more than 75 days before the meeting, as well as complying with the notification requirements in § 60.6.

(e) Upon action on a nomination by the State Review Board, the State Historic Preservation Officer shall, within 90 days, submit the nomination to the National Park Service, or, if the State Historic Preservation Officer does not consider the property eligible for the National Register, so advise the applicant within 45 days.

(f) If the applicant substantially revises a nomination form as a result of comments by the State or Federal agency, it may be treated by the State Historic Preservation Officer or Federal Preservation Officer as a new submittal and reprocessed in accord with the requirements in this section.

(g) The Federal Preservation Officer shall request the comments of the State Historic Preservation Officer and notify the applicant in writing within 90 days of receipt of an adequately documented nomination form as to whether the Federal agency will nominate the property. The Federal Preservation Officer shall submit an adquately documented nomination to the National Park Service unless in his or her opinion the property is not eligible for the National Register.

§ 60.12 Nomination appeals.

(a) Any person or local government may appeal to the Keeper the failure or refusal of a nominating authority to nominate a property that the person or local government considers to meet the National Register criteria for evaluation upon decision of a nominating authority to not nominate a property for any reason when requested pursuant to § 60.11, or upon failure of a State Historic Preservation Officer to nominate a property recommended by the State Review Board. (This action differs from the procedure for appeals during the review of a nomination by the National Park Service where an individual or organization may "petition the Keeper during the nomination process," as specified in §§ 60.6(t) and 60.9(i). Upon receipt of such petition the normal 45-day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.)

(b) Such appeal shall include a copy of the nomination form and documentation previously submitted to the State Historic Preservation Officer or Federal Preservation Officer, an explanation of why the appplicant is submitting the appeal in accord with this section and shall include pertinent correspondence from the State Historic Preservation Officer or Federal Preservation Officer.

(c) The Keeper will respond to the appellant and the State Historic Preservation Officer or Federal Preservation Officer with a written explanation either denying or sustaining the appeal within 45 days of receipt. If the appeal is sustained, the Keeper will:

(1) request the State Historic Preservation Officer or Federal Preservation Officer to submit the nomination to the Keeper within 15 days if the nomination has completed the procedural requirements for nomination as described in Section 60.6 or 60.9 except that concurrence of the State Review Board, State Historic Preservation Officer or Federal Preservation Officer is not required; or

(2) if the nomination has not completed these procedural requirements, request the State Historic Preservation Officer or Federal Preservation Officer to promptly process the nomination pursuant to Section 60.6 or 60.9 and submit the nomination to the Keeper without delay.

(d) State Historic Preservation Officers and Federal Preservation Officers shall process and submit such nominations if so requested by the Keeper pursuant to this section. The Secretary reserves the right to list properties in the National Register or determine properties eligible for such listing on his own motion when necessary to assist in the preservation of historic resources and after notifying the owner and appropriate parties and allowing for a 30-day comment period.

(e) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

[FR Doc. 83-27535 Filed 10-11-83; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AW400PA; (AD-FRL-2449-4)]

Approval and Promulgation of Implementation Plans; Approval of the Pennsylvania State Implementation Plan for Lead

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: EPA approves portions of Pennsylvania's State Implementation Plan (SIP) for the control of lead (Pb) emissions. Pennsylvania's lead SIP meets all of the applicable requirements under Section 110 of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans, except for three areas where secondary lead smelters are located. For these three areas, we are awaiting submittal by Pennsylvania of enforceable control measures providing for attainment in the three areas. An appropriate demonstration must be submitted with the enforceable control measures. All other areas are in attainment.

DATE: November 14, 1983.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Management Branch, 6th & Walnut Streets, Curtis Building, Philadelphia, PA 19106. Attn: Eileen Glen (3AW11)

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA. 17120. Attn: Gary L. Triplett

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW. (Waterside Mall), Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, NW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Miss Eileen M. Glen at the address listed above, or at (215) 597-8187.

SUPPLEMENTARY INFORMATION: The Pennsylvania State Implementation Plan (SIP) for lead was submitted by DER Secretary Peter N. Duncan on September 30, 1982. A public hearing was held on September 8, 1982, on this SIP. In addition, DER has indicated that it has the legal authority necessary to implement this plan and any control strategies related to it.

The National Ambient Air Quality Standard (NAAQS) for lead was published on October 5, 1978 (43 FR 46269), along with the requirements for lead SIP's. The plan which DER has submitted is intended to satisfy these requirements for all areas of the State except Allegheny County and Philadelphia. The April 11, 1983, Notice of Proposed Rulemaking (48 FR 15498), discusses the violations of the National Ambient Air Quality Standards (NAAQS) for lead in eleven areas of the State, the SIP control strategy that would demonstrate attainment of the lead standards by 1982 in eight of these areas, and the provisions for review of new and modified sources of lead in order to prevent violations of the standard in the future.

The demonstration of attainment for eight of the eleven areas in which violations have been recorded shows that the standard would not be violated in 1982. Air quality data obtained during 1982 has subsequently established that no violations occurred in these eight areas. Therefore, further control measures for these areas are not required.

Pennsylvania has identified the three secondary lead smelters as contributing to violations of the lead standard in the remaining three areas. However, specific, enforceable control measures providing for attainment in these areas have not been submitted. DER has committed to develop agreements with the three companies, and has listed specific measures which will be considered for implementation at each plant to bring about attainment. However, because of the lack of enforceable control measures in the SIP, EPA cannot approve the SIP for the areas surrounding the three secondary lead smelters, and is therefore taking no action on the SIP for these three areas.

The three smelters are:

1. East Penn Manufacturing Company, Lyons, PA.

2. General Battery Corporation, Muhlenberg, PA.

3. Tonolli Corporation, Nesquehaning, PA.

In its lead SIP, Pennsylvania committed to either entering into consent agreements with the three sources by October 1, 1983, or issuing Administrative Orders to the sources by November 1, 1983. These legal instruments would provide emission reductions necessary to attain the national ambient air quality standard for lead by the statutory attainment date. Pennsylvania would submit these instruments to EPA as SIP revisions shortly after their execution.[1]

Public Hearing

The State provided proof that a public hearing, with respect to the lead SIP, was held on September 8, 1982 in Harrisburg, Pennsylvania, in accordance with the requirements of 40 CFR 51.4.

Solicitation of Public Comments

In its proposed rulemaking action, 48 FR 15498 (1983), EPA solicited public comments on its proposed approval action. However, no comments were received.

EPA Action

EPA has reviewed Pennsylvania's lead SIP and has determined that it meets the scope and intent of 40 CFR 51.80 through 51.88 (Control Strategy-Lead), except for three areas where secondary lead smelters are located. Therefore, EPA approves Pennsylvania's lead SIP for all areas except the three designated non-attainment areas. For these three areas, EPA is taking no action at this time.

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

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981). This action constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27 certification. This action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of

[1] Since Pennsylvania submitted its schedule to EPA for developing controls for these areas, EPA and the Natural Resources Defense Council, Inc., have signed an agreement in settlement of litigation concerning promulgation of lead implementation plans under the Clean Air Act, *NRDC v. Ruckelshaus*, No. 82-2137 (D.D.C.). The Agreement establishes specific deadlines for completion of lead SIP's and requires EPA to promulgate plans for States that do not submit them in accordance with the schedule in the Agreement. (*See* Federal Register of August 10, 1983, 48 FR 36250.) Under the Agreement, EPA would need to receive the necessary SIP revision for the three smelter areas in Pennsylvania in time to propose action on that portion of Pennsylvania's lead SIP by January 3, 1984.

today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen Dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.— Incorporation by reference of the Implementation Plan for the State of Pennsylvania was approved by the Director of the Office of the Federal Register on July 1, 1981.

(42 U.S.C. 7401–642)

Dated: October 4, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. In § 52.2020, paragraph (c)(56) is added to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(56) A State Implementation Plan for the control of lead (Pb) emissions submitted on September 30, 1982 by the Secretary of Environmental Resources.

[FR Doc. 83-27653 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2849/R606; PH-FRL 2449-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; N,N-Diethyl-2-(1-Naphthalenyloxy) Propionamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy) propionamide (napropamide) in or on the raw agricultural commodity rhubarb. The regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on October 12, 1983.

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

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1192.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of August 24, 1983 (48 FR 38501), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 3E2849 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Oregon and Washington.

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 herbicide *N,N*-diethyl-2-(1-naphthalenyloxy) propionamide in or on the raw agricultural commodity rhubarb at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rulemaking.

The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance would protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should 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.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 30, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.328 is amended by adding, and alphabetically inserting, the raw agricultural commodity rhubarb to read as follows:

§ 180.328 N,N-Diethyl-2-(1-naphthalenyloxy) propionamide; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Rhubarb	.01
* * * * *	

[FR Doc. 83-27663 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-11

[FPMR Amendment B-54]

Organization, Maintenance, and Use of Current Records

AGENCY: Office of Information Resources Management, GSA.

ACTION: Final rule.

SUMMARY: This regulation sets forth the copy management responsibilities of the General Services Administration and other Federal agencies. The Administrator of General Services is required to provide guidance and assistance to Federal agencies regarding the reproduction of records and the selection and use of records. This regulation provides guidance to Federal agencies on managing copying practices and copying equipment with the intended effect of promoting efficiency and economy in the Federal Government.

EFFECTIVE DATE: November 14, 1983, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Ira A. Penn, Chief, Information Retrieval and Distribution Branch (202-535-7429).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major

rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–11

Advisory committees, Archives and records, Classified information, Freedom of Information, Government property management, Interagency reports, Micrographics, Privacy, Records and information management, and Word processing.

Accordingly, the General Services Administration amends 41 CFR Part 101–11 as follows:

PART 101–11—RECORDS MANAGEMENT

1. The authority is amended to read as follows:

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

2. The table of contents for Part 101–11 is amended by adding the following entries:

Subpart 101–11.3—Organization, Maintenance, and Use of Current Records

101–11.302 Copy management.
101–11.302–1 Scope.
101–11.302–2 Authority.
101–11.302–3 Definitions.
101–11.302–4 Agencies' responsibilities.
101–11.302–5 General Services Administration's responsibilities.

3. Sections 101–11.302 through 101–11.302–5 are added to read as follows:

Subpart 101–11.3—Organization, Maintenance, and Use of Current Records

§ 101–11.302 Copy management.

§ 101–11.302–1 Scope.

This section sets forth the copy management responsibilities of the General Services Administration and other Federal agencies. It provides guidance to Federal agencies on managing copying practices and copying equipment. It does not apply to the reproduction of micrographic, photographic, or machine readable records or to associated equipment.

§ 101–11.302–2 Authority.

As required by 44 U.S.C. Chapter 29, the Administrator of General Services shall provide guidance and assistance to Federal agencies regarding the reproduction of records and the selection and use of equipment and supplies associated with the copying of records. As provided by section 5 of Pub. L. 94–575, this regulation does not limit or supersede the authority or responsibility of the Joint Committee on Printing (JCP) or the Government Printing Office under chapters 1 through 19 of title 44 U.S.C.; nor does this regulation relieve Federal agencies of their responsibilities under chapters 1 through 19 of title 44 U.S.C., or the Government Printing and Binding Regulations as published by the JCP.

§ 101–11.302–3 Definitions.

For the purposes of this section, the following definitions shall apply:

(a) "Copy" means a duplicate of a document previously created;

(b) "Copier" means a machine that creates paper copies directly without requiring the creation of an intermediate master for each original;

(c) "Duplicator" means a machine that produces paper copies through the use of an intermediate master; and

(d) "Copying" means the making of copies whether by copier or by duplicator.

§ 101–11.302–4 Agencies' responsibilities.

To ensure good copying practices and proper equipment management, each agency shall:

(a) *Determine availability of common centralized services.* Before agencies consider purchase or rental of copying equipment, they shall first determine the availability of common centralized services, such as GSA print plant and copy centers, to ensure that the required copying capability cannot be met economically and efficiently through the use of centralized services (see also Subpart 101–5.2, Centralized Field Duplicating Services).

(b) *Match equipment to copying needs.* (1) Whenever purchase or rental of copying equipment is planned, agencies shall determine the users' copying requirements. The following kinds of information are needed:

(i) Average number of copies needed per month;

(ii) Phyical characteristics of materials routinely copied (e.g., copy size, individual sheet or bound volumes, etc.);

(iii) Average number of pages per document;

(iv) Average number of copies per page;

(v) How the copies are used; and

(vi) How quickly they are needed.

Each piece of copying equipment shall be used according to its operating characteristics and limitations. Equipment that is used in excess of its rated capacity is likely to suffer from frequent breakdowns, and equipment that is used at levels significantly below its rated capacity is not economical.

(2) When deciding on the types of equipment to be procured, agencies shall consider both direct and indirect costs of copying. Direct costs include such items as the lease or purchase price of equipment, the cost of maintenance and supplies, and the salaries of full-time equipment operators. Indirect costs include such items as overhead and the amount of time consumed by personnel in seeking and obtaining copying services. Copying service contracts, ranging from the provision and maintenance of equipment and supplies to complete copying services, are offered by private companies. An agency shall decide to contract for copying services if contracting is more economical than using its own resources. (See Office of Management and Budget Circular A–76 for guidance on acquiring commercial products and services.)

(c) *Maintain records.* To determine the proper use and most cost effective and economical placement of equipment, agencies shall establish inventory records for each machine. Records shall be kept by offices with authority to ensure their effective use in matching equipment to needs and controlling overall cost. Records shall include the following information:

(1) Equipment brand, model number or name, and serial number;

(2) Type of procurement (lease, purchase, or lease-with-option-to purchase) and installation date;

(3) Essential provisions of the lease plan or, if owned, the purchase price and essential elements of the maintenance plan, if any;

(4) Number of copies produced by month;

(5) Equipment characteristics, such as production speed, significant accessories or special features, and special electrical requirements;

(6) A record of repairs and maintenance; and

(7) Information on the operating environment, such as machine location, organizations served, and whether access to the machine is unrestricted, restricted to a full-time operator, or otherwise limited.

(d) *Review equipment requests.* Requests for equipment shall be reviewed by offices with authority to

ensure economical procurement and placement of equipment. Reviews shall include:

(1) study of the current copying needs of the requesting office;

(2) Consideration of projected copying needs of the requesting office;

(3) Analysis of the present use of equipment by the requesting office;

(4) Consideration as to whether the requesting office should share existing equipment, acquire its own, upgrade existing equipment, or use some combination of these alternatives;

(5) A determination of whether alternate reproduction methods are practical;

(6) A cost/benefit analysis of any feasible equipment alternatives, including a determination of whether purchase or lease would be more economical (see Subpart 101–25.5, Guidelines for Making Purchase or Lease Determinations); and

(7) Study to determine the best location for the equipment.

(e) *Review supply procurement policy.* Agencies shall review at least annually procurement methods and sources for supplies, such as paper, toner, ink, and duplicating masters. Options, such as blanket purchase agreements, bulk purchasing, and procurement under General Services Administration contracts, may offer lower costs.

(f) *Review copy management efforts.* Agencies shall conduct periodic reviews to determine whether improvements are neccessary. Practices shall be audited to determine whether they can be improved. Records shall be reviewed to identify areas of potential improvements in equipment management.

§ 101–11.302–5 General Services Administration's responsibilities.

To assist Federal agencies in planning, developing, and evaluating copy management programs, the General Services Administration will:

(a) Provide guidelines on developing and maintaining a copy management program. These will consist of handbooks, guides for evaluating agency programs, and other publications.

(b) Provide advice and assistance in carrying out copy management studies and in program management.

(c) Periodically review agency programs to determine what improvements can be made.

Dated: September 21, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-27597 Filed 10-11-83; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, National Flood Insurance Program, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67.

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Fayette, Fayette County (FEMA–6521)	Sipsey River	Just downstream of County Road 35	*318
			Just downstream of Southern Railway	*321
			Just downstream of U.S. Highway 43 (State Highway 18)	*323
Maps available for inspection at City Clerk's Office, City Hall, 102 Second Avenue, S.E., Fayette, Alabama.				
Alaska	Galena (city) Yukon-Koyubuk Division (FEMA–6499)	Yukon River	Intersection of Second Avenue and Seventh Avenue	*130
Maps available for inspection at City Hall, Galena, Alaska.				
Arizona	Clifton (town), Greenlee County (FEMA–6527)	San Francisco River	At the intersection of Laine Boulevard and 6th Street	*3,448

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Ward Canyon Creek	At the intersection of Southern Pacific Railroad and Ward Canyon Road.	*3,450
		Chase Creek	At the intersection of U.S. Highway 666 and Chase Creek Street.	*3,475
Maps available for inspection at City Manager's Office, City Hall, Clifton, Arizona.				
Arizona	Pima (town), Graham County (FEMA-6521)	Cottonwood Wash	Intersection of 1st West Street and U.S. Highway 70	#2
		Ash Creek	Intersection of 2nd South Street and U.S. Highway 70	#2
		Mud Hollow	Intersection of 5th South Street and 2nd East Street	#2
Maps available for inspection at the Town Clerk Office, Town Hall, 50 South 2nd West Street, Pima, Arizona.				
Colorado	Montrose (city),Montrose County (FEMA-6527)	Uncompahgre River	500 feet downstream from center of West Main Street (State Highway 90).	*5,770
		Montrose Arroyo	At the intersection of South 9th Street and Park Avenue.	*5,833
Maps available for inspection at the Planning Department, City Hall, Montrose, Colorado.				
Colorado	Montrose County (unincorporated areas (FEMA-6526)	Uncompahgre River	30 feet upstream from center of Blossom Road	*5,240
			60 feet upstream from center of Jay Jay Road	*5,526
		Montrose Arroyo	50 feet upstream from center of Ogden Road	*5,956
		Dry Cedar Creek	75 feet upstream from center of Highway 550	*5,863
		Happy Canyon Creek	45 feet upstream from center of U.S. Highway 90	*5,776
		San Miguel River	70 feet upstream of Main Street	*4,984
Maps available for inspection at Planning Department, 320 S. 1st Street, Montrose, Colorado.				
Connecticut	Bethel, town, Fairfield County (Docket No. FEMA-6526).	Limekiln Brook	Downstream corporate limits	*294
			Upstream Walnut Hill Road	*311
			Approximately 340 feet downstream of second dam after Walnut Hill Road.	*337
			Upstream Plumtrees Road	*368
			Approximately 3,550 feet downstream Rockwell Road	*402
			Approximately 150 feet upstream of Old Hawleyville Road.	*427
			Upstream corporate limits	*447
		Sympaug Brook	Downstream corporate limits	*360
			Upstream South Street	*372
			Grassy Plain Street/State Route 53	*383
		East Swamp Brook	Confluence with Limekiln Brook	*294
			Upstream of Plumtrees Road	*305
			Approximately 625 feet upstream of Taylor Road	*373
		Terehaute Brook	Confluence with Sympaug Brook	*361
			Approximately 1,180 feet upstream of Reservoir Street	*375
		Wolf Pit Brook	Confluence of East Swamp Brook	*346
			Upstream Dodgingtown Road	*373
			Approximately 990 feet upstream of dam	*392
			Confluence of Putnam Park Brook	*446
			Approximately 1,020 feet upstream of Wolf Pits Road	*502
		Dibbles Brook	Confluence with Limekiln Brook	*368
			Approximately 25 feet downstream of second dam after Plumtrees Road.	*401
			Approximately 2,230 feet upstream of private drive culvert.	*435
		Putnam Park Brook	Confluence with Wolf Pit Brook	*445
			Approximately 265 feet upstream of second private drive after State Route 58.	*470
Maps available for inspection at the Town Clerk's Office, Town Hall, Bethel, Connecticut.				
Connecticut	Bridgeport, city, Fairfield County (Docket No. FEMA-6535).	Long Island Sound	Shoreline of Ash Creek at Livingston Street extended	*11
			Entire shoreline of Black Rock Harbor	*14
			Shoreline at Hilltop Road extended	*15
			Shoreline at Battery Park Drive extended	*17
			Shoreline at Barnum Dyke extended	*16
			Entire shoreline of Bridgeport Harbor	*14
			Shoreline at eastern corporate limits	*15
Maps available for inspection at the City Engineer's Office, City Hall, Bridgeport, Connecticut.				
Connecticut	Old Lyme, town, New London County (Docket No. FEMA-6535).	Long Island Sound	Shoreline east of Griswold Point	*16
			Shoreline at Oak Road (extended)	*15
		Connecticut River	Shoreline of Lord Cove 800 feet north of Binney Road (extended).	*13
			Shoreline at Huntley Road (extended)	*12
			Shoreline at Noyes Road (extended)	*13
Maps available for inspection at the Town Hall, Office of Planning and Building, Old Lyme, Connecticut.				
Connecticut	Stamford, city, Fairfield County (Docket No. FEMA-6527).	Long Island Sound	Shoreline at Shippan Point	*17
			Shoreline of Stamford Harbor at Dolphin Cove Way (extended).	*1/
			Shoreline of Stamford Harbor at Cook Road (extended).	*15
			Shoreline of Holly Pond at Weed Circle (extended)	*13
			Shoreline of East Branch Rippowam River behind hurricane barrier.	*8
Maps available for inspection at the Office of the Environmental Protection Board, City Hall, 429 Atlantic Street, Stamford, Connecticut.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Florida	Bradenton Beach (city), Manatee County FEMA-6526	Gulf of Mexico	Center of intersection of Avenue B North and 24th Street North.	*10
			Center of intersection of Avenue C North and 22nd Street North.	*11
			Center of intersection of State Highway 789 (Gulf Drive North) and 22nd Street North.	*12
			100 feet due west from the center of the intersection of State Highway 789 (Gulf Drive North) 22nd Street North.	*14
			100 feet due west from the center of the intersection of State Highway 789 (Gulf Drive North) and State Highway 684 (Cortez Road West).	*15
Maps available for inspection at Building Department, City Hall, 107 Gulf Drive North, Bradenton Beach, Florida.				
Florida	City of Cedar Key, Levy County (FEMA 6535)	Gulf of Mexico	At the intersection of Shelcrest Avenue and Gulf Boulevard.	*15
			At the intersection of Merle Street and Sherril Street.	*17
Maps available for inspection at City Clerk's Office, City Hall, Second Street, Cedar Key, Florida 32625.				
Florida	Town of Inglis, Levy County (FEMA-6535	Gulf of Mexico	At intersection of Aragon Drive and Riverside Drive	*10
		Withlacoochee River	Just east of water control structure on overflow channel located just north of Inglis Lock.	*26
Maps available for inspection at Town Hall, Highway 40 West, Inglis, Florida 32649.				
Florida	Unincorporated areas of Levy County (FEMA 6539)	Withlacoochee River	At Marion County line	*29
			Just upstream of Inglis Dam	*27
			Just downstream of Inglis Dam	*17
		Suwannee River	Just downstream of State Road 55 *U.S. Highway 19, 98, and 27A.	*21
			Approximately 2.3 miles downstream of confluence with Cedar Branch.	*10
		Gulf of Mexico	Mouth of Turtle Creek	*22
			At intersection of County Road 326 and County Road 347.	*13
			Approximately 1,000 feet downstream of confluence of Cabbage Slough and Otter Creek along Otter Creek.	*9
Maps available for inspection at County Development Department, Levy County Courthouse, Court Street, Bronson, Florida 32621.				
Florida	Sarasota (city), Sarasota County FEMA-6526	Whitaker Bayou	At the center of the intersection of 41st Street and Cocoanut Avenue.	*14
		Phillippi Creek branch B	At the confluence with Phillipi Creek branch A	*16
		Rainfall ponding	250 feet east from the center of the intersection of Calliandra Drive and Circus Boulevard.	*19
		Gulf of Mexico	At the center of the intersection of Filmore Drive and Monroe Drive.	*11
			At the center of the intersection of Cedar Terrace and Chippawa Place.	*12
			At the center of the intersection 1st Street and Cedar Point Drive.	*13
			At the center of the intersection of Norosota Way and Hamilton.	*14
			At the center of the intersection of Bayshore Road and Indian Beach Drive.	*15
			At the Westernmost end of Sapphire Drive	*16
			At the mouth of Whitaker Bayou	*17
			400 feet north from North Shore Drive near the shoreline of Sarasota Bay.	*18
Maps available for inspection at Chief Building Inspector's Office, City Hall, 1st and Orange Avenue, Sarasota, Florida.				
Florida	Town of Yankeetown, Levy County (FEMA 6535)	Gulf of Mexico	At westernmost end of Hodges Island	*21
			At intersection of Riverside Drive and 56th Street	*12
Maps available for inspection at Town Hall, Harmony Lane, Yankeetown, Florida 32698.				
Idaho	Payette (City) Payette County FEMA-6521	Payette River	100 feet south of the intersection of 6th Avenue South and 6th Street.	*2,143
Maps available for inspection at City Hall, 700 Center Avenue, Payette, Idaho.				
Idaho	Payette County (unicorporated areas) FEMA-6521	Payette River	Intersection of U.S. Highway 95 and Killebrew Drive	*2,150
		Snake River	Intersection of Kennedy Road and Northwest 10th Avenue.	*2,139
Maps available for inspection at County Clerk's Office, 1130 3rd Avenue North, Payette, Idaho.				
Illinois	(Uninc.) Champaign County (Docket No. FEMA-6535)	Sangamon River	Just upstream of State Route 47	*684
			About 0.4 mile upstream of Interstate 74	*687
		McCullough Creek	Just upstream of Race Street	*718
			About 2,900 feet upstream of Race Street	*725
		Upper Boneyard Creek	About 750 feet upstream of Neil Street	*739
			About 2,200 feet upstream of Neil Street	*744
		Saline Branch	About 1,500 feet downstream of Interstate 74	*694
			About 1,400 feet upstream of Lincoln Ave	*717
		Phinney Branch	Just upstream of Interstate 57	*709
			Just downstream of Windsor Road	*726
		Salt Fork	About 0.52 mile downstream of Conrail	*664
			About 0.13 mile upstream of U.S. Route 150	*665

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Copper Slough	Just upstream of Interstate 57	*712
			About 500 feet upstream of Westbound Interstate 72	*734
			Just upstream of Conrail	*750
Maps available for inspection at the County Zoning Administrator's Office, 1905 East Main Street, Urbana, Illinois.				
Illinois	(V) Hamburg, Calhoun County (Docket No. FEMA-6499).	Mississippi River	At the confluence of Irish Hollow Creek	*451
			About 0.86 mile upstream of confluence of Irish Hollow Creek	*452
Maps available for inspection at the City Clerk's Office, Village Hall, Hamburg, Illinois.				
Illinois	(V) Lyndon, Whiteside County (Docket No. FEMA-6527).	Rock River	About 0.55 mile downstream of 6th Avenue West	*606
			About 1.2 miles upstream of 6th Avenue West	*606
Maps available for inspection at the Village Hall, Lyndon, Illinois.				
Illinois	(C) Mt. Vernon, Jefferson County (Docket No. FEMA-6527).	Bishop Creek	At mouth	*453
			Just upstream of Norfolk Southern Railway (at 5th Street).	*457
			At 11th Street	*464
		Brickyard Creek	At mouth	*453
			Just upstream of Norfolk Southern Railway (at 5th Street).	*456
			Just upstream of 11th Street	*470
		West tributary	Just upstream of Shilo Drive	*442
			About 2,300 feet upstream of Richview Road	*491
		Church tributary	About 150 feet downstream of State Route 37	*467
			About 1,250 feet upstream of State Route 37	*471
		Botches Ditch	Just downstream of State Route 37	*435
			Just downstream of Missouri Pacific Railroad	*456
			Just upstream of State Route 148	*466
			About 250 feet upstream of South Fishers Lane	*486
		East fork Botches Ditch	At mouth	*467
			About 70 feet upstream of South Fishers Lane	*477
		Bell Street Ditch	At mouth	*476
			Just downstream of 10th Street	*458
		Casey Fork	About 1,800 feet downstream of State Route 142	*435
			About 3,000 feet upstream of Tolle Road	*456
Maps available for inspection at the City Engineer's Office, City Hall, 1100 Main Street, Mt. Vernon, Illinois.				
Iowa	(Uninc.) Polk County, (Docket No. FEMA-6535)	Fourmile Creek	Just upstream of Northeast 12th Avenue	*801
			City of Des Moines corporate limits	*823
			Just downstream of Chicago and Northwestern Railroad (downstream crossing).	*839
			Just downstream of Interstate 35	*898
			Just upstream of NE, 110th Avenue	*910
			Just upstream of State Highway 67	*938
			Just downstream of NE, 134th Street	*958
			Just upstream of NW, 158th Avenue	*999
			At upstream county boundary	*1,005
		Mud Creek	Just upstream of SE, 56th Avenue	*780
			About 100 feet upstream of SE, 20th Avenue	*803
			Just downstream of NE, 12th Avenue	*830
			Just upstream of NE, 27th Avenue	*853
			Just downstream of Chicago, Rock Island and Pacific Railroad (downstream crossing).	*892
			Just upstream of Chicago, Rock Island and Pacific Railroad (downstream crossing).	*897
			Just downstream of Chicago, Rock Island and Pacific Railroad (upstream crossing).	*904
			About 150 upstream of NE, 80th Street	*910
			At city of Boundurant corporate limits	*921
		Mud Creek (above the city of Boundurant).	City of Bondurant corporate limits (upstream crossing)	*947
			Just downstream of NE, 94th Avenue	*962
		Rock Creek	About 0.51 mile upstream of mouth	*813
			Just upstream of State Highway 415	*883
			Just upstream of NE, 102nd Avenue	*941
			Just downstream of Chicago and Northwestern Railroad.	*953
		Spring Creek	About 100 feet upstream of SE, 82d Street	*784
			About 100 feet upstream of SE, 69th Street	*823
			Just downstream of State Highway 163	*860
			Just upstream of State Highway 163	*876
			Just downstream NE, 80th Street (downstream crossing).	*876
			Just upstream of NE, 80th Street (downstream crossing).	*881
			Just downstream of NE, 27th Avenue	*917
			About 100 feet upstream of NE, 27th Avenue	*923
			Just upstream of NE, 80th Street (upstream crossing)	*931
		Walnut Creek	At city of Clive corporate limits	*864
			Just upstream of U.S. Highway 6	*879
			About 1.45 miles upstream of U.S. Highway 6	*886
		North Walnut Creek	Just upstream of Meredith Drive	*892
			Just downstream of NW, 100th Street	*907
			Just upstream of NW, 100th Street	*913

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 0.45 mile upstream of NW. 100th Street	*914
		Tributary to Walnut Creek	Mouth at Walnut Creek	*878
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*881
			About 1.5 miles upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*909
		Beaver Creek	City of Johnston corporate limits (downstream crossing).	*822
			Just upstream of Herrold Street	*835
			Just downstream of State Highway 141	*842
		Little Beaver Creek	Mouth at Beaver Creek	*823
			Just upstream of NW. 100th Street	*856
			Just upstream of State Highway 141	*877
			City of Grimes corporate limits (upstream crossing)	*919
			Just upstream of NW. 128th Street	*934
		Little Beaver Creek tributary	Mouth at Little Beaver Creek	*914
			About 0.4 mile downstream of State Highway 44	*922
			Just downstream of Trail Ridge Road	*932
		Tributary A	Mouth at Little Beaver Creek	*908
			About 100 feet downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*918
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*925
			Just downstream of NW. 142nd Street	*937
Maps available for inspection at the Physical Planning Department, 5898 NW. 14th, Des Moines, Iowa.				
Kentucky	Unincorporated areas of Carter County (FEMA-6527)	Cory Branch	Just upstream of Chessie System	*695
		Damron Branch	Just upstream of private road (Approximately 2,580 feet upstream of mouth).	*603
		Dry Fork	Approximately 1,000 feet upstream of confluence of Lost Creek.	*632
		Flat Fork	Just upstream of Interstate Highway 64	*866
		Grahn Fork	Just upstream of unnamed bridge (Approximately 740 feet upstream of mouth).	*699
			Approximately 100 feet upstream of Kiser Branch Road.	*734
		Hitchins tributary	Just upstream of private drive (approximately 2,030 feet upstream of confluence with little fork of Little Sandy River).	*608
		Little Sandy River	Approximately 3,700 feet upstream of Interstate Highway 64.	*583
		Little Sinking Creek	Approximately 210 feet downstream of Fultz Road	*607
			Just downstream of Secondary Road 181 Bridge	*688
		Little fork of Little Sandy River	Just downstream of Secondary Road 1496	*629
			Just upstream of Secondary Road 1122	*659
		Lower Stinson Creek	Just upstream of Old U.S. Highway 60 (downstream crossing).	*601
		Soldier Fork	Approximately 210 feet downstream of Secondary Road 174 (downstream crossing).	*780
			Just downstream of confluence with Bradley Branch	*862
		Star Creek	Just upstream of U.S. Highway 60	*693
			Just upstream of Star Creek Road	*723
		Tygarts Creek	Approximately 2,380 feet upstream of Interstate Highway 64.	*729
			Just upstream of Secondary Road 174	*786
		Upper Stinson Creek	Just downstream of U.S. Highway 60	*588
		Upper Tygart Branch	Just upstream of U.S. Highway 60	*852
		Williams Creek	Just upstream of Secondary Road 854	*632
Maps available for inspection at Carter County Courthouse, Grayson, Kentucky 41143.				
Kentucky	City of Martin, Floyd County (FEMA 6509)	Beaver creek	At Chessie System Railroad	*659
		Right fork Beaver Creek	Approximately 500 feet downstream of State Highways 80 and 122.	*622
Maps available for inspection at the City of Martin Fire Station, Martin, Kentucky 41649.				
Louisiana	City of New Orleans and Orleans Parish (FEMA 6539)	Ponding area 1	At intersection of Cambronne and Earhart Blvd	*0.5
			At intersection of U.S. Highway 61 (Airline Highway) and Palmetto.	*0.5
		Ponding area 2	At intersection of Pine and Spruce	*1.5
		Ponding area 3	At intersection of Hillary and Dominican	*7.5
		Ponding area 4	At intersection of Orleans Avenue and Navarre Avenue.	0.0
		Ponding area 5	At intersection of Carrollton Avenue and Canal Street	*0.0
			At intersection of U.S. Highway 90 (Broad Avenue) and Earhart Boulevard.	*0.0
		Ponding area 6	At intersection of Fontainbleu Drive and Napoleon Ave	*1.5
		Ponding area 7	At intersection of Napoleon Avenue and Willow	*1.5
		Ponding area 8	At intersection of Napoleon Avenue and Prytania	*6.0
		Ponding area 9	At intersection of Canal Street and North Villere	*2.5
		Ponding area 10	At intersection of Canal Street and Dauphine Street	*4.0
		Ponding area 11	At intersection of Desaix Boulevard and Tunica Street	*0.5
		Ponding area 12	At intersection of U.S. Highway 90 (Broad Avenue) and St. Bernard Avenue.	*1.5
			At intersection of Orleans Avenue and North Prieur	*1.5
		Ponding area 13	At intersection of St. Anthony and North Villere	*2.5
			At intersection of St. Philip and Treme Street	*2.5
		Ponding area 14	At intersection of Esplanade Avenue and Burgundy St	*5.0
		Ponding area 15	At intersection of Interstate 10 and Franklin Avenue	*1.5

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Ponding area 16	At intersection of Franklin Avenue and North Robertson St.	*2.0
		Ponding area 17	At intersection of St. Ferdinand St. and North Rampart Street.	*4.5
		Ponding area 18	At intersection of Almonster Avenue and Gentilly Road	*2.0
		Ponding area 19	Approximately 2,000 feet north of intersection of Gentilly Road and Street Highway 47 (Paris Road).	*−1.5
		Ponding area 20	At the intersection of North Galvez and Egania	*−1.5
		Ponding area 21	Approximately 4,000 feet south of the intersection of U.S. Highway 90 (Chef Menteur Highway) and Maxent Canal.	*−0.5
		Ponding area 22	At intersection of Michoud Boulevard and North Lemans.	*−2.0
			At intersection of Alcee Fortier Blvd. and St. Maxent Dr.	*−2.0
		Ponding area 23	At intersection of Michoud Boulevar and Louisville and Nashville Railroad.	*−1.0
		Ponding area 24	Approximately 1,000 feet southeast of the intersection of Gentily Road and State Highway 47 (Paris Road).	*0.5
		Ponding area 25	Approximately 500 feet south of the intersection of Saturn Boulevard.	*0.0
		Ponding area 26	At intersection of Elysian Fields Ave. and Filmore Avenue.	*−1.0
		Ponding area 27	At intersection of Zenith and LaFourche	*−4.0
		Ponding area 28	At intersection of Interstate 610 and West End Boulevard.	*−2.5
		Ponding area 29	At intersection of Diagonal Drive and Harrison Ave	*0.5
		Ponding area 30	At intersection of Paris Avenue and Mirabeu Avenue	*−1.0
		Ponding area 31	Approximately 4,000 feet south of intersection of State Highway 47 (Paris Road) and Gentilly Road.	*6.0
		Ponding area 32	At intersection of Interstate 10 and Pipeline Canal	*2.5
			At intersection of U.S. Highway 90 and U.U. Highway 11.	*2.5
		Ponding area 33	At intersection of MacArthur Boulevard and General DeGaulle Drive.	*−2.0
			At intersection of Westchester Street and Stratford Place.	*−2.0
		Ponding area 34	Approximately 500 feet south of the intersection of Frederick Street and Norman Street.	*−1.5
		Ponding area 35	Approximately 3,000 feet south of intersection of State Highway 406 and Oliver River Road.	*−0.5
		Ponding area 36	Approximately 4,000 feet south of the intersection of Tullis Drive and Woodland Drive.	*1.5
Maps available for inspection at Planning Department, Room 9-W, City Hall, 1300 Perdido Street, New Orleans, Louisiana 70112.				
Louisiana	Unincorporated areas of St. Bernard Parish (FEMA 6539).	Lake Borgne	At the confluence of Bayou Bienevenue and the Mississippi Gulf Outlet Canal.	*18
		Chandeleur Sound	Along entire shoreline	
		Breton Sound	Along entire shoreline	*19
		Rainfall ponding	At the intersection of Aycock Avenue and Patricia Street (reach 1).	*−1.5
			At the intersection of Mehle Street and Rocheblave (reach 1).	*−1.5
			At the intersection of Evangoline Avenue and Prince Drive (reach 2).	*0.0
			At the intersection of Perrin Street and Perrin Road (reach 2).	*0.0
			At the intersection of Genie Street and Delambert Street (reach 3).	*1.5
			At the intersection of Chalona Drive and Genie Street (reach 3).	1.5
			Approximately 5,000 feet northeast of intersection of State Highway 39 (St. Bernard Highway) and Riverbend Circle (reach 4).	*3.0
			Approximately 2,500 feet south of intersection of State Highway 39 (St. Bernard Highway) and East Christie Street (reach 5).	*3.0
Maps available for inspection at St. Bernard Parish Police Jury President's Office, St. Bernard Parish Police Jury Complex, 8201 W. Judge Perez Drive, Chalmette, Louisiana 70043.				
Louisiana	Unincorporated areas of St. Tammany Parish (FEMA 6539).	Tchefuncta River	Approximately 1,300 feet downstream of State Highway 21.	*15
		Bayou Lacombe	Just upstream of U.S. Highway 190	*10
		Bayou Liberty	Approximately 750 feet downstream of Interstate Highway 12.	*15
		Bogue Falaya	Approximately 1,100 feet upstream of Illinois Central Gulf Railroad.	*20
		Abita River	Approximately 1,300 feet upstream of U.S. Highway 190.	*17
		Little Bogue Falaya	Approximately 750 feet upstream of Holly Road	*23
		Bayou Vincent	Approximately 250 feet downstream of Illinois Central Gulf Railroad (upstream crossing).	*16
		Bogue Chitto	Approximately 250 feet upstream of State Highway 21	*63
		West Pearl River	Approximately 700 feet upstream of Interstate Highway 10.	*12
		French Branch	Just downstream of U.S. Highway 190	*12
		Diversion Canal (W14 Main)	Just upstream of Robert Road	*15
		Gulf of Mexico/Lake Bogne	Intersection of Indian Village Road and U.S. Highway 190.	*9
		Gulf of Mexico/Lake Pontchartrain	Intersection of Salmen Avenue and Sullivan Street	*9

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Intersection of Bayou Paquet and State Highway 433	*10
			Intersection of Harbor Street and Grand Ave	*10
			Intersection of U.S. Highway 11 and Carr Drive	*11
			Intersection of State Highway 434 and Lucille St	*14
			Intersection of Copal Street and Mulberry Avenue	*15
Maps available for inspection at St. Tammany Parish Council Office, St. Tammany Parish Administration Complex, Covington, Louisiana 70434.				
Maryland	Chestertown, town, Kent County (Docket No. FEMA-6521).	Chester River	Entire shoreline within community	*7
		Radcliffe Creek	Approximately 2,500 feet downstream of High Street/State Route 20.	*7
			Upstream High Street/State Route 20	*12
			Upstream corporate limits	*14
Maps available for inspection at the Town Hall, Maple Avenue and Cross Streets, Chestertown, Maryland.				
Michigan	(Twp) Coloma, Berrien County (Docket No. FEMA-6485).	Pawpaw River	About 3.6 miles downstream of Park Street (at downstream corporate limits).	*604
			About 1.4 miles upstream of Pawpaw Lake Road (at upstream corporate limits).	*616
		Pawpaw Lake	Shoreline	*629
Maps available for inspection at the Township Hall, 4919 Pawpaw Lake Road, Coloma, Michigan.				
Minnesota	(C) Brownsville, Houston County (Docket No. FEMA-6521).	Mississippi River	Within the corporate limits	*639
Maps available for inspection at the Office of the City Clerk, City Hall, Brownsville, Minnesota.				
Minnesota	(C) Palisade, Aitkin County (Docket No. FEMA-6521).	Mississippi River	About 850 feet downstream of Soo Line Railroad	*1,214
			About 450 feet upstream of Soo Line Railroad	*1,215
Maps available for inspection at the Office of City Clerk, City Hall, Palisade, Minnesota 56469.				
Mississippi	Town of McLain, Greene County (FEMA-6527)	Leaf River	Just upstream of U.S. Highway 98 Bridge	*76
Maps available for inspection at Town Clerk's Office, Town Hall, McLain, Mississippi 39456.				
Mississippi	City of Ocean Springs, Jackson County (FEMA-6527)	Gulf of Mexico/Mississippi Sound	Intersection of Sheerwater Drive and Waterside Drive	*14
			Approximately 300 feet north of the intersection of Martin Avenue and West Beach Drive.	*13
			Intersection of Cleveland Avenue and Ruskin Avenue	*11
Maps available for inspection at City Engineer's Office, City Hall, 1018 Porter Avenue, Ocean Springs, Mississippi 39564.				
Nevada	Lincoln County (unincorporated areas) FEMA-6143	White River (near Alamo)	Intersection of river and downstream edge of lower road crossing.	*3,450
		White River (near Ash Springs)	Area west of U.S. Highway 93 at the Ash Springs crossing.	*3,590
		White River (near Hiko)	Intersection of river and upstream edge of lower road crossing.	*3,844
		Meadow Valley Wash (near Caliente).	Intersection of wash and center of Union Pacific Railroad (crossing just north of Caliente).	*4,433
		Meadow Valley Wash (near Panaca).	50 feet upstream from center of Nevada State Highway Route 25.	*4,725
		Meadow Valley Wash (near Ursine).	Upstream limit of detailed study	*5,583
		Clover Creek	Upstream limit of detailed study	*4,434
		Antelope Canyon Wash	Upstream limit of detailed study	*4,599
		Cathedral Gorge Wash	At confluence with Meadow Valley Wash (just upstream of Union Pacific Railroad).	*4,734
		Dry Canyon Wash	Upstream limit of detailed study	*5,698
		Dry wash runoff	50 feet upstream from center of Union Pacific Railroad	*4,370
		Hiko Wash	20 feet upstream from center of State Highway 38	*3,872
Maps available for inspection at County Surveyors Office, Lincoln County Courthouse, Pioche, Nevada.				
New Jersey	Belmar, borough, Monmouth County (Docket No. FEMA-6526).	Atlantic Ocean	Entire shoreline within community	*13
		Shark River	Entire shoreline within community	*10
Maps available for inspection at the Belmar Municipal Building, 8th Avenue and Route 35, Belmar, New Jersey 07719				
New Jersey	Brick, township, Ocean County (Docket No. FEMA-6535).	Kettle Creek	Entire shoreline within community	*8
		Atlantic Ocean	Entire shoreline within community	*13
		Barnegat Bay	Mantoloking Road	*7
			Swan Point	*7
			Havens Point	*8
			Dutchman's Point Road extended	*7
		Metedeconk River	Dock Road extended	*8
		Manasquan River	Entire shoreline within community	*8
Maps available for inspection at the Brick Municipal Building, 401 Chambers Bridge Road, Brick, New Jersey.				
New Jersey	Clinton, township Hunterdon County (Docket No. FEMA-6535).	South branch Raritan River	Most downstream corporate limits	*202
			Gray Rock Road (downstream side)	*213
			1,575' upstream of Gray Rock Road	*219
			At corporate limits 3,110' downstream of Cokesbury Road.	*290
			Cokesbury Road (downstream side)	*314
			Most upstream corporate limits	*327
		Beaver Brook	Downstream corporate limits	*207

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Eastbound State Route 31 (upstream side)	*218
			Allerton Road (upstream side)	*234
			Upstream of Conrail crossing	*290
		South branch Rockaway Creek	Downstream corporate limits	*173
			Blossom Hill Road (upstream side) at first upstream corporate limits.	*212
			Approximately 500 feet upstream of the most upstream corporate limits with the borough of Lebanon.	*221
Maps available for inspection at the Clinton Municipal Building, West Street, Clinton, New Jersey.				
New Jersey	Jersey City, city, Hudson County (Docket No. FEMA-6535).	Newark Bay	Western shoreline of community	*10
		Upper New York Bay	Eastern shoreline of community	*10
Maps available for inspection at the Division of Engineering, Public Works Building, 575 Route 440, Jersey City, New Jersey.				
New Jersey	Neptune, township, Monmouth County (Docket No. FEMA-6535).	Atlantic Ocean	Entire shoreline within community	*13
		Shark River	Shoreline at Sylvan Drive (extended)	*10
Maps available for inspection at the Neptune Township Municipal Building, 25 Neptune Boulevard, Neptune, New Jersey.				
New Jersey	North Plainfield, borough, Somerset County (Docket No. FEMA-6470).	Green Brook	At downstream limits	*58
			Upstream of West End Avenue	*67
			Upstream of Duer Street	*86
			Upstream of Norwood Avenue	*104
			At upstream corporate limits	*128
		Stony Brook	At confluence with Green Brook	*63
			Upstream of Rockview Terrace	*74
			Downstream of Grove Street	*93
			At upstream corporate limits	*114
Maps available for inspection at the Municipal Building, 263 Somerset Street, North Plainfield, New Jersey.				
New Jersey	Spring Lake, borough, Monmouth County (Docket No. FEMA-6526).	Atlantic Ocean	Entire shoreline within community	*13
Maps available for inspection at the Spring Lake Municipal Building, 5th and Warren Avenue, Spring Lake, New Jersey.				
New Jersey	Vernon, township, Sussex County (Docket No. FEMA-6499).	Wallkill River	Downstream corporate limits	*389
			Upstream Bassets Bridge Road	*391
			Upstream corporate limits	*394
Maps available for inspection at the Vernon Municipal Center, Church Street, Vernon, New Jersey.				
New Jersey	Wantage, township, Sussex County (Docket No. FEMA-6499).	Wallkill River	Downstream corporate limits	*389
			Upstream of Bassets Bridge Road	*391
			Upstream of Glenwood Road	*394
			Upstream corporate limits	*401
Maps available for inspection at the Municipal Building, Route 23, Sussex, New Jersey.				
New York	Beacon, city, Dutchess County (Docket No. FEMA-6526).	Hudson River	Entire shoreline within corporate limits	*8
		Fishkill Creek	Upstream corporate limits	*183
			Factory bridge—downstream side	*130
			At East Main Street	*98
			Most downstream dam (upstream side)	*40
			At confluence with Hudson River	*8
Maps available for inspection at the Office of the Commissioner of Public Works, City Hall, 427 Main Street, Beacon, New York.				
New York	Clifton Park, town, Saratoga County (Docket No. FEMA-6535).	Mohawk River	Downstream corporate limits	*198
			Upstream Vischer Ferry Dam	*218
			At upstream corporate limits	*222
		Dwaas Kill	Downstream corporate limits at U.S. Route 9	*187
			Upstream Interstate Route 87	*204
			At confluence of Cooley Kill	*209
		Cooley Kill	At confluence with Dwaas Kill	*209
			Approximately 760 feet upstream of State Route 109	*240
		Alplaus Kill	Downstream corporate limits	*236
			Upstream corporate limits	*265
		Anthony Kill	Entire shoreline within community	*160
		Ballston Lake	Entire shoreline affecting community	*258
		Round Lake	Entire shoreline within community	*160
Maps available for inspection at the Town Hall Building Department, Town Hall, Route 146A, Clifton Park, New York.				
New York	Corinth, town, Saratoga County (Docket No. FEMA-6535).	Hudson River	Confluence with Sturdevant	*558
			Upstream corporate limits	*559
		Sturdevant Creek	At confluence with Hudson River	*558
			Upstream of corporate limits of village of Corinth	*598
			Heath Road upstream	*616
Maps available for inspection at the Town Hall, 600 Palmer Avenue, Corinth, New York.				
New York	Corinth, village, Saratoga County (Docket No. FEMA-6535).	Hudson River	Downstream corporate limits	*446

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream Palmers Falls Dam	*524
			Upstream Curtis Mill Dam	*557
			Upstream corporate limits	*558
		Sturdevant Creek	At confluence with Hudson River	*558
			Approximately 60 feet upstream of Maple Street	*566
			Downstream International Paper Company Railroad	*591
			Upstream corporate limits	*598
Maps available for inspection at the Village Hall, 260 Main Street, Village of Corinth, New York.				
New York	Halfmoon, town, Saratoga County (Docket No. FEMA-6535).	Anthony Kill	Downstream corporate limits	*106
			Upstream of footbridge	*132
			Upstream of Coons Crossing Road	*156
			Upstream corporate limits	*160
		Dwaas Kill	Downstream corporate limits	*191
			Upstream corporate limits	*194
		Hudson River	Downstream corporate limits	*38
			Downstream lock No. 2	*45
			Upstream corporate limits	*61
		Mohawk River	Downstream corporate limits	*193
			Upstream corporate limits	*198
Maps available for inspection at the Town Hall Building Department, Harris Road, Half Moon, New York.				
New York	Malta, town, Saratoga County (Docket No. FEMA-6535).	Ballston Creek	Downstream corporate limits	*164
			Upstream of Interstate Route 87	*171
			Upstream of Ruhle Road	*190
			Upstream corporate limits	*256
		Morning Kill	Confluence with Kayaderosseras Creek	*225
			Upstream corporate limits	*227
		Anthony Kill	Downstream corporate limits	*159
			Confluence with Round Lake	*160
		Kayaderosseras Creek	Confluence with Saratoga Lake	*210
			Upstream U.S. Route 9 South	*215
			Approximately 140 feet upstream of North Line Road	*225
			Upstream corporate limits	*228
		Round Lake	Entire shoreline within community	*160
		Saratoga Lake	Entire shoreline within community	*210
Maps available for inspection at the Town Hall, R.D. 3, Ballston Spa, New York.				
New York	Vienna, town, Oneida County (Docket No. FEMA-6535).	Fish Creek	Confluence with Erie Canal	*373
			Confluence of Mill Stream	*380
			Upstream State Route 49	*389
			Upstream Oswego Road	*401
			Confluence of west branch of Fish Creek	*406
		Hall Brook	Confluence with Oneida Lake	*373
			Upstream State Route 49	*403
			Upstream of third crossing of Mill Road	*429
		Halstead Creek	Confluence with west branch Fish Creek	*462
			Upstream McConnellsville Road	*490
		Mill Stream	Confluence with Fish Creek	*380
			Upstream State Route 49	*434
			Downstream dam and spillway	*490
		Murray Brook	Confluence with Oneida Lake	*373
			Approximately 1,435' upstream of West Lake Street	*420
			Upstream of dam	*476
		West Branch	Confluence with Fish Creek	*406
		Fish Creek	Upstream County Route No. 69	*417
			Approximately 1.5 miles downstream of Factory Street	*440
			Confluence of Halstead Creek	*462
		Oneida Lake	Confluence with Erie Canal	*373
		Erie Canal	Confluence with Fish Creek	*373
Maps available for inspection at the Town Hall, Route 49, Vienna, New York.				
New York	Warrensburg, town, Warren County (Docket No. FEMA-6535).	Hudson River	Upstream of State Route 418	*618
			Approximately 15,000' upstream of State Route 418	*635
			Approximately 25,000' upstream of State Route 418	*658
			Potter Brook Road extended	*667
			Upstream corporate limits	*709
		Schroon River	Confluence with Hudson River	*618
			Upstream of pulp mill dam (breached)	*634
			Upstream of Milton Road	*649
			Upstream of New Street	*685
			Upstream of U.S. Route 9	*688
			Upstream of Interstate 87	*701
			Upstream of bridge at USGS gage	*712
			Upstream corporate limits	*734
Maps available for inspection at the Emerson Town Hall, Assessor's Office, Main Street, Warrensburg, New York.				
North Dakota	Dodge (city), Dunn County FEMA-6526	Spring Creek	Area approximately 200 feet north of the intersection of Central Avenue and Kemper Street.	*1,979
Maps available for inspection at Mayor's Office, City Hall, Main Street, Dodge, North Dakota.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
North Dakota	Dunn County (unincorporated areas) FEMA-6526	Spring Creek	Area approximately 50 feet south of the intersection of State Highway 200 and Burlington Northern Railroad, east of the city of Dodge.	*1,970
			Approximately 100 feet downstream of the confluence of North Creek and Spring Creek.	*2,060
			South side of State Highway 200 at the crossing of Spring Creek at the North end of Lake Ilo.	*2,196
		Alkali Creek	At the intersection of Creek and center of State Highway 200.	*2,072
Maps available for inspection at Dunn County Auditor's office, Manning, North Dakota.				
Ohio	(Uninc.) Monroe County (Docket No. FEMA-6527)	Ohio River	Downstream county boundary	*632
			Upstream county boundary	*646
		Sunfish Creek	Just upstream State Route 7	*642
			About 1.0 mile downstream State Route 78	*668
			Just upstream State Route 78	*680
			Just upstream Township Road 156	*722
			Just upstream State Route 26	*843
Maps available for inspection at the Monroe County Commissioner's Office, Monroe County Courthouse, Woodsfield, Ohio.				
Ohio	(V) Swanton, Fulton County (Docket No. FEMA-6527)	Ai Creek	At county boundary	*668
			About 1,750 feet upstream of Athletic Field Road	*680
		Tributary A	At county boundary	*664
			About 4,600 feet upstream of county boundary	*674
Maps available for inspection at the Village Hall, 219 Chestnut Street, Swanton, Ohio.				
Oklahoma	Unincorporated areas of Oklahoma County (FEMA-6527).	North Canadian River	Approximately 270 feet upstream of U.S. Highway 62	*1,073
			Approximately 2,400 feet upstream of Triple XXX Road	*1,099
			Just downstream of northeast 78th Street (Wilshire Boulevard).	*1,103
			Approximately 300 feet upstream of northeast 36th Street.	*1,154
		Deep Fork	Approximately 300 feet downstream of Hiwassee Road.	*945
		Cowbell Creek	Just upstream of the city of Edmond corporate limits	*1,052
		Peavine Creek	Just upstream of the city of Edmond corporate limits	*1,070
		Chisholm Creek	Approximately 400 feet upstream of Waterloo Road (248th Street.	*1,013
			Approximately 1,200 feet upstream of Sorghum Mill Road.	*1,027
			Approximately 300 feet downstream of Coffee Creek Road.	*1,030
		Chisholm Creek tributary 1	Approximately 1,400 feet upstream of confluence with Chisholm Creek.	*1,029
		Bluff Creek	Just upstream of northwest 192d Street	*1,036
			Approximately 260 feet upstream of northwest 178th Street.	*1,044
			Approximately 400 feet downstream of northwest 164th S. Street.	*1,057
		Deer Creek	Approximately 680 feet upstream of Waterloo Road (Northwest 248th Street).	*1,007
			Approximately 670 feet upstream of Coffee Creek Road (Northwest 220th Street).	*1,019
			Approximately 670 feet upstream of MacArthur Boulevard.	*1,041
			Approximately 130 feet upstream of Rockwell Avenue	*1,051
			Approximately 370 feet upstream of Council Road	*1,061
		Deer Creek tributary 1	Approximately 50 feet upstream of Covell Road	*1,031
		Deer Creek tributary 2	Just downstream of Danforth Road (Northwest 192d Street).	*1,050
		Walnut Creek	Approximately 150 feet downstream of northwest 164th Street.	*1,067
Maps available for inspection at County Engineer's Office, Room 119, Oklahoma County Courthouse, Oklahoma City, Oklahoma 73102.				
Pennsylvania	Langhorne Manor, borough, Bucks County (Docket No. FEMA-6526).	Chub Run	Downstream corporate limits	*82
			Upstream of Dam No. 1	*117
			Downstream of Dam No. 2	*152
			Upstream corporate limits	*196
Maps available for inspection at the Borough Building, Langhorne Manor, Pennsylvania.				
Pennsylvania	Warwick, township, Chester County (Docket No. FEMA-6535).	French Creek	County Park Road	*293
			Ridge Road (State Route 23 (upstream side)	*307
			Conrail (upstream side)	*418
			Approximately 90 feet downstream of Trythall Road	*446
Maps available for inspection at the Office of Edward Fowler, Keen and Company, Routes 23 and 345, Warwick, Pennsylvania.				
South Carolina	Georgetown City, Georgetown County (Docket No. FEMA-6525).	Winyah Bay	South Bay Street 500 feet bayward of its intersection with Mulberry Street.	*16
			South Bay Street, 350 feet bayward of its intersection with Olive Street.	*16

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			South Bay Street, 100 feet bayward of its intersection with Hill Street.	*16
			Oak Street, 200 feet bayward of its intersection with Martin Street.	*16
			Greenwich at its intersection with Prince Street	*16
			Helena Street, at its terminus	*15
			Mulberry Street, 500 feet bayward of its intersection with South Island Road.	*15
			William Street, 425 feet bayward of its intersection with South Island Road.	*15
			South Bay Street, 250 feet bayward of its intersection with Ive Street.	*15
			South Bay Street at its intersection with Glenwood Street.	*15
			Martin Street, 205 feet bayward of its intersection with Oak Street.	*15
			South Bay Street, 100 feet northeast of its intersection with Mulberry Street.	*13
			Bolick Street, at its intersection with Prince Street	*13
			Meeting Street, 50 feet bayward of its intersection with Duke Street.	*13
			South Bay Street, 500 feet southwest of its intersection with Birch Street.	*12
			South Bay Street, 150 feet bayward of its intersection with Olive Street.	*12
			Fraser Street, 450 feet northeast of its intersection with Parker Street.	*12
			Meeting Street, at its intersection with Highmarket Street.	*12
		Sampit River	Sampit River shoreline southwest of Front Street	*12
			Screven Street, at its intersection with Highmarket Street.	*11
			King Street, 100 feet northeast of its intersection with Front Street.	*11
			Duke Street, 100 feet southwest of its intersection with Cleland Street.	*11
		Pee Dee River	Landgrave Street, 150 feet east of its intersection with Huger Drive.	*11
			Grimes Street, 150 feet east of its intersection with Landgrave Street.	*11
		Whites Creek	Seaboard Street, 150 feet southwest of its intersection with Prince Street.	*11
Maps are available for inspection at the Office of the Mayor, City Hall, Georgetown, South Carolina.				
South Carolina	Georgetown County (Docket No. FEMA-6524)	Atlantic Ocean	Southern tip of Cedar Island	*22
			South-central section of Cedar Island	*20
			Winyah Bay, west of Malady Bush Island	*20
			Georgetown-Horry county line	*19
			Murrell's Inlet	*19
			Huntington Beach State Park	*19
			Litchfield Beach, seaward of dune line	*19
			Midway Inlet	*19
			Pawley's Island, at Atlantic Avenue and dune line	*19
			Debordieu Colony, seaward of dune line	*19
			North Inlet	*19
			Winyah Bay entrance	*19
			Allston Creek Parsonage Creek	*18
			Old Man Creek, Town Creek, Bass Hole Bay	*18
			Northern tip of Marsh Islands	*18
			North shoreline of Cat Island	*18
			Jones Creek-Cottonpatch Creek	*18
			Goat Island in the Santee River	*18
			Southern tip of Crane Island	*18
			Main Creek	*17
			Oaks Creek, west of Litchfield Beach	*17
			Debidue Creek, south of Luvan Way	*17
			Clubhouse Creek and Mackenzie Beach Road	*17
			Island Creek, inland of Pawley's Island	*17
			Debidue Creek	*17
			Estherville Minim Creek Canal and South Island Road	*17
			Mosquito Creek	*17
			Pleasant Creek, at North Santee River	*17
			South Island at North Santee Bay	*17
			Georgetown-Horry County line	*16
			Atlantic Avenue at Seward Street, Pawley's Island	*16
			South causeway Pawley's Island	*16
			Georgetown-Horry County line	*15
			Litchfield development east of U.S. Rt. 17	*15
			Litchfield Boulevard at Sportsman Boulevard	*15
			MacKenzie Beach Road at U.S. Route 17	*15
			Georgetown-Horry County line	*14
			Brookgreen Drive at Seaview Loop	*14
			Boyle Road at Parker Avenue	*14
			Boyle Road at Lake-shore Drive	*14
			Norris Drive at Parker Boulevard	*14
			Luvan Way at Lafayette Boulevard	*14
			Pioneer Court at Lafayette Boulevard	*14
		Winyah Bay	Rabbit Island	*16
			Bay shoreline area south of city of Georgetown	*16

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Area immediately south of city of Georgetown	*15
			Bay shoreline area in southern part of Waccamaw Neck.	*14
		Waccamaw River	Immediately upstream of U.S. Route 17 Bridge	*13
			Point approximately 2,000 feet upstream of U.S. Route 17 Bridge.	*12
			Near confluence with Schooner Creek	*10
			At confluence with Thoroughfare Creek	*9
			Near confluence with Dull Tree Creek	*8
			Confluence with Cowhouse Creek	*7
			At Georgetown-Horry County line	*7
		Sampit River	West of city of Georgetown	*11
		N. Santee River	Immediately upstream of U.S. Route 17-701 Bridge	*11
			Approximately 300 feet upstream of U.S. Route 17-701 Bridge.	*10
			Approximately 9,000 feet upstream of U.S. Route 17-701 Bridge.	*9
		S. Santee River	Immediately upstream of the U.S. Route 17-701 Bridge.	*11
			Approximately 4,000 feet upstream of the U.S. Route 17-701 Bridge.	*10
			Approximately 10,000 feet upstream of the U.S. Route 17-701 Bridge.	*9
		White's Creek	West of City of Georgetown	*11
Maps are available for inspection at the Office of the Chairman, Georgetown County Council, County Courthouse, Georgetown, South Carolina.				
South Carolina	(Uninc.) Horry County (Docket No. FEMA-6492)	Atlantic Ocean	Singleton Lake at Lake Arrowhead Road Bridge	*13
			Town of Briarcliffe Acres southern corporate limits inland.	*13
			Mouth of Little River	*13
			Intersection of Stanley Drive and 4th Street	*14
			Intersection of Woodview Lane and Dogwood Drive at Long Bay Estates.	*14
			City of Myrtle Beach southern corporate limits at State Route 73.	*14
			Northern county boundary	*14
			Intersection of Stanley Drive and 2d Street	*15
			Intersection of Seabreeze Drive and Rainbow Drive	*15
			Town of Surfside Beach southern corporate limits at Melody Lane and Lakeside Drive intersection.	*15
			Town of Surfside Beach northern corporate limits at 17th Avenue North and Dogwood Drive North intersection.	*15
			Approximately 800 feet seaward of Elizabeth Drive and Cypress Avenue intersection along Cypress Avenue.	*16
			Approximately 150 feet seaward of Hawes Avenue and Wacaman Drive intersection along Hawes Avenue (extended).	*16
			Intersection of Ocean Boulevard and Dogwood Drive at Long Bay Estates.	*16
			Approximately 300 feet seaward of Hawes Avenue and Wacaman Drive intersection along Hawes Avenue (extended).	*18
			Approximately 150 feet seaward of Melogy Lane and South Ocean Boulevard intersection along Melody Lane (extended).	*18
			Mouth of Singleton Swash	*20
			Town of Briarcliffe Acres southern corporate limits at shoreline.	*20
			Mouth of White Point Creek	*20
			Approximately 400 feet seaward of Hawes Avenue and Wacaman Drive intersection along Hawes Avenue (extended).	*22
			Approximately 400 feet seaward of Melody Lane and South Ocean Boulevard intersection along Melody Lane (extended).	*22
			Approximately 400 feet seaward of 17th Avenue North and North Ocean Boulevard intersection along 17th Avenue North (extended).	*22
			Approximately 400 feet seaward of Ocean Boulevard and Dogwood Drive intersection along Dogwood Drive (extended) at Long Bay Estates.	*22
		Waccamaw River	Southern county boundary	*7
			Bull Creek	*7
			Old River	*7
			Peachtree Landing	*7
			Pitch Landing	*8
			U.S. Route 501 Bridge upstream	*12
			State Route 544 Bridge upstream	*14
			5,000 feet upstream of State Route 544 Bridge	*15
		Kingston Lake Swamp	State Route 905 Bridge	*14
			Confluence with Crab Tree Swamp	*14
		Little River	At mouth	*13
			At Mullet Creek	*13
		Intracoastal Waterway	Interstate Route 501 Bridge	*7
			State Route 544 Bridge	*7
			At confluence of Waccamaw River	*7
			Sea Mountain Highway Bridge	*10

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Town of North Myrtle Beach southern corporate limits	*11
Maps available for inspection at the Horry County Courthouse, P.O. Box 677, Conway, South Carolina.				
Tennessee	City of Gatlinburg, Sevier County (FEMA-6526)	West prong Little Pigeon River	Just upstream of Old Treatment Plant Road	*1,239
			Just downstream of Laurel Avenue	*1,260
			Just upstream of Long Branch Road	*1,323
		Dudley Creek	Just upstream of Dudley Creek Road	*1,256
			Just downstream of State Highway 73	*1,329
			Just upstream of Grimes Road (extended)	*1,504
		Roaring Fork Creek	Just upstream of U.S. Highway 441	*1,272
			Just downstream of State Highway 73	*1,364
		Baskins Creek	Just downstream of Bishop Lane	*1,310
			Just upstream of Stephen Drive	*1,346
		Le Conte Creek	Just upstream of State Highway 73 and U.S. Highway 441.	*1,339
			Approximately 100 feet upstream of Asbury Lane	*1,499
Maps available for inspection at City Planners Office, City Hall, 175 Airport Road, Gatlinburg, Tennessee 37738.				
Texas	City of Alice, Jims Wells County (FEMA-6401)	San Diego Creek	Just upstream of Texas Boulevard	*198
			Just upstream of U.S Highway 281	*215
		Lattas Creek	Just downstream of South Texas Boulevard	*195
			Just downstream of South Reynold Street	*200
			Just downstream of U.S. Highway 281	*207
		Lattas Creek tributary	Just upstream of U.S. Highway 281	*205
			Just downstream of South Golf Street	*212
		San Fernando Creek tributary	Just downstream of Airport Road	*186
		Chiltipin Creek	Just upstream of Lake Alice Dam	*199
		Recasa De Enmedio	Just downstream of North Texas Boulevard	*190
Maps available for inspection at City Manager's Office, City Hall, 500 East Main Street, Alice, Texas 78332.				
Texas	Unincorporated areas of Bell County (FEMA-6527)	Big Elm Creek	Approximately 530 feet upstream of Big Elm Creek Road.	*410
			Approximately 600 feet upstream of State Highway 53	*478
			Approximately 110 feet downstream of F.M. 2086	*496
			Approximately 550 feet upstream of Bottoms Road	*561
			Approximately 320 feet upstream of Shiloh Road	*603
		Camp Creek	Approximately 440 feet upstream of Big Elm Creek Road.	*415
			Approximately 140 feet downstream of State Highway 53.	*464
			Approximately 100 feet upstream of FM 2904	*495
		Cyclone Branch	Just upstream of FM 964	*455
		Possum Creek	Approximately 480 feet downstream of State Highway 53.	*463
			Approximately 100 feet downstream of Possum Creek Road.	*492
		Possum Creek tributary No. 1	Approximately 380 feet upstream of Airville Road	*473
		Ratibor Branch	Just upstream of FM 2086 (downstream crossing)	*493
			Approximately 300 feet upstream of FM 2086 (upstream crossing).	*502
		Little Elm Creek	Approximately 400 feet upstream of Seaton South Road.	*459
			Approximately 80 feet upstream of FM 3117	*503
			Approximately 350 feet downstream of Little Flock East Road.	*542
			Approximately 270 feet upstream of Gun Club Road	*610
			Just upstream of Moore's Mill Road	*678
		Little Elm Creek tributary No. 1	Approximately 100 feet downstream of FM 3117	*492
			Approximately 150 feet upstream of Quail Trail	*546
		Williamson Creek	Just upstream of Little Flock Road	*561
		Little Elm Creek tributary No. 2	Approximately 170 feet upstream of Old U.S. Highway 81.	*667
		Cottonwood Creek	Approximately 440 feet upstream of Mockingbird Road	*481
			Approximately 300 feet upstream of FM 2086	*536
			Just upstream of Gun Club Road	*636
			Just upstream of Interstate Highway 35	*731
		Pecan Creek	Just upstream of Berger Road (downstream crossing)	*541
			Just downstream of Pecan Road	*613
			Approximately 150 feet upstream of Quail Run	*669
		Kings Branch	Approximately 1,000 feet upstream of confluence with Big Elm Creek.	*616
		Kings Branch tributary No. 2	Approximately 300 feet upstream of the western corporate limits of the city of Troy.	*717
		South Elm Creek	Approximately 100 feet downsteam of FM 2184	*418
			Approximately 300 feet upstream of Hunt Hill Road	*476
			Approximately 230 feet downstream of Highland School Road.	*519
		South Elm Creek tributary No. 1	Approximately 1,450 feet upstream of confluence with South Elm Creek.	*465
		Nolan Creek	Just upstream of Backstrum Crossing	*592
			Approximately 100 feet upstream of FM 93	*601
			Approximately 200 feet upstream of confluence of Nolanville tributary.	*667
		Nolan Creek tributary No. 1	Approximately 80 feet upstream of the city of Belton corporate limits.	*556
		Nolan Creek tributary No. 2	Just downstream of Dog Ridge Road	*601
		North Nolan Creek	Approximately 240 feet upstream of Atchison-Topeka & Santa Fe Railway.	*598

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 290 feet upstream of FM 439	*606
		Nolanville tributary	Approximately 170 feet downstream of FM 439	*734
		Little Nolan Creek	Just upstream of East Trimmer Road	*831
			Approximately 140 feet downstream of West Trimmer Road.	*903
		Little Nolan Creek tributary No. 2	Just upstream of Elms Road	*838
			Approximately 80 feet upstream of Onion Road	*847
			Approximately 130 feet downstream of West Trimmer Road.	*894
		Little River	Just upstream of Sunshine Road	*420
			Approximately 1,350 feet upstream of State Highway 95.	*445
		Sypert Branch tributary No. 1	Just downstream of FM 2184	*487
		Runnells Creek	Just downstream of Volvo Road	*434
			Approximately 250 feet upstream of Missouri-Kansas-Texas Railroad.	*473
		Willow Creek	Just downstream of State Highway 95	*454
		Boggy Creek	Approximately 250 feet downstream of FM 436	*453
			Just downstream of FM 93	*563
		Boggy Creek tributary No. 1	Approximately 150 feet upstream of Missouri-Kansas-Texas Railroad.	*469
		Leon River	Approximately 150 feet downstream of FM 93	*476
			Approximately 200 feet downstream of the back toe of Belton Dam.	*502
		Fryers Creek	Approximately 160 feet upstream of Forrester Road	*482
			Approximately 150 feet upstream of Hartrick Bluff Road.	*567
		Fryers Creek tributary No. 1	Just upstream of Belton Railroad	*556
			Approximately 70 feet upstream of FM 1741	*565
		Bird Creek	Approximately 450 feet upstream of Shallow Ford Road (downstream crossing).	*479
			Just upstream of Nugent Avenue	*697
		Bird Creek tributary No. 1	Approximately 800 feet upstream of confluence with Bird Creek.	*486
		Pepper Creek	Approximately 170 feet upstream of Go-Cart Road	*512
			Approximately 100 feet downstream of Mouser Road	*683
		Pepper Creek tributary No. 1	Just upstream of private drive (approximately 1,970 feet upstream of confluence with Pepper Creek.	*552
		Cedar Creek	Approximately 100 feet upstream of Cedar Creek Road.	*636
			Just downstream of FM 1237	*657
			Just upstream of Southerland Road	*701
		Lampasas River	Approximately 270 feet downstream of FM 1123	*465
			Approximately 150 feet downstream of the back toe of Stillhouse Hollow Dam.	*524
			Just upstream of Stillhouse Hollow Dam (Stillhouse Hollow Lake).	*642
			Approximately 100 feet upstream of Stillman Valley Road.	*669
			Approximately 350 feet upstream of Maxdale Road	*732
		Mitchell Branch	Approximately 100 feet upstream of FM 1123	*496
			Just upstream of Elm Grove Road	*560
		Darrs Creek	Approximately 150 feet upstream of confluence of Cathey Creek.	*455
			Just downstream of Missouri-Kansas-Texas Railroad	*505
			Just upstream of Missouri-Kansas-Texas Railroad	*511
		Cathey Creek	Approximately 150 feet upstream of Missouri-Kansas-Texas Railroad.	*502
			Approximately 150 feet upstream of FM 1123	*540
		Donahoe Creek	Just downstream of Donahoe Road	*459
			Approximately 770 feet upstream of FM 487	*511
		Indian Creek	Approximately 450 feet upstream of Lutheran Church Road.	*505
			Just downstream of Missouri-Kansas-Texas Railroad	*541
		Town Branch	Approximately 140 feet upstream of Lutheran Church Road (downstream crossing).	*525
			Approximately 70 feet downstream of State Highway 95.	*571
		Salado Creek	Just upstream of FM 1123	*476
			Approximately 150 feet downstream of Armstrong Road.	*492
			Approximately 300 feet upstream of Amity East Road	*530
			Just upstream of South Ridge Road	*569
			Just upstream of FM 2843	646
		Smith Branch	Just upstream of Royal Road	*588
			Approximately 180 feet upstream of FM 2268	*634
		Salado Creek tributary No. 1	Approximately 380 feet upstream of Rose Lane	*584
			Just upstream of dam (Approximately 670 feet upstream of Rose Lane).	*595
		Salado Creek tributary No. 2	Approximately 150 feet upstream of confluence with Salado Creek tributary No. 1.	*559
		Salado Creek tributary No. 3	Approximately 120 feet downstream of Degummond Way.	*569
			Just downstream of FM 2268 (Main Street)	*606
		Campbell Branch	Just downstream of West Village Road	*607
		Salado Creek tributary No. 4	Approximately 150 feet downstream of dam (approximately 2,500 feet upstream of confluence with Salado Creek).	*603

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 1,000 feet upstream of dam (approximately 2,500 feet upstream of confluence with Salado Creek).	*626
			Just upstream of FM 2843	*656
		Knob Creek	Approximately 630 feet upstream of Read's Lake South Road.	*441
			Just downstream of Knob Creek Lane	*477
			Just upstream of FM 436	*485
			Just downstream of FM 93	*536
			Just upstream of U.S. Hisghway 190	*559
		Margie Lou Branch	Approximately 160 feet upstream of FM 436	*499
			Just upstream of Atchison-Topkea and Santa Fe Railway.	*512
			Approximately 270 feet downstream of FM 3117	*531
		Site tributary No. 7	Approximately 110 feet upstream of the city of Harker Heights northern corporate limits.	*736
		Belton Lake	Entire shoreline	*625
Maps available for inspection at County Judge's Office, Bell County Courthouse or County Engineer's Office, Bell County Courthouse Annex, Belton, Texas 76513.				
Texas	El Lago, city, Harris County (Docket No. FEMA-6431)	Clear Lake	The entire shoreline within community	*15
		Taylor Lake	Upstream of Nasa Road to upstream corporate limits	*11
Maps available for inspection at the City Hall, El Lago, Texas.				
Texas	Unincorporated areas of Kleberg County (FEMA-6527).	Tranquitas Creek	Just upstream of Sage Road	*70
		Escondido Creek	Just upstream of FM 1356	*48
		Santa Gertrudis Creek	Approximately 1,000 feet downstream of FM 1356	*35
		Gulf of Mexico/Laguna Madre/Baffin Bay/Alazan Bay.	Loyola Beach, just downstream of intersection of FM 1546 and Vattaman Creek.	*9
		Gulf of Mexico/Laguna Madre/Baffin Bay.	Padre Island, just east of State Highway 22	*9
			Padre Island, just west of State Highway 22	*8
Maps available for inspection at County Judge's Office, Kleberg County Courthouse, Kingsville, Texas 78363.				
Texas	Seabrook, city, Harris County (Docket No. FEMA-6431).	Galveston Bay	Entire shoreline of Galveston Bay within community	*18
			Eastern shoreline of Clear Lake	*13
			Entire shoreline of Clear Lake wittin community	*13
			Entire shoreline of Pine Gully upstream from Todville Road.	*12
			Confluence of Pine Gully with Galveston Bay	*18
		Clear Lake	Shoreline from western corporate limits to approximately 450 feet west of Elan Street (extended).	*15
			Shoreline from approximately 450 feet west of Elan Street (extended) to approximately 250 feet west of Ocean View Drive (extended).	*14
		Taylor Lake	Entire shoreline within community	*11
Maps available for inspection at the City Hall, Seabrook, Texas.				
Texas	Taylor Lake Village, city, Harris County (Docket No. FEMA-6431).	Taylor Lake	Entire shoreline within community	*11
		Forest Lake	Entire shoreline within community	*11
Maps available for inspection at the Taylor Lake Village City Hall, Seabrook, Texas.				
Texas	Unincorporated areas of Willacy County (FEMA-6527)	Gulf of Mexico/Laguna Madre	Third Street extended to Laguna Madre shoreline	*13
			Intersection of Canal Street and Fourth Street	*11
			Intersection of Legion Drive and Beach Drive	*10
			Intersection of Well Street and Navigation Drive	*9
Maps available for inspection at County Judge's Office, Willacy County Courthouse Annex, Raymondville, Texas 78580.				
Washington	Marysville (city), Snohomish County FEMA-6459	Snohomish River (Ebey Slough and Steamboat Slouth).	At center of the intersection of 1st Street and Interstate Highway 5.	*9
Maps available for inspection at City Hall, 514 Delta Avenue, Marysville, Washington.				
Wisconsin	(V) Bid Bend, Waukesha County (Docket No. FEMA-6535).	Fox River	Within the corporate limits	*780
Maps available for inspection at the Village President's Office, Village Hall, W230 S9175 Nevins Street, Big Bend, Wisconsin.				
Wisconsin	(V) Plover, Portage County (Docket No. FEMA-6535)	Wisconsin River	At downstream corporate limits	*1,046
			At upstream corporate limits	*1,047
Maps available for inspection at the Clerk's Office, Village Hall, 704 Washington Avenue, Plover, Wisconsin.				
Wisconsin	(V) Wyeville, Monroe County (Docket No. FEMA-6535).	South fork Lemonweir River	Just upstream of Chicago and North Western Railroad	*917
			About 0.55 mile upstream of Chicago and North Western Railroad.	*918
Maps available for inspection at the Village President's Office, Village Hall, P.O. Box #47, Wyeville, Wisconsin.				

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut	New Fairfield, town, Fairfield County (Docket No. FEMA-6247).	Ball Pond Brook	Confluence with Lake Candlewood	*444
			Upstream of Musket Ridge Road	*484
			Upstream of Saw Mill Road	*524
			Upstream of State Route 39	*582
			Upstream of Overbrook Drive	*615
			Upstream of Ball Pond Road	*647
			Upstream of Meadowbrook Road	*685
	Maps available for inspection at the First Selectman's Office, Town of New Fairfield, Town Hall, New Fairfield, Connecticut.			
Florida	Dunedin (city), Pinellas County (FEMA-6333)	Curlew Creek	150 feet south of intersection of Birdie Lane and Curlew Road.	*11
		Gulf of Mexico	Intersection of Lynhurst Street and Broadway	*11
			Intersection of Palm Boulevard and Edythe Drive	*12
			Intersection of Santa Barbara Drive and San Salvador Drive.	*13
		Shallow flooding	120 feet south of intersection of Franklin Way and Patriot Place.	*12
	Maps available for inspection at Engineering Department, Police Administration Building, 737 Louden Avenue, 2nd Floor, Dunedin, Florida.			
Iowa	(C) Maxwell, Story County (Docket No. FEMA-6499)	Indian Creek	Just downstream of State Highway 210	*865
			Just downstream of county road at upstream corporate limits.	*873
		Rock Creek	About 1,450 feet downstream of confluence of Rock Creek tributary.	*866
			Just downstream of county highway E63	*880
			Just upstream of county highway E63	*885
		Tributary to Rock Creek	At confluence with Rock Creek	*871
			About 600 feet upstream of county road	*877
	Maps available for inspection at City Hall, Maxwell, Iowa.			
New Jersey	Middletown township, Monmouth County (Docket No. FEMA-6356).	Swimming River	Downstream Newman Springs Road	*9
			Downstream northbound Lane Garden State Parkway	*12
			Downstream Normandy Road	*13
			Downstream Swimming River Road	*23
		Claypit Creek	Upstream Locust Avenue	*9
			Upstream Lakeside Avenue	*12
		McCleos Creek	Upstream Cooper Road	*9
			Upstream Whipporwill Valley Road	*19
			Downstream Chapel Hill Road	*29
			Upstream Sleepy Hollow Road	*40
		Poricy Brook	Downstream Conrail	*9
			At Navesink River Road	*25
			Downstream Normandy Road	*45
			Approximately 900 feet upstream of Middletown-Lincroft Road.	*64
		Nut Swamp Brook	Upstream private drive	*17
			Downstream Garden State Parkway	*27
			Upstream Middletown-Lincroft Road	*50
		Jumping Brook	Downstream West Front Street	*18
			Upstream Leedsville Drive	*40
			Approximately 1,150 feet upstream Middletown-Lincroft Road.	*46
		Mahoras Brook	Downstream corporate limits	*38
			Downstream Holland Road	*76
			Upstream corporate limits	*104
		Waackaack Creek	Downstream corporate limits	*22
			Downstream Cherry Tree Farm Road	*35
		Comptons Creek	Upstream Campbell Avenue	*12
			Downstream Leonardville Road	*14
		Town Brook	Downstream Park Avenue	*17
			Upstream Swartzel Drive	*31
			Downstream Spruce Drive	*48
		Raritan Bay	Entire shoreline within community	*18
		Navesink River	Shoreline from confluence with Shrewsbury River to Conover Lane extended.	*12
			Shoreline from Conover Lane extended to State Route 35.	*10
		Shrewsbury River	Entire shoreline within community	*12
	Maps available for inspection at the Town Hall, One Kings Highway, Middletown, New Jersey.			
New Jersey	Point Pleasant Beach, borough, Ocean County (Docket No. FEMA-6470).	Atlantic Ocean	Entire shoreline within community	*13
		Manasquan River	From 850 feet east of Ocean Avenue, extended, to Conrail bridge.	*10
			From Conrail bridge to Orchard Avenue, extended	*8
	Maps available for inspection at the Municipal Building, 416 New Jersey Avenue, Point Pleasant Beach, New Jersey.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: September 26, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-27400 Filed 10-11-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Rule to List

Panicum Carteri (Carter's Panicgrass) as an Endangered Species and Determine Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines one plant, *Panicum carteri* (Carter's panicgrass) to be an Endangered species and the island of Mokoli'i (Chinaman's Hat) to be its Critical Habitat. These actions are taken under the authority of the Endangered Species Act of 1973, as amended.

P. carteri is a small annual grass found only on Mokoli'i, in the City and County of Honolulu, Hawaii. The principal threats to this plant's survival are vandalism, including fire and trampling; and habitat disturbance resulting from recent unauthorized planting of coconut trees in the area in which it grows. The present rule is intended to provide *Panicum carteri* the protection available under the Act.

EFFECTIVE DATE: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

ADDRESS: The complete file for this rule is available for inspection by appointment, during regular business hours (7:45-4:15 p.m.), at the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia.

SUPPLEMENTARY INFORMATION:

Background

Panicum carteri is an annual grass whose population fluctuates considerably in numbers from year to year, apparently in response to the amount of annual winter rainfall. It is one of several endemic Hawaiian species of the large cosmopolitan genus *Panicum* that are adapted to dry lowland habitats. The earliest known collection of *P. carteri* was in 1917, but the species was not formally recognized as distinct until 1942. It is known from a small area of Mokoli'i island, near Kualoa Point, Oahu, and is only evident during and immediately after winter rains, when it grows from seed and flowers. The plants die back during the drier summer months and only seeds survive the period of drought. The largest number of individuals of this species ever observed during a rainy season was slightly over 200, while in some years observers have failed to find the species at all. This species and its close relatives on others of the Hawaiian islands are presumably all derived from a single ancestral stock and would be appropriate subjects for research on the differentiation and radiative evolution of island species.

The principal threats to the survival of *P. carteri* are trampling by visitors to Mokoli'i; vandalism, including the possibility of arson or accidental fire; and habitat disturbance associated with the recent unauthorized planting of coconut trees in the area in which the *Panicum* grows.

Section 12 of the Endangered Species Act of 1973 (the Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director of the U.S. Fish and Wildlife Service published notice in the **Federal Register** (40 FR 27823) of his acceptance of the the report of the Smithsonian Institution as a petition under Section 4(c)(2) of the Act. The plant species named in this petition were placed under review for addition to the list of Endangered and Threatened plants and, on June 16, 1976, the Director published a proposed rule (41 FR 24523) that would have listed some 1,700 such taxa as Endangered. This proposal was based on the Smithsonian petition as well as comments and other information received by the Service and the Smithsonian Institution. *Panicum carteri* was listed in House Document No. 94-51 and the 1975 notice as extinct, but was later rediscovered and included in the proposal.

The Endangered Species Act Amendments of 1978 subsequently required that any proposal to list a species be withdrawn unless made final within two years. A period of one year was allowed after the passage of the amendments on November 10, 1978, during which no proposals were to be withdrawn because of having passed a two-year deadline. On December 10, 1979 (44 FR 70796) the Service published a notice withdrawing that portion of the June 16, 1976, proposal that had not been the subject of final action, as well as four other expired proposals. A reproposal was published on January 30, 1981 (46 FR 9976), based on information available at the time of the 1976 proposal and information gathered between that time and the date of the proposal's withdrawal as well as a report of a visit to Mokoli'i indicating that the site from which *Panicum carteri* has been known was recently disturbed by the planting of coconut trees (Annabelle Takahashi, Letter dated October 8, 1980).

The comment period on this reproposal closed on April 30, 1981. It was subsequently reopened from July 29, 1982, until October 27, 1982, in order to allow the Service to accept further comments from State and local governments and other interested parties.

In the June 2, 1977, **Federal Register** (42 FR 32373, codified at 50 CFR 17.61, 17.62, and 17.63) the Service published a final rule detailing regulations to protect Endangered plant species. These established prohibitions and a permit procedure to grant exceptions to the prohibitions under certain conditions.

Summary of Comments and Recommendations

The proposed rule of January 30, 1981 (46 FR 9976), invited comment from all interested parties that might contribute to the formulation of a final rule. All comments received between the time of publication of the proposal and April 30, 1981, have been considered and are summarized below. Comments received between July 29, 1982, and October 27, 1982, are also treated.

In his original comment, the Governor of Hawaii agreed that *Panicum carteri* is in need of protection, citing the need for control of rodents and encroaching exotic vegetation on Mokoli'i, as well as for controls on human access to the island. He expressed the opinion that

propagation and transplant of the species will enable its range to be expanded on Mokoli'i and elsewhere on Oahu. He concluded, however, that listing of the species as Endangered is unnecessary because a coordinated effort for the species' protection will be able to ensure its survival. In an additional comment after reopening of the comment period, the Governor continued to oppose listing, citing recent restrictions on human access to Mokoli'i and continued plans to propagate and relocate the species. The Service believes that the very precarious situation of this species, acknowledged by the Governor, warrants its listing. After the species is listed, the Service would be authorized to coordinate and participate in recovery activities. The Act is primarily concerned with the maintenance of species within their native habitats, rather than their protection through transplantation outside native range. Even granting that transplant might eventually provide valuable insurance for a species known from an extremely small native population, no successful reproduction of transplanted *P. carteri* has taken place and the ultimate success of any such actions remains highly speculative. The absence of this species from areas adjacent to its present range on Mokoli'i suggests that long-term maintenance outside its small known range may not be feasible. If transplant is demonstrated to be possible, it should be recognized that this species should not be relocated to habitat within or adjacent to the range of any related species of *Panicum* because of the possibility of hybridization that could alter the gene pools of both species. While acknowledging the probable benefit to *P. carteri* of recent actions to restrict human use of Mokoli'i, the Service believes that threats to the species from unauthorized visitation and the competitive and predatory effects of exotic organisms are such that the species' listing is warranted.

In her original comment, the Mayor of Honolulu recommended that the species not be listed or Critical Habitat be designated because of the possible adverse effect on the species as a result of calling attention to its occurence and because of the possibility of vandalism to its habitat if any attempt were made to restrict public access to Mokoli'i.

The Mayor did, however, indicate concern for the species' protection and indicated that the City and County of Honolulu will cooperate with the State and others in an effort to propagate the species. In further comments after reopening of the comment period, the Mayor again opposed listing, also citing recent restrictions on human activity on Mokoli'i and the probability of the species being propagated and transplanted.

As noted above, the service believes that recent restrictions on public access to Mokoli'i may contribute to the conservation of *P. carteri*, but that other threats to the species' survival continue to warrant its listing. As also noted above, the potential for propagating this species and the efficacy of a program of transplantation remain open to speculation. The Service appreciates the difficulty of balancing the need to identify a sensitive resource with the possible danger of exposing it to vandalism or other disturbance. It should be noted that the designation of MoKoli'i as Critical Habitat for Carter's panicgrass does not automatically or necessarily limit public access to the island. Critical Habitat has significance only insofar as Federal agencies might be involved in modification of the island. No such Federal agency actions are anticipated in the present case. Nevertheless, the Act requires that Critical Habitat be specified to the maximum extent prudent when a species is proposed for listing. It is in order to comply with this provision of law, rather than to affect any known Federal activity, that Critical Habitat was proposd for the *Panicum*. Given that the listing and designation of Critical Habitat do not impose any burden on the public that is likely to provoke vandalism, and inasmuch as the local authorities have now imposed use restrictions in the absence of such a determination, the Service believes that the survival of the species is best served by listing and finds the designation of Critical Habitat to be prudent in this case.

The Department of General Planning of the city and county of Honolulu commented that the designation of Mokoli'i as Critical Habitat * * * "would be consistent with the City's General Plan policies and objectives."

Dr. Douglas Rayner of the South Carolina Wildlife and Marine Resources Department indicated concern with several aspects of the proposal. He commented that the documentation in the proposed rule was "meager" and failed to indicate that a status review had been conducted for the species, or whether there had been any search for additional populations. He questioned whether any reexamination had been made of the species' taxonomy. He also requested that the source of information regarding annual population fluctuations and the unique features of the species' present habitat that limit its distribution and requested clarification concerning the actual, rather than potential, effects of the recent planting of coconut trees within the species' habitat. Dr. Rayner's concerns are addressed below:

Adequacy of Status Information

The proposed rule inadvertently failed to refer specifically to a detailed status report on the species prepared by Service personnel and available on request to interested parties. It was included however, in the administrative file, which was open for public inspection, and the information contained in the report was discussed generally in the proposed rule. The complete file is available from the Service at the Office of Endangered Species (see "ADDRESSES" above). This report is summarized in part above in SUPPLEMENTARY INFORMATION.

Possible Existence of Additional Populations

The lowland flora of Oahu is relatively well-known and the Service is reasonably sure that no additional populations of this species exist. Such extreme endemism, which would be very unusual in a continental species, is in fact common among Hawaiian plants, many of which are known only from small isolated populations. This is, in fact, one of the principal reasons that such a high percentage (±40%) of native Hawaiian plants are extinct, Endangered, Threatened, or candidates for listing.

Taxonomic Status

Although no recent taxonomic study has been made of the group to which *Panicum carteri* belongs, it has been recognized as a distinct species by students of the Hawaiian flora since its description in 1942 (e.g., St. John 1973). The Service sees no reason to question its validity as a distinct species.

Source of Information on Population Fluctuation

Several estimates of population size have been made for *P. carteri*. E. Y. Hosaka, who described it originally, found only 12 individuals in 1941. In 1976, about 24 individuals were found, and, in the exceptionally wet year of 1978, 207 were found. Because it was not recorded between 1941 and 1976, the species had been believed to be extinct, although no detailed records exist of attempts to relocate it in the intervening time. The 1976 and 1978 records are provided by Dr. Derral Herbst and referred to in the status review mentioned above.

Uniqueness of Habitat

There is nothing obviously unique about the small habitat in which this species occurs, but the fact that it has persisted only in one very small area for at least the past 40 years suggests that it may depend upon some factor, or combination of factors, present in the area but not fully understood at present. It should be noted that such instances of extreme endemism without obvious habitat uniqueness are rather common among the Hawaiian flora.

Impact of Coconut Planting

The ultimate consequences of the recent planting of coconut palms in the habitat of this species cannot presently be predicted with any certainty. It appears that soil excavated for the planting was spread over the area and that this may either inhibit the growth of *P. carteri* or encourage the establishment of other, exotic, species such as *Digitaria adscendens* (Henry's crabgrass) as suggested by another commenter, Mr. Keith Woolliams. Further monitoring of the site, particularly during the rainy season, will be necessary to estimate the magnitude of effects.

Letters from Mr. Keith Woolliams, Director of Waimea Arboretum & Botanical Garden, Haleiwa, Hawaii, particularly expressed concern that the coconut planting would adversely affect *P. carteri* by encouraging the growth of disturbance-tolerant exotic grasses.

Three additional comments generally supported listing of the species, without providing further details concerning its status.

A public meeting was held concerning the proposed rule on March 5, 1981, at the Kahalu'u Elementary School in Kaneohe, Hawaii. This meeting was attended by representatives of the Service, the Hawaii State Department of Land and Natural Resources, and three private citizens. No additional information or comments on the proposal were brought forward at the meeting.

Conclusion

After a thorough review and consideration of all available information, the Service has determined that *Panicum carteri* (Carter's panicgrass) is in danger of becoming extinct throughout all of its range due to one or more of the factors described in Section 4(a) of the Act. These factors and their application to the status of this species are discussed below.

A. *Present or threatened destruction, modification, or curtailment of habitat or range*—*Panicum carteri* occurs only on Mokoli'i, or Chinaman's Hat, Island in Honolulu County, Hawaii. This is a part of Kualoa Regional Park. Although the master development plan for the park designates Mokoli'i as a wildlife sanctuary, it will be difficult to control access to the island. The island can be reached by wading during low tide and by small boats at other times. As the development plans are implemented and more people are attracted to the park, it is virtually inevitable that traffic will become heavier on Mokoli'i. The entire population of the species ranges along a foot trail. Although the effect of pedestrian traffic on the species is not known, some deterioration of the environment with a concomitant effect on the species can be anticipated. A report received by the Service (Annabelle Takahashi, letter dated October 8, 1980) indicates that recent unauthorized planting of coconut trees on Mokoli'i may have had a severe impact on the area from which *Panicum carteri* is known.

B. *Overutilization for commercial, recreational, scientific, or educational purposes*—Does not apply to this species.

C. *Disease or Predation*—None known.

D. *Inadequacy of existing regulatory mechanisms*—Although Mokoli'i is a designated wildlife sanctuary, it is difficult to restrict access to the island.

E. *Other natural or manmade factors affecting continued existence*—The small number of individuals and their limited distribution must be considered a threat to the species' continued existence. A single fire or act of vandalism could severely deplete or destroy the one known population.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Critical Habitat of *Panicum carteri* includes the entire island of Mokoli'i (approximately 4 acres), although presently the plant only occurs in two restricted portions of the island. Because of the small size of Mokoli'i, activities anywhere on the island could be significant to the conservation of this species. As an example, a fire originating virtually anywhere on the island during drought conditions might spread to the area in which the *Panicum* grows. Therefore, the Service believes the entire island to be an area essential to the conservation of the species.

The precise constituent elements of this habitat upon which *Panicum carteri* depends for its continued survival are presently unknown, but may include exposure to strong sunlight; low rainfall; exposure to sea spray; and presence of gravelly, basalt-derived soil. Ability to withstand such relatively harsh conditions may allow *P. carteri* to compete successfully with other plant species within its limited habitat.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any designation of Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency activities, through Section 7 of the Act.

Actions that would result in direct adverse effects on the Critical Habitat include setting of fires on the island and trampling of the portion of the island that actually supports the population of *Panicum carteri*. Any action that contributed to increased human visitation of Mokoli'i could be expected to contribute indirectly to such adverse modification.

Because of the lack of Federal involvement in the area of Critical Habitat, no direct consequences are foreseen as a result of such designation. Federal recognition that the island is essential to the conservation of *Panicum carteri*, however, may tend to reinforce the City and County of Honolulu's compatible designation of the area as a wildlife sanctuary.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis for the present designation to serve as a basis for considering the possible exclusion of certain portions of the proposed area from Critical Habitat designation in order to avoid undesirable impacts that such designation might have. On the

basis of this analysis, the Service believes designation of Mokoli'i island as Critical Habitat for *Panicum carteri* to be without significant economic or other impacts in the foreseeable future. Designation as Critical Habitat places restrictions only on activities in which there is involvement of a Federal agency, and no such activities are known to be taking place or planned on Mokoli'i. In consideration of this analysis and the conservation needs of *Panicum carteri*, the entire area proposed is determined to be Critical Habitat in the present rule.

Available Conservation Measures

In addition to those discussed above, the effects of the present rule include, but are not necessarily limited to, the following: The Act and implementing regulations published in the 50 CFR 17.61 set forth a series of general prohibitions and exceptions that apply to all Endangered plant species, and are summarized below.

With respect to *Panicum carteri* all prohibitions of section 9(a)(2) of the Act, as implemented by § 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell this species or offer it for sale in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. Taking of Endangered plants is prohibited only when it occurs on land under Federal control and is intended to reduce such plants to possession. The Act and § 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

Section 7(a) of the Act also requires that Federal agencies carry out programs for the conservation of Endangered and Threatened species and that they ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or destroy or adversely modify the Critical Habitat of such species. A procedure is also established whereby particular Federal actions may be exempted from compliance with Section 7(a). Provisions for interagency cooperation in complying with Section 7(a) of the Act are codified at 50 CFR Part 402.

The Service will also review the status of this species to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendices to that Convention or whether it should be considered under other appropriate international agreements.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this rule. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours (7:45–4:15 p.m.). This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102 (2)(C) of the National Environmental Policy Act of 1969 and 40 CFR Parts 1500–1508.

Note.—The Department of the Interior has determined that the present designation of Critical Habitat is not a major rule and does not require the preparation of a regulatory analysis under Executive Order 12291. The Department has also determined, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601), that the rule will not have a significant economic effect on a substantial number of small entities. Due to the nature of the location and the species, no significant effect upon a substantial number of small entities is known, anticipated, or in fact possible. This finding was made as a result of staff discussions and the analysis of data provided by the City and County of Honolulu.

References

Herbst, D. 1978. Unpublished status report on *Panicum carteri* Hosaka.

Hosaka, E. Y. 1942. A new Hawaiian *Panicum* (Gramineae). Occ. Paps., B. P. Bishop Museum 17:67–69.

Park Engineering, Inc. 1972. Master Development Plan—Kualoa Regional Park, for the City and County of Honolulu, Department of Parks and Recreation. St. John, H. 1973.

List and Summary of the Flowering Plants in the Hawaiian Islands. Pacific Tropical Botanical Garden, Lawai.

Authors

The primary authors of this rule are Dr. Derral Herbst, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850 (808/546–5615) and Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—[AMENDED]

Accordingly, Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. The authority citation for Part 17 is as follows:

Authority.—Pub. L. 93–205, 87 Stat. 884; Pub. L. 96–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1241; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

2. Section 17.12 (h) is amended by adding, in alphabetical order by family and genus, the following plant species:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

PLANTS

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	* *	*		*		*
Panicum carteri	Carter's panicgrass	U.S.A. (HI)	E		17.96(a)	NA
* *	* *	*		*		*

§ 17.96 [Amended]

3. The Service also amends § 17.96(a) by adding the Critical Habitat of *Panicum carteri* alphabetically by family and genus as follows:

* * * * *

Family Poaceae: Carter's panicgrass (*Panicum carteri*) Hawaii: City and County of Honolulu: Entire island of Mokoli'i (see map).

Probable primary constituent elements include: Exposure to strong sunlight; low rainfall; exposure to sea spray; and presence of gravelly, basalt-derived soil.

* * * * *

CARTER'S PANICGRASS

Honolulu County, HAWAII



Dated: September 28, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-27967 Filed 10-11-83; 8:45 am]

BILLING CODE 4310-55-M

---

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Change the Status of the American Alligator in the State of Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is reclassifying the status of the American alligator (*Alligator mississippiensis*) throughout the State of Texas, where the species was classified as Endangered or Threatened, to Threatened due to Similarity of Appearance as provided for by the Endangered Species Act of 1973, as amended. This change is based on evidence that the species is no longer biologically Endangered or Threatened in Texas and has recovered from former low numbers in response to complete protection afforded by effective enforcement of laws and regulations by the State of Texas and the U.S. Fish and Wildlife Service. This action is a formal recognition by the Service of the biological recovery of the alligator in Texas. The State may now institute comprehensive management plans for the alligators on a statewide basis in accordance with Section 4(e) of the Endangered Species Act of 1973, as amended, and with the Service's special rule on Threatened American alligators (50 CFR 17.42(a)).

DATE: This rule becomes effective on November 14, 1983.

ADDRESS: The complete file for this rule is available for inspection during normal business hours by appointment at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service, 421 Gold Avenue, SW., P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972).

FOR FURTHER INFORMATION CONTACT: Mr. David Bowman, Region 2, Endangered Species staff (see **ADDRESS** above) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The population density of the American alligator (*Alligator mississippiensis*) in the United States varies in the Southeast. Its range includes all or parts of the States of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas.

The American alligator was first classified as Endangered throughout its range in 1967 because hunting and poaching had substantially reduced alligator numbers. Subsequently, in response to strict Federal and State protection, the alligator recovered rapidly in many parts of its range. Its recovery then enabled the Service to undertake the following reclassification actions: (1) Reclassification to Threatened due to Similarity of Appearance in three coastal parishes of Louisiana that reflected complete recovery (September 26, 1975—40 FR 44412); (2) reclassification to Threatened that reflected partial recovery in all of Florida and certain coastal areas of Georgia, Louisiana, South Carolina, and Texas (January 10, 1977—42 FR 2071); (3) reclassification to Threatened due to Similarity of Appearance, again reflecting complete recovery, in nine additional parishes of Louisiana (June 25, 1979—44 FR 37132); (4) elimination of the permit requirement for fabricators of alligator products from lawfully taken alligators, so long as the fabricators comply with the laws and regulations of, (a) the State in which the taking occurs, and (b) the State in which the sale occurs (November 25, 1980—45 FR 78153); and (5) reclassification to Threatened due to Similarity of Appearance throughout the State of Louisiana reflecting complete recovery of the species in the State (August 10, 1981—46 FR 40664).

Alligators in Texas have been studied by Crouch (1974), Smith (1975a,b; 1976a,b,c), Potter (1974, 1975, 1981), Dixon and Staton (1976) and Kroll (1976). Summaries of these studies were provided in the Service's proposed rule (47 FR 40196) to reclassify this species in Texas. The data accumulated by these university, State, and private biologists point to increased numbers of alligators in coastal marsh and inland habitats through increased nesting and nesting success. In addition, Service data indicate four National Wildlife Refuges along the Texas coast showed an increase in alligator populations during studies conducted from 1977 to 1979. Alligator populations doubled at Anahuac, Aransas, and Laguna Atascosa Refuges and slightly increased at the Brazoria Wildlife Refuge (Klett, pers. comm., 1981).

Based on a status report on the American alligator in Texas (Potter, 1981), the Texas Parks and Wildlife Department on January 29, 1981, petitioned the Fish and Wildlife Service to review the status of the American alligator in Texas.

Potter (1981) accumulated data on population parameters of Texas alligators by questionnaires, by aerial surveys of alligator nests, by night line-transect counts in marsh and inland waters, and by other means. Whereas Crouch's, Kroll's, and Dixon and Staton's studies were of short duration (1 to 2 years), Potter maintained annual counts of alligators by line-transects, aerial surveys, and survey questionnaires for 7 years (1975–1981). Potter (1981) indicated that the alligator populations in prime Texas habitat have doubled in the past 5 years, based upon a census technique supplied by Taylor (1980). He also noted that the number of nests per square mile in census areas increased from 1.95 in 1976–78, to 4.05 per square mile in 1979–80. Furthermore, recent surveys indicated that nest densities appear to be near maximum and population growth may have reached optimum proportions (Potter, 1981). This is consistent with recent data from Louisiana which indicate that the alligator population structure in Louisiana is stable and is limited by the support capability of the habitat;

consequently, no further significant increases in Louisiana alligator numbers can be expected (Taylor, 1980).

The Service has concluded that the best scientific data available indicate that the Texas population of American alligators has recovered and is no longer biologically Endangered or Threatened. Commercial data of a biological nature, which is also utilized in any determination of Threatened or Endangered status, is not available since no legal commerce in alligator products from Texas has occurred since 1973.

However, because of the similarity of appearance of Texas American alligator hides and parts to the appearance of hides and parts of other protected crocodilians, it is necessary to restrict commercial activities involving alligator specimens taken in Texas to ensure the conservation of other alligator populations, as well as other crocodilians that are Threatened or Endangered. Recent amendments to the Texas Parks and Wildlife Code, i.e., addition of Chapter 65, gives the Texas Parks and Wildlife Department authority to regulate the taking, possession, and sale of alligators or any part of an alligator. In addition, Section 4(e) of the Endangered Species Act authorizes the treatment of a species (or subspecies or group of wildlife in common spatial arrangement) as an Endangered or Threatened species even though it is not otherwise biologically threatened with extinction if it is found: (a) That the species so closely resembles in appearance an Endangered or Threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the Endangered or Threatened species; and (c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act. Therefore, although the Service believes the American alligator in Texas to be fully recovered biologically, it is being retained on the Federal list in the reclassified status of Threatened due to Similarity of Appearance, and any commercial trade in legally harvested alligators must be in conformance with the Service's special rule for American alligators found at 50 CFR Section 17.42(a).

American alligators in Texas are presently listed as Threatened or Endangered; thus, commercial take of alligators in Texas under any condition is illegal. This has facilitated the recovery and conservation of alligators and other crocodilians. This final rule now permits regulated commercial harvest of alligators in Texas as part of the State's alligator management, in a manner authorized by Texas law and compatible with conservation of Endangered or Threatened populations of alligators and crocodilians and with the Service's special regulations on alligators (50 CFR 17.42(a)).

Summary of Comments and Recommendations

In the September 13, 1982, **Federal Register** proposed rule (47 FR 40197) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. A letter was sent to the Governor of Texas notifying him of the proposed rule and soliciting his comments and suggestions. Seventeen comments were received and are discussed below.

Seven individual citizens—six from Texas and one from Oklahoma—expressed support for the proposed reclassification based upon their personal experiences with locally abundant American alligators. A seventh Texas citizen was "oppposed to the issue of hunting alligators in the state [sic] of Texas" and did not express an opinion on the proposed reclassification specifically. Mr. Frank Collazo, Jr., Member of the Texas House of Representatives, expressed the opinion that there is need to manage American alligator populations in the coastal areas of Texas, especially in Jefferson County. Mr. Jerry H. Lacy commented that members of the Koon Kreek Klub of hunters and fishermen in Henderson County believed American alligators to be a nuisance and potential hazard in the club's lakes, and he urged allowing the State of Texas to manage American alligators in Texas. Mr. James Glass, President of the Wildlife Legislative Fund of America (WLFA), stated that the WLFA strongly supported the proposed reclassification because the American alligator had made a strong comeback in Texas and because the State should have authority to manage alligators within its borders. Mr. Howard S. Hoover, President of the Brazos River Club (BRC) stated that the 41 members of the BRC would strongly recommend harvest of alligators, but he did not express an opinion on the proposed reclassification specifically.

The Service received comments expressing opposition to the proposed reclassification from the Defenders of Wildlife, the New York Zoological Society, and from the American Society of Ichthyologists and Herpetologists. All three organizations expressed doubts that biological information presented in the **Federal Register** proposed rule adequately demonstrates recovery of the American alligator in Texas. Also, the three organizations urged approval of an alligator "management plan" before reclassification of the American alligator to Threatened due to Similarity of Appearance.

The Governor of Texas made the following comments:

> I wish to express my total support for this proposed action as it provides the necessary recognition that the Texas alligator population has recovered suitably and no longer fits the criteria for endangered or threatened classification.
>
> I would emphasize that the State of Texas has specifically recognized the alligator as an important natural resource and has mandated its appropriate management by statute as contained in Chapter 65, Parks and Wildlife Code. Under this authority, the Parks and Wildlife Department is developing a management and research program that will ensure the conservation of the alligator as a renewable resource in Texas.

The Service's response to the comments received on the proposed reclassification of the American alligator in Texas (from Threatened and Endangered to Threatened due to Similarity of Appearance) falls into four general categories.

First, individuals expressed concern about the potentially hazardous nature of locally abundant American alligators and the immediate need, in their opinions, for control of potentially dangerous or nuisance American alligators. The Service believes that the sightings of, and encounters with, alligators by Texans and their pets, livestock, etc. are a consequence of contemporaneously burgeoning human and American alligator populations in Texas. A comprehensive State management plan ought to help resolve these conflicts in the future.

Second, and closely associated with the first category of comments, individuals and organizations expressed the opinion that legal harvest through a hunting or trapping season on American alligators would benefit both people and the American alligator. With publication of this final rule, a regulated harvest of American alligators is again the prerogative of the State of Texas. The Service recognized in the proposed rule that the State would likely initiate a regulated harvest of American alligators as early as the Fall of 1983. The Service believes that such a harvest would be an appropriate management practice consistent with the present status of the American alligator in Texas and would, in fact, help reduce conflicts between

alligators and humans by allowing the State to implement, if is so chose, expanded nuisance alligator control programs or geographically targeted harvests that focus on areas of chronic conflicts.

Third, comments from three organizations expressed the opinion that a "management plan" should be prepared by the Texas Parks and Wildlife Department before reclassification of the American alligator in Texas occurs. The Endangered Species Act of 1973, as amended, clearly dictates that listing actions, including reclassification, shall be based solely on the biological status of the species being listed or reclassified. However, although a "management plan" is not required for reclassification, a procedure for regulating international commerce in American alligator hides, parts, or products is required under the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) prior to allowing legally taken hides, parts, or products of alligators to be exported. Use of Texas alligator parts and products in foreign commerce, therefore, will not be allowed under CITES requirements until such time as the State develops a tagging and marking program for harvested alligators, which is consistent with the Service's special regulations for American alligators (50 CFR 17.42(a)) and which meets CITES criteria.

The fourth type of comments indicated that the respondents thought there was not sufficient biological data to justify reclassification of the American alligator in Texas. Studies of individual populations of alligators in Texas have documented large increases in those populations (Crouch, 1974; Dixon and Staton, 1976; Kroll, 1976; Potter, 1974, 1975, 1981). The increases in those populations are considered to be representative of the American population in Texas as a whole. Therefore, the Service continues to believe that all biological evidence clearly indicates that the American alligator is neither threatened nor endangered within the borders of the State of Texas.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the American alligator throughout the State of Texas, where the species is now classified as Endangered or Threatened, should be reclassified as Threatened due to Similarity of Appearance. The Service's listing regulations (50 CFR 424.11(d)) state that a species may be removed from the Federal list of Threatened and Endangered species, if the best scientific and commercial data available to the Service substantiate that the species is neither Endangered nor Threatened for one or more of the following reasons:

(1) *Extinction:* Unless each individual of the listed species was previously identified and located, a sufficient period of time must be allowed before delisting to clearly ensure that the species is in fact extinct.

(2) Recovery of the species: The principal goal of the Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted if evidence shows that it is no longer Endangered or Threatened.

(3) Original data for classification in error: Subsequent investigations may produce data that show the best scientific or commercial data available at the time the species was listed were in error.

The American alligator in Texas is being removed from Federal listing by virtue of reason (2), recovery of the species. It is, however, being retained as a Threatened Species due to Similarity of Appearance because of the need to regulate commercial activities in products from American alligators from Texas in order to ensure continued law enforcement protection in those areas where the species is still considered as biologically Threatened or Endangered.

Section 4(a)(1) of the Endangered Species Act and implementing regulations (50 CFR 424.11(b)) set forth five factors which shall be used in determining the need for listing, reclassifying or removing a species from the Federal list of Threatened and Endangered species. These factors, and their application to the American alligator in Texas, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The total size of alligator populations in Texas is influenced greatly by the amount of available aquatic or wetland habitats. Examples of these habitats are rivers, bayous, canals, lakes, ponds, marshes, and swamps. The amount of good American alligator wetlands in Texas was conservatively estimated by Potter (1981) from unfinished analysis of satellite photographs to be 1,086,720 acres (439,968 hectares); the total aquatic habitat suitable for American alligators in Texas could be as much as 3.7 million acres (1,497,976 hectares) made up of fresh, intermediate, and brackish waters. Taylor (1980) indicated nonmarsh, permanently flooded habitat in Louisiana with woody and herbaceous cover dominated by bald cypress and tupelo gum apparently produces higher densities of American alligators in many instances than do marshland habitats. This cypress-tupelo habitat type extends into and is common in southeastern Texas (Potter, 1981).

The estimated 9,649 miles of streams in historical American alligator range in Texas support American alligators to the extent permitted by the presence of oxbows and marshlands associated with the streams. Streams without adjacent, permanently inundated cypress-tupelo or marshland habitat areas constitute poor quality habitat and support insignificant numbers of American alligators. A minimum estimate of nonmarsh American alligator habitat in Texas consists of 736,000 acres (297,976 hectares) of all vegetation associations with permanent water levels, and 31,754 shoreline miles of private and public waters in the form of ponds and lakes (Potter, 1981).

Prime coastal American alligator habitat in the Chenier Plain was reduced by 20.0 percent during 1952–1974 (Gosselink *et al.*, 1979). However, permanently flooded cypress-tupelo association and open water acreages are changed slowly by water management practices.

The overall picture of statewide habitat is good, because much of the prime habitat is under State and Federal control and because water storage activities are increasing habitat availability (Potter, 1981). Therefore, habitat alteration and loss pose no serious threat to American alligator populations in Texas within the foreseeable future.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The commercial demand for products from American alligators, including hides, teeth, and meat, is high. This demand, and the harvest generated by the demand, were responsible for a decline in American alligators throughout their range in the 1950's and 1960's (with some exceptions, such as on sanctuaries and wildlife refuges). This decline was reversed by the following actions: (1) The State of Texas closed American alligator harvest seasons in 1969; (2) The Lacey Act was amended in 1969 to include control of interstate commerce in reptiles; (3) The Endangered Species Act was passed in 1973; (4) State and Federal authorities vigorously enforced these protective measures.

Taylor (1980) and Potter (1981) provide convincing evidence that under strict protection, the reproductive cabability of the species provides for rapid recovery.

Experience in Louisiana clearly documented the impact of controlled harvest on American alligators. A comparison between size-class frequencies found in nonmarsh night counts and hide measurements from harvested areas shows no statistical difference in population structure. Furthermore, a comparison of population structure from a series of time specific views (1975–80), shows no trend towards shrinkage or increase of adult/subadult size-class ratios, either of which would be indicative of populations moving away from stability. Since American alligator population in Texas is adjacent to that of Louisiana (very similar ecological parameters exist in the adjacent areas), much of the information from Texas (Potter, 1981) and from Louisiana (Chabreck, 1980; Taylor, 1980) applies equally to the populations of American alligators in both States. These data indicate American alligators are not being detrimentally affected by legal harvests in Louisiana marshlands. Some illegal taking undoubtedly continues to occur, but the State's and Service's law enforcement efforts have reduced this to insignificant levels. The inaccessibility of nonmarsh habitats further helps to protect the species in these areas (Kroll, 1976; Crouch, 1974; Potter, 1981).

C. *Disease or predation.* American alligators suffer various types of disease and predation, but these factors are not excessive and are not known to have hindered American alligator recovery.

D. *The inadequacy of existing regulatory mechanisms.* The following State and Federal laws and regulations adequately protect the American alligator in Texas: (a) Chapter 65 of the Texas Parks and Wildlife Code regulates harvest, possession, and sale of American alligators; (b) the 1969 amendment to the Lacey Act extends Federal law enforcement authority to include interstate movement of reptiles; (c) special rules promulgated by the Service for Threatened (due to Similarity of Appearance) American alligators govern commerce in alligator products; (d) the annual findings of the Scientific and Management Authorities of the Service govern the export of species, including American alligator, listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The success of efforts by State and Federal agencies to stop illegal activity involving American alligators is evidenced by the recovery of American alligator populations throughout the State of Texas.

E. *Other natural or manmade factors affecting its continued existence.* Although other factors occasionally may have an effect on some American alligators, e.g., freezes and flooding of nests, none of these factors are known to have limited recovery of the American alligator in Texas nor are they expected to become threatening factors in the future.

Effects of this Final Rule

This rule will change the status of the American alligator in Texas from Endangered or Threatened to a statewide status of Threatended due to Similarity of Appearance. The rule formally recognizes the biological recovery of the American alligator in Texas. This rule removes Federal agency responsibilities under Section 7 of the Endangered Species Act. Responsibility and authority for management and protection of the American alligator will revert to the State of Texas under recently enacted State statutes. No adverse effects to the status of this species are expected to occur as a result of this rule.

This rule gives the State an option to allow American alligator harvests in specified counties. The economic value of the American alligator resource under a sustained yield scheme may result in significant economic benefits to Texas trappers and others participating in the commercial process. The value of American alligators also may help reduce indiscriminate, illegal killing of American alligators. Harvests would be expected to increase the workloads of the personnel of Texas Parks and Wildlife Department, the Texas Department of Health, and the Service's Division of Law Enforcement. Conversely, the harvests would be expected to reduce the number of nuisance American alligator complaints which are increasing rapidly (Bill Brownlee, Texas Parks and Wildlife, pers. comm.) and result in a corresponding reduction in manpower commitments devoted to handling nuisance alligators. Local governments involved in catching and removing nuisance alligators would receive some relief if the number of larger, more dangerous alligators were reduced in areas with human-alligator conflicts.

Harvest of American alligators in Texas would create the potential for an increased volume of American alligator exports. The Service has previously expressed its concern about the effects of increased exports on Endangered crocodilians that occur in international trade. A determination by the Service (October 21, 1980–45 FR 69844) on this subject concluded that the export of American alligators taken during the 1980–81 season in Florida and the 1980 season in Louisiana was not detrimental to the survival of the American alligator or other Endangered crocodilians. The service will continue to review this possible impact and will take appropriate action, if evidence indicates that restrictions are warranted. International trade in American alligator products is presently allowed under the provisions of CITES, with certain restrictions in the form of licensing and permit requirements for buyers and tanners. Reclassification of the American alligator in Texas would not automatically allow use of hides, parts, and products from American alligators harvested there in international commerce. Once the State of Texas develops a "management plan" that spells out procedures for a controlled harvest that meets CITES criteria and is consistent with the Service's special regulations for American alligators, the export of American alligator parts and products will be allowed.

This action will not be an irreversible commitment on the part of the Service. The action is reversible and relisting would be possible should changes occur in management, habitat, or other factors which result in new threats to the species' recovery or recovery of crocodilians.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file in the Service's Regional Office of Endangered Species, 421 Gold S.W., Albuquerque, New Mexico, and may be examined by appointment during regular business hours. A determination has been made that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented 40 CFR Parts 1500–1508).

References

Chabreck, R.H. 1980. Status of the American alligator in Louisiana and in Baldwin and Mobile Counties, Alabama. Contract Report prepared for the Fish and Wildlife Service. Jackson, Mississippi. 72 pp.

Crouch, G.E. 1974. Population and habitat of the American alligator (an endangered species) in Texas. Sam Houston State Univ., Huntsville, Texas. Report: NSF Grant GY–11523. 170 pp.

Dixon, J.R., and M.S. Staton. 1976. Survivorship of alligators through their first year and one-half of life. Contract report prepared for the Fish and Wildlife Service.

Gosselink, J.G., C.L. Cordes, and J.W. Parsons. 1979. An ecological characterization study of the Chenier Plain coastal ecosystem of Louisiana and Texas. 3 vols. U.S. Fish and Wildlife Service, Office of Biological Services. FWS/OBS–78/9 through 78/11.

Kroll, J.C. 1976. A radiotelemetric study of movements and behavior of captive reared alligators (*Alligator mississippiensis*) released in East Texas. Contract report prepared for the Fish and Wildlife Service, Washington, D.C. 39 pp.

Potter, F.E., Jr. 1974. Population status of the American alligator in Texas. Mimeo. Texas Parks and Wildlife Dept. 3 pp.

Potter, F.E., Jr. 1975. American alligator study. Special Report, Texas Parks and Wildlife Dept. 24 pp.

Potter, F.E., Jr. 1981. Status of the American alligator in Texas. Special Report, Texas Parks and Wildlife Dept. 49 pp.

Smith, E.N. 1975a. Oxygen consumption, ventilation, and oxygen pulse of the American alligator during heating and cooling. Physiological Zoology 49(4):326–337.

Smith, E.N. 1975b. Thermoregulation of the American alligator, *Alligator mississippiensis*. Physiological Zoology 48(2):177–194.

Smith, E.N. 1976a. Heating and cooling rates of the American alligator, *Alligator mississippiensis*. Physiological Zoology 49(1):37–48.

Smith, E.N. 1976b. Cutaneous heat flow during heating and cooling in *Alligator mississippiensis*. American Journal of Physiology 230(5):1205–10.

Smith, E.N. 1976c. Leech infestation of the American alligator in Texas. Copeia 1976(4):842.

Taylor, D. 1980. An alligator population model and associated minimum population estimate for non-marsh alligator habitat in Louisiana. Mimeo. Louisiana Department of Wildlife and Fisheries, Monroe, Louisiana. 32 pp.

Author

The principal author of this rule is David Bowman, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, (505/766–3972), with technical collaboration by Dr. James Dixon, Texas A&M University, College Station, Texas 77840.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, fish, marine mammals, plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*)

§ 17.11 [Amended]

2. Amend § 17.11(h) by revising the entries for the American alligator, under "Reptiles," to read as follows:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Reptiles:							
Alligator, American	*Alligator mississippiensis*	Southeastern U.S.A.	Wherever found in wild except those areas where listed as threatened as set forth below.	E	1, 11, 51, 60, 111.	NA	NA.
Do.	do.	do.	U.S.A. (FL and certain areas of GA, SC).	T	20, 47, 51, 60, 111.	NA	17.42(a).
Do.	do.	do.	U.S.A. (LA, TX)	T (S/A)	11, 47, 51, 60, 111.	NA	17.42(a).
Do.	do.	do.	In captivity wherever found	T (S/A)	11, 47, 51, 111	NA	17.42(a).

§ 17.42 [Amended]

3. Paragraph (a)(1) of 17.42 is revised to read as follows:

* * * * *

(a) American alligator *(Alligator mississippiensis).*

(1) Definitions. For the purpose of this paragraph (a): "American alligator" shall mean any member of the species *Alligator mississippiensis,* whether alive or dead, and any part, product, egg, or offspring thereof occurring: (i) in captivity wherever found; (ii) in the wild wherever the species is listed under § 17.11 as Threatened by Similarity of Appearance (T[S/A]); or (iii) in the wild in Florida and in the coastal areas of Georgia and South Carolina, contained within the following boundaries: From Winyah Bay near Georgetown, South Carolina, west on U.S. Highway 17 to Georgetown; thence west and south on U.S. Alternate Highway 17 to junction with South Carolina State Highway 63 south of Walterboro, South Carolina; thence west on State Highway 63 to junction with U.S. Interstate Highway 95; thence south on U.S. Interstate Highway 95 (including incomplete portions) across the South Carolina-Georgia border to junction with U.S. Highway 82 in Liberty County, Georgia; thence southwest on U.S. Highway 82 to junction with U.S. Highway 84 at Waycross, Georgia; thence west on U.S. Highway 84 to the Alabama-Georgia border; thence south along this border to the Florida border and following the Florida border west and south to its termination at the Gulf of Mexico.

"Buyer" shall mean a person engaged in buying a raw, green, salted, crusted or otherwise untanned hide of an American alligator.

"Tanner" shall mean a person engaged in processing a raw, green, salted, or crusted hide of an American alligator into leather.

* * * * *

Dated: September 26, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-27666 Filed 10-11-83; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Removal of the Santa Barbara Song Sparrow From the List of Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Santa Barbara Song Sparrow (*Melospiza melodia graminea*) is removed from the List of Endangered and Threatened Wildlife because of extinction.

EFFECTIVE DATE: This rule is effective on November 14, 1983.

ADDRESS: Comments and data may be mailed to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 Northeast Multnomah Street, Portland, Oregon 97232 (503/231–6131).

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, Endangered Species Specialist, Regional Office, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 Northeast Multnomah Street, Portland, Oregon 97232 (503/231–6131).

SUPPLEMENTARY INFORMATION:

Background

In the August 9, 1982, **Federal Register** (47 FR 34436) the Santa Barbara Song Sparrow (*Melospiza melodia graminea*) was proposed for delisting under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). This subspecies of the song sparrow was known only from 2.6 km^2 (640 acres) Santa Barbara Island, Los Angeles County, California. This island is part of the Channel Islands National Monument. Since a 1959 fire which devastated most of the island, no Santa Barbara song sparrows have been observed. For the past decade regular visits have been made by qualified ornithologists as well as National Park Service naturalists (some of the latter have been living on the island for much of the past 5 years). The sparrows were a conspicuous part of the avifauna, when present.

A single, negative comment to the proposal was received from one individual. The person objected on the grounds that insufficient data were on hand to make the determination that the sparrow was extinct. Other questions were raised concerning the motives behind the proposal and whether the surveys were made by independent and qualified observers.

As indicated in the proposal, many efforts to find the bird on this tiny island have failed for the past 20 years. There is no benefit to the Service or any other agency in retaining this species on the Endangered species list.

The surveys were conducted by various professional ornithologists, some of whom were under contract with the Service. These contracts were to have surveys made of the endemic avifauna and were done as contracts because no Service field ornithologist was available for the lengthy surveys. The State of California and the National Park Service agree that the Santa Barbara song sparrow is extinct.

The Service, based upon all available information from Santa Barbara Island, concludes that this bird is extinct.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if it: (1) Becomes extinct, (2) recovers, or (3) if the original classification data were in error. A "sufficient period of time" must be allowed to clearly insure that a species has become extinct. The Service believes that 20 years of field observations looking for this conspicuous species on a small island is clearly sufficient to pronounce it extinct.

Effects of the Rule

The Santa Barbara song sparrow was classified as Endangered on June 4, 1973 (38 FR 14678). No Critical Habitat was designated. This action will merely acknowledge the species' extinction and remove it from protection under the Endangered Species Act of 1973, as amended. As there were no specific preservation or management programs in effect, there will be no impact on any agency or individuals.

National Environmental Policy Act

A Finding of No Significant Impact has been made based upon a Final Environmental Assessment prepared in conjunction with this rule. The assessment is on file in the Service's Regional Office (see Address above). This determination concluded that this is not a major Federal action which would affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 and implemented at 40 CFR Parts 1500–1508.

Author

The author of this rule is Jay M. Sheppard, Staff Ornithologist, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 703 (235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, and Plant/agriculture.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, the Service amends Part 17 of Title 50 of the Code of Federal Regulations as follows:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

§ 17.11 [Amended]

2. The entry for "Sparrow, Santa Barbara . . ." under BIRDS at 50 CFR 17.11(h) is removed in its entirety.

Dated: September 28, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-27868 Filed 10-11-83; 8:45 am]

BILLING CODE 4310-55-M

---

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Designation of Critical Habitat for the Kentucky Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Kentucky cave shrimp (*Palaemonias ganteri* Hay) to be an Endangered species and designates its Critical Habitat. This action is being taken because the only known population of this species occurs in Mammoth Cave National Park, where it faces the threat of contamination of the ground water supply to its habitat. Inadequate sewage treatment facilities in nearby communities and possible spills of toxic substances along local highways are the basis of this threat.

DATE: This rule becomes effective November 14, 1983.

ADDRESS: Questions concerning this action may be addressed to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Kentucky cave shrimp (*Palaemonias ganteri* Hay) is a crustacean of the family Atyidae. This species has been found only in the Flint-Mammoth Cave System within Mammoth Cave National Park in Kentucky. Its reduced eyes and lack of pigmentation indicate that the species has had a long history of subterranean existence. The Kentucky cave shrimp is one of only two known species of the genus *Palaemonias* and is one of only three existing species of its family found in North America north of Mexico.

On April 28, 1975, the Service published in the **Federal Register** (40 FR 18476–18477) a notice that it was reviewing the status of 57 species of freshwater crustaceans, including the

Kentucky cave shrimp. The Kentucky cave shrimp was proposed to be listed as a Threatened species on January 12, 1977 (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796) under a provision of the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of proposal or within 1 year after passage of the Amendments, whichever period was longer.

On March 28, 1980, the Service published a notice (45 FR 20502) announcing the acceptance of a petition submitted by Dr. Raymond W. Bouchard to list the Kentucky cave shrimp as an Endangered or Threatened species. By this action, the Service determined that the petition contained sufficient new evidence to repropose listing this species as Endangered or Threatened. The 1980 notice also solicited comments from interested persons having knowledge of this species, threats to the species, or possible impacts of listing. The Service proposed Endangered status and Critical Habitat for the Kentucky cave shrimp on October 17, 1980 (45 FR 68975) and a public meeting on the proposal was held on December 10, 1980, in Bowling Green, Kentucky. The National Park Service then proposed to undertake a study of the status, distribution, and life history of the Kentucky cave shrimp. The Service delayed final action on the listing proposal to allow time for the National Park Service study because the study could have provided information that would modify the final rule listing the shrimp and determining its Critical Habitat. The National Park Service selected Dr. John R. Holsinger and Mr. Arthur T. Leitheuser of Old Dominion University, Norfolk, Virginia, to carry out this study. These researchers have determined that the Kentucky cave shrimp inhabits streams in base (the lowest) level passages of the Flint-Mammoth Cave System within Mammoth Cave National Park (Holsinger and Leitheuser, 1982, 1983). They estimated the total population size for the species to be about 500 individuals. They have also presented evidence that individuals breed year-round and can reproduce outside of the quiet pool habitat where reproduction had been observed during earlier studies (Barr and Kuehne, 1971).

Holsinger and Leitheuser have discovered shrimp in areas outside of the proposed Critical Habitat of the Roaring River passage. These areas include Mystic River, Echo River, Styx River, Lake Lethe, Colossal River, and the Golden Triangle. All of these areas are within the cave systems of Mammoth Cave National Park. These additional areas are not being included in the present designation of Critical Habitat because there has not been sufficient opportunity for public comment on such an inclusion. These areas may be included in future proposals to revise Critical Habitat for the Kentucky cave shrimp. Although these additional areas are not being determined as Critical Habitat at this time, the present listing of the Kentucky cave shrimp as Endangered provides protection for all individuals of this species, whether or not they are within the designated Critical Habitat.

On July 23, 1983, Mr. Arthur Leitheuser entered Blue Spring in Hart County, Kentucky, and sighted two crustaceans that he presumed to be Kentucky cave shrimp. This habitat is located in an oil field where wells are still occasionally drilled. The Service is withholding recognition of this population as belonging to the same species as the Kentucky cave shrimp until individuals are collected and their taxonomic status can be determined. If this population is identified as consisting of Kentucky cave shrimp, it will receive protection as an Endangered species along with all other populations of this species as a result of the present rule.

The Service had been considering the designation of the Kentucky cave shrimp as a Threatened species rather than Endangered, as proposed, based on Mr. Leitheuser's evaluation that the species' population was stable. Since that time, Holsinger and Leitheuser have determined that cave faunas in the Mammoth Cave area have significantly declined over the last 10 years as a result of ground water pollution.

A public hearing on the proposal to list and designate Critical Habitat for the Kentucky cave shrimp was held at Mammoth Cave National Park, Kentucky, on June 28, 1983.

Summary of Comments and Recommendations

The testimony presented at the public meeting and the public hearing and all written comments received by August 22, 1983, are part of the public record and have been carefully considered in the drafting of this final rule. These written and oral comments are summarized in this section of the rule.

Representative William H. Natcher expressed concern that the listing of the Kentucky cave shrimp under the Act was for the purpose of removing Lock and Dam 6 on the Green River. Concerns about the possibility that listing of the shrimp would result in the removal of Lock and Dam 6 and the economic impacts that this removal would entail were expressed in comments by the Joint City-County Planning Commission of Barren County, the Barren Fiscal Court, the City of Cave City, the Barren River Area Development District, and Green River Boat Concession, Inc. The Office of the Chief of Engineers, Department of the Army, commented that the flooding impacts of Lock and Dam 6 on Mammoth Cave may be minimal. Comments that described the threat of Lock and Dam 6 to the shrimp were submitted by the National Speleological Society, the National Parks and Conservation Association, the Cave Research Foundation, and four individuals. One additonal individual commented that listing the shrimp and the status of Lock and Dam 6 should be regarded as separate issues, with each evaluated on its own merits. The Service responds that the listing of the shrimp is based on the best available scientific information on the status of the species. Although Lock Dam 6 probably eliminated some pool habitat of the shrimp when it was built in 1906, the coexistence of that structure and the shrimp from that time until now indicates that Lock and Dam 6 is not likely to jeopardize the continued existence of the species. Listing of the shrimp is therefore not likely to affect the operation of Lock and Dam 6. Moreover, the Service's determination of Endangered or Threatened status for a particular species must focus *solely* on the five criteria listed in section 4(a)(1) of the Act and the biological data relevant to those criteria; economic impacts are relevant to the designation of Critical Habitat, but not to the listing determination.

The Office of the Chief of Engineers commented that releases from reservoirs do not have a significant effect on the shrimp. The Barren River Area Development District commented that the listing of the shrimp may require regulation of discharges from these reservoirs. The National Speleological Society, the Cave Research Foundation, the Kentucky Nature Preserves Commission, and 13 individuals commented that unseasonal flooding from reservoir releases is a threat to the shrimp. If future study should establish that these releases may affect the shrimp, the U.S. Army Corps of Engineers would be required to consult with the Service under section 7(a)(2) of the Act on their release schedules.

Concerns that the listing of the shrimp would interfere with the development of sewage treatment facilities were

expressed in comments from the Joint City-County Planning Commission of Barren County, the City of Park City, the City of Cave City, and the Barren River Area Development District. The inadequacy or lack of sewage treatment facilities was cited as a threat to the shrimp in comments by the National Speleological Society, the National Parks and Conservation Association, the Kentucky Nature Preserves Commission, and 16 individuals. The U.S. Environmental Protection Agency (EPA) commented that development of sewage treatment facilities is consistent with protection of the shrimp under the Act. EPA also noted that the proposal of protective status for the shrimp was not anticipated to cause delays in the completion of the Environmental Impact Statement on wastewater facilities in the Mammoth Cave area. The Service agrees with EPA's comments and notes that although communities cannot be forced to develop treatment facilities under present laws or regulations, any development of such facilities would be viewed as favorable to the conservation of the shrimp.

The Kentucky Nature Preserves Commission supported the listing of the shrimp based on its limited range and abundance. Additional comments in support of listing were submitted by Kentucky Department of Fish and Wildlife Resources, the National Parks and Conservation Association, the National Speleological Society, the Cave Research Foundation, the Nashville Grotto of the National Speleological Society, the Environmental Council of Volusia County, and 23 individuals.

Comments stating that the available scientific data were not sufficient for listing were received from the Joint City-County Planning Commission of Barren County, the Barren Fiscal Court, the Hart County Fiscal Court, the Edmonson County Fiscal Court, the Hart County Planning Commission, the City of Park City, the City of Cave City, the Munfordville Chamber of Commerce, the Mammoth Cave National Park Association, the Horse Cave Chamber of Commerce, the Barren River Area Development District, the Hart County Bank and Trust Company, and four individuals. The Service responds that the intensive 2-year study of the Kentucky cave shrimp makes it one of the world's best known cave animals. Its very small population size, of about 500 individuals, and limited habitat make it vulnerable to extinction. These factors and the existence of threats of population of ground water supplying its habitat justify its designation as Endangered under the Act.

Comments from the Joint City-County Planning Commission of Barren County and the Barren River Area Development District stated that a decline in the population size of the shrimp had not been demonstrated. Green River Boat Concession, Inc. questioned whether the shrimp was extinct in a comment dated November 18, 1980. Following the collection of live shrimp a few days later, Green River Boat Concession, Inc. stated in a comment dated December 6, 1980, that no proof existed that the shrimp were near extinction. A discussion and comparison of present and past population sizes may be found in the "Factors Affecting the Species" section of this rule. The Service notes that species may qualify for listing in the absence of a demonstrated decline in population size if, as in the case of the shrimp, threats exist to the survival of the species.

The City of Cave City and City of Park City commented that the shrimp is more widespread than previously known and that other, unknown populations of the shrimp may exist. The Service responds that, although the National Park Service study has resulted in the discovery of some previously unknown habitat, the known range of the species is still very small. Repeated searches of numerous additional caves have located only one possible additional population. The Service notes that any additional populations that may exist would likely face the same threats as the known populations, and therefore any new discoveries would be unlikely to change the classification of the species under the Act.

The Joint City-County Planning Commission of Barren County and the City of Park City commented that the shrimp are more numerous now than in previous years. The Service responds that the sightings of more shrimp since the National Park Service study began is the result of more intensive searches and increased knowledge of their habitat. No increase in estimated population size has been noted during this period.

Comments opposing the listing on the basis of its economic effects were submitted by the Hart County Fiscal Court, the Joint City-County Planning Commission of Barren County, the Hart County Planning Commission, the Edmonson County Water District, the Barren River Area Development District, Green River Boat Concessions, Inc., the Munfordville Chamber of Commerce, and one individual. The Service responds that decisions on listing must be based on the best available scientific and commercial information on the species and not on economic considerations. Economic impacts must, however, be considered when designating Critical Habitat. The Service, however, has gathered and examined extensive data on the possible economic impacts of designating the shrimp's Critical Habitat and has found no such economic impacts.

Comments stating that the shrimp was sufficiently protected by the National Park Service were received from the hart County Fiscal Court, the Edmonson County Fiscal Court, the City of Park City, the Mammoth Cave National Park Association, the Barren River Area Development District, the Horse Cave Chamber of Commerce, and three individuals. The Service agrees that the National Park Service adequately protects this species from taking. The Service notes, however, that taking is not a major threat to this species and that the major threats to this species originate outside the park and beyond National Park Service control.

The Barren River Area Development District commented that the Service did not allow adequate time for the preparation of comments before and after the June 28, 1983, public hearing. The Service responds that the amount of advance notice of the hearing and the associated comment period exceeded those required by the Act and its implementing regulations. Ample opportunity for public participation was provided in this proceeding.

Comments opposing the listing and citing its negative impact on tourism and recreational use of Mammoth Cave National Park were received from the Edmonson County Water District, Green River Boat Concession, Inc., and one individual. The Service responds that listing the shrimp will have no effect on these activities. The shrimp's habitat is almost entirely in areas that are not used for regular public tours. A boat trip on Echo River is in an area occupied by shrimp, but the Service does not consider that activity harmful to the shrimp.

Green River Boat Concession, Inc. and 12 individuals commented that salt brine was introduced into the Green River in the early 1960's by oil drilling and that this pollution caused the decline in the shrimp population. The Service agrees that this could have had an adverse effect on the shrimp.

Hart County Bank and Trust Company commented that the public hearing on the listing was held "in an almost secretive fashion." The Service responds that the hearing was announced in advance in the Federal Register, announcements were placed in local

newspapers, a press release was issued, and the then-upcoming hearing was covered in news reports in the local media.

In their early comments on the proposal, the Cave Research Foundation, the National Parks and Conservation Association, and the National Speleological Society suggested that areas other than the originally proposed Roaring River passage be considered for inclusion in the Critical Habitat. The Service responds that there has not been sufficient opportunity for public comment on additional areas to include them in the Critical Habitat at this time. These areas may be included in future proposed revisions of Critical Habitat.

Two individuals commented on known incidents of pollution in caves in the Mammoth Cave area on how these incidents demonstrate the vulnerability of these cave habitats. The Service agrees with these individuals on the significance of these events.

One individual commented in favor of listing the shrimp on the basis that its rarity makes it prone to extinction.

One individual submitted life history data collected prior to 1967 on shrimp in cave pools.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.)* and regulations promulgated to implement listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments) set forth the procedures for adding species to the Federal list. A species may be determined to be an Endangered or a Threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Kentucky cave shrimp (*Palaemonias ganteri)* are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The entire known population consists of about 500 individuals in streams in base level cave passages within Mammoth Cave National Park. Holsinger and Leitheuser have searched 95 other localities in 37 caves and found only one possible additional population at Blue Spring in Hart County, Kentucky. Much of the habitat is newly discovered as shrimp habitat and therefore no long-term estimates of abundance are available for these areas. For other localities, comparisons of historical collections with the recent population estimates of Holsinger and Leitheuser provide the only possible indications of population trends. Fage (1931) reported collecting 25 shrimp from Styx River in 1928. The current estimated population size for Styx River is four individuals. Populations were intermittently studied and collections made of shrimp in the "shrimp pools" of the Roaring River passage from the discovery of the shrimp in 1901 until 1967. Only one shrimp has been seen in these pools during recent studies.

The Kentucky cave shrimp is threatened by contamination of the ground water flow to its habitat. Several nearby communities either have inadequate sewage treatment facilities or lack such facilities altogether (Environmental Protection Agency, 1981). The resulting contaminated ground water can enter the cave systems of Mammoth Cave National Park (Quinlan and Ewers, 1981). An additional potential threat is the entry into the ground water of contaminants from traffic accidents and roadside businesses. One incident in 1979 caused the death of aquatic cave organisms in a cave system that is connected to the Flint-Mammoth Cave System. In a 1980 incident, a truck carring toxic cyanide salts overturned on Interstate Highway 65, just south of Mammoth Cave National Park.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to this species.

C. *Disease or predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* National Park Sevice regulations are adequate to protect this species from taking. The threats to its habitat are from sources outside of the park over which the National Park Service has no control

The Commonwealth of Kentucky's Kentucky Nature Preserves Commission has determined this species to be Endangered in Kentucky. That designation, however, carries no legal protection.

E. *Other natural or manmade factors affecting its continued existence.* The very small estimated population size (500 individuals) of this species makes it especially vulnerable to extinction.

Critical Habitat

Critical Habitat as defined by section 3 of the Act and 50 CFR Part 424 means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Act requires that, at the time of listing, Critical Habitat be determined to the maximum extent prudent and determinable. Critical Habitat is being designated for the Kentucky cave shrimp to include the Roaring River passage of Mammoth Cave National Park. As described in the background section of this rule, additional areas known to contain shrimp populations may be included in future proposals to revise this species' Critical Habitat. The total designated Critical Habitat amounts to about 1 mile of cave passages.

The Critical Habitat consists of a stream in a base level cave passage. This stream is characterized by abundant quantities of organic matter and sediments of coarse silt and very coarse to very fine sand.

The activities that adversely affect Critical Habitat were described above under "Summary of Factors Affecting the Species."

The Service has examined all known ongoing or planned Federal activities that might affect this Critical Habitat and finds that none of these will be affected by this Critical Habitat designation. These activities are identified and discussed under "Summary of Comments and Recommendations."

Available Conservation Measures

Conservation measures provided to species listed as Endangered or Threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The protection required by Federal agencies and other prohibitions are discussed in detail below.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed

species. When a species is listed, section 7 requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize its continued existence or to adversely modify its Critical Habitat. If an adverse effect is expected the Federal agency must enter into consultation with the Service. The Service has examined all known or planned Federal activities that might affect Critical Habitat of the Kentucky cave shrimp and finds that none of these will be affected by this Critical Habitat designation.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all Endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce a listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this final rule. Based on this Environmental Assessment, a determination has been made that this is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

The Critical Habitat designation in this rule entails no recordkeeping requirements as defined by the Paperwork Reduction Act and will not have a significant economic effect on a substantial number of small entities as defined by the Regulatory Flexibility Act. This Critical Habitat is not a major rule under Executive Order 12291.

Author

The primary author of this rule is Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

References

Barr, T. C., Jr., and R. R. Kuehne. 1971. Ecological studies in the Mammoth Cave System of Kentucky II: The ecosystem. Ann. Speleologie 26(1):47–96.

Environmental Protection Agency. 1981. Final Environmental Impact Statement; Mammoth Cave Area; Kentucky; Wastewater Facilities. EPA 904/9–81–076. Atlanta.

Fage, L. 1931. Crustaces amphipodes et decopodes, pp. 361–374. *In:* C. Boliver and R. Jeannel (eds.) Biospeleologica LXI: Campagne Speologique dans l'Amerique du nord en 1928 (Premiere Serie). Archives de Zoologie Experimentale et General 71:293–499.

Hay, W.P. 1901. Two subterranean crustaceans from the United States. Proc. Biol. Soc. Washington 14:179–180.

Holsinger, J.R., and A.T. Leitheuser. 1982. Ecological Analysis of the Kentucky Cave Shrimp, *Palaemonias ganteri* Hay, Mammoth Cave National Park (Phase II). Report to National Park Service, Atlanta.

Holsinger, J.R., and A.T. Leitheuser. 1983. Ecological Analysis of the Kentucky Cave Shrimp, *Palaemonias ganteri* Hay, Mammoth Cave National Park (Phase III). Report to National Park Service, Atlanta.

Quinlan, J.F., and R.O. Ewers. 1981. Hydrogeology of the Mammoth Cave Region, Kentucky. pp. 457–495. *In:* T.G. Roberts (ed.). GSA Cincinnati 1981 Field Trip Guidebooks. American Geological Institute, Washington, D.C. VOL. III.

List of Subjects in 50 CFR Part 17

Endangered and Threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below.

1. The authority citation for part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h), Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended by adding the following entry alphabetically to the table under the heading "Crustaceans" as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Shrimp, Kentucky cave.	*Palaemonias ganteri*	U.S.A. (KY)	NA	E		17.95(h)	NA
*	*	*	*	*	*		*

3. It is further determined that § 17.95(h), Crustaceans, be amended by adding the Critical Habitat of the Kentucky cave shrimp as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) * * *

Kentucky Cave Shrimp (*Palaemonias ganteri*)

Kentucky, Edmonson County: The Roaring River passage of the Flint-Mammoth Cave System in Mammoth Cave National Park.



Known constituent elements include a stream in a base level cave passage with abundant organic material and sediments consisting of coarse silt and very coarse to very fine sand.

* * * * *

Dated: September 26, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-27680 Filed 10-11-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 30627-118]

Western Pacific Spiny Lobster Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: The Secretary of Commerce (Secretary) issued an emergency interim rule on July 11, 1983 (48 FR 31655) to change the specification of the required entryway openings for lobster traps. The intent of the rule is to allow a wider range of lobster trap designs in the spiny lobster fishery in the Northwestern Hawaiian Islands while still affording protection for the Hawaiian monk seal. This notice extends the effective date for that emergency interim rule to January 9, 1984, so that the Secretary may review and make effective an amendment of this fishery's management plan that would implement on a permanent basis the management measures of that emergency interim rule.

EFFECTIVE DATE: From October 11, 1983, until January 9, 1984.

FOR FURTHER INFORMATION CONTACT: James J. Morgan (National Marine Fisheries Service) 213-548-2518.

SUPPLEMENTARY INFORMATION: On July 11, 1983, an emergency interim rule to change the specification of the required entryway for lobster traps was published in the **Federal Register** (48 FR 31655). The rule is effective for 90 days, from July 6, 1983, to October 11, 1983. The action was the result of a unanimous vote of the Western Pacific Fishery Management Council (Council) and was nondiscretionary under section 305(e)(2)(A) of the Magnuson Fishery Conservation and Management Act (Management Act).

The Council has submitted Amendment 2 to the FMP which will implement on a permanent basis the management measures of that emergency interim rule. The notice of availability of the amendment was published in the **Federal Register** on September 28, 1983 (48 FR 43700).

The period required for public review and implementation of the amendment will extend beyond October 11, 1983; therefore, the emergency rule is extended for an additional 90 days, from October 11, 1983, to January 9, 1984, under the authority of section 305(e)(3)(B) of the Magnuson Act.

Other Matters

The Administrator of NOAA has concluded that an emergency continues to exist and the determinations set out in 48 FR 31655 under Executive Order 12291 and other applicable law apply to this extension of the emergency rule. For these reasons, the emergency provisions of section 8(a)(1) of Executive Order 12291 apply to this extension of the effective dates for the emergency interim regulations.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 681

Fish, Fisheries, Reporting requirements.

Dated: October 6, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-27729 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 198
Wednesday, October 12, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1131

[Docket No. AO-271-A24]

Milk in the Central Arizona Marketing Area; Decision on Proposed Amendments To Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision provides for a reduction in the pooling standard for a cooperative association's manufacturing plant and the adoption of provisions that would not pool milk received at pool plants from dairy farmers who are primarily associated with nonfederally regulated markets. Payments from pool proceeds would be made to producers who are primarily associated with this marketing area if a pool plant operator refuses to accept their milk and such milk is marketed by the dairy farmer directly to nonpool plants and is used for manufacturing purposes. The changes, which are based on industry proposals considered at a public hearing in November 1982, are necessary to reflect current marketing conditions and to assure orderly marketing in the Central Arizona marketing area.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding:

Notice of Hearing: Issued October 20, 1982; published October 25, 1982 (47 FR 47259).

Notice of Suspension: Issued April 27, 1983; published May 2, 1983 (48 FR 19699).

Recommended Decision: Issued June 28, 1983; published July 5, 1983 (48 FR 30641).

Notice of Suspension: Issued July 21, 1983; published July 26, 1983 (48 FR 33849).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Central Arizona marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Phoenix, Arizona, on November 9-10, 1982. Notice of such hearing was issued on October 20, 1982 (47 FR 47259).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Most parties subject to a milk order are considered to be a small business. No participants at the hearing testified about any potentially adverse impacts of the proposals on small businesses as a group.

Further, William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that the amendments adopted herein, which are based on the hearing record, will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers in the manner set forth later in this decision.

In their exceptions to the recommended decision, Jerome and Peggy La Salvia, who are nonmember producers stated that the procedure followed by the United States Department of Agriculture in considering the proposed amendments to the order failed to comply with the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* In particular, exceptors claimed that the Department failed to publish an initial Regulatory Flexibility Analysis which they believe is required by 5 U.S.C. 603.

The initial Regulatory Flexibility Analysis that is specified in 5 U.S.C. 603 is not required in this instance. The Regulatory Flexibility Act, in 5 U.S.C. 605(b), provides as follows:

> Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the **Federal Register**, at the time of publication of general notice of proposed rule-making for the rule or at the time of the publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

Exceptors allege also that Mr. Manley's certification that "this action will not have a significant economic impact on a substantial number of small entities" is incorrect. It is exceptors' opinion that there are a substantial number of small entities which will be economically affected if the proposed amendments are adopted.

The Department concurs with exceptors' conclusion that the proposed amendments would have an economic effect upon a substantial number of small entities (dairy farmers supplying the Central Arizona market and operators of processing plants). However, it is the Department's position that the economic effect upon the individual dairy farmers or processors would not be significant. Furthermore, the recommended decision is an economic analysis of the proposed amendments and takes into consideration the impact of such changes in regulation upon the dairy industry, including to the extent that the record permits the impact on small businesses. For the reasons previously set forth, exceptors' request that the recommended decision not be adopted until a "regulatory flexibility analysis" has been completed is denied.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Marketing Program Operations, on June 28, 1983, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exception thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

Index of Changes

(a) In Issue No. 1, "Pool plant requirements for a plant operated by a cooperative association," eleven paragraphs have been added at the end.

(b) In Issue No. 2, "A 'dairy farmer for other markets' provision," two paragraphs have been added at the end.

(c) In Issue No. 3, "Provisions providing for an 'associated producer'," three paragraphs are added at the end.

The material issues on the record of the hearing relate to:

1. Pool plant requirements for a manufacturing plant operated by a cooperative association;

2. A "dairy farmer for other markets" provision;

3. Provisions providing for an "associated producer"; and

4. The level of the Class I differential.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pool plant requirements for a plant operated by a cooperative association.* The pool plant definition should be modified to reduce the pooling standard for a milk manufacturing plant located in the marketing area that is operated by a cooperative association. Such plant should be a pool plant if 50 percent or more of the member producer milk of the cooperative association operating the plant is received at pool plants to other handlers during the current month or the previous 12-month period ending with the current month. The order presently provides for the pooling of such a plant on the basis of 65 percent or more of the member producer milk of the cooperative association being received at pool plants of other handlers.

The United Dairymen of Arizona (UDA), a cooperative association that markets in excess of 80 percent of the producer milk under the Central Arizona order, proposed the lower pooling standard that is adopted herein. The cooperative operates a manufacturing plant that is pooled under the order on the basis of the cooperative's total performance in supplying the fluid milk needs of distributing plants.

The cooperative's witness testified that a lower pooling standard is necessary because of a slow-down in the rate of increase in Class I sales and an increase in milk production. Also, a lower pooling standard is needed to accommodate the market's need for a higher level of reserve to accommodate seasonal variations in production and extreme variation in daily and weekly fluid milk requirements of distributing plants. The witness further testified that, in the absence of amendatory action, the cooperative association could continue to pool the milk of its members, but that costly and inefficient operational changes would have to be made in order to do so. The witness stated that the plant could be operated as a nonpool plant by receiving the milk of its members at such plant as milk diverted from pool plants. Also, the plant could be operated as a pool supply plant by meeting the order's requirement that a specified proportion of its receipts be shipped to pool distributing plants.

The proposal to reduce the pooling standard was supported by a handler who operates a distributing plant pooled under the order. A witness for the handler testified that the Central Arizona market had changed from a market with a tight supply of milk to a market with a continuing surplus. The witness further testified that UDA's manufacturing plant represents the only practical market clearing plant in the area. Consequently, the witness testified that a lowering of the pooling standard, which would allow the plant to continue to operate as a pool plant, would promote equity among producers and marketing efficiency.

Another handler who operates a pool distributing plant opposed the proposal to reduce the pooling standard. The witness testified that the proposal would promote the pooling of milk that is in excess of fluid milk needs and would result in a blend price reduction to all producers. The witness also testified that the increase in production in excess of fluid milk needs is the result of UDA practices to encourage additional production for manufacturing uses. In addition, the witness testified that it would be contrary to both local market needs and national policy to reduce the cost of the milk price support program, to accommodate the pooling of increased production for which there is no market. Also, the witness testified that proponent's testimony contending that a denial of the proposal would increase handling costs was not substantiated by record evidence.

A brief in opposition to the proposal was filed on behalf of a nonmember producer. The producer contends that the proposal would result in the pooling of milk that is in excess of fluid needs, thereby diluting the pool and the blend price payable to all producers. The producer argues that such action would be contrary to the intent of the Deputy Assistant Secretary's July 14, 1975 Partial Decision (40 FR 30087) concerning the same issue in this market (official notice was taken of such decision at the hearing). The producer contends that the pooling standard should be established at a level that would deter the pooling of milk which is in excess of that needed to balance the fluid milk needs of the market. The producer argues that adoption of the proposal would result in members of UDA receiving the blend price for milk that is surplus to market needs whereas he and other independent producers whose milk is shipped to UDA's plant for surplus disposal receive the Class III price. The producer contends that nonmember producers should receive the blend price for milk that is surplus to the needs of distributing plants as do members of UDA (this aspect of pricing the milk of producers that is in excess of supplies that handlers are willing to market is considered under another issue).

At the hearing, and in its brief, the State of Arizona objected to consideration of UDA's proposal unless it was considered in conjunction with a proposal to lower the pooling standard for a cooperative manufacturing plant that was submitted on behalf of the State of Arizona. The State's proposal, which was not included in the notice of hearing, would have conditioned the pooling of the plant upon the cooperative accepting all milk of nonmember producers that was eligible for fluid use and produced in the State of Arizona, unless the plant was filled to capacity with the milk of member producers that was produced in the State of Arizona. The proposal also would have required payment for such nonmember milk at the Central Arizona order blend price less: (1) transportation charges; (2) charges for additional checks for weights or tests necessitated prior to commingling said milk with member milk; (3) an administrative charge not to exceed the direct cost of administering the transaction; and (4) a reasonable balancing charge not to exceed the amount by which the Class III price exceeds the highest price at which the cooperative purchases milk that is not pooled under the order.

The State's proposal was appropriately denied inclusion in the notice of hearing since the proposal would have required the cooperative's manufacturing plant to accept milk from any dairy farmer who wanted to deliver milk to the cooperative. There is no authority in the Agricultural Marketing Agreement Act of 1937, as amended, to

establish an order provision that would require any handler, including a cooperative association, to purchase all or any part of the production of any dairy farmer. Furthermore, the proposal would have attempted to specify the price the cooperative association would have to pay to dairy farmers for milk received at its plant. This is in direct conflict with section 608c(5)(F) of the Act which specifies, in part, that nothing shall prevent a cooperative association from distributing the proceeds from its sales to its producers in accordance with the contract between the association and its producers, provided that the cooperative does not sell milk to handlers at less than class prices.

The State of Arizona's contention that the denial of the State's proposal precludes consideration of the lower pooling standard proposed by UDA is without merit. While the State was barred from presenting testimony on its initial proposal, the State was advised at the hearing by the Administrative Law Judge that it could submit modifications of UDA's proposal and offer testimony in support thereof or testify in favor of or in opposition to UDA's proposal to modify the standards for a pool balancing plant. The State's representative declined to accept any of the alternatives and held to his initial contention that testimony should not be taken on UDA's proposal unless the State's proposal was also considered.

Proponent cooperative's plant is located at Tempe, Arizona, and has facilities for processing milk into butter, nonfat dry milk and cheese. It is the only milk manufacturing plant in the State and as such it is the only practical outlet for the milk of its members and other dairy farmers that is in excess of the immediate processing requirements of distributing plants. The plant has been pooled under the order on the basis of at least 65 percent of UDA's member producer milk being received at pool plants of other handlers during the current month or the previous 12-month period ending with the current month. Operating the facility as a pool plant promotes various efficiencies in supplying the entire market. Milk from UDA member producers is transported directly from farms to fluid processing plants as required. Milk that is in excess of daily fluid processing plant needs is received at the manufacturing plant and continues to be producer milk under the order by virtue of its receipt at a pool plant. Such milk is then available for a limited period of time to supplement either the peak demand days of fluid processors or previously unanticipated processing demands. Milk is also separated so that skim milk is available to supplement fluid processing plant requirements. Milk not needed by fluid plants is processed into storable manufactured dairy products. In one way or another, any milk that is in excess of the needs of distributing plants backs up to UDA's facility, subject to the capacity of the plant. The plant operation thus serves an essential balancing function for the market.

Data presented at the hearing indicate that the cooperative's plant would not qualify as a pool plant beginning with February 1983. At such time, by making various alternative operational changes the cooperative could continue to pool the milk of member producers who have historically supplied the fluid milk needs of the market. For example, the plant could be operated as a nonpool plant with the milk of its members being received at such plant as milk diverted from pool plants. The milk would be pooled by virtue of its association with a pool plant but not as a result of its receipt at the cooperative's manufacturing plant as is currently the case. This method of operation is a reasonable alternative to the present method of operation, at least during the months of December through April when there are no limits to the quantities of milk that may be diverted to nonpool plants. However, beginning with May and extending through the month of November, diversions are limited to not more than 8 days' production of any producer. These limitations represent approximately 26 percent of monthly producer receipts and would require that about 74 percent of total receipts would have to be physically received at pool plants. In order to pool the total current milk supply under these provisions, milk in excess of fluid plant needs would nevertheless have to be received at such plants and then transferred to the cooperative's plant for surplus disposal. This would represent a totally inefficient and excessively costly method of operation.

Another approach available to the cooperative association under current order provisions would be to operate the manufacturing plant as a supply plant. In the month of February, when it was anticipated that the plant would first lose pooling status under the current method of operation, 20 percent of the manufacturing plant's receipts would have to be shipped to pool distributing plants. The 20 percent pooling standard for supply plants applies during the months of November through June. During July through October, 50 percent of a supply plant's receipts must be shipped to distributing plants to attain pool plant status. If such a plant meets these standards during each of the months of July through October, the plant can then be designated as a pool plant during each of the following months of November through June if written application for such status is made to the market administrator.

The marketing conditions that provide a basis for the current 65 percent pooling standard were last reviewed in the Deputy Assistant Secretary's July 1975 decision on this issue. The standard was adopted because it was determined that the market on an annual basis required a reserve milk supply amounting to 25–30 percent of producer receipts. A reserve supply of such amount represented 31 to 37.5 percent of the cooperative's member producer milk which indicated that on a yearly basis about 65 percent of the cooperative's member producer milk was required by other handlers.

In order for a market to be fully supplied at all times by local producers, a reserve milk supply is necessary because of fluctuations in the supply of and demand for fluid milk products. Due to the combined effects of seasonal variation in milk production and the seasonal and daily variation in the requirements of fluid milk handlers, the present pooling standard bsed on a 35 percent annual or monthly reserve requirement is no longer an appropriate measures of the amount of milk that needs to be associated with the cooperative's manufacuturing plant to fully supply the requirements of fluid milk handlers.

In 1981, milk production peaked during the months of March-May and dropped to a seasonal low during July and August. The high month of production (April) exceeded the low month of production (July) by approximately 20 percent, in terms of both average daily production of UDA member producers and daily average producer receipts pooled under the order. In terms of producer receipts, the seasonal range in 1981 was greater than that exhibited in 1975 when the high month (May) exceeded the low month (January) by about 15 percent.

In 1981, fluid milk demand as expressed by the daily average pounds of producer milk in Class I uses, was at its highest level during January, September and October and at its lowest level during June, July, and August. The highest sales month (October) exceeded the lowest month (June) by about 14 percent. In contrast, the range between the highest and lowest months in 1975 (October and June, respectively) was about 24 percent.

The amount of milk required by fluid milk plants varies significantly on a daily basis with most milk being received Monday-Friday and very little being received on weekends. Thus, if production is sufficient to meet the peak demand days, significant quantities of milk will be in excess of the requirements of bottling plants on other days. Such excess milk is recieved at the cooperative's manufacturing plant and constitutes a reserve supply of milk that is availale to meet the varying fluid milk requirements of distributing plants. The greater the range between highest and lowest processing days, the greater the reserve supply that must be received by the cooperative's manufacturing plant.

Average deliveries by UDA members to fluid bottling plants for each day of the week for each month of 1981 varied considerably. Receipts for the highest day of delivery during the week ranged from 186 percent of the lowest day in December to 306 percent of the lowest day in April and July. The record indicates also that during a number of days of the year, virtually all of the UDA's milk is delivered to bottling plants while on a number of days during even the highest delivery months UDA is required to handle through its manufacturing plant over 70 percent of its member milk.

In addition the seasonal variation in the processing requirements of distributing plants that are supplied by UDA, there are significant, unanticipated variations in production that affect the quantity of milk that must be received and processed by the cooperative's plant. For example, changes in temperature and humidity caused average daily production to decline by 14.3 percent between June 30 and July 15, 1982, and then, as the weather moderated, to increase gradually until August 15 to the June 30 level. production then dropped by 10 percent the week following August 15 and then increased during the next seven-day period by 11.5 percent.

The need to reduce the pooling standard is primarily a function of the change in the market's supply-demand relationship that has occurred over time, particularly since 1979. Significant increases in producer receipts relative to increases in the Class I use of producer milk have resulted in the need to handle an increasing quantity of milk that is in excess of the fluid milk needs of distributing plants. This is clearly indicated in the following statistics.

Fluid milk sales in the market, in terms of the amount of producer milk used in fluid milk products, increased each year from 1975 through 1981, with the total increase between these years approaching 30 percent, or about a 5 percent increase each year over the previous year. From 1979 to 1981, producer milk in Class I uses increased by 10 percent. However, during the first 9 months of 1982, Class I use was only about 1.3 percent above the corresponding period of 1981. The lower rate of increase indicated for the first 9 months of 1982 was attributed to general economic conditions and the unemployment rate, and was projected to continue through 1982.

Milk production, in terms of total producer receipts pooled under the order, increased by about 35 percent between 1975 and 1981. Most of the increase occurred from 1979 to 1981 when producer receipts increased by 23.4 percent. Also, during the first 9 months of 1982, producer receipts were up 6 percent from the corresponding period in 1981.

As a consequence of the increase in receipts relative to Class I sales, the Class I utilization percentage declined from 67 percent in 1979 to 62.7 percent in 1980 and 59.9 percent in 1981. Also, during each of the first 9 months of 1982, the percentage of producer milk in Class I uses was less than the Class I utilization percentage for the same month in 1981.

The change in the market's supply-demand relationship has resulted in a larger proportion of producer receipts being used to produce manufacturing dairy products (Class III). The proportion of producer milk in Class III uses increased from 19.2 percent in 1979 to 24.5 percent in 1980 and 28.5 percent in 1981. Also, during each of the first 9 months of 1982, the percentage of producer milk in Class III uses was greater than the Class III utilization percentage for the same month in 1981.

The lower pooling standard proposed by UDA is appropriate in view of the market's supply-demand relationship. By supplying at least 50 percent of its member milk supply to pool plants of other handlers, the association is exhibiting a substantial involvement in supplying the fluid milk needs of the market. This level of performance is also consistent with the performance levels for other plants (distributing plants and supply plants during parts of the year) as well as those adopted herein for certain categories of dairy farmers (associated producer and dairy farmer for other markets adopted in this decision). Also, in view of the seasonality of sales and producer receipts, individual monthly performance by the cooperative association could fall below 50 percent in some months. Consequently, the 50 percent performance standard should apply on either the previous 12-month period ending with the current month or the current month, as presently applied.

It is also noted that the existing pool supply plant provisions allow a cooperative to pool more milk than the pooling standard for a cooperative's manufacturing plant adopted herein. However, it is also obvious that if the cooperative were to operate the facility as a supply plant, certain efficiencies from the current method of operation would be lost in supplying the market. Rather than being moved directly from the farm to the fluid processing plant where it is needed, milk would first have to be physically received at the supply plant. The milk would then have to be reloaded and transferred to bottling plants. In addition to the unnecessary cost of unloading and reloading milk and the rerouting of the current farm to bottling plant transportation system, the quality of the milk supply would suffer from additional pumping and extension of the time between pick-up and final delivery. Under the circumstances, such an alternative pooling method is not a practical alternative to the current method which allows the cooperative to move a substantial proportion of its member milk directly to pool distributing plants.

Opponents of lower pooling standards contended that the current milk supplies resulted from UDA activities to seek additional supplies of milk for the purpose of enhancing its manufacturing plant's efficiency. They argued that the pooling of additional milk supplies should not be accommodated since such supplies are in excess of the reserve supplies needed to balance the fluid milk needs of the market.

There is no basis from which to conclude that UDA has through any activity encouraged the pooling of additional supplies of milk solely for manufacturing purposes. In fact, the cooperative has instituted various payment plans to provide a disincentive for its member producers to produce milk in excess of bases or quotas. In this manner the cooperative has tried to discourage a buildup of supplies over the seasonal requirements of bottling plants and the capacity of its manufacturing facility. The increase in the supply of milk over fluid milk needs is apparently a marketwide phenomenon resulting from the independent production decisions of all dairymen who have historically supplied the market. A failure to adjust the pooling standard in response to the change in the market supply-demand situation would result in a need for the cooperative to implement uneconomic

marketing practices to continue to pool the milk of producers who have historically supplied the market.

Jerome and Peggy La Salvia, nonmember producers, contend in their exceptions that the United States Department of Agriculture arbitrarily denied their proposed amendments to the order without conducting a hearing on the proposed amendments.

The only amendment proposed by the La Salvias that the Department denied for hearing was their proposed pool plant definition, which was identical to the one submitted by the State of Arizona. The proposed pool plant definition would condition the pooling of a cooperative association's plant upon the plant receiving the milk of nonmember producers whose facilities are located in the State of Arizona and would provide for payment for such milk at the central Arizona order blend price less transportation charges.

The proposed amendment was denied for hearing because the modification is not authorized under the Agricultural Marketing Agreement Act of 1937, as amended. In addition, exceptors and the State of Arizona were given an opportunity by the Administrative Law Judge, the presiding officer at the hearing, to suggest a modification of the pool plant provision proposed by UDA. Neither chose to do so at the hearing.

Exceptors cite as additional authority for their proposed amendment requiring UDA to take non-member milk, the antitrust laws of the United States. In this regard, exceptors rely upon the "Essential Facility" doctrine. It is their opinion that the Essential Facility doctrine mandates that where facilities cannot practicably be duplicated by would-be competitors, those possessing the facilities must share them with competitors on reasonable terms.

Such an argument falls outside the scope of milk order regulations. The statutory authority for orders provides no basis for requiring regulated handlers to receive milk from any dairy farmer who may wish to deliver milk to the handler. It should be noted that testimony at the hearing by the cooperative's representative indicated that the cooperative does accept the milk of nonmember producers if the plant has the capacity to handle such milk and pays for such milk on the same basis that it pays its member producers.

Exceptors argue, too, that the United States Supreme Court in *Brannan* vs. *Stark*, 342 U.S. 451 (1952) approved a market order provision requiring a cooperative's manufacturing plant to accept milk from nonmembers of the cooperative.

The provision in that particular case involved cooperative payments for marketwide services, a provision that is unique to the New York-New Jersey federal milk order. As a condition for receiving cooperative payments amounting to one cent per hundredweight for milk marketed by member producers, the cooperative must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for such acceptance of milk of its own members.

Exceptors also attempt to rely upon an Agreement of Settlement entered into by UDA with the State of Arizona after the close of the hearing as a basis for demonstrating that UDA is now obligated to accept nonmember milk.

The Agreement of Settlement is not a part of the record evidence of this hearing since it was signed after the close of the hearing. For this reason, no findings or conclusions are made regarding the agreement because the findings and conclusions set forth in the recommended decision and final decision must be based solely on the evidence in the record.

In any event, the agreement entered into by UDA and the State of Arizona represents a voluntary arrangement. The agreement, however, can not be made part of the order provisions unless there is authority under the act for such a provision. As pointed out previously, there is no authority for the amendment proposed by the La Salvias.

Exceptors argue, too, that while the AMA Act permits a cooperative to reblend the proceeds which it pays to its member producers, the Act provides no authority for exempting a cooperative from paying a nonmember the blend price for milk that is received by the cooperative and pooled under the order. If such interpretation were correct, it would mean that nonmembers, although relying upon the cooperative's plant for an outlet for milk, could not be required to bear any of the expenses of operating the cooperative's plant. From a practical standpoint, it is not logical to expect that an individual who has made an investment in plant facilities would have to receive less for his product when it is manufactured in such plant than one who has no investment in such plant.

2. *A "dairy farmer for other markets" provision.* The order should be revised to exclude from the producer definition any dairy farmer whose milk was received at a nonpool plant (except an other order plant) other than as a diversion by a handler from a pool plant unless 50 percent or more of the milk production from the same farm was producer milk under the Central Arizona order during the current month and each of the 2 immediately preceding months (or would have been producer milk in each of the 2 immediately preceding months except for the operation of this provision).

The "dairy farmer for other markets" provision was proposed by UDA. The cooperative proposed the adoption of such provision to assure that milk which is surplus to other markets does not become producer milk and thereby share in the marketwide proceeds for the Central Arizona market.

The cooperative also proposed that the provision not apply to a producer located in the marketing area in order to allow one of the largest producers on the Central Arizona market to pool that portion of his milk which is received at pool plants. This exclusion was considered necessary to provide pool status for this producer who delivers milk to nonpool plants on days when his handler refuses to accept his milk. The handler to whom the milk is committed by contract refuses to receive any milk in excess of the amount specified in the contract and also refuses to divert the milk to a nonpool plant for the handler's account. On those days when the producer's milk is refused by the handler, the producer often diverts milk for his own account. Such diverted milk is not pooled under the order and the producer realizes whatever price he negotiates with the nonpool plant.

The spokesman for State Dairy Association, Inc., objected to the "dairy farmer for other markets" provision as proposed by UDA. The State Dairy Association, Inc. representative indicated that three of its 140 California dairy farmer members started delivering milk to a Central Arizona pool plant on August 8, 1982. The milk of the three dairy farmers is shipped to the Central Arizona market twice each week. Such weekly shipments represent two days' production of each producer.

The representative of the three dairy farmers objected strenuously to the adoption of a provision that would exclude dairy farmers from becoming producers on the Central Arizona market solely on the basis that their farms were not located in the Central Arizona marketing area. The objector pointed out that none of the reserve milk supply associated with the milk production of the three California producers is pooled under the Central Arizona order. In such case, only the milk that is physically received at the Central Arizona pool plant is pooled under the Central Arizona order. He noted that usually the reserve milk supply associated with a supply source is also pooled in the market.

A pool plant operator objected to establishing different rules for dairy farmers based upon the state in which the farmer is located. The pool plant operator favored an alternative proposal which would provide that a dairy farmer with a prior association with the market would not be excluded as a "dairy farmer for other markets".

The pool plant representative testified that during the past 3 years there has been an ever increasing surplus of market grade milk in California due to an increase in milk production while Class I usage has been either stable or declining during such period. The representative testified that some California dairy farmers were informed that their total production on a monthly basis would not be accepted at California pool plants. Such producers have had to deliver milk that is in excess of the California pool plant's fluid needs to nonpool plant operators in California or in other states. According to the witness, dairy farmers have received returns as low as 6 or 7 dollars per hundredweight for such milk after deducting the cost of transporting milk from the farm to the plant.

A "dairy farmer for other markets" provision should be adopted in the Central Arizona order to assure that milk which is surplus to other markets does not become producer milk and thereby share in the marketwide proceeds for the Central Arizona market. Under the provisions adopted herein, milk received at a pool plant from a "dairy farmer for other markets" would be designated as other source milk and would be allocated to the extent possible to Class III milk. As such, this milk would be accounted for in a manner similar to receipts of fluid milk products from a producer-handler.

The record reveals that there is a need to provide safeguards against pooling California market milk which is either over-quota or over-base milk. Of the three California producers who supply the Central Arizona pool plant, two have State-issued quota for butterfat and solids-not-fat and one has no quota at all. The dairy farmer who has no State quota receives the California Class IV price for such milk due to the reblending practice of State Dairy Association, Inc. The other two dairy farmers receive a price higher than the Class IV price depending upon the amount of California quota and/or base milk that these dairy farmers possess. On occasion, some of the milk of the three producers that is shipped out of the Southern California area returns less than the Class IV price.

The intent of the "dairy farmer for other markets" provision is to safeguard producers regularly supplying the Central Arizona market from sharing their pool proceeds with other dairy farmers whose primary association is with another market and whose milk production on this market represents milk that is in excess of base or quota milk on another market. As previously noted, a marketing entity representing a group of California producers entered into an agreement with an Order 131 regulated handler to deliver milk beginning in August 1982 to the handler's plant two times per week. The milk shipments represented the milk production of three California producers (on several occasions the milk of a fourth producer was substituted for that of one of the three producers). The marketing entity for the three producers, State Dairy Association, is in a position to benefit on each hundredweight of milk that it ships to plants located outside of California. Under the California milk pooling plan, the 140 producers who make up the cooperative are treated as if they were one producer with one quota and one base. With regard to the milk marketed in Arizona by the cooperative, such shipments reduce the amount of over-quota and over-base milk that the association has under the California plan. Under the current order provisions, such milk can be marketed in Phoenix at the Central Arizona blend price f.o.b. the pool plant where the milk is received. After deducting a hauling cost approximating $1.25 per hundredweight, the California farmers receive a net price at their farm locations which exceeds the returns they could realize by delivering such milk to California processing plants.

The cooperative's proposal that the dairy farmer for other markets provision not apply to a dairy farmer whose farm is located in the Central Arizona marketing area should not be adopted. The adoption of such provision would discriminate against producers located outside the Central Arizona marketing area. Instead, the determination of whether a person is a dairy farmer for other markets should be based upon such person's degree of association with the Central Arizona market.

One of the proposals in the notice of hearing would have provided that any producer who had a 3-month association with this market would not be considered as a dairy farmer for other markets, while no testimony was offered in support of this particular proposal, the time element appears to be a reasonable basis for determining whether a producer has a sufficient association with this market that would warrant such person sharing in the pool proceeds on the volume of milk that the producer diverts for his account to nonpool plants for manufacturing use.

In addition to the length of time that a producer is associated with the market, a further requirement should be added to assure that a producer has a greater total association with this market relative to other markets that such producer may supply. A requirment that 50 percent or more of the monthly milk production of such person must be producer milk during the current month and each of the 2 immediately preceding months will provide assurance that the milk of the producer has a greater association with this market than any other market.

The "dairy farmer for other markets" provision is not intended to prevent a dairy farmer from obtaining the approval of a duly constituted regulatory agency for the production of milk for fluid consumption and becoming a producer on the Central Arizona market. A dairy farmer who wants to become a producer under the Central Arizona order and continue in such status would need to market his total milk production as producer milk during the first and second month that he delivers milk to this market. This degree of association is necessary to achieve and maintain producer status since, under the provisions adopted, any shipment of milk from the farm of the dairy farmer to a nonpool plant (except an other order plant) other than as a diversion by a handler from a pool plant would result in a dairy farmer for other markets status for such person. Then, during the third month and in all succeeding months, the dairy farmer would need to ship to the Central Arizona market at least 50 percent of his milk production from the same farm to continue to qualify as a producer. Similarly, a dairy farmer who fails to market during the current month at least 50 percent of his monthly milk production from the same farm as producer milk under the Central Arizona order would need to requalify as a producer during any subsequent month in the same manner as a dairy farmer who becomes a new producer.

The "dairy farmer for other markets" provision should not be implemented until two months have elapsed following the effective date of the amended order. This delay is necessary in order to provide dairy farmers with advance notice of the rules concerning their eligibility as producers under the amended order. In absence of such two-month delay, the determination of producer status for the first month the amended order was effective would be contingent upon whether a dairy farmer

had delivered 50 percent or more of his milk from the same farm as producer milk during the two months immediately preceding the effective date of the amended order.

Provision should also be made for accomodating a dairy farmer who wants to attain (or regain) producer status following the effective date of the amended order and such person is unable to market all of his milk as producer milk during an initial 2-month period. If the dairy farmer, except for the operation of this provision, would have been able to market as producer milk during each of the 2 months more than 50 percent of his total monthly production, such person would be a dairy farmer for other markets during the initial 2-month period. However, the dairy farmer would qualify as a producer during the month immediately following such 2-month period if more than 50 percent of his total monthly milk production is pooled under the Central Arizona order.

The provisions adopted herein are designed to accommodate the pooling of any dairy farmer who has a primary association with the Central Arizona market. Thus, in the event more than 50 percent of a dairy farmer's total monthly milk production is received at a nonpool plant (except an other order plant) other than as a diversion by a handler from a pool plant, none of the milk received at pool plants would be producer milk under the Central Arizona order.

The La Salvias objected to the adoption of a "dairy farmer fo other markets" provision. They alleged that UDA has attained a monoply position and monopoly power within the Central Arizona marketing area and that the adoption of the proposed provision would serve only to enhance UDA's monopoly of the market.

The purpose of the "dairy farmer for other markets" provision, as previously set forth, is to ensure that milk which is surplus to other markets does not become producer milk and thereby lower the marketwide blend price to the Central Arizona market producers. Such provision serves to protect the marketwide pool under the Central Arizona order. Consequently, it is unclear how the adoption of the "dairy farmer for other markets" provision would in any manner disadvantage the nonmember producer.

3. *Provisions providing for an "associated producer".* The order should be revised to provide for payments from pool proceeds to an "associated producer", a dairy farmer who diverts a portion of his total milk production during the month to a nonpool plant (except an other order plant) for manufacturing uses. Such payments would be limited to a dairy farmer other than a producer-handler or a dairy farmer for other markets. During the months of May through November, payments for milk diverted to a nonpool plant by such person would be limited to 8 days' production less the number of days that milk of such person was diverted by a handler from a pool plant to a nonpool plant. Payments to an associated producer would be made from pool proceeds and would be computed by multiplying the quantity of milk diverted by the associated producer times the difference between the blend price and the Class III price for the month.

An "associated producer" must produce milk approved by a duly constituted regulatory agency for disposition for fluid consumption. Such a person must also certify in writing to the market administrator on or before the first day after each month in which his milk is not accepted or accounted for by a handler at a pool plant that he will deliver his milk to such pool plant and does so deliver upon request from the handler.

In order for milk diverted by an "associated producer" to qualify as "associated producer milk", the milk must be used for manufacturing purposes at the nonpool plant and the operator of such plant must maintain books and records whowing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator. In addition, each associated producer, or a cooperative association on his behalf, shall submit on or before the 7th day after each month a report to the market administrator of the quantity of milk which the associated producer diverted to a nonpool plant and was used for manufacturing purposes. Then, on or before the 10th day of each month, the person reporting the quantity of asociated producer milk must furnish delivery receipts or othe evidence satisfactory to the market administrator verifying the quantity of such milk sold for manufacturing purposes during the prior month.

United Dairymen of Arizona proposed provisions which would accomplish essentially the same purposes as the "associated producer" provisions adopted herein. The cooperative proposed that the producer milk definition be revised to include milk of any producer located in the marketing area which is diverted by the producer to a nonpool plant for manufacturing use within the limitation of the diversion provisions that apply to producer milk. The cooperative proposed that if the producer's milk was received at more than one pool plant, the milk diverted shall be deemed to have been diverted by the operator of the pool plant at which the greater share of the milk was received as producer milk during the month. The cooperative also proposed that other conforming changes be made to provide for payment by the operator of the pool plant at the difference between the blend price and the Class III price to the producer whose milk is diverted to a nonpool plant for the producer's account.

The intended purpose of the associated producer provisions is to allow a dairy farmer who has an established association as a producer on the Central Arizona market to share to a limited extent in a pool proceeds on that portion of his milk production which is either not accepted or accounted for by a handler who operates a pool plant.

As indicated by proponent, the proposed amendment is intended to accommodate one of the largest producers located in the Central Arizona marketing area who has been unable at times to pool a part of his milk production on some days during certain months of the year because the handler to whom the milk is committed by contract has refused to receive any milk in excess of the amount specified in the contract for that month and also has refused to divert the milk for the handler's account. On those days when the producer's milk is refused by the handler, the producer has diverted milk for his own account to nonpool plants. Such milk is not considered to be producer milk and, hence, the producer does not receive the blend price on such milk. Another option that the producer has exercised in the past is to deliver the milk that was refused by the pool plant operator to the pool plant operated by the proponent cooperative association whenever the plant has capacity to process such additional milk. The nonmember receives the Class III price or the price that the cooperative pays for milk that is in excess of a member's base, whichever is less, minus a processing charge. According to the cooperative, the producer is treated the same as a member with respect to payment for milk that is in excess of the cooperative member's base.

The only objections to proponent's proposal came from the operators of proprietary plants who were concerned that a plant operator would be responsible for reporting the milk diverted to nonpool plants by the producer as well as making payment for

such milk at the difference between the blend price and the Class III price.

The "associated producer" provisions adopted herein do not place any responsibility on a pool plant operator to divert milk for the producer's account or to make payment on any portion of the milk so diverted. The associated producer is responsible for diverting milk for his account and the market administrator would make payment from the producer-settlement fund for any milk qualified as "associatead producer milk" at the difference between the blend price and the Class III price for the month.

Proponent requested that certain limitations apply in the use of the "associated producer" provisions to assure that such provisions were not abused or exploited by producers whose association with the market is minimal or sporadic. However, proponent's suggestion that the provision apply solely to producers located in the marketing area would not provide the assurances that the cooperative seeks. To accomplish the cooperative's objective, the use of the provisions should be limited to producers who have had an association with the market for a period of time and who have delivered the majority of their milk production during such period to the Central Arizona market. Such limitation would not discriminate against producers located outside the Central Arizona marketing area who have relied upon the Central Arizona market as the primary outlet for their milk production for a long period of time.

The "associated producer" provision should be adopted. A cooperative association representing all but a few producers supplying the market proposed that a portion of the pool proceeds be shared with producers who ship to pool plant operators who refuse to accept all of their monthly milk production. No opposition to the proposal was offered at the hearing or expressed in the briefs submitted. Thus, there is total support among producers to forego a portion of the pool proceeds to benefit other producers who are unable to pool all of their monthly milk production on the Central Arizona market. From a regulatory viewpoint no basis exists for denying producers the opportunity to apportion the pool proceeds in the manner that they propose.

In administering the "associated producer" and "associated producer milk" provisions, it will be necessary for the market administrator to verify the receipts and utilization of associated producer milk at nonpool plants. Also, the market administrator will need to make payment from pool proceeds to an associated producer on the volume of milk that such a person is permitted to divert to a nonpool plant for manufacturing use. The expenses incurred by the market administrator in the administrative functions involving the payment for associated producer milk should be paid from the administrative assessment fund.

The associated producer who benefits from the adoption of the "associated producer" provisions should pay a pro rata share of the expense of administration of the order. In that regard, the order should provide that the market administrator, in making payments to each associated producer on or before the 15th day after the end of the month, shall deduct 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the quantity of associated producer milk diverted to a nonpool plant (except a producer-handler or another order plant) for manufacturing uses.

Additional administrative modifications are included herein as a result of the adoption of the "associated producer" provisions. The modifications are necessary to provide the means for recovering any over-payments to any associated producer that may occur.

UDA excepted to the "associated producer milk" definition provided in the recommended decision. The cooperative suggested that the definition be modified to limit the application of the provision to milk that is diverted to a nonpool manufacturing plant rather than milk diverted to a nonpool plant for manufacturing use. The cooperative pointed out that if milk is delivered to a nonpool plant that processes and distributes fluid milk as well as manufacturers some of its receipts, there would be no way of determining the actual use of the milk diverted by an Order 131 producer to the nonpool plant. The cooperative held that if the order were to permit "associated producer milk" to be delivered to such plant, the market administrator should classify such milk pro-rata to the nonpool plant's total utilization.

As exceptor points out, the market administrator would have difficulty in classifying "associated producer milk" received at a nonpool plant that processes and distributes fluid milk products. To remedy this situation, the order should be modified to provide that the market administrator shall follow the classification method utilized in classifying milk transferred or diverted from pool plants to nonpool plants. In such instance, after Class I uses are assigned to the plant's regular sources of supply, then any remaining Class I uses should be prorated to any remaining unassigned receipts of fluid milk products received at the nonpool plant from pool plants and other order plants and from "associated producers". Any remaining unassigned receipts should be prorated to any remaining Class III utilization and then to Class II utilization. Only the diversions from Order 131 producers that are classified as Class III milk and Class II milk would be associated producer milk.

The La Salvias excepted to the "associated producer milk" provisions on the basis that the provisions do not permit such diversions during the months of December through April. The order provides no specific limits on diversions during December through April. However, an associated producer is limited indirectly in the amount of milk that he may divert to a nonpool plant during the months of December through April. This occurs because a dairy farmer is required to pool 50 percent or more of his production from the same farm as producer milk during the month as one of the conditions for obtaining status as an "associated producer". The dairy farmer thus would be precluded from diverting more than 50 percent of his total production from the same farm to a nonpool plant during the months of December through April.

4. Level of the Class I differential. No change should be made on the basis of this record in the Class I differential that is used to compute the Class I price for each month. The current Class I differential is $2.52 per hundredweight. It is added to the basic formula price (Minnesota-Wisconsin price) for the second preceding month to arrive at the Class I price for the month.

A handler who operates a distributing plant pooled under the order proposed that the Class I differential be decreased by $1.00 per hundredweight. The handler contended that the current differential is no longer appropriate in terms of the cost of producing milk on large scale drylot dairy farm operations and the cost of alternative supplies of milk. The handler contended also that the current Class I differential has contributed to a surplus of production. In this regard, the handler cited the 1975 decision of the Deputy Assistant Secretary concerning the pooling standards for a cooperative association's manufacturing plant under the Central Arizona order. In lowering the pooling standard, the decision concluded, "However, if the reserve milk supply for this market continues to increase, the level of Class I price appropriately should be reconsidered before consideration is given to any

further reduction in the pooling standards."

In his brief, another handler who operates a pool distributing plant stated that a review of the present Class I differential is appropriate in view of the Department's previous decision wherein the level of the Class I price was apparently considered by the Department to have an influence on the amount of milk produced. The handler suggested that the following points should be considered in evaluating the level of the present Class I price differential: (1) The degree to which the present differential is contributing to the growing surplus of milk, (2) the effect of a lower differential on consumer demand, (3) the extent to which the present differential prevents Central Arizona handlers from expanding their sales area, (4) the competitive advantage of producer-handlers over pool handlers because of too high a price, (5) the degree to which Central Arizona producers are insulated from competition with producers associated with adjacent areas, and (6) the degree to which relevant conditions have changed since the differential was established.

United Dairymen of Arizona opposed any reduction in the present Class I differential at this time. A witness representing the cooperative offered several reasons for denying such proposal. He contended that the seasonal pattern of production and Class I use are no longer as well coordinated as they once were. Consequently, a greater volume of reserve milk supplies is necessary to assure that there is always an adequate supply of milk for fluid use. Also, the witness contended that a reduction in the Class I utilization percentage in recent years is not a sufficient basis from which to conclude that the Class I price should be dropped. He noted too that the Central Arizona area is subject to extreme variations in both production and fluid milk sales. The witness also stated that it would be false economy to attempt to reduce production since there would be an offsetting increase in the cost of manufacturing a smaller reserve supply of milk.

The witness testified further that the Class I differential has been eroded by inflation. As an example, he pointed out that in 1956 the Class I differential was nearly equal to the basic formula price but that currently the differential represents only 20 percent of the basic formula price. The witness further stated that the $2.50 differential that was established in 1967 represents less than 62 cents in terms of 1967 dollars.

The witness also contended that the issue of the Class I differential in Central Arizona cannot be divorced from price considerations under the Dairy Price Support Program which affects the general level of milk prices throughout the country. He stated that the price for milk everywhere in the country has been at levels that overstimulated milk production. the witness contended that the issue of over production should be dealt with in the context of the overall national dairy situation.

The witness further stated that a potential $1.00 per hundredweight reduction on April 1, 1983, that would apply nationally to all milk commercially marketed would be equivalent to a $1.50 reduction in the Class I differential. Such a reduction, coupled with the proposal to reduce the Class I differential by $1.00 would be a threat to the maintenance of an adequate supply of local milk to meet fluid milk demands. Further, he stated that Central Arizona dairymen have expanded production to meet a growing market where the growth in fluid consumption has exceeded the national average. If the growth in sales continues, there will be a need for more milk in the future.

The proposal was also opposed by a representative of two producer-handlers that serve the market. The witness stated that he did not believe producer-handlers could continue to operate if the Class I price was reduced and they had to pay $1.00 per hundredweight to the Commodity Credit Corporation to offset a portion of the cost of the Price Support Program.

In his brief, a producer who supplies the market also opposed the proposal to lower the Class I differential.

The Class I price for milk used for fluid purposes under Federal orders has a direct relationship to the price paid for milk used for manufacturing purposes. This is recognized in the pricing formula by use of the Minnesota-Wisconsin (MW) price as the basic formula price in computing the Class I price each month. The MW price is an average of prices paid at a large number of manufacturing plants in the states of Minnesota and Wisconsin. The prices paid by manufacturing plants are reported on a current month basis and the MW price is announced for each month on or before the fifth day of the following month. This price, for the second preceeding month, is the basic formula price for establishing Class I prices each month in all Federal order markets.

The MW price for raw milk delivered by farmers is determined by competitive conditions and reflects general economic conditions affecting the supply and demand of milk for manufactured milk products marketed through a highly coordinated marketing system which is national in scale. Thus, use of this price in determining Class I prices gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products as well as the month-to-month changes in the supply of and demand for milk and dairy products. Also, actions of the Secretary under the Price Support Program that affect the level of price for milk in manufactured products are automatically reflected in the level of Federal order prices.

The differential over manufacturing milk prices is necessary to cover the added cost of production of milk for fluid uses and the cost of moving it to market. Dairy farmers must have an incentive, over the price of milk for manufacturing uses, to produce and deliver an adequate supply of quality milk to meet the market's demands for milk in fluid form. Class I differentials vary from market to market depending on the supply-demand situation and the cost of alternative supplies of milk.

The current Central Arizona Class I differential of $2.52 per hundredweight has basically been maintained at such level since May 1967. At that time the differential was increased by 20 cents per hundredweight to $2.50. The differential was subsequently increased to its current level in January 1970.

From 1970 through 1981 the Class I price more than doubled (increasing by almost 111 percent) from $7.17 to $15.10 per hundredweight. The Class I differential was constant throughout the 12-year period and, consequently, all of the price increase is attributable to increases in the basic formula price that is used in establishing Class I prices under all Federal orders. During this period the basic formula price increased by almost 171 percent from $4.65 in 1970 to $12.58 in 1981. Consequently, the Class I differential as a proportion of the Class I price decreased from 35.1 percent in 1970 to 16.7 percent in 1981.

During the 12-year period the blend price payable to producers increased by about 117 percent from $6.52 in 1970 to $14.12 in 1981. The blend price increase represented increases in the basic formula price as well as changes in the Central Arizona market supply-demand relationship. The market's supply-demand relationship, as measured by the Class I utilization of producer milk, declined from 77.5 percent in 1970 to 59.9 percent in 1981.

It is obvious that for the 12-year period, both Class I sales and producer receipts have increased dramatically. Class I sales increased by 46 percent while producer receipts increased by 89 percent during the 12-year period. However, most of the changes in the market's supply-demand relationship occurred during the 6-year period from 1970 through 1975 as the Class I utilization of producer milk declined from 77.5 percent to 62.5 percent. It was during this period that UDA undertook a policy to stimulate an increase in the local supply of milk to meet market needs rather than relying on imports of distant milk supplies to supplement the fluid milk needs of the market. Since 1975, the Class I utilization has been relatively stable and in fact increased consistently from 61.3 percent in 1976 to 67 percent in 1979. Since 1979, the Class I utilization decreased to 62.7 percent in 1980 and to 59.9 percent in 1981.

In view of the above it is obvious that it has only been in recent years that increases in producer receipts have outpaced the increases in fluid milk sales. Consequently, the situation in the Central Arizona market is not materially different from the national dairy situation. Since the 1978–1979 marketing year there has been a continuous increase in purchases of surplus dairy products under the Price Support Program as production nationally has exceeded the demand for dairy products. Basically, the national production increases have been in response to the price support levels established for manufactured dairy products as well as to other economic factors affecting the production and sale of milk and dairy products. These factors include abundant feed supplies, poor alternatives to dairy farmers and relatively lower demands for dairy products. Concern over the national dairy situation and the cost of the Dairy Price Support Program led to passage of the Omnibus Budget Reconciliation Act of 1982 which authorized various levels of deductions from the proceeds from commercially marketed milk to offset the cost of the Price Support Program and to encourage a reduction of diary surpluses.

In this regard, Official Notice is taken of the news release issued by the Secretary of Agriculture on March 16, 1983. The Secretary announced that a deduction of 50 cents per hundredweight on commercially marketed milk would be implemented on April 16, 1983 and maintained until new legislation can be adopted. In the vent that a resolution to the dairy surplus problem is not developed by August 1, 1983, consideration would have to be given to implementation of a second 50-cent assessment.

The current surplus situation is a national problem and actions are underway to deal with it on a national basis. Consequently, it would be inappropriate at this time to take action to deal with the relatively recent increase in production in Central Arizona. To do so would place an inequitable burden on Central Arizona dairy farmers relative to other producers across the nation who have also contributed to the current surplus of production. Furthermore, if local action were taken as well as national action, the maintenance of an adequate supply of milk for the Central Arizona market could be jeopardized.

Several other considerations presented by handlers in support of a Class I price reduction do not provide sufficient bases for making any change at this time. The record does not reveal that significant reductions have occurred in the cost of producing milk that might otherwise justify a Class I price reduction in the absence of any Price Support reduction. In this regard, the size of the production units, relative to other areas of the country, is not a new development as the climate of the area lends itself to large scale drylot operations. Also, there is no indication that Central Arizona handlers are competitively disadvantaged with respect to sales in the market because of current Class I prices they must pay relative to prices paid by handlers in surrounding markets. In addition, the issue of whether Central Aizona handlers might be able to expand their sales territory if the Class I differential were reduced is not a factor that is involved in determining the level of Class I prices under Federal orders.

For the foregoing reasons, the proposal to reduce the Class I differential by $1.00 per hundredweight is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Central Arizona marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered. That this entire decison, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

June 1983 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Central Arizona marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1131

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on: October 6, 1983.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order [1] amending the order, regulating the handling of milk in the Central Arizona marketing area.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Arizona marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Central Arizona marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Acting Deputy Administrator, Marketing Program Operations, on June 28, 1983, and published in the **Federal Register** on July 5, 1983 (48 FR 30641), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, subject to the following modifications in §§ 1131.21, 1131.22, and 1131.42.

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

§ 1131.7 [Amended]

1. Amend § 1131.7(c) by removing the provision "65 percent or more" and substituting therefore the provision "50 percent or more."

2. In § 1131.12, a new paragraph (b)(4) is added to read as follows:

§ 1131.12 Producer.

* * * * *

(b) * * *

(4) Any person whose milk is received at a nonpool plant (except an other order plant) other than as a diversion by a handler from a pool plant, unless 50 percent or more of the milk production from the same farm is producer milk under this Part during the current month and each of the 2 immediately preceding months (or would have been producer milk in each of the 2 immediately preceding months except for the operation of this provision); *Provided,* That this provision shall not be applicable until the third month following the effective date of this amended order.

3. A new § 1131.21 is added to read as follows:

§ 1131.21 Associated producer.

"Associated producer" is any person (other than a producer-handler or a diary farmer for other markets), whose milk is received at a nonpool plant (except an other order plant) other than as a diversion by a handler from a pool plant subject to the following conditions:

(a) Fifty percent or more of the milk production from the same farm is producer milk under this part during the current month and each of the 2 immediately preceding months (or would have been producer milk in each of the 2 immediately preceding months except for the application of § 1131.12(b)(4));

(b) Milk produced on such farm must meet the requirements of § 1131.12(a) (1) or (2); and

(c) Such person shall certify in writing to the market administrator on or before the first day after each month in which his milk is not accepted or accounted for by a handler at a pool plant, that he will deliver his milk to such pool plant and does so deliver upon request from the handler.

4. A new § 1131.22 is added to read as follows:

§ 1131.22 Associated producer milk.

"Associated producer milk" means the milk produced by an associated producer that is not accepted or accounted for by a handler at a pool plant and is diverted by the associated producer to a nonpool plant (except a producer-handler plant or an other order plant) subject to the following conditions:

(a) Milk so diverted shall not qualify as associated producer milk unless the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator. Milk so diverted shall qualify as associated producer milk to the extent such milk is used for maufacturing purposes at the nonpool plant (classified as Class III milk, or

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Class II milk pursuant to § 1131.42(d)(2)(vi)).

(b) During the months of May through November the quantity of associated producer milk receipts at nonpool plants from such farm shall not exceed 8 days' production less the number of days' production that is diverted by a handler from such farm to nonpool plants.

5. A new § 1131.33 is added to read as follows:

§ 1131.33 Associated producer reports.

Each associated producer, or a cooperative association on his behalf, shall submit in the manner prescribed by the market administrator:

(a) On or before the 7th day after each month, a statement of the quantity of milk which the associated producer diverted to nonpool plants (except a producer-handler plant or an other order plant) for use for manufacturing purposes in such month; and

(b) On or before the 10th day after each month, delivery receipts or other evidence satisfactory to the market administrator verifying the quantity of his milk sold for manufacturing purposes in such month.

6. Section 1131.42(d)(2)(vi) is revised to read as follows:

§ 1131.42 Classfication of transfers and diversions.

* * * * *

(d) * * *

(2) * * *

(vi) Any remaining unassigned receipts of bulk fluid milk products received at the nonpool plant pursuant to § 1131.22 or from pool plants and other order plants shall be assigned, pro rata among such sources of milk, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

* * * * *

7. In § 1131.44(a)(7), a new paragraph (vii) is added to read as follows:

§ 1131.44 Classification of producer milk.

* * * * *

(a) * * *

(7) * * *

(vii) Receipts of milk from a dairy farmer pursuant to § 1131.12(b)(4);

* * * * *

8. In § 1131.60, paragraph (d) is revised to read as follows:

§ 1131.60 Handler's value of milk for computing uniform price.

* * * * *

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(7) (i) through (vi) and (vii) and the corresponding step of § 1131.44(b), excluding receipts of bulk fluid cream products from an other order plant;

* * * * *

9. Section 1131.61 is revised to read as follows:

§ 1131.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1131.60 for all handlers who filed the reports prescribed by § 1131.30 for the month and who made the payments pursuant to §§ 1131.71 and 1131.73 for the preceding month;

(b) Add an amount equal to the value of the associated producer milk for the month at the Class III price for milk of 3.5 percent butterfat content;

(c) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight of associated producer milk; and

(3) The total hundredweight for which a value is computed pursuant to § 1131.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producer.

10. Section 1131.72 is revised to read as follows:

§ 1131.72 Payments from the producer-settlement fund.

(a) On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.72(a)(2) exceeds the amount computed to § 1131.71(a)(1).

(b) On or before the 15th day after the end of each month the market administrator shall make payment to each associated producer, or to a cooperative association on his behalf, an amount obtained by multiplying the quantity of associated producer milk of such associated producer for the month by the difference between the uniform price and the Class III price. Any overpayment to an associated producer may be offset by a payment reduction to such associated producer from the market administrator in the following month or, shall be remitted by such associated producer to the producer-settlement fund or or before the next date for making payments under this provision.

(c) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

11. Section 1131.77 is revised to read as follows:

§ 1131.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors, resulting in monies due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred. Such adjustments shall apply in the same manner with respect to an associated producer.

12. Section 1131.85 is revised to read as follows:

§ 1131.85 Assessment for order administration.

(a) As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(1) Producer milk (including such handler's own production);

(2) Other source milk allocated to Class I pursuant to § 1131.44(a) (7) and (11) and the corresponding steps of § 1131.44(b), except such other source milk that is excluded from the computations pursuant to § 1131.60 (d) and (f); and

(3) Class I milk disposed of from a partially regulated distributing plant as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1131.76(a)(2).

(b) The market administrator shall deduct the same rate per hundredweight prescribed in paragraph (a) of this section from payments to associated producers pursuant to § 1131.72(b) to cover each such associated producer's pro rata share of the expense of administration of the order.

[FR Doc. 83-27701 Filed 10-11-83 8:45 a.]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 83-060]

Bird Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations in 9 CFR Part 92 to establish criteria for the selection of applicants for consideration for approval of quarantine facilities for certain birds imported into the United States. It appears that the adoption of the proposal would establish a workable and equitable system for determining which applications should be selected for consideration for approval.

DATE: Comments must be received on or before November 14, 1983.

ADDRESS: Written comments concerning this proposal should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, 20782 (301) 436-8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain provisions concerning the importation of birds into the United States. The regulations are designed to protect the poultry industry of the United States from exotic Newcastle disease and other communicable diseases of poultry. Section (92.11(e) provides, with certain exceptions, that each lot to pet birds, commercial birds, zoological birds, or research birds importerd from any part of the world shall be entered at certain ports and quarantined at a United States Department of Agriculture quarantine facility or at a privately-operated quarantine facility approved by the Deputy Administrator for Veterinary Services (VS).

The regulations in § 92.11(f) set forth requirements for privately-operated bird quarantine facilities. These provisions, among other things, contain certain minimum requirements concerning location, construction, sanitation, security, and operational procedures. These provisions also state that approval of any such quarantine facility shall be contingent upon a determination by the Deputy Administrator for VS that adequate personnnel are available to provide services required by the facility. Further, these provisions provide for personal inspection of a facility by a Veterinary Medical Officer of VS to determine compliance with standards in the regulations before a decision is made respect to the eligibility of any facility for initial approval.

Applications for approval of privately-operated bird quarantine facilities were being accepted for consideration until 1979. VS has not considered new applications for privately-operated bird quarantine facilities since then because adequate personnel have not been available to provide the necessary services. However, it appears that VS personnel are now available at certain ports of entry to provide services for new privately-operated bird quarantine facilities. Therefore, it is proposed to amend the regulations to set forth procedures for the selection of applicantss for consideration for approval of privately-operated bird quarantine facilities.

Consideration was given concerning whether to propose to rank applicants on a first-come, first-served basis. However, it was determined not to propose a system based on this concept.

At the time VS stopped considering new applications for approval of privately-operated bird quarantine facilities, it appeared that it was unlikely that there would be sufficient VS personnel available to service additional quarantine facilities. Because of this, persons who inquired about establishing new privately-operated quarantine facilities were discouraged from submitting applications for approval. Although some applications are on hand, it does not appear that it would be fair to consider them because in all likelihood additional persons would have submitted applications had they not been discouraged from doing so.

Further, it does not appear that a new system of accepting applications on a first-come, first-served basis and then maintaining them on file indefinitely until an opening becomes available would be a desirable method for selecting applicants. In order to help discourage frivolous applications which could severely hamper the effectiveness of a selection system, it appears that as a condition for considering applications an applicant should be required to have a premises available and identified on the application form. It appears that such a first-come, first-served system would not be compatible with a requirement that a premises be identified on the application, since it would be unrealistic to require applicants to retain availability of premises, possibly for years, until their applications could be considered.

There are many different procedures that could be adopted for selecting applicants to be considered for approval of privately-operated bird quarantine facilities. However, the proposed procedures explained below appear to provide the most workable and equitable system for making such selections.

Under the provisions of the proposal, the procedures for selection of applicants would be used when it is determined by the Deputy Administrator, VS, that adequate personnel are available at a specified port of entry to provide services for one or more privately-operated bird quarantine facilities in addition to any facilities already being serviced.

In order to give official notice of any openings, it is proposed to provide that an announcement would be published in the **Federal Register** specifying the ports of entry at which openings exist and the number of openings at each port of entry. It is further proposed that the announcement would state that applications for approval will be accepted only if received by the Import/Export Animals and Products Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, on or before 60 days after the announcement is published in the **Federal Register** It appears that this would allow sufficient time for preparation of applications in accordance with the proposed application provisions set forth below. Also, the Import/Export Animals and Products Staff is the staff in APHIS which is responsible for activities concerning approvals of privately-operated bird quarantine facilities.

It is proposed to require that an applicant submit a completed VS Form 17–11, "Application for Approval of Quarantine Facility for Birds" (a footnote is included to explain that VS Form 17–11 is available from the Import/Export Animals and Products Staff), or submit a document which states that it is an application for approval of a quarantine facility for birds and which includes the following information (the same as that which would be called for by VS Form 17–11):

(A) Applicant's name, address, and telephone number;

(B) Status of applicant, such as individual, partnership, or corporation (if incorporated, include State where incorporated and date of incorporation);

(C) Name, title, and address of intended operators, partners, officers, directors, holders or owners of 10 percent or more of voting stock, and employees in a managerial or executive capacity;

(D) Address where the bird quarantine facility will be located;

(E) A drawing of the floor plan of the facility, showing the location of bird holding areas, equipment storage areas, office areas, clothes storage and change areas, feed storage areas, necropsy room (showing entry and refrigeration), washing areas for equipment, shower areas, ventilation arrangements, and entries and exits;

(F) Whether water source of the facility will be public or private;

(G) Whether disposal of waste from the facility will be by sewer or incinerator, or both;

(H) Whether priority status is requested, and, if so, the extenuating circumstances relied on for such request; and

(I) Date; certification by signature of the intended operator, partner, or officer; and title of such individual after the following language:

"Application is hereby made for approval of a USDA Approved Quarantine Facility for bird importations. I certify that the information provided herein is true and correct to the best of my knowledge and belief, and agree to comply with the applicable regulations in 9 CFR Part 92."

It appears that the information proposed to be required for an application would be necessary to identify and communicate with an applicant, and to enable VS to take action concerning the application (including taking action concerning request for priority status, as explained below).

The regulations, as noted above, already provide for personal inspection of a facility by a Veterinary Medical Officer of VS to determine compliance with standards in the regulations before a decision is made with respect to the eligibility of any facility for initial approval. It is proposed to retain these provisions. In this connection, the information in the application concerning the facility for which approval is sought would also help the Veterinary Medical Officers in conducting such inspections.

Also, it appears that it is necessary to know the identities of any persons listed in item (C) in the proposed application provisions since under the regulations an application could be denied if the applicant or any such person has been convicted of certain crimes or violations of the regulations. (See 9 CFR 92.11(f)(6)). In addition, it appears that the certification proposed to be included in the application would be necessary to help assure that the applicant understands that it is necessary to provide true and correct information, and to assure that the applicant agrees to comply with the applicable regulations in 9 CFR Part 92.

It is proposed that if there is more than one announced opening at a port of entry, an applicant may submit more than one application (not to exceed the number of announced openings) but may submit only one application for any particular premises. One application for a premises from an applicant would be sufficient for APHIS to make any necessary determinations concerning such application and, under the proposed procedures set forth below, an applicant would not gain an advantage by submitting more than one application for a particular premises.

It is proposed to select applications for consideration using the following procedures:

1. If the number of applications for bird quarantine facilities at a specified port of entry does not exceed the number of announced openings, each application shall be considered for approval of a facility at that port of entry.

2. If the number of applicants for bird quarantine facilities at a specified port of entry is fewer than the number of openings, but the number of applications exceeds the number of openings, each applicant shall first be selected for consideration for approval of one facility at that port of entry. Then, if there is a sufficient number of remaining openings, each applicant who submitted two or more applications shall be selected for consideration for approval of a second facility. However, if the number of applicants who submitted two or more applications exceeds the number of remaining openings, the applicants to be selected for consideration for approval for a second opening shall be determined based on a drawing. The proceeding shall continue in this manner until there are no more openings.

3. If the number of applicants for bird quarantine facilities at a specified port of entry exceeds the number of announced openings, an applicant (regardless of the number of applications submitted by such applicant) shall be eligible to be selected for consideration for approval of no more than one new facility at that port of entry. Under these circumstances, priority status for selection shall be given to applications from operators of currently approved facilities who request to transfer operations from a facility at a port of entry where they currently operate to a facility at a port of entry specified in the announcement if the Deputy Administrator, VS, determines that there is a change in circumstances beyond the control of the operator which makes it impracticable to continue operations at the currently approved facility, such as termination of services from a Government agency or termination of services from airlines; *Except that*, an application shall not be given priority status if the granting of approval would result in the applicant having approval to operate more than one facility at a time for which approval has been granted on a priority basis. If the number of applicants determined by the Deputy Administrator, VS, to be eligible for priority status exceeds the number of announced openings, the selection of such priority applicants to be considered for approval shall be determined based on a drawing. If there are any announced openings remaining after the eligible priority applicants are determined, the nonpriority applicants to be selected for consideration for approval shall be determined based on a drawing.

It is the policy of VS to consider for approval as many privately-operated quarantine facilities as can be serviced by VS personnel, and to assure a fair distribution of opportunities for applicants. These procedures appear to meet these criteria.

Also, it appears to be equitable to allow priority consideration as explained above for operators of currently approved facilities who request to transfer operations from a facility at a port of entry where they currently operate to a facility at a port of entry specified in the announcement if the Deputy Administrator, VS, determines that there is a change in

circumstances beyond the control of the operator which makes it impracticable to continue operations at the currently approved facility, such as termination of services from a Government agency or termination of services from airlines. Otherwise, an operator could be forced out of business at that facility through no fault of his own after changing his personal situation in reliance on the ability to operate that privately-operated bird quarantine facility.

Further, in order to help assure that different applicants have an opportunity to be considered for approval of privately-operated quarantine facilities, it appears an applicant should not be given priority status if the granting of approval would result in the applicant having approval to operate more than one facility at a time for which approval has been granted on a priority basis.

It is proposed to provide that if a drawing is to be held, the participants in the drawing would be notified by registered or certified mail of the date, place, and time of the drawing so that they may attend if the wish. Participants would not be required to attend a drawing since there does not appear to be any valid reason for requiring their attendance.

It is further proposed that applicants selected for consideration for approval of a quarantine facility shall be notified of selection by registered or certified mail and that the facility must meet all requirements contained in § 92.11 for approval of the quarantine facility for birds within 18 months from the date of notification. It is anticipated that selected applicants would meet all requirements for approval of quarantine facilities within a short period of time. However, it appears that an 18-month period is sufficient for any serious applicant to meet all of the requirements. If the requirements are not met within that period it appears that other applicants should be allowed an opportunity to have a facility approved based on another announced proceeding.

In addition, it should be noted that §92.11(f)(6) of the regulations contains procedures for denying approval of quarantine facilities.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. A duplicate copy of such comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Comments

Written comments are solicited for 30 days after publication of this document in the **Federal Register.** It appears that personnel are now available to service additional privately-operated bird quarantine facilities. Prompt action should be taken to establish a system for determining which applications should be selected for consideration for approval. Therefore, a comment period of 30 days appears to be warranted and adequate under the circumstances.

Executive Order 11291 and Regulatory Flexibility Act

This proposed action has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1, and has been determined to be not a major rule. The Department has determined that this action would not have a significant effect on the economy and would not result in a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have 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.

This document proposes procedures for the selection of applicants for consideration for approval of privately-operated bird quarantine facilities. It is anticipated that these procedures would be used mostly in the process of replacing facilities that go out of business. No substantial change in eifher the number of birds imported into the United States or in the number of persons importing birds is anticipated if this proposal become effective.

It is also possible that if the proposal is adopted, certain facilities could be relocated. The markets for jobbers, wholesalers, and retailers of birds span multistate areas, and any rearrangement in the location of bird quarantine facilities would only have a minimal impact on such businesses.

Based on the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic effect on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, imports, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Therefore, it is proposed to revise 9 CFR 92.11(f)(5) to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(f) * * *

(5) *Selection of applicants for consideration for approval of bird quarantine facilities.* (i) When it is determined by the Deputy Administrator, Veterinary Services, that adequate personnel are available to provide services for one or more bird quarantine facilities in addition to any bird quarantine facilities already being serviced, an announcement will be published in the **Federal Register** specifying the ports of entry at which openings exist and the number of openings at each port of entry. Applications for approval will be accepted only if received by the Import/Export Animals and Products Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, on or before 60 days after the announcement is published in the **Federal Register.** If there is more than one announced opening at a port of entry, an applicant may submit more than one application (not to exceed the number of announced openings) but may submit only one application for any particular premises. An applicant shall submit a completed VS Form 17–11,** "Application for Approval of Quarantine Facilities for Birds," or shall submit a document which states that it is an application for approval of a quarantine facility for birds and which includes the following information (the same as that called for by VS Form 17–11):

(A) Applicant's name, address, and telephone number;

** VS Form 17–11 is available from the Import/Export Animals and Products Staff, VS APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

(B) Status of applicant, such as individual, partnership, or corporation (if incorporated, include State where incorporated and date of incorporation);

(C) Name, title, and address of intended operators, partners, officers, directors, holders or owners of 10 percent or more of voting stock, and employees in a managerial or executive capacity;

(D) Address where the bird quarantine facility will be located;

(E) A drawing of the floor plan for the facility, showing the location of bird holding areas, equipment storage areas, office areas, clothes storage and change areas, feed storage areas, necropsy room (showing entry and refrigeration), washing areas for equipment, shower areas, ventilation arrangements, and entries and exits;

(F) Whether the water source of the facility will be public or private;

(G) Whether disposal of waste from the facility will be by sewer or incinerator, or both;

(H) Whether priority status is requested, and, if so, the extenuating circumstances relied on for such request; and

(I) Date; certification by signature of the intended operator, partner, or officer; and title of such individual after the following language:

Application is hereby made for approval of a USDA Approved Quarantine Facility for bird importations. I certify that the information provided herein is true and correct to the best of my knowledge and belief, and agree to comply with the applicable regulations in 9 CFR Part 92.

(ii) If the number of applications for bird quarantine facilities at a specified port of entry does not exceed the number of announced openings, each application shall be considered for approval of a facility at that port of entry.

(iii) If the number of applicants for bird quarantine facilities at a specified port of entry is fewer than the number of openings but the number of applications exceeds the number of openings, each applicant shall first be selected for consideration for approval of one facility at that port of entry. Then, if there is a sufficient number of remaining openings, each applicant who submitted two or more applications shall be selected for consideration for approval of a second facility. However, if the number of applicants who submitted two or more applications exceeds the number of remaining openings, the applicants to be selected for consideration for approval for a second opening shall be determined based on a drawing. The proceeding shall continue in this manner until there are no more openings.

(iv) If the number of applicants for bird quarantine facilities at a specified port of entry exceeds the number of announced openings, an applicant (regardless of the number of applications submitted by such applicant) will be eligible to be selected for consideration for approval of no more than one new facility at that port of entry. Under these circumstances, priority status for selection shall be given to applications from operators of currently approved facilities who request to transfer operations from a facility at a port of entry where they currently operate to a facility at a port of entry specified in the announcement if the Deputy Administrator, Veterinary Services, determines that there is a change in circumstances beyond the control of the operator which makes it impracticable to continue operations at the currently approved facility, such as termination of services from a Government agency or termination of services from airlines; *Except that*, an application shall not be given priority status if the granting of approval would result in the applicant having approval to operate more than one facility at a time for which approval has been granted on a priority basis. If the number of applicants determined by the Deputy Administrator, Veterinary Services, to be eligible for priority status exceeds the number of announced openings, the selection of such priority applicants to be considered for approval shall be determined based on a drawing. If there are any announced openings remaining after the eligible priority applicants are determined, the nonpriority applicants to be selected for consideration for approval shall be determined based on a drawing.

(v) If a drawing is to be held, the participants in the drawing shall be notified by registerd or certified mail of the date, place, and time of the drawing so that they may attend; however, attendance by participants is not required.

(vi) Applicants selected for consideration for approval of a bird quarantine facility shall be notified of such selection by registered or certified mail. As a condition of approval as a bird quarantine facility, the facility must comply with the requirements set forth in this section within 18 months from the date of notification. Before a decision is made with respect to the eligibility of any facility for approval, a personal inspection of the facility shall be made by a Veterinary Medical Officer of Veterinary Services, to determine whether it complies with the standards set forth in this section

* * * * *

Authority: Sec. 2, 32 Stat. 792, as amended; Secs. 2, 4, 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134c, 134f, 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C. this 5th day of October, 1983.

D. F. Schwindaman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 83-27856 Filed 10-11-83; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Docket Nos. 23771 and 23772]

Cessna Aircraft Co.; Single-Pilot Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking.

SUMMARY: This notice publishes for public comment the petitions of Cessna Aircraft Company dated September 15, 1983. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice is not intended to affect the legal status of the petitions of their final disposition.

DATES: Comments on the petition for exemption (Docket No. 23771) must be received on or before November 1, 1983.

Comments on the petition for rulemaking (Docket No. 23772) must be received on or before December 12, 1983.

ADDRESS: Send comments on these petitions in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23771 or 23772, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: James Kelln, Project Development Branch (AFO-850), General Aviation and Commercial Division, Office of Flight Operations, Federal aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petitions as they may desire. Communications should identify

the docket and be submitted in triplicate to the address indicated above. All communications received on or before the closing date will be considered before taking action on the petition. All comments submitted will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of comments received in response to this notice should submit a self-addressed stamped postcard which states "Comments to Docket No. 23771 or 23772." the postcard will be date/time stamped and returned to the commenter.

Normally, the FAA only summarizes petitions for exemption and rulemaking for publication in the **Federal Register.** Because of the widespread interest that may be generated throughout the aviation community, the FAA has elected to publish the petitions verbatim. This action precludes any loss of thought or meaning which might occur in summarization of the petitions.

Although this notice sets forth the contents of the petitions as received by the FAA without changes, it should be understood that its publication to receive public comment is in accordance with FAA procedures governing petitions for exemption and rulemaking. It does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the agency on the merits of the petitions. The FAA intends to proceed to consider the petitions under the applicable procedures of Part 11 and reach a conclusion on the merits of the proposal after it has had an opportunity to evaluate if carefully in light of the comments received and other relevant matters presented. If the FAA concludes that it should initiate public rulemaking action on the petition for rulemaking, appropriate rulemaking action will be published.

The petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petitions for exemption and rulemaking of the Cessna Aircraft Company dated September 15, 1983.

Issued in Washington, D.C., on October 6, 1983.

John H. Cassady,

Assistant Chief Counsel

15 September 1983.

In Reply Refer To: 178-02-83-611

Federal Aviation Administration, 800 Independence Avenue, Washington, D.C. 20591.

Attention: Rules Docket (AGC-204)

Gentlemen: The prupose of this letter is to petition the FAA, as provided in 14CFR11, for an amendment to § 91.213 and for an exemption in relief of present § 91.213 pending completion of the rulemaking process.

The requested amendment and the requested exemption are summarized as follows:

Petition for Amendment of § 91.213

The Petitioner, The Cessna Aircraft Company seeks the promulgation of an amendment to §91-213 so as to allow airplanes type certificated from operation by a single pilot to be operated without a second in command irrespective of whether the airplane is a "large aircraft" or a "small aircraft" as defined in § 1.1.

Petition for Exemption From The Provisions of § 91.213

The Petitioner, The Cessna Aircarft Company, seeks relief from the provisions of present § 91-213 so as to permit the operators of Cessna Citation airplanes, Models 550 and 552, that otherwise meet the minimum crew requirements of § 25.1523 with a single pilot, to operate those airplanes without a second in command.

§ 91.213, as presently effective and as the Petitioner proposes it be amended, is as follows:

Presently Effective Rule

(a) Except as provided in paragraph (b) of this section, no person may operate the following airplanes without a pilot who is designated as second in command of that airplane:

(1) A large airplane, except that a person may operate an airplane certificated under SFAR 41 without a pilot who is designated as second in command if that airplane is certificated for operation with one pilot.

(2) A turbojet-powered multiengine airplane for which two pilots are required under the type certification requirements for that airplane.

(b) The Administrator may issue a letter of authorization for the operation of an airplane without compliance with the requirements of paragraph (a) of this section if that airplane is designed for and type certificated with only one pilot station. The authorization contains any conditions that the Administrator finds necessary for safe operation.

(c) No person may designate a pilot to serve as second in command nor may any pilot serve a second in command of an airplane required under this section to have two pilots, unless that pilot meets the qualifications of second in command prescribed in § 61.55 of this chapter.

Proposed Rule

(a) No person may operate any airplane for which two pilots are required under the type certification requirements for that airplane without a pilot who is designated as second in command of that airplane.

(b) No person may designate a pilot to serve as second in command nor may any pilot serve as second in command of an airplane required under this section to have two pilots, unless that pilot meets the qualifications for second in command prescribed in § 61.55 of this chapter.

Background

The Petitioner, The Cessna Aircraft Company of Wichita, Kansas, is the manufacturer of a comprehensive line of general aviation aircraft. This line includes turbofan powered airplanes in the 500 series. At the presnet time Cessna manufactures duplicate aircraft in the Citation I type (Models 500 and 501) and also the Citation II (Models 550 and 551) such that their only difference is their certification basis. The effect of the certification basis is the enabling of a presently effective FAA finding to the effect that airplanes of the Citation I or II types that have Part 23 as a certification basis are permitted to be operated by a single pilot. Those that have Part 25 as a certification basis require a second in command for compliance with the minimum crew limitation as presently established by FAA. These petitions seek to enable single pilot operation of Part 25 Citations based on safe single pilot operation experience accumulated in their Part 23 counterparts.

At the inception of the Model 500 program it was Cessna's intention to develop a turbofan airplane with the pilot work station tailored to take advantage of experience accumulated in many years of general aviation aircraft and at the same time tailor the airframe and its systems so as to attain work load levels equal or lower than contemporary propeller aircraft. However, Cessna requested that the Model 500 be certificated as a Transport Category airplane.

Findings made by the FAA during the finalization of Model 500 were that compliance with Appendix D criteria in Part 25 with one pilot were incomplete and Cessna accepted Type Certificate A22CE with the limitation of a two pilot minimum crew.

In 1976 Cessna again raised the question of Model 500 operation with a single pilot and was exploring the issue with FAA when Cessna and FAA turned to the alternative of type certificating a Model 501 airplane identically configured to the Model 500, but offered for certification as a normal category airplane under Part 23. The criteria set forth by FAA for evaluation of the single pilot minimum crew went beyond the VFR-only provisions in § 23.1523 contained in the certification basis (FAR 23 thru Amendment 23-16) and it is our understanding that evaluations were made consistent with the criteria added to § 23.1523 at Amendment 23-21. The wording of §§ 23.1523 and 25.1523 is now identical except for the statement in § 25.1523 that, "The criteria used in making the determinations required by this section are set forth in Appendix D."

Resulting from the normal category evaluation was type certification of the Model 501 under Type Certificate A27CE, the first turbojet airplane certificated for single pilot operation. Subsequent to the Model 501, Cessna obtained certification in 1978, of the Model 550 as an FAR 25 companion to the Model 500 under an amendment to Type Certificate A22CE which was followed by an identically configured Model 551, limited to 12,500 lb. by the standards of Part 23, that was certificated as an amendment to Type Certificate A27CE. It is important to note that

FAA's operations evaluations resulted in a single C500 series pilot type rating being made applicable to all four aircraft—Models 500, 501, 550, and 551.

Using the standards of Part 23 has provided an interim solution to the needs of operators for a single pilot airplane. Experience with these models over the past six years has confirmed their capability for safe operations with a single pilot. Although accidents in any aircraft are an unfortunate reality, we are pleased that the Citation series has experienced fewer than other contemporary types, but also pleased that the Citation single pilot models have a lower unit accident and incident rate than their Part 25 counterparts.

The foregoing has been a review of Cessna/FAA history on the single pilot issue. With the changes now in work to improve the Model 550 and in that process increase the takeoff weight to 14,300 lb., it is no longer feasible to offer a companion product, a Model 551 derivative, that could incorporate the same improvements as the Citation II Serial 550-0501 configuration and still be limited to the 12,500 lb. takeoff weight limitation of Part 23. Similarly, it is not feasible to resolve special purpose, 15,000 lb. TOGW Model 552 operations objectives by a Part 23 certification. Thus, Cessna is once again brought to the issue of FAR 25 and single pilot operations. We believe both FAA and the aviation community will benefit by resolving these issues in an objective and straightforward manner.

It is Cessna's position that since all of the 500 series airplanes have very high commonality in their pilot stations and in their operating characteristics, there is no substantive difference in the capabilities of a single type rated pilot to operate any of the airplanes safely. A pilot, if led blindfolded to a Citation II (Model 550 or Model 551) cockpit, could uncover his eyes and have difficulty determining whether he is in a Part 23 or Part 25 airplane. Equipment installations and standards of design and manufacture are identical, irrespective of certification basis of the category which is eventually selected by the operator. Many operators have utilized available service bulletins to change from one category to another—a process largely comparised of procedures satifying FAA administrative requirements rather than physical changes affecting flying characteristics.

In a separate action, Cessna has requested that FAA reexamine the issue of Part 25 Citations in the 500 series being operated by a single pilot. Of this group of airplanes the Model 500, or Citation I, meets § 1.1 definition of "small aircraft" and is clearly eligible under the applicable certification basis. However, other Part 25 airplanes in the Citation II class exceed 12,500 lb. in takeoff weight and some FAA personnel have been led to conclude that since a second in command would be required by the operating rules, the incapacitation criterion in paragraph (b)(10) of Part 25, Appendix D would preclude type certification with a single pilot.

Because of possibly constraining applications of § 91.213(a), the Petitioner finds it necessary to seek regulatory and/or exemptive relief so that the issue of single pilot operation of Part 25 Citations may be examined solely on the basis of technical merit and safety consistent with the FA Act.

Petitioner's Assertion On Safety Effects

Cessna has had the opportunity to observe more than six years of operators experience with single pilot turbofan Citations. Of particular interest is experience with the Model 550/551 Citation II design. As pointed out earlier, the two models are constructed from the same drawings, have a common manufacturing base (assembly line, tools, fixtures, etc.), and are indistinguishable with respect to category until the time of presentation for an airworthiness certificate. As standard equipment, both models are fitted with the systems specified as prerequisites for single pilot operations (autopilot with approach coupler, flight director, boom microphone, and transponder with ident switch on the pilot's control wheel). Other than the minimum crew limitation the only difference between the 550 and 551 Citation II configurations is that in Transport Category a takeoff weight of 13,300 lb. is approved vs. the 12,500 lb. normal category limit.

When a Citation II enters service it is identified by its airworthiness and registration documents as a normal or transport category airplane in accordance with the needs of the operator. Even this boundary is blurred by the availability of service bulletins that can effect a change from one category to the other as may be necessary by changes in operators. It is noted that these category changes are largely administrative rather than physical changes to the aircraft. It is also noted that crew training and airplane type rating is not affected by category since FAA has previously determined that persons holding C-500 type ratings are authorized to operate either 501 and 551 aircraft as a single pilot (and obviously as commender of a second in command when the operator deems such a crew appropriate) or as pilot in command of Model 500 and 550 aircraft with a second in command.

Having thus identified a takeoff weight difference as the only physical manifestation of difference between normal and transport category Citation II airplanes, one is brought to the question of whether the weight difference would cause a safety problem with single pilot operation at the transport category takeoff limitation. Cessna maintains, and pilot opinion confirms, that Citation workload differences attributable to weight differences are inconsequential.

The reality of Citation II airplanes is that safe operation in single pilot airplanes constructed to transport category standards have been taking place for over five years clothed in normal category airworthiness certificates. Thus Cessna must conclude that application of regulations to constrain single pilot operations in transport category Citations dogmatically exceeds the regimen necessary for an acceptable level of safety and leads us to seek the relief for which these petitions are a part.

The instant situation is similar in many ways to the problems that surrounded the promulgation of Amendment 25-3. In that case FAA wisely amended certification criteria such that the flight engineer's crew position is equated to needs of the airplane rather than tieing the crew makeup to a weight limit in the operating rules. In both cases the capability of an applicant to type certificate an appropriate minimum crew requires separation from the constraints of the inappropriate weight parameter.

Statistical examinations of accident/incident data support Cessna's contention that operations by a single pilot are acceptably safe. We are reluctant to assert the implications of the raw value rates of these data that single pilot Citations are more safely operated than transport category Citations with mandatory two pilot crews. However, we do see significance in the record that shows an absence of accidents or incidents attributable to excessive single pilot workload or single pilot accidents/incidents in high traffic density airspace—circumstances mentioned most frequently by persons doubting the safety of Citation single pilot operations. In addition to the above, it is Cessna's assertion that the data do not show accidents of any type where the presence of a second in command would have assured accident avoidance.

The preceding assertions of Citation single pilot safety have been drawn from the operating experience of Citation airplanes already in service. As previously stated, it has been accepted by some Citation II operators that the useful load lost in the exchange of lowering the takeoff weight to normal category limits was a fair swap in order to obtain the capability for single pilot operations. However, such operator acceptances are diminishing and will be more unacceptable as the differences between the takeoff weight and normal category limits increase.

At this time Cessna is preparing for Type Certification of two derivative models of the Citation II. The changes involved in these derivatives will have an almost negligible effect on cockpit workload. Thus we would expect them to also be capable of safe operation by pilots holding the same type rating as Citation II's already in service and thereby have the same capability for single pilot operation. However, the route thru normal category certification is not unacceptable because the increases in takeoff weight associated with the improvements incorporated in these derivatives prohibit the practicality of off-loading sufficient useful load to reach the 12,500 normal category limit.

Maintaining "small" airplane certification thru Type Certification utilizing SFAR 41 is likewise unobtainable because of the entrenched prerequisite at several points that limits SFAR 41 airplanes to prapeller power. We are also advised that in-work activities to bring the provisions of SFAR 41 into the body of Part 23 standards do not contemplate accommodations for turbojet airplanes. Thus Cessna is led to believe that the most direct means to continuing the viability of single pilot Citation operations is for FAA to resolve the Part 25 single pilot type certification issue. As stated earlier, this requires the

simultaneous relief, thru rule amendment and/or exemption, of the operating rule constraint that is perceived by certification personnel to block Type Certification findings with respect to single pilot Part 25 Citations.

It should be pointed out that following amendment of § 91.213 as herein proposed, any airplane, Part 23 or Part 25, would have to be shown to be in compliance with applicable certification basis requirements in § 25.1523 or § 23.1523 with one pilot in order to operate without a second in command.

Public Interest

Cessna believes that the requested rule change and/or exemption is in the public interest for reasons including the following:

• In these times of high unemployment among manufacturers of general aviation aircraft, any factor that can stimulate buyer interest within the aviation community is profoundly in the public interest. We believe that the capability to market a single pilot Part 25 Citation II is such a factor. Cessna's Chairman Mr. Russell W. Meyer, Jr., has estimated that each unit of the 500 series that is sold represents the direct employment of 100 aerospace workers. Added to that is the jobs impact of associated community support and service employment.

• The capability for single pilot operation in Part 25 Citations will make them more competitive against foreign manufactured aircraft, unless or until those aircraft can also be shown to be safe for single pilot operation. An improved competitive position enhances the position of the United States among world aerospace manufacturers, helps to preserve jobs in United States aerospace manufacturing, and benefits the United States by reducing the outflow of dollars as well as reducing negative balance of payment pressures.

The President of the United States, thru the Office of Science and Technology Policy,[1] has identified United States pre-eminence in aviation and aerospace as a necessary goal.

The granting of this requested rule change and/or exception is clearly consistent with that stated policy.

• Operators advise us that substantial economic benefits result from the capability for single pilot operation. Although, Citations are often operated with a second in command whether or not single pilot operation is authorized, the flexibility afforded by this authorization can materially reduce day-to-day operating costs. Additional economies will accrue by relief thru transport category certification of the 12,500 normal category weight limit since the added fuel capability can allow a trip to be made without fuel wasting intermediate stops. Also, the availability of the option of operating single pilot often adds a dimension of scheduling flexibility that can eliminate the need of some flights. Thus the economy of single pilot operation is in the public interest both from the standpoint of conserving financial resources and from the standpoint of conserving fuel resources.

While the preceding factors identify principal points of public interest in the requested petitions, it by no means exhausts the scope of public interest. However, we believe that these alone amply show the profound national and private sector pubic interest factors of these petitions.

Conclusion

Cessna has, in the preceding discussions and assertions, set forth the constituents for rule making and exemption applications as specified in 14 CFR 11. We therefore solicit FAA's early action in the processing and grant of the rule change and/or exemptive relief being sought by Cessna in these petitions.

Very truly yours,

Cessna Aircraft Company, Wallace Aircraft Division.

Donald W. Mallonee,

Executive Engineer.

[FR Doc. 83-27737 Filed 10-11-83; 8:45 am]

BILLING CODE 4910-13-M

[1] Executive Office of the President, Office of Science and Technology Policy, Aeronautical Policy Review Committee.

Names of government and nongovernment committee members can be obtained from Mr. John McCarthy, Executive Secretary

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 104, 141, 154, 159, 201, 204 and 260

[Docket No. RM83-66-000]

Revisions to Public Utility and Natural Gas Company Classification Criteria; Uniform Systems of Accounts, Form Nos. 1, 1-F, 2, and 2-A, and Related Regulations

September 27, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes a series of amendments to its Uniform Systems of Accounts (Uniform Systems) for public utilities, licensees, and natural gas companies (regulated companies). Briefly, the Commission proposes: (1) To reorganize the Uniform Systems to eliminate separate systems for large and small regulated companies; (2) to change the nomenclature for referring to regulated companies from "Class A and Class B" and "Class C and Class D" to "Major" and "Nonmajor," respectively; (3) to revise the Commission's criteria for classifying regulated companies as Major or Nonmajor for the purposes of the Uniform Systems and certain reporting and filing requirements; (4) to amend its Uniform Systems to recognize recent changes in the application of Generally Accepted Accounting Principles to regulated companies; (5) to provide an account for unrecovered plant and study costs, and (6) to make various other minor changes to clarify and update the Uniform Systems.

This proposed rule is part of the Commission's ongoing program to reduce and eliminate burdensome and unnecessary requirements and, if adopted, would reduce by about four percent the burden on electric utilities and licensees and about ten percent the burden on gas companies of maintaining accounts and filing or reporting information.

DATES: Comments must be received December 12, 1983. Written requests for a public hearing must be received on or before November 7, 1983.

ADDRESS: Comments must be submitted in writing to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM83-66-000. An original and 14 copies must be filed.

FOR FURTHER INFORMATION CONTACT: Joseph Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, (202) 357-5737.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes a series of amendments to its Uniform Systems of Accounts (Uniform Systems) for Public Utilities and Licensees and Natural Gas Companies. These amendments affect electric utilities, natural gas companies, and other licensees (hereinafter collectively referred to as "regulated companies") that are subject to Commission jurisdiction under the Federal Power Act, 16 U.S.C. 792-828c (1976 and Supp. V 1981) and the Natural Gas Act, 15 U.S.C. 717-717w (1976 and Supp. V 1981). In summary, the Commission proposes:

(1) To reorganize the Uniform Systems by merging the four separate accounting systems for large and small regulated companies into two separate Uniform Systems;

(2) To change the nomenclature for classifying regulated companies from "Class A and Class B" and "Class C and Class D" to "Major" and "Nonmajor", respectively;

(3) To revise the Commission's criteria for classifying regulated companies for the purposes of the Uniform Systems and for certain reporting and filing requirements;

(4) To amend its the Uniform Systems to recognize recent changes in the

application of Generally Accepted Accounting Principles (GAAP) to regulated companies;

(5) To provide an account for unrecovered plant and regulatory study costs; and

(6) To make various editorial and technical changes to clarify and update the the Uniform Systems.

This proposed rule is part of the Commission's ongoing program to reduce and eliminate burdensome and unnecessary requirements and, if adopted, would reduce by about four percent the burden on electric utilities and by about ten percent the burden on gas companies of maintaining accounts and filing or reporting information.

II. Background

Both the Federal Power Act (sections 301 and 304, 16 U.S.C. 825 and 825c (1976)) and the Natural Gas Act (sections 8 and 10, 15 U.S.C. 717g and 717i (1976)) require regulated companies to keep such accounts and to file such annual reports and other periodic or special reports as the Commission may prescribe "as necessary or appropriate for purposes of administration" of these Acts to furnish such information as the Commission may order.[1] Pursuant to these statutory provisions, the Commission developed a system of accounting regulations for regulated companies to facilitate the Commission's ratemaking responsibilities. The Commission called these accounting regulations the "Uniform Systems of Accounts." In 1960, the Commission generally revised the Uniform Systems and established the current classification criteria for regulated companies.[2]

The current Uniform Systems classify regulated companies as Class A, Class B, Class C, Class D, or exempt. These classifications are based on the regulated companies' annual operating revenues. Specifically, Class A regulated companies have annual operating revenues of $2,500,000 or more. Class B regulated companies have annual operating revenues of between $1,000,000 and $2,500,000. Class C regulated companies have annual operating revenues of between $150,000 and $1,000,000. Class D regulated companies have annual operating revenues of between $25,000 and $150,000. Regulated companies that have annual operating revenues of less that $25,000 are exempt from the Uniform Systems and from certain filing requirements.

Currently, there are 216 Class A and Class B electric utilities and licensees, 95 Class A and Class B gas companies, 10 Class C and Class D electric utilities and licensees, and 24 Class C and Class D gas companies. Class A and Class B electric utilities must comply with Part 101 of the Commission's regulations (18 CFR Part 101), and Class C and Class D electric utilities with Part 104 (18 CFR Part 104). Similarly, Class A and Class B gas companies must comply with Part 201 (18 CFR Part 201) and Class C and Class D gas companies with Part 204 (18 CFR Part 204).

The organization of the four separate Uniform Systems (Parts 100, 104, 201 and 204) is similar.[3] Each begins with a section containing definitions, followed by three sets of instructions (General, Electric [or Gas] Plant, and Operating Expenses), and ending with six groups of accounts (Balance Sheet, Electric [or Gas] Plant, Income, Retained Earnings, Operating Revenue, and Operation and Maintenance).

A regulated company's classification determines its accounting, and reporting burden and certain rate filing requirements. For example, Class A and B electric utilities must comply with the Uniform Systems of Part 101 and file FERC Form No. 1, which requires a comprehensive reporting of a company's financial position. Class C and D electric utilities, on the other hand, use the less detailed Uniform Systems of Part 104 and file the simplified and less detailed FERC Form No. 1-F. Similarly, Class A and B gas companies must comply with the Uniform Systems of Part 201 and file the more comprehensive FERC Form No. 2, while Class C and D gas companies use the less detailed Uniform Systems of Part 204 and file the less detailed FERC Form No. 2-A. These forms are used by the Commission's audit and enforcement staffs to ensure that regulated companies comply with the Commission's orders and regulations. In addition, these forms are an integral part of rate case proceedings as an aid to the Commission and its staff in analyzing the rate filings of regulated companies.

Since the promulgation of the Uniform Systems in 1960, Congress has enacted the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (Supp. V 1981). This Act expresses the intent of Congress to minimize the public's reporting burden. The General Accounting Office (GAO) reviewed the progress of five federal independent regulatory agencies, including this Commission, in minimizing the public's reporting burden under the Paperwork Reduction Act. The GAO published its Report on July 7, 1981,[4] and concluded that the independent agencies could further reduce the paperwork burden on industry. GAO recommended that independent agencies make better use of graduated reporting by addressing the effects of inflation on class size and by basing class size on the agency's need for information rather than on an arbitrary designation. The changes in the method of classifying regulated companies proposed in this rulemaking are in accordance with GAO's recommendations.

III. Discussion

The Commission is proposing numerous changes to its Uniform Systems.[5] For the most part, these changes update the Commission's regulations in light of events that have taken place over the last several years.[6]

---

[1] Section 402(a)(2) of the Department of Energy Organization Act transfers these Federal Power Act and Natural Gas Act responsibilities from the Federal Power Commission to the Federal Energy Regulatory Commission. 42 U.S.C. 71771(a)(2) (Supp. V 1981).

[2] These revisions were devised by the Commission in coordiantion with the National Association of Regulatory Utility Commissioners (NARUC). *See* Order No. 218 (issued June 7, 1960), 23 F.P.C. 772; Order No. 219 (issued June 21, 1960), 23 F.P.C. 825; Order No. 225 (issued December 13, 1960), 24 F.P.C. 1062; Order No. 226 (issued December 17, 1960), 23 F.P.C. 772; Order No. 225 (issued December 13, 1960), 24 F.P.C. 1083; Order No. 227 (issued December 21, 1960), 24 F.P.C. 1115; Order No. 228 (issued December 23, 1960), 24 F.P.C. 1125.

[3] The Commission originally had six different and distinct Uniform Systems covering Class A and B electric utilities and licensees; Class A and B gas companies, Class C electric utilities, Class C gas companies, and Class D electric utilities and licensees, and Class D gas companies. These six Uniform Systems were implemented to prevent the smaller regulated companies from having to work with an "inordiante amount of textual material designed for larger" regulated companies. In Order No. 457, issued August 16, 1972, 48 F.P.C. 335, the Class D Uniform Systems for regulated companies were integrated into the Class C Uniform Systems for regulated companies. These were integrated because the Commission found that two of the six separate systems opf accounts were unnecessary.

[4] Report to Director, Office of Management and Budget, "Independent Regulatory Agencies Can Reduce Paperwork Burden on Industry," No. B-162087 (July 7, 1981).

[5] The Commission also proposes to amend FERC Form Nos. 1, 1-F, 2, and 2-A to reflect the reorganization of the Uniform Systems, any changes in terminology, and the other changes proposed in this notice. These changes are purely technical, conforming and clarifying. These forms are not being printed in the Federal Register, but are available through the Commission's Division of Public Information, Room 1000, 825 North Capital Street, N.E., Washington, D.C. 20426; telephone (202) 357-8118. Refer to "Uniform Systems Package" and the relevant Part (Part 101—electric or Part 201—gas) when making inquiries.

[6] The Commission has developed a chart which shows the changes in the Charts of Accounts in Parts 101 and 201. This chart can be obtained through the Commission's Division of Public Information. See footnote 5.

In proposing these revisions, the Commission is especially interested in, and specifically invites comments, on the following: (1) Whether the proposed changes would affect any Commission or State regulatory functions; (2) whether State agencies would revise their regulations if these proposed changes were implemented; (3) how much savings in company costs are likely to result from the proposed changes; (4) the estimated burden, in dollars or hours, associated with the proposed accounting, filing, and reporting requirements versus the actual or estimated burden under current accounting, filing, and reporting requirements; and (5) whether the thresholds for reclassifying regulated companies are reasonable, or whether other criteria are appropriate.

A. Merger of the Uniform Accounts and Changes in Nomenclature

The Commission proposes, as a major overall feature of this rulemaking, to merge the Uniform Systems for Class C and Class D regulated companies into the Uniform Systems for Class A and Class B regulated companies. Thus, there would be only one Uniform Systems for electric utilities and licensees (Part 101) and one for gas companies (Part 201). In addition, the Commission proposes to change its nomenclature for describing these regulated companies. Instead of classifying regulated companies as Class A and Class B, the Commission's regulations would classify both classes as "Major" regulated companies. Similarly, Class C and Class D regulated companies would be classified as "Nonmajor" regulated companies.

The Commission believes that the present Uniform Systems for Class A and Class B electric utilities and licensees and Class A and Class B gas companies contain the accounting requirements necessary for Commission regulation of Major electric utilities and licensees (Part 101) and Major gas companies (Part 201). Likewise, the Commission believes that the present Uniform Systems for Class C and Class D electric utilities and licensees (Part 201) and Class C and Class D gas companies (Part 204) contain the accounting requirements necessary for Commission regulation of Nonmajor electric utilities and licensees and Nonmajor gas companies.

As a result of merging the Uniform Systems for Class A and Class B regulated companies with those for Class C and Class D regulated companies (in Parts 101 and 201 respectively), the following types of changes will be make: (1) Duplicative accounts will be deleted; (2) accounts applicable only to major or Nonmajor regulated companies would be so designated; and (3) accounts applicable to both Major or Nonmajor regulated companies would be amended, where necessary, to distinguish between the requirements for Major and Nonmajor regulated companies. These conforming and clarifying changes would be purely technical, but the Commission believes that the reorganization would save time, personnel resources, and money each time the Uniform Systems are updated and would make the Uniform Systems easier and less confusing to use for the public.

If a definition, instruction, or account is not designated in the proposed revisions as either Major or Nonmajor, it is applicable to both Major and Nonmajor, regulated companies, as appropriate. However, numerous accounts in Part 101 for electric utilities and licensees and Part 201 for gas companies would be applicable to only Major electric utilities, licensees, and gas companies. These accounts would be amended by inserting the parenthetical "(Major only)" at the end of each account title.

a. The following accounts in Part 101 would be designated "(Major only)":

103, 106, 108, 111, 115, 120.1–120.5, 123, 123.1, 125–128, 131–135, 151–153, 155–163, 171–173, 183–185, 188, 202, 203, 205–210, 216.1, 222, 238–241, 320–325, 418.1, 445, 446, 502, 505, 506, 510–514, 517–532, 537–539, 541–545, 548–549, 551–554, 556, 561–566, 568–573, 581, 582–584, 590–592, 593, 594, 901, 905, and 907–916.

b. The following accounts in Part 201 would be designated "(Major only)":

103, 105.1, 106, 108, 111, 115, 117, 123, 123.1, 125–128, 131–135, 151–153, 155–163, 164.3, 166–173, 183.1–185, 188, 202–210, 216.1, 222, 238–241, 363–363.4 364.1–364.8, 403, 404.1–404.3, 418.1, 482, 700–708, 711–724, 725–729, 730, 732–735, 740–742, 751–754, 756, 757, 761, 762, 765–769, 770–775, 777–791, 800–804.1, 806, 809.1–812, 815–822, 824, 830, 831, 833–837, 840–847.8, 851–853, 854–857, 859 861, 862, 865–867, 871–873, 875–877, 880, 885–892, 894, 901, 905, 907–913, and 916.

Part 104 for electric utilities and Part 204 for gas companies have many accounts that are applicable to only Nonmajor electric utilities or gas companies. These accounts are being merged with the accounts in parts 101 and 201. When they are merged, they will renumbered and the parenthetical "(Nonmajor only)" will be inserted at the end of each account title.

a. The following chart shows the accounts in Part 104 that would be merged and renumbered, and would contain the parenthetical "(Nonmajor only)":

From part 104	*To part 101*
103	103.1
110	110
125	129
131	130
218	218
449	449
502	508
506	515
532	540.1
535	545.1
540	550.1
543	554.1
551	567.1
553	574
562	581.1
571	592.1
572	594.1
907	906
910	917
933	932
901 and 902	902
902 and 903	903

b. The following chart shows the accounts in Part 204 that would be merged and renumbered, and would contain the parenthetical "(Nonmajor only)":

From part 204	*to part 201*
103	103.1
110	110
125	129
131	130
218	218
403	403.1
404	404
701	724.1
702	729.1
703	737
706	743
718	792
719	769.1
730	799
735	812.1
842	827
746	838
747	839
751	853.1
752	857.1
757	868
	880.1
765	892.1
767	
769	895
907	906
910	917
933	932
901 and 902	902
902 and 903	903

After the merger of Part 104 into Part 101 and of Part 204 into Part 201 in accordance with the proposed scheme shown above, numerous definitions, instructions, and accounts would contain the requirements for both Major and Nonmajor regulated companies. This may be appropriate in some cases, but there will also be instances where the requirements contained in a definition, instruction, or an account for a Major or a Nonmajor regulated company should differ. In these instances, the Commission proposes to revise the present definitions, instructions, and accounts in Parts 101 and 201 to clarify the appropriate differences in application and to eliminate any unnecessary ambiguity.

The Commission intends no substantive changes by these revisions.

a. The following definitions, instructions and accounts of Part 101 would be revised:

Definitions: 28 and 35.

General Instructions: 8,12,14,and 15.

Electric Plant Instructions: 1,3,4,7,8,9,10,11,15,and 16.

Accounts: 154, 186, 204, 211, 242, 302, 330, 331, 332, 335, 368, 370, 372, 500, 535, 546, 547, 560, 585, 588, 903, 924, 925, 926, 930.2, and 932.

b. The following definitions, instructions and accounts of Part 201 would be revised:

Definitions: 13, 15, 16, 27, 29, 35, and 36.

General Instructions: 8, 12, 14, 15, 16, and 19.

Gas Plant Instructions: 1, 3, 4, 6, 7, 8, 10, 11, 12, 14, 15, and 16.

Accounts: 154, 186, 201, 204, 211, 242, 302, 303, 338.3, 352.3, 363.5, 411.6, 411.7, 412, 413, 421.1, 421.2, 481, 488, 495, 710, 750, 755, 759, 776, 795, 796, 797, 798, 807, 808.1, 808.2, 813, 814, 823, 850, 865, 870, 874, 878, 879, 902, 903, 924, 925, 926, 930.2, and 932.

B. New Methods of Classifying Regulated Companies

As outlined above, the Commission now classifies regulated companies as Class A, B, C, D, or exempt according to annual operating revenues. Many of the regulated companies that were classified as Class C and D in 1960, when the classification criteria were set, have become Class A and B regulated Companies because inflation has increased their annual operating revenues without a corresponding increase in scope of the regulated company's operations. This method of classification unnecessarily increased the accounting, reporting, and filing burden on some of the smaller regulated companies. Accordingly, the Commission proposes to reclassify regulated companies using criteria that would not be affected by inflation. In lieu of the annual operating revenues criteria, the Commission proposes to classify regulated companies as Major if detailed information is required for regulatory purposes, as discussed below. In contrast, the Commission proposes to classify regulated companies as Nonmajor if less detailed information is required by the Commission for regulatory purposes. Finally, the Commission proposes to exempt regulated companies if the Commission rarely requires information from them on an annual basis.

In selecting the criteria for whether or not detailed information is required for the Commission's regulatory responsibilities, the Commission has balanced its need for information against the burden on the regulated companies and has considered the use of criteria that are both easily administered and are not inflation-sensitive. The following proposed standards have been developed as a result of this balancing of competing concerns.[7]

1. Classification of Public Utilities and Licensees

The Commission proposes to classify electric utilities and licensees based on energy sales or transmission services. A company will be classified as a Major if its sales or transmission services exceed, in the previous year: (1) 1,000,000 megawatt hours of total annual sales; (2) 100 megawatt hours of annual sales for resale; (3) 500 megawatt hours of annual gross interchange out;[8] or (4) 500 megawatt hours of wheeling for others (deliveries plus losses).[9] In contrast, a company will be classified as a Nonmajor electric utility if it had total annual sales of 10,000 megawatt hours or more, but would not otherwise qualify as Major (as defined above) in the previous calendar year.

These definitions exempt companies that have total annual sales below 10,000 megawatt hours and are not otherwise classified as "Major." These companies are exempted because the Commission believes that specific accounting, filing, and reporting burdens may be unjustified and because the Commission can request information as the need arises

2. Classification of Natural Gas Companies

The Commission proposes to classify gas companies based on combined gas sold for resale and gas transported or stored for a fee. A company will be classified as a Major gas company if, in the previous year, combined gas sold for resale and gas transported or stored for a fee was in excess of 50 million Mcf at 14.73 psia (60° F.). These proposed criteria are the same criteria used in FERC Form No. 11. They have proven to be sufficient for the Commission's needs in reviewing monthly data in rate case proceedings. In contrast, a company would be classified as a Nonmajor gas company if it would not qualify as "Major" (as defined above) but had annual gas sales or volume transactions exceeding 200,000 Mcf at 14.73 psia (60° F.) in the previous calendar year. In addition, this definition excludes gas companies that have had annual gas sales or volume transactions at or below 200,000 Mcf at 14.73 psia (60° F.) in the previous year. These gas companies would be exempted because the Commission believes that specific accounting, filing, and reporting burdens would not be justified and because the Commission can always request information as the need arises.

After the new classification criteria are implemented, some regulated companies that are now classified as Major (old Class A or Class B) would be reclassified as Nonmajor (old Class C or Class D). The Commission believes that some minor adjustments to the reporting requirements of those regulated companies that are reclassified from Major to Nonmajor will be necessary. In a final rule issued September 5, 1980,[10] the Commission revised FERC Form No. 1–F by removing certain data items and reducing the reporting burden on the electric utilities that were then classified as Class C and Class D. However, the Commission proposes to reinstate certain requirements for accounting and corporate information, which were removed from FERC Form No. 1–F by the 1980 rulemaking, for only those former Major electric utilities that would be reclassified as Nonmajor. Therefore, the Commission proposes to revise the instructions to FERC Form No. 1–F to make it clear that additional information will be required from only these newly-reclassified Nonmajor electric utilities.

Overall, the proposed reclassification would reduce the filing requirements for many regulated companies. For example, § 154.63(b)(3), 18 CFR 154.63(b)(3), relates to a major rate increase filing requirements. This section permits Classes B, C, and D gas companies to file less information that Class A gas companies. The proposed reclassification will be reflected in section 154.63 by revising Class A to Major and Class B, C, and D as Nonmajor and, thus, will increase the number of gas companies that may file the lesser amount of information for a major rate increase.

---

[7] A comparison of the regulated companies that were defined as Class A and Class B when the present standards were implemented in 1961 (under the old standard) and the regulated companies that would be classified as Major (using the proposed standard) shows that significantly fewer regulated companies would be classified Major than were originally classified as Class A and Class B in 1961.

[8] "Interchange out" means an electric utility's (the respondent's) own megawatt hours delivered to another electric utility and excludes wheeling transactions.

[9] "Wheeling for others (deliveries plus losses)" means the electric utility's (the respondent's) use of its transmission facilities to transmit power of another electric utility to or for a third electric utility.

[10] Docket No. RM80–59–000, Order No. 101, issued September 5, 1980, 45 FR 60,898 (1980).

C. Changes in the Application of Generally Accepted Accounting Principles (GAAP)

Generally Accepted Accounting Principles are established, in part, by the Financial Accounting Standards Board (FASB). The FASB is the successor of the Accounting Principles Board (APB) of the American Institute of Certified Public Accountants. Pronouncements of the APB made and in effect prior to the establishment of the FASB remain in effect unless subsequently modified by the FASB. As a general proposition, the Commission generally ensures that its Uniform Systems are consistent with the standards announced by FASB. The Uniform Systems differ from FASB standards only to reflect ratemaking distinctions.[11]

In December of 1982, FASB issued Financial Accounting Standards Board Statement of Financial Accounting Standards No. 71, *Accounting for the Effects of Certain Types of Regulation* (FASB No. 71).[12] FASB No. 71 addresses many of the differences that may arise in the application of GAAP to regulated companies because of the regulatory ratemaking process.

Regulated companies have a need to implement FASB No. 71 even without the Commission's amending its Uniform Systems, because certified public accountants that audit these companies will take exception to any accounting methods used by a company that are not in accordance with GAAP.[13] While requiring regulated companies to apply GAAP in different ways, FASB No. 71 leaves the implementation of these changes in the application of GAAP to the discretion of the affected regulated companies. Consequently, the Commission proposes to amend its Uniform Systems to ensure that regulated companies implement these changes in a uniform and consistent manner. Moreover, the Commission believes its proposed changes will clearly identify the costs and liabilities affected by these changes in the application of GAAP, will ease the Commission's responsibility in monitoring rates, and will not increase the burden on the regulated companies.

FASB No. 71 states four general accounting standards that are applicable to regulated companies. (1) FASB No. 71 establishes criteria for capitalizing costs that would otherwise be charged as current expenses. (2) FASB No. 71 recognizes that the value of an asset might be affected by a regulatory decision to exclude the cost of the asset from allowable costs in present and future periods. In that situation, FASB states that the carrying amount of the asset must be reduced to the extent that the value of the asset has been impaired. (3) FASB No. 71 recognizes that regulatory decisions can impose liabilities that would generally be considered obligations to the regulated company's customers, giving, as examples, refunds to customers and contingencies for storm damage where the enterprise remains accountable for the monies not expended for the intended purpose. (4) Finally, FASB No. 71 determines that a regulator can only eliminate a liability created by the regulator.

1. *Retained Earnings and Rate Refunds*

The Uniform Systems permit adjustments of retained earnings to reflect significant non-recurring transactions related to prior periods where Commission approval is granted (for example, in a rate refund ordered by the Commission). The Commission proposes to restrict future adjustments to retained earnings only to the corrections of errors in financial statements of prior years and to adjustments caused by the realization of certain income tax benefits. These restrictions are necessary to ensure that certain contingent liabilities are accrued when required to be recognized by GAAP, instead of adjusting retained earnings in a later period. Therefore, the Commission proposes to amend account 439 of Parts 101 and 201 for adjustments to retained earnings to implement these restrictions. Moreover, to reflect these and other restrictions arising from FASB No. 71, the Commission proposes to revise Instructions 7 and 7.1 of Parts 101 and 201 concerning extraordinary items and prior period items and accounts 434 and 435 concerning extraordinary income and deductions.

Under FASB No. 71 regulated companies will sometimes need to account for revenues collected subject to refund as a liability. Therefore, the Commission proposes to add to Parts 101 and 201 new accounts 229 and 414.2 to provide recording provisions for rate refunds as liabilities, and new accounts 410.3 and 411.3 to provide for recording income tax deferrals and flowback of the deferrals related to provisions for rate refunds. Finally, the Special Instructions following account 410 and account 190 (concerning accumulated deferred income taxes) would be amended to reflect the addition of these new accounts, and unnecessary portions of paragraph B of account 236 in Parts 101 and 201 (concerning accrued taxes) would be deleted.

2. *Capital Leases*

The present Uniform Systems account for payment on leased property as rent expenses and there are no provisions for capitalizing any amounts related to such property. Certain leased property and the corresponding lease obligations must be recorded as assets and obligations under FASB No. 71. Therefore, the Commission proposes to implement the concept of "capital leases" in the Uniform Systems, which is consistent with GAAP, by adding the following: (1) New definitions 15 and 16 to Part 101 and new definitions 18 and 19 to Part 201 for capital and operating leases; (2) a new General Instruction 19 to Parts 101 and 201 providing criteria for classifying leases as either capital or operating; (3) a new General Instruction 20 to Parts 101 and 201 explaining the method required to account for leases; (4) a new account 101.1 to Parts 101 and 201 for the recording of utility property under capital leases; (5) a new account 227 to Parts 101 and 201 for the recording of noncurrent obligations under capital leases; and (6) a new account 243 to Parts 101 and 201 for recording current obligations under capital leases.

3. *Operating Reserve Accounts*

The present operating reserve accounts record amounts allowed by a regulator to be accrued for contingencies such as uninsured storm damage. However, FASB No. 71 requires that amounts collected in rates, which are not yet expended for the intended contingency and for which the regulated company remains accountable, must be treated as liabilities. The Commission proposes to implement this requirement by deleting from Parts 101 and 201 the present operating reserve accounts, accounts 261, 262, 263, and 265, and by adding new liability accounts that may be credited only where a regulatory authority permits the collection of these amounts in a regulated company's rate levels. Specifically, the Commission proposes to add to Parts 101 and 201 the following: (1) An account 228.1 for recording amounts accrued and collected for possible property losses through accidents, fire, flood, or other

[11] *See* Docket No. R-424, Order No. 505-B (issued July 8, 1977), 59 F.P.C. 591. *See also, Addendum to APB Opinion 2* (1962).

[12] December 1982. FASB No. 71 will go into effect December 19, 1983. The Commission presently expects to implement the changes proposed in this rule in a manner that will allow timely action by regulated companies.

[13] Under Rule 203 of the American Institute of Certified Public Accountants Code of Ethics, certified public accountants must report departures from Generally Accepted Accounting Principles.

hazards that are not covered by insurance; (2) an account 228.2 for recording the probable liability, not covered by insurance, for deaths or injuries to employees and others and for damages to property not owned or leased by the regulated company; (3) an account 228.3 for recording provisions made and amounts contributed for employee pensions and benefits; (4) an account 228.4 for recording accumulated miscellaneous operating provisions not provided for elsewhere; and (5) an account 229 for recording estimated refunds when the regulated company is collecting monies subject to refund.

D. Other Minor Amendments to Parts 101 and 201

The Commission proposes other minor changes to the Uniform Systems in Parts 101 and 201. For the most part, these revisions are intended to make certain accounts more easily administrable, to update certain accounts to reflect inflation and minor statutory changes, and to conform certain accounts to the other changes being proposed in this rulemaking.

First, the Commission proposes to subdivide account 182 in both Parts 101 and 201 by renumbering account 182 as 182.1 and by adding a new account 182.2 "Unrecovered Plant and Regulatory Study Costs." The Commission understands that regulated companies already include unrecovered plant and regulatory study costs in the present account 182 and, therefore, the change only makes it easier to identify those costs. Moreover, in an effort to clarify the application of the new account, the Commission proposes to amend General Instruction 3 of Parts 101 and 201 to include examples of "studies."

Second, the Commission proposes to further amend Electric and Gas Plant Instructions 3 and 9 in Parts 101 and 201 by changing the example of "individual items of equipment of small cost" from $50 to $500. This is necessary to reflect inflation over the last two decades. The Commission specifically seeks comments on whether $500 is a reasonable estimation of "small costs."

Third, the Commission assumed many of the responsibilities of the Federal Power Commission in 1977. Accordingly, the Commission proposes to substitute the name "Federal Energy Regulatory Commission" for "Federal Power Commission" in the definition sections of and throughout Parts 101 and 201.

Fourth, paragraph C of account 105 in Parts 101 and 201 relates to the removal of utility plant property held for future use that is no longer needed or appropriate for future utility operations, and paragraph C of account 105.1 in Part 201 relates to the removal of production property held for future use that is no longer needed or appropriated for future operations. Regulated companies are required by paragraph C of these accounts to notify the Commission and to request prior approval of entries to remove property from these accounts. The Commission does not believe it is necessary for it to approve entries, on an individual entry basis, for the removal of property from account 105 or 105.1 if that property has an original cost of less than $100,000 (for account 105) or $500,000 (for account 105.1). Consequently, the Commission proposes to amend paragraph C of account 105 in Parts 101 and 201 and account 105.1 in Part 201 to require that the company request prior Commission approval of journal entries to remove property from these accounts only when the original cost of the property is $100,000 or more (for account 105) or $500,000 or more for (account 105.1). For properties with an original cost of less than $100,000 or $500,000 respectively, the regulated company is only required to file annually with the Commission those journal entries reflecting the removal of the property from account 105 or account 105.1 and to include the same descriptive information that is currently filed with the individual journal entries submitted to the Commission. The Commission believes that $100,000 and $500,000 are reasonable thresholds for these accounts. However, the Commission specifically requests comments on whether thresholds of $100,000 and $500,000 are reasonable, or whether other criteria are more appropriate.

Fifth, the Commission proposes to delete account 214, related to capital stock expenses, from Parts 101 and 201. The Commission believes account 214 is no longer necessary because it is seldom used and is potentially misleading. Any current balances in account 214 would be included in account 201 or 204, relating to common and preferred stock issued, as appropriate.

Sixth, the Commission proposes to delete paragraph D of account 282, relating to accumulated deferred income taxes in Parts 101 and 201, because the Commission believes regulated companies no longer need to maintain vintage year records with respect to entries to this account.

Seventh, the Commission also proposes to amend account 425 in Parts 101 and 201 concerning the amortization of miscellaneous items. The amendments would remove all references to accounts 182 and 214 to permit the amortizations of miscellaneous items that are specifically allowed by the Commission.

Eighth, the Commission also proposes to add a new Item 5 to account 426.5 of Parts 101 and 201 to provide for preliminary abandonment costs recorded in accounts 182.1 and 182.2, but not allowed to be amortized. This change is necessary to clarify the proper account to be used for these costs.

Finally, the Commission proposes to add a new item to accounts 367 and 376 of Part 201 to provide for "line pack gas." This change is necessary to clarify that the costs associated with line pack gas in gas mains are to be shown separately from other gas main costs.

The various proposed amendments listed above are in addition to the numerous editorial changes that are also being proposed to conform the remainder of the Uniform Systems with the other specific changes detailed in this notice. These conforming changes are not intended to be substantive in nature. The Commission invites comments and additional suggestions on any other conforming changes that may be necessary.[14]

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601–612 (Supp. V 1981)), requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that, if promulgated, would have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a proposed rule would not have such an impact.

Most electric utilities and natural gas companies do not fall within the RFA's definition of small entity.[15] Most hydroelectric licensees, on the other hand, may fall within the small entity definition. Since the accounting, filing, and reporting burdens on all of these types of regulated entities would either be reduced by this rule or remain unchanged, this proposed rule would have a positive economic impact on the vast majority of regulated entities, both large and small. No entity, regardless of size, will have an increased burden of any sort. These are intended and

[14] The Commission recently published in the **Federal Register** technical amendments to correct minor errors in the Uniform Systems, 48 F.R. 32,567 (1982). These technical amendments are reflected in this NOPR.

[15] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. V 1981). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's Small Business Size Standards, 13 CFR Part 121 (1982).

important impacts. The Commission does not, however, believe that this impact will be "significant," at least within the meaning of the RFA. Pursuant to section 605(b) of the RFA, therefore, the Commission certifies that this rule, if promulgated, will not have a "significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act Statement

The proposed changes in this notice are being submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (Supp. V 1981), and OMB's regulations, 48 FR 13,666, 13,694 (1983) (to be codified at 5 CFR Part 1320). Interested persons can obtain further information on the proposed changes by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Attention: Joseph Hartsoe, (202) 357–5737). Comments relating to the burden imposed by these proposed changes may be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Written Comment Procedure

The Commission invites interested persons to submit written data, views, and other information concerning the matters set out in this notice. All comments in response to this notice should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and must reference Docket No. RM83–66–000. An original and 14 copies of such comments must be filed. All comments must be received by the Commission 60 days after the date this Notice of Proposed Rulemaking is published in the **Federal Register.**

All written comments will be placed in the Commission's public file and will be available for public inspection during regular business hours at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

In addition, the Commission may consider affording interested persons an opportunity for a public hearing to receive oral comments. Any interested person wishing an opportunity to appear to give oral comments must file with the Office of the Secretary a written request for public hearing by November 7, 1983. A notice will be published in the **Federal Register** if a public hearing will be held.

(Natural Gas Act, 15 U.S.C. 717–717w (1976 and Supp. V 1981); Federal Power Act, 16 U.S.C. 792–828c (1976 and Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (Supp. V 1981) Executive Order 12,009, 3 CFR 142 (1978); 5 U.S.C. 553 (1976))

List of Subjects

18 CFR Parts 101 and 104

Electric power, Electric utilities, Uniform systems of accounts.

18 CFR Part 141

Electric power, Electric utilities.

18 CFR Parts 154 and 159

Natural gas.

18 CFR Parts 201 and 204

Natural gas, Uniform systems of accounts.

18 CFR 260

Natural gas.

In consideration of the foregoing, the Commission proposes to amend Parts 101, 104, 141, 154, 159, 201, 204, and 260 of Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 101—[AMENDED]

1. The title in Part 101 that follows the Subchapter heaidng "SUBCHAPTER C—ACCOUNTS, FEDERAL POWER ACT" and the title in part 101 that precedes the heading "Definitions" are amended by removing the parenthetical "(Class A and Class B)."

2. The Definitions section of Part 101 is amended as follows:

(a) in Definition 7, by removing the words "Federal Power Commission" and inserting, in their place, the words "Federal Energy Regulatory Commission";

(b) in paragraph B of Definition 28, by inserting a comma "," and the words "in the case of Major utilities," following the parenthetical "(RD&D)";

(c) in Definition 35, by removing the words " "Subsidiary Company" " and inserting, in their place, the words " "Subsidiary Company" in the case of Major utilities,";

(d) by redesignating Definitions 15 through 36 as Definitions 17 through 38, and inserting new definitions 15 and 16 to read as follows:

15. "Lease, capital"means a lease of property used in utility or nonutility operations, which meets one or more of the criteria stated in General Instruction 19.

16. "Lease, operating" means a lease of property used in utility or nonutility operations, which does not meet any of the criteria stated in General Instruction 19.

3. The General Instructions of Part 101 are amended as follows:

(a) in Instruction 1, by revising paragraphs A, B and C to read as follows:

General Instructions

1. Classification of Utilities

A. For the purpose of applying the system of accounts prescribed by the Commission, electric utilities and licensees are divied into two classes, as follows:

(1) *Major.* Utilities and licensees that had, in the previous calendar year, sales or transmission service that exceeded one or more of the following:

(1) One million megawatt hours of total annual sales;

(2) 100 megawatt hours of annual sales for resale;

(3) 500 megawatt hours of annual gross interchange out; or

(4) 500 megawatt hours of wheeling for others (deliveries plus losses.

(2) *Nonmajor.* Utilities and licensees that are not classified as a "Major" (as defined above), and had total annual sales of 10,000 megawatt hours or more in the previous calendar year.

B. This system applies to both Major and Nonmajor utilities and licensees. Provisions have been incorporated into this system for those entities which, prior to January 1, 1984, were applying the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees subject to the Provisions of the Federal Power Act (Class C and Class D) [Part 104 of this chapter, now revoked]. The notations "(Nonmjor)" and "(Major)" have been used to indicate those instructions and accounts which by definition from previous systems and classifications are not interchangeable without causing a loss of detail for the Major (previously Class A and Class B) or an increase in detail burden on the Nonmajor (previously Class C and Class D).

C. The class to which any utility or licensee belongs will originally be determined by the average of its annual megawatt hours for the last three consecutive years, or in the case of a newly established entity, the projected data shall be the basis. Subsequent changes in classification shall be made as necessary when the megawatt hours for each of the three immedately preceding years shall exceed the upper limit, or be less than the lower limit of the classification previously applicable to the utility.

* * * * *

(b)in Instruction 7, by removing:

(1) the words "not typical or customary business activities of the company" and inserting, in their place, the words "of unusual nature and infrequent occurrence";

(2) the words "would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business," and inserting, in their place, the words "are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.";

(3) the words "of a similar nature should be considered" and inserting, in their place, the words "should be considered individually and not";

(4) the sentence in the parenthetical that reads "Dissimilar items should be considered individually; however, if they are few in number, they may be considered in aggregate." and inserting in the parenthetical, in its place, the sentence "However, the effects of series of related transaction arising from a single specific and identifiable event or plan of action should be considered in the aggregate.";

(c) in instruction 7.1, by revising the text to read as follows:

7.1 *Prior Period Items*

A. Items of profit and loss related to the following shall be accounted for as prior period adjustments and excluded from the determination of net income for the current year:

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits of pre-acquisition operating loss carryforwards of purchased subsidiaries.

B. All other items of profit and loss recognized during the year shall be included in the determination of net income for that year.

(d) in the respective titles for Instructions 8, 12, 14 and 15, by inserting the parenthetical "(Major Utility)" at the end of each title;

(e) in paragraph G of Instruction 17, by removing the words "Account 283, Accumulated Deferred Income Taxes—Other" and inserting, in their place, the words "Account 282, Accumulated Deferred Income Taxes—Other Property", and by removing the words "Account 283" and inserting, in their place, the words "Account 282".

(f) by adding new Instructions 19 and 20, following Instruction 18, to read as follows:

19. *Criteria for Classifying Leases*

A. If at its inception a lease meets one or more of the following criteria, the lease shall be classified as a capital lease. Otherwise, it shall be classified as an operating lease.

(1) The lease transfers ownership of the property to the lessee by the end of the lease term.

(2) The lease contains a bargain purchase options.

(3) The lease term is equal to 75 percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(4) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any profit thereon, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by the lessor. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease. The lessee utility shall compute the present value of the minimum lease payments using its incremental borrowing rate, unless (A) it is practicable for the utility to learn the implicit rate computed by the lessor, and (B) the implicit rate computed by the lessor is less than the lessee's incremental borrowing rate. If both of those conditions are met, the lessee shall use the implicit rate.

B. If at any time the lessee and lessor agree to change the provisions of the lease, other than by renewing the lease or extending its terms in a manner that would have resulted in a different classification of the lease under the criteria in paragraph A had the changed terms been in effect at the inception of the lease, other revised agreement shall be considered as a new agreement over its terms, and the criteria in paragraph A shall be applied for purposes of classifying the new lease. Likewise, any action that extends the lease beyond the expiration of the existing lease term, such as the exercise of a lease renewal option other than those already included in the lease term, shall be considered as a new agreement and shall be classified according to the above provisions. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the leased property) or changes in circumstances (for example, default by the lessee) shall not give rise to a new classification of a lease for accounting purposes.

20. *Accounting for Leases*

A. All leases shall be classified as either capital or operating leases.

B. The utility shall record a capital lease as an asset in account 101.1, Property under Capital Leases (or account 121, Nonutility Property, if appropriate), and an obligation in account 227, Obligations under Capital Leases—Noncurrent or account 243, Obligations under Capital Leases—Current, at an amount equal to the present value at the beginning of the lease term of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, together with any profit thereon. However, if the amount so determined exceeds the fair value of the leased property at the inception of the lease, the amount recorded as the asset and obligation shall be the fair value.

C. Rental payments on all leases shall be charged to rent expense as they become payable.

D. For a capital lease, for each period during the lease term, the amounts recorded for the asset and obligation shall be reduced by an amount equal to the portion of each lease payment that would have been allocated to the reduction of the obligation, if the payment had been treated as a payment on an installment obligation (liability) and allocated between interest expense and a reduction of the obligation so as to produce a constant periodic rate of interest on the remaining balance.

4. The Electric Plant Instructions of Part 101 are amended as follows:

(a) in the title of Instruction 1, by inserting the parenthetical "(Major utilities)" following the word "Accounts", and adding a new paragraph D, following paragraph C, to read as follows:

D. Plant acquired by lease which qualifies as capital lease property under General Instruction 19, *Criteria for Classifying Leases*, shall be recorded in Account 101.1 Property under Capital Leases.

(b) in paragraph A of Instruction 2, by removing the words "by the utility." and inserting, in their place, the words "by the utility, except for property acquired

by lease which qualifies as capital lease property under General Instruction 19, *Criteria for Classifying Leases*, and is recorded in Account 101.1, Property under Capital Leases.";

(c) by amending Instruction 3 as follows:

(1) by removing the words "The cost of construction" and inserting, in their place, the words "A. For Major utilities, the cost of construction";

(2) by adding, following paragraph A in Instruction 3, a new paragraph B to read as follows:

B. For Nonmajor utilities, the cost of construction of property chargeable to the electric plant accounts shall include, where applicable, the cost of labor; materials and supplies; transportation; work done by others for the utility; injuries and damages incurred in construction work; privileges and permits; special machine service; allowance for funds used during construction, not to exceed without prior approval of the Commission, amounts computed in accordance with the formula prescribed in paragraph (a) of subparagraph (17) above; training costs; and such portion of general engineering, administrative salaries and expenses, insurance, taxes, and other analogous items as may be properly includable in construction costs. (See Operating Expense Instruction 4.) The rates and balances of short- and long-term debt, preferred stock, common equity and construction work in progress shall be determined as prescribed in paragraph (b) of subparagraph (17) above.

(3) in subparagraph (3), by removing from the note the words "$50 or less" and inserting, in their place, the words "$500 or less,"

(4) by adding a new subparagraph (20), following subparagraph (19), to read as follows:

(20) "Studies" includes the costs of studies such as nuclear operational, safety, or seismic studies or environmental studies mandated by regulatory bodies relative to plant under construction. Studies relative to facilities in service shall be charged to account 183, Preliminary Survey and Investigation Charges.

(5) in subparagraph 17, by inserting the parenthetical "(Major and Nonmajor Utilities)" following the words "during Construction";

(6) in subparagraph 19 of Instruction 3, by inserting the parenthetical "(Major and Nonmajor Utilities)" following the words " "Training Costs" ";

(d) in paragraph C of Instruction 4, by removing the words "The records supporting" and inserting, in their place, the words "for Major utilities, the records supporting";

(e) in paragraph A of Instruction 6, by adding a sentence at the end of the paragraph to read "The provisions of this paragraph are applicable to property leased under either capital leases or operating leases.";

(f) in paragraph H of Instruction 7, by removing from the parenthetical the words "See account 111" and inserting, in their place, the words "For Major utilities, see account 111,"; and by inserting in the parenthetical the words "for Nonmajor utilities, see account 404" immediately following the words "Limited-Term Electric Plant";

(g) in pargaraph H of Instruction 8 by inserting the parenthetical "(Major Utilities)" at the end of the following items: 2, 6, 11, 12, 18, 19, 27, 28, 31, 34, 35, 38, 39, 40, 41, 43, 44, 46, 48, 51, 52, 54, 57, 59, 60, 61, 63, 64, 65, and 66;

(h) in paragraph B of Instruction 9, by removing from the parenthetical the words "$50 or less" and inserting, in their place, the words "$500 or less";

(i) in paragraph D of Instruction 9, by removing the words "The utility shall" and inserting, in their place, the words "In the case of Nonmajor utilities, the utility shall furnish the Commission with full particulars of and justification for any test or experimental run extending beyond a period of 30 days. In the case of Major utilities, the utility shall";

(j) in paragraph F of Instruction 10, by inserting the parenthetical "(Account 110, Accumulated Provision for Depreciation and Amortization of Electric Utility Plant, in the case of Nonmajor utilities)" following the words "Electric Plant in Service"; and by inserting the parenthetical "(Account 110 for Nonmajor utilities)" following the words "to Account 108";

(k) in paragraph G of Instruction 10, by removing the words "The accounting for" and inserting, in their place, the words "In the case of Major utilities, the accounting for";

(l) in paragraph C of Instruction 10, by removing the words "Each utility" and inserting, in their place, the words "In the case of Major utilities, each utility";

(m) in respective titles to Instructions 15 and 16, by inserting the parenthetical "(Major utilities)" at the end of each title.

5. The Operating Expense Instructions of Part 101 are amended by inserting, in the title to Instruction 1, the parenthetical "(Major Utilities)" at the end of the title.

6. The Balance Sheet Chart of Accounts and Balance Sheet Accounts of Part 101 are amended in the following accounts by inserting the parenthetical "(Major only)" at the end of the titles of the following accounts: accounts 103, 106, 108, 111, 115, 120.1–120.5, 123, 123.1, 125–128, 131–135, 151–153, 155–157, 163, 171–173, 183, 184, 185, 188, 202, 203, 205–209, 210, 216.1, 222, 238 and 239–241.

7. The Balance Sheet Chart of Accounts of Part 101 is amended as follows:

(a) by inserting a new account 101.1, following account 101, to read "101.1 Property under Capital Leases";

(b) by inserting a new account 103.1, following account 103, to read "103.1 Electric plant in process of reclassification (Nonmajor only)";

(c) in account 110, by removing the words "110 [Reserved]" and inserting, in their place, the words"110. Accumulated provision for depreciation and amortization of electric utility plant (Nonmajor only)";

(d) by inserting a new account 130, preceding account 131 to read "130 Cash and working funds (Nonmajor only)";

(e) by inserting a new account 129 following account 128, to read "129 Special funds (Nonmajor only)";

(f) by redesignating account 182 as account 182.1 and inserting a new account 182.2, directly following account 182.1, to read "182.2, Unrecovered Plant and Regulatory Study Costs";

(g) by removing account 214 in its entirety;

(h) by inserting a new account 218, following account 217, to read "218 Noncorporate proprietorship (Nonmajor only)";

(i) By removing the caption "9. OPERATING RESERVES" and by removing accounts 261, 262, 263, and 265;

(j) By redesignating caption 8 as caption 9 and caption 7 as caption 8 and inserting a new caption 7 to read "7. Other Noncurrent Liabilities";

(k) By inserting, after account 226, the following new accounts:

227 Obligations under Capital Leases—Noncurrent
228.1 Accumulated Provision for Property Insurance
228.2 Accumulated Provision for Injuries and Damages
228.3 Accumulated Provision for Pensions and Benefits
228.4 Accumulated Miscellaneous Operating Provisions
229 Accumulated Provision for Rate Refunds

(l) By inserting a new account 243 following Account 242, to read "243 Obligations under Capital Leases—Current".

8. The Balance Sheet Accounts of Part 101 are amended as follows:

(a) By adding a new account 101.1, following account 101, to read as follows:

101.1 Property Under Capital Leases.

A. This account shall include the amount recorded under capital leases for plant leased from others and used by the utility in its utility operations.

B. The electric property included in this account shall be classified separately according to the detailed accounts (301 to 399) prescribed for electric plant in service.

C. Records shall be maintained with respect to each capital lease reflecting: (a) Name of lessor, (b) basic details of lease, (c) terminal date, (d) original cost or fair market value of property leased, (e) future minimum lease payments, (f) executory costs, (g) present value of minimum lease payments, (h) the amount representing interest and the interest rate used, and (i) expenses paid.

(b) In paragraph C of account 105, by removing the words "notify the Commission of such condition and request approval of journal entries to remove such property from this account." and adding, in their place, new text to read as follows:

request Commission approval of journal entries to remove such property from this account when the original cost of the property is $100,000 or more, prior to their being recorded. For individual properties with an original cost of less than $100,000, the company shall file with the Commission, on an annual basis, journal entires reflecting the removal of such property from this account. Such filings shall include the description and original cost of individual properties removed from this account, the accounts charged upon removal, and whether any associated gains or losses were realized upon disposition of such property.

(c) in account 110, by removing the word "[Reserved]";

(d) by removing the following accounts (including text) 261, 262, 263, and 265;

(e) in account 121, by redesignating paragraph B as C and inserting a new paragraph B to read as follows:

121 Nonutility Property.

A. * * *

B. This account shall also include the amount recorded under capital leases for property leased from others and used by the utility in its nonutility operations. Records shall be maintained with respect to each lease reflecting: (a) Name of lessor, (b) basic details of lease, (c) terminal date, (d) original cost or fair market value of property leased, (e) future minimum lease payments, (f) executory costs, (g) present value of minimum lessee payments, (h) the amount representing interest and the interest rate used, and (i) expenses paid.

(f) in paragraph A of account 154, by inserting, following the words "maintenance purposes.", the sentence "For Nonmajor utilities, this account shall include the cost of fuel on hand and unapplied materials and supplies (except meters and house regulators)." and removing the words "It shall include" and inserting, in their place, the words "For both Major and Nonmajor utilities, it shall include";

(g) in account 154, by inserting a new paragraph C to read as follows:

C. For Nonmajor utilities, inventories of materials, supplies, fuel, etc., shall be taken at least annually and the necessary adjustments shall be made to bring this account into agreement with the actual inventories. In effecting the adjustments, large differences which can be assigned to important classes of materials shall be equitably adjusted among the accounts to which such classes of materials have been charged since the previous inventory. Other differences shall be equitably apportioned among the accounts to which materials have been charged.

(h) in account 154, by removing the NOTE (including the text) and inserting, in its place, NOTES A and B to read as follows:

Note A.—Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they may be charged to a stores expense clearing account (account 163, Stores Expense Undistributed, in the case of Major utilities), and distributed therefrom to the appropriate account.

Note B.—(Nonmajor utilities: When materials and supplies are purchased for immediate use, they need not be carried through this account but may be charged directly to the appropriate utility plant or expense account.

(i) by redesignating account 182 as account 182.1 and inserting, following account 182.1, an account 182.2 to read as follows:

182.2 Unrecovered Plant and Regulatory Study Costs.

A. This account shall include: (1) Nonrecurring costs of studies and analyses mandated by regulatory bodies related to plants in service, transferred from account 183, Preliminary Survey and Investigation Charges, and not resulting in construction; and (2) when authorized by the Commission, significant unrecovered costs of plant facilities where construction has been cancelled or which have been prematurely retired.

B. This account shall be credited and account 407, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs, shall be debited over the period specified by the Commission.

C. Any additional costs incurred, relative to the cancellation or premature retirement, may be included in this account and amortized over the remaining period of the original amortization period. Should any gains or recoveries be realized relative to the cancelled or prematurely retired plant, such amounts shall be used to reduce the unamortized amount of the costs recorded herein.

D. In the event that the recovery of costs included herein is disallowed in the rate proceedings, the disallowed costs shall be charged to account 426.5, Other Deductions, in the year of such disallowance.

(j) in account 183, by redesignating paragraph B as paragraph C and inserting a new paragraph B to read as follows:

B. This account shall also include costs of studies and analyses mandated by regulatory bodies related to plants in service. If construction results from such studies, this account shall be credited and the appropriate utility plant account charged. If the studies do not culminate in construction, such costs shall be charged to account 182.2, Unrecovered Plant and Regulatory Study Costs. The costs of such studies relative to plant under construction shall be included directly in account 107, Construction Work in Progress—Electric.

(k) in subparagraph A of account 186, by removing the words "This account shall" and inserting, in their place, the words "For Major utilities, this account shall";

(l) In account 186, by revising paragraphs A and B, redesignating paragraph B as paragraph C and adding new paragraph B to read as follows:

186 Miscellaneous deferred debits.

A. For Major utilities, this account shall include all debits not elsewhere provided for, such as miscellaneous work in progress, and unusual or extraordinary expenses, not included in other accounts, which are in process of amortization and items the proper final disposition of which is uncertain.

B. For Nonmajor utilities, this account shall include the following classes of items:

(1) Expenditures for preliminary surveys, plans, investigations, etc., made

for the purpose of determining the feasibility of utility projects under contemplation. If construction results, this account shall be credited with the amount applicable thereto and the appropriate plant accounts shall be charged with an amount which does not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to plant. If the work is abandoned, the charge shall be to account 426.5, Other Deductions, or to the appropriate operating expense accounts.

(2) Undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing accounts shall be substantially cleared not later than the end of the calendar year unless items held therein relate to a future period.

(3) Balances representing expenditures for work in progress other than on utility plant. This includes jobbing and contract work in progress.

(4) Other debit balances, the proper final disposition of which is uncertain and unusual or extraordinary expenses not included in other accounts, which are in process of being written off.

(C) For both Major and Nonmajor utilities, the records supporting the entries to this account shall be so kept that the utility can furnish full information as to each deferred debit included herein.

(m) in paragraph A of account 190, by removing the word "or" preceding the words "account 411.2," and by removing the word "Deductions" and inserting, in its place, the words "Deductions or account 411.3, Provision for Deferred Income Taxes—Credit, Rate Refunds";

(n) in paragraph B of account 190, by removing the word "or" preceding the words "account 410.2", by removing the word "Deductions" and inserting, in its place, the words "Deductions, or account 410.3, Provision for Deferred Income Taxes, Rate Refunds", and by removing the words "or 410.2" and inserting, in their place, the words "410.2 or 410.3";

(o) in the Note to account 204, by inserting the parenthetical "(for Nonmajor utilities, account 211, Miscellaneous Paid-In Capital)" immediately following the words "Premium on Capital Stock".

(p) in account 211, by revising the text, redesignating the Note as Note A, and adding a new Note B to read as follows:

211 Miscellaneous Paid-in Capital.

This account shall include the balance of all other credits for paid-in capital which are not properly includible in the foregoing accounts. (In the case of Nonmajor companies, this account shall be kept so as to show the source of the credits includible herein.

Items (Nonmajor only)

1. Premium received on original issues of capital stock.
2. Donations received from stockholders or reduction of debt of the utility, and the cash value of other assets received as a donation.
3. Reduction in part or stated value of capital stock.
4. Gain on resale or cancellation of reaquired capital stock.

Note A.—(Major utilities) Amounts included in capital surplus at the effective date of this system of accounts which cannot be classified as to the source thereof shall be included in this account.

Note B.—(Nonmajor utilities) Premium on capital stock shall not be set off against expenses. Further, a premium received on an issue of a certain class or series of stock shall not be set off against expense of another issue of the same class or series.

(q) by removing account 214 in its entirety.

(r) by adding, following account 226, new accounts 227, 228.1, 228.2, 228.3, 228.4 and 229 to read as follows:

227 Obligations Under Capital Leases—Noncurrent.

This account shall include the portion not due within one year, of the obligations recorded for the amounts applicable to leased property recorded as assets in account 101.1, Property under Capital Leases, or account 121, Nonutility Property. SPECIAL INSTRUCTION for Accounts 228.1 thru 229.

No amounts shall be credited to these accounts unless authorized by a regulatory authority or authorities to be collected in a utility's rate levels.

228.1 Accumulated Provision for Property Insurance.

A. This account shall include amounts reserved by the utility for losses through accident, fire, flood, or other hazards to its own property or property leased from others, not covered by insurance. The amounts charged to account 924, Property Insurance, or other appropriate accounts to cover such risks shall be credited to this account. A schedule of risks covered shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered, not to exceed the account balance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

228.2 Accumulated Provision for Injuries and Damages.

A. This account shall be credited with amounts charged to account 925, Injuries and Damages, or other appropriate accounts, to meet the probable liability, not covered by insurance, for deaths or injuries to employees and others and for damages to property neither owned nor held under lease by the utility.

B. When liability for any injury or damage is admitted by the utility either voluntarily or because of the decision of a court or other lawful authority, such as a workmen's compensation board, the admitted liability shall be charged to this account and credited to the appropriate current liability account. Details of these charges shall be maintained according to the year and casualty occurred which gave rise to the loss.

Note.—Recoveries or reimbursements for losses charged to this account shall be credited hereto; the cost of repairs to property of others if provided for herein shall be charged to this account.

228.3 Accumulated Provision for Pensions and Benefits.

A. This account shall include provisions made by the utility and amounts contributed by employees for pensions, accident and death benefits, savings, relief, hospital and other provident purposes, where the funds are included in the assets of the utility either in general or in segregated fund accounts.

B. Amounts paid by the utility for the purposes for which this liability is established shall be charged hereto.

C. A separate account shall be kept for each kind of provision included herein.

Note.—If employee pension or benefit plan funds are not included among the assets of the utility but are held by outside trustees, payments into such funds, or accruals therefore, shall not be included in this account.

228.4 Accumulated Miscellaneous Operating Provisions.

A. This account shall include all operating provisions which are not provided for elsewhere.

B. This account shall be maintained in such manner as to show the amount of each separate provision and the nature and amounts of the debits and credits thereto.

Notes.—This account includes only provisions as may be created for operating purposes and does not include any reservations of income the credits for which should be carried in account 215, Appropriated Retained Earnings.

229 Accumulated Provision for Rate Refunds.

A. This account shall be credited with amounts charged to Account 414.2, Provision for Rate Refunds, to provide for estimated refunds where the utility is collecting amounts in rates subject to refund.

B. When a refund of any amount recorded in this account is ordered by a regulatory authority, such amount shall be charged hereto and credited to account 242, Miscellaneous Current and Accrued Liabilities.

(s) in paragraph B of account 236, by removing the sentence "However, if such corrections are so large as to seriously distort current expenses, see General Instruction 7.1.";

(t) in account 242, by inserting at the end of the text the following:

Items (Nonmajor only)

1. Dividends declared but not paid.
2. Matured long-term debt.
3. Matured interest.
4. Taxes collected through payroll deductions or otherwise pending transmittal to the proper taxing authority.

(u) by adding a new account 243, following account 242, to read as follows:

243 Obligations Under Capital Leases—Current.

This account shall include the portion, due within one year, of the obligations recorded for the amounts applicable to leased property recorded as assets in account 101.1, Property under Capital Leases, or account 121, Nonutility Property.

(v) in account 282, by removing paragraph D in its entirety, and redesignating paragraph E as paragraph D.

9. The Electric Plant Chart of Accounts and the Electric Plant Accounts of Part 101 are amended by inserting in the following account the parenthetical "(Major only)" at the end of the titles of accounts 320, 321, 322, 323, 324, and 325.

10. The Electric Plant Accounts of Part 101 are amended as follows:

(a) in subparagraph C of account 302 and subparagraph B of account 303, by inserting the parenthetical "(for Nonmajor utilities, account 110, Accumulated Provision for Depreciation and Amortization of Electric Plant)" following the words "Electric Utility Plant";

(b) in accounts 330, 331, 332, and 335 by removing the words "It shall also" and inserting, in their place, the words "For Major utilities, it shall also";

(c) in the NOTE of account 368, by inserting the parenthetical "(for Nonmajor utilities, account 561, Line and Station Labor or account 562, Line and Station Supplies and Expenses)," following the words "Underground Line Expenses";

(d) in **Note B** of account 370, by inserting the parenthetical "(for Nonmajor utilities, account 556, Meter Expenses)" following the words "Meter Expenses";

(e) in **Note A** of account 372, by inserting the parenthetical "(for Nonmajor utilities, account 567, Customer Installations Expenses)" immediately following the words "Customer Installations Expenses".

11. The Income Chart of Accounts and the Income Accounts of Part 101 are amended by inserting the parenthetical "(Major only)" at the end of the title of account 418.1.

12. The Income Chart of Accounts of Part 101 is amended as follows:

(a) by removing the title of Account 407 and inserting, in its place the title "Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs";

(b) by removing, the reference to account 411.3 [Reserved] redesignating account 414 as account 414.1 and by adding, following new account 414.1, new headings and references to accounts 414.2, 410.3 and 411.3 to read as follows:

Net utility operating income before provision for rate refunds. Rate refunds.
410.3 Provision for Deferred Income Taxes, Rate Refunds.
411.3 Provision for Deferred Income Taxes—Credit, Rate Refunds. Rate refunds after taxes.
414.2 Provision for rate Refunds.
Net utility operating income after provision for rate refunds.

13. The Income Accounts of Part 101 are amended as follows:

(a) in account 407, by removing the account title and inserting, in its place, the title "Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs" and removing the words "account 182, Extraordinary Property Losses" and inserting, in their place, the words "account 182.1, Extraordinary Property Losses, and account 182.2, Unrecovered Plant and Regulatory Study Costs";

(b) in the *Special Instructions* following account 410, by removing the words "Accounts 410.1, 410.2, 411.1, and 411.2," and inserting, in their place, the words "Accounts 410.1, 410.2, 410.3, 411.1, 411.2, and 411.3.";

(c) in paragraph A of the *Special Instructions* following account 410, by removing the words "and 410.2" and inserting in their place, the words "410.2 and 410.3", and by removing the words "or 411.2" and inserting, in their place, the words "411.2 or 411.3";

(d) in paragraph B of the *Special Instructions* following account 410, by removing the words "and 411.2" and inserting, in their place, the words "411.2 and 411.3", and by removing the words "or 410.2" and inserting, in their place, the words "410.2 or 410.3";

(e) by adding, following account 410.2, new account 410.3 to read as follows:

410.3 Provision for Deferred Income Taxes, Rate refunds.

This account shall include the amounts of those deferrals of taxes and allocations of deferred taxes which relate to rate refunds.

(f) by removing the reference to account 411.3 [Reserved] and inserting, in its place, the following:

411.3 Provision for Deferred Income Taxes—Credit, Rate Refunds.

This account shall include the amounts of those allocations of deferred taxes and deferrals of taxes, credit, which relate to rate refunds.

(g) by redesignating account 414 as account 414.1 and adding a new account 414.2, following account 414.1, to read as follows:

414.2 Provision for Rate Refunds.

A. This account shall be charged with provisions for the estimated pretax effects on net income of the portions of amounts being collected subject to refund which are estimated to be required to be refunded. Such provisions shall be credited to account 229, Accumulated Provision for Rate Refunds.

B. This account shall also be charged with amounts refunded when such amounts have not previously been accrued.

C. Income tax effects relating to the amounts recorded in this account shall be recorded in account 411.3, Provision for Deferred Income Taxes—Credit, Rate Refunds, as appropriate.

(h) in account 425, by removing Items 2 and 3, and inserting, in their place, a new Item 2 to read "2. Other miscellaneous amortization charges allowed to be included in this account by the Commission."

(i) in account 426.5, by adding a new Item 5, directly following Item 4, to read as follows:

5. Costs of preliminary abandonment costs recorded in accounts 182.1, Extraordinary Property Losses, and 182.2, Unrecovered Plant and Regulatory Study Costs, not allowed to be amortized to account 407, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs.

(j) in account 434, by removing the words "nontypical, noncustomary, infrequently recurring gains," and inserting, in their place, the words "gains of unusual nature and infrequent occurrence,";

(k) in account 435, by removing the words "nontypical, noncustomary, infrequently recurring losses," and inserting, in their place, the words "losses of unusual nature and infrequent occurrence,".

14. The Retained Earnings Accounts of Part 101 are amended by removing the text of account 439 and inserting, in its place, the following:

439 Adjustments to Retained Earnings.

A. This account shall, with prior Commission approval, include significant nonrecurring transactions accounted for as prior period adjustments, as follows:

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits or pre-acquisition operating loss carryforwards of purchased subsidiaries.

B. All other items of profit and loss recognized during a year shall be included in the determination of net income for that year.

15. The Operating Revenue chart of Accounts and Operating Revenue Accounts of Part 101 are amended by inserting the parenthetical "(Major only)" at the end of the titles of accounts 445 and 446.

16. The Operating Revenue Chart of Accounts of Part 101 are amended by inserting an account 449, following account 448, to read "449 Other sales (Nonmajor only)".

17. The Operating Revenue Accounts of Part 101 are amended by inserting an account 449, following account 448, to read as follows:

449 Other sales.

A. This account shall include revenues for electricity supplied which are not provided for elsewhere.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenues received from each customer.

18. This account shall include revenues for electricity supplied which are not provided for elsewhere.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenues received for each customer.

18. The Operations and Maintenance Expense Chart of Accounts and the Operation and Maintenance Expense Accounts are Amened by inserting in the following accounts the parenthetical "(Major only)" at the end of each title of accounts 502, 505, 506, 510, 511, 512, 513, 514, 517–532, 537–539, 541–545, 548, 549, 551–554, 556, 561–566, 568–573, 581–584, 590–594, 901, 905, 907–913, 916.

19. The Operation and Maintenance Expense Chart of Accounts of Part 101 is amended as follows:

(a) By inserting an account 508, following account 507, to read "508 Operation supplies and expenses (Nonmajor only)";

(b) By inserting an account 515, following account 514, to read "515 Maintenance of steam production plant (Nonmajor only)";

(c) By inserting an account 540.1, following account 540, to read "540.1 Operation supplies and expenses (Nonmajor only)";

(d) By inserting an account 545.1, directly following account 545, to read "545.1 Maintenance of hydraulic production plant (Nonmajor only)";

(e) By inserting an account 550.1, following account 550, to read "550.1 Operation supplies and expenses (Nonmajor only)";

(f) By inserting an account 554.1, following account 554, to read "554.1 Maintenance of other power production plant (Nonmajor only)";

(g) By inserting an account 567.1, following account 567, to read "567.1 Operation supplies and expenses (Nonmajor only)";

(h) By inserting an account 574, following account 573, to read as follows "574 Maintenance of transmission plant (Nonmajor only)";

(i) By inserting an account 581.1, directly following account 581, to read "581.1 Line and station expenses (Nonmajor only)";

(j) By inserting an account 592.1, following account 592, to read "592.1 Maintenance of structures and equipment (Nonmajor only)";

(k) By inserting an account 594.1, following account 594, to read "594.1 Maintenance of lines (Nonmajor only)";

(l) By inserting an account 906, preceding account 907, to read "906 Customers service and informational expenses (Nonmajor only)";

(m) By inserting an account 917, following account 916, to read "917 Sales expenses (Nonmajor only)"; and

(n) By redesignating account 932 as account 933 and inserting a new account 932, following account 931, to read "932 Transportation expenses (Nonmajor only)."

20. The Operation and Maintenance Expense Accounts of Part 101 are amended as follows:

(a) in account 500, by revising and redesignating the current text as paragraph A and adding a new paragraph B to read as follows:

500 Operation supervision and engineering

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of steam power generating stations. Direct supervision of specific activities, such as fuel handling, boiler room operations, generator operations, etc., shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor utilities, this account shall include the cost of supervision and labor in the operation of steam power generating stations.

Items (Nonmajor only)

Boiler Room Labor:

1. Supervising steam production.
2. Operating fuel conveying, storage, weighing and processing equipment within boiler plant.
3. Operating boiler and boiler auxiliary equipment.
4. Operating boiler feed water purification and treatment equipment.
5. Operating ash collecting and disposal equipment located inside the plant.
6. Operating boiler plant electrical equipment.
7. Keeping boiler plant log and records and preparing reports on boiler plant operations.
8. Testing boiler water.
9. Testing, checking, and adjusting meters, gauges, and other instruments in boiler plant
10. Cleaning boiler plant equipment when not incidental to maintenance work.
11. Repacking glands and replacing gauge glasses where the work involved is of a minor nature and is performed by regular operating crews. Where the work is of a major character such as that performed on high pressure boilers the item should be considered as maintenance.

Electric Plant Labor:

12. Supervising electric production.
13. Operating turbines, engines, generators and exciters.
14. Operating condensers, circulating water systems, and other auxiliary apparatus.
15. Operating generator cooling system.
16. Operating lubrication and oil control system, including oil purification.
17. Operating switchboards, switch gear and electric control, and protective equipment.
18. Keeping electric plant log and records and preparing reports on electric plant operations.
19. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls, and other equipment in electric plant.
20. Cleaning electric plant equipment when not incidental to maintenance work.
21. Repacking glands and replacing gauge glasses.

Miscellaneous labor:

22. General clerical and stenographic work at plant.
23. Guarding and patrolling plant and yard.
24. Building service.
25. Care of grounds including snow removal, cutting grass, etc.
26. Miscellaneous labor.

(b) in account 501, by inserting the following:

(1) the parenthetical "(for Nonmajor utilities, appropriate fuel accounts carried under account 154, Plant Materials and Operating Supplies)" immediately following the words "account 151, Fuel Stock" in the first sentence of paragraph B.;

(2) the parenthetical "(for Nonmajor utilities, appropriate subaccount of account 154, Plant Materials and Operating Supplies)" immediately following the words "account 152, Fuel Stock Expenses Undistributed" in the second sentence of paragraph B. and;

(3) in items 7 and 8, by inserting the parenthetical "(Major only)" after the words "unloading point";

(c) in account 535, by revising and redesignating the current text as paragraph A, and by adding a new paragraph B and new Items section, following paragraph B, to read as follows:

535 Operation supervision and engineering.

A. For Major utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of hydraulic power generating stations. Direct supervision of specific activities, such as hydraulic operation, generator operation, etc., shall be charged to the appropriate account (See operating expense instruction 1).

B. For Nonmajor utilities, this account shall include the cost of supervision and labor in the operation hydraulic power generating stations.

Items (Nonmajor Only)

Hydraulic Labor:
1. Supervising hydraulic operation.
2. Removing debris and ice from trash racks, reservoirs and waterways.
3. Patrolling reservoirs and waterways.
4. Operating intakes, spillways, sluiceways and outlet works.
5. Operating bubbler, heater or other deicing systems.
6. Ice and log jam work.
7. Operating Navigation facilities.
8. Operations relating to conservation of game, fish, forests, etc.
9. Insect control activities.

Electric Labor:
10. Supervising electric production.
11. Operating prime movers, generators and auxiliary equipment.
12. Operating generator cooling system.
13. Operating lubrication and oil control systems, including oil purification.
14. Operating switchboards, switchgear and electric control and protection equipment.
15. Keeping plant log and records and preparing reports on plant operations.
16. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipments in the plant.
17. Cleaning plant equipment when not incidental to maintenance work.
18. Repacking glands. Miscellaneous Labor.
19. General clerical and stenographic work.
20. Guarding and patrolling plant and yard.
21. Building service.
22. Care of grounds, including snow removal, cutting grass, etc.
23. Snow removal from roads and bridges.
24. Miscellaneous Labor:

(d) in account 546, by revising and redesignating the current text as paragraph A, and by adding a new paragraph B and Items section, following paragraph A, to read as follows:

546 Operation supervision and engineering.

A. For Major utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of other power generating stations. Direct supervision of specific activities, such as fuel handling, engine and generator operation, etc., shall be charged to the appropriate account. (See operating expense instruction 1).

B. For Nonmajor utilities, this account shall include the cost of supervision and labor in the operation of other power generating stations.

Generating Labor:
1. Supervising other power generation operation.
2. Operating prime movers, generators and auxiliary apparatus and switching and other electric equipment.
3. Keeping plant log and records and preparing reports on plant operations.
4. Testing, checking, cleaning, oiling and adjusting equipment.

Miscellaneous Labor:
5. General clerical and stenographic work.
6. Guarding and patrolling plant and yard.
7. Building service.
8. Care of grounds, including snow removal, cutting grass, etc.
9. Miscellaneous labor.

(e) in account 547, by removing the parenthetical "(See account 151, Fuel Stock)" and inserting, in its place, the parenthetical "(See account 151, Fuel Stock, for Major utilities, and account 154, Plant Materials and Operating Supplies, for Nonmajor utilities)";

(f) in account 560, by revising and redesignating the current text as paragraph A, and by adding a new paragraph B and Items section, following paragraph A, to read as follows:

560 Operation supervision and engineering.

A. For Major utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of the transmission system as a whole. Direct supervision of specific activities, such as station operation, line operation, etc., shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor utilities, this account shall include the cost of supervision and labor in the operation of the transmission system.

Items (Nonmajor only)

Load Dispatching Labor:
1. Directing switching.
2. Arranging and controlling clearances for construction, maintenance, test and emergency purposes.
3. Controlling system voltages.
4. Obtaining reports on the weather and special events.
5. Preparing operating reports and data for billing and budget purposes.

Station Labor:
6. Supervising station operation.
7. Adjusting station equipment where such adjustment primarily affects performance, such as regulating the flow of cooling water, adjusting current in fields of a machine or changing voltage of regulators changing station transformer taps.
8. Inspecting, testing and calibrating station equipment for the purpose of checking its performance.
9. Keeping station log and records and preparing reports on station operation.
10. Operating switching and other station equipment.
11. Standing watch, guarding and patrolling station and station yard.
12. Sweeping, mopping and tidying station.
13. Care of grounds, including snow removal, cutting grass, etc.

Line Labor:
14. Supervising line operation.
15. Inspecting and testing lightning arresters, circuit breakers, switches and grounds.
16. Load tests of circuits.
17. Routine line patrolling.
18. Routine voltage surveys made to determine the condition or efficiency of transmission system.
19. Transferring loads, switching and reconnecting circuits and equipment for operating purposes. (Switching for construction or maintenance purposes is not includible in this account.)
20. Routine inspection and cleaning of manholes, conduit, network and transformer vaults.
21. Electrolysis surveys.
22. Inspecting and adjusting line testing equipment such as voltmeters, ammeters, wattmeters, etc.
23. Regulation and addition of oil or gas in high voltage cable systems.

Miscellaneous Labor:

24. General records of physical characteristics of lines and stations, such as capacities, etc.
25. Ground resistance records.
26. Janitorial work at transmission office buildings, including care of grounds, snow removal, cutting grass, etc.
27. Joint pole maps and prints.
28. Line load and voltage records.
29. Preparing maps and prints.
30. General clerical and stenographic work.
31. Miscellaneous labor.

(g) in account 580, by removing the word "See" from the parenthetical and inserting, in its place, the words "For Major utilities, see";

(h) by removing the text following the title of accounts 582 and 584.

(i) by adding text following account 584 to read as follows:

584 Underground line expenses (Major only).

Accounts 581.1 through 584 shall include, respectively, the cost of labor, materials used and expenses incurred in the operation of overhead and underground distribution lines and stations..

Items

Line Labor:
1. Supervising line operation.
2. Changing line transformer taps.
3. Inspecting and testing lightning arresters, line circuit breakers, switches and grounds.
4. Inspecting and testing line transformers for the purpose of determining load, temperature or operating performance.
5. Patrolling lines.
6. Load tests and voltage surveys of feeders, circuits and line transformers.
7. Removing line transformers and voltage regulators with or without replacements.
8. Installing line transformers or voltage regulators with or without change in capacity provided that the first installation of these items is included in account 368, Line transformers.
9. Voltage surveys, either routine or upon request of customers, including voltage tests at customer's main switch.
10. Transferring loads, switching and reconnecting circuits and equipment for operation purposes.
11. Electrolysis surveys.
12. Inspecting and adjusting line testing equipment.

Line Supplies and Expenses:
13. Tool expenses.
14. Transportation expenses.
15. Meals, traveling and incidental expense.
16. Operating supplies, such as instrument charts, rubber goods, etc.

Station Labor:
1. Supervising station operation.
2. Adjusting station equipment where such adjustment primarily affects performance, such as regulating the flow of cooling water, adjusting current in fields of a machine, changing voltage of regulators or changing station transformer taps.
3. Keeping station log and records and preparing reports on station operation.
4. Inspecting, testing and calibrating station equipment for the purpose of checking its performance.
5. Operating switching and other station equipment.
6. Standing watch, guarding and patrolling station and station yard.
7. Sweeping, mopping and tidying station.
8. Care of grounds, including snow removal, cutting grass, etc.

Station supplies and Expenses:
9. Building service expenses.
10. Operating supplies, such as lubricants, commutator brushes, water and rubber goods.
11. Station meter and instrument supplies, such as ink and charts.
12. Station record and report forms.
13. Tool expenses.
14. Transportation expenses.
15. Meals, traveling and incidental expenses.

Note.—(Major only) If the utility owns storage battery equipment used for supplying electricity to customers in periods of emergency, the cost of operating labor and of supplies, such as acid, gloves, hydrometers, thermometers, soda, automatic cell fillers, acid proof shoes, etc., shall be included in this account. If significant in amount, a separate subdivision shall be maintained for such expenses.

(j) in account 585, by removing the words "This account shall" and inserting, in their place, the words "B. For Major utilities, this account shall"; and adding, immediately preceding the present text (newly redesignated as paragraph B), a new paragraph A to read as follows:

A. For Monmajor utilities, this account shall include the cost of labor, materials used and expenses incurred in the operation of street lighting and signal system plant.

(k) in Item 7 of account 588, by inserting the word "expenses" following the word "meter";

(l) in Item 8 of account 588, by inserting in two separate places, following the words "Station Expenses" and "Expenses Undistributed," the parenthetical "(For Nonmajor utilities, account 581.1, Line and Station Expenses)"; and by inserting, following the words "store records," the parenthetical "(For Nonmajor utilities, station records)";

(m) in Item 13 of account 588, by inserting the parenthetical "(Major only)" following the words "demonstration expenses";

(n) in Item 26 of account 903, by inserting the parenthetical "(Major only)" following the words "Transportation expenses";

(o) in account 903, by adding new Items 31 and 32, following Item 30, to read as follows:

31. Communication service (Nonmajor only).
32. Miscelllaneous office supplies and expenses and stationery and printing (Nonmajor only).

(p) in **Note B** of account 924, by inserting in subparagraph (1) the parenthetical "(stores expenses in the case of Nonmajor utilities)" following the words "Expense Undistributed";

(q) in **Note B** of account 924, by removing from subparagraph (2) the word "Transportation" and inserting, in its place, the words "For Major Utilities, transportation"; and by adding, at the end of subparagraph (2), the sentence "For Nonmajor utilities, transportation and garage equipment, to account 933, Transporation Expenses.";

(r) in **Note C** of account 924, by inserting the parenthetical "(Major only)" directly following the words "NOTE C":

(s) in paragraph A of account 925, by removing the words "It shall also" and inserting, in their place, the words "For Major utilities, it shall also";

(t) in subparagraph D of account 926, by removing the word "Records" and inserting, in its place, the words "For Major utilities, records";

(u) in Item 4 of account 930.2, by removing the word "Research" and inserting, in its place, "For Major utilities, research", and adding, following Item 12 in ITEMS list, the sentence "For Nonmajor utilities, transportation and garage equipment, to account 933, Transportation Expenses.";

(v) by redesignating account 932 as account 933.

(w) in subparagraph A of account 933, by adding a sentence, immediately preceding the parenthetical, to read "For Nonmajor utilities, include also other general equipment accounts (not including transportation equipment).";

(x) in subparagraph B of account 933, by inserting the parenthetical "(Major only)" following the words "Account 532".

21. Part 104 is amended as follows:

(a) in account 103, by redesignating it as account 103.1 of Part 101 and inserting the parenthetical "(Nonmajor only)" at the end of the account 103.1 title;

(b) in account 110, by redesignating it as account 110 of Part 101 and inserting the parenthetical "(Nonmajor only)" at the end of the account 110 title;

(c) in account 125, by redesignating it as account 129 of Part 101 (to precede the heading "3. CURRENT AND ACCURED ASSETS.") and inserting the parenthetical "(Nonmajor only)" at the end of the account 129 title;

(d) in account 131, by redesignating it as account 130 of Part 101 (to following

the heading "3. CURRENT AND ACCURED ASSETS.") and inserting the parenthetical "(Nonmajor only)" at the end of the account 130 title;

(e) in account 218, by redesignating it as account 218 of Part 101 (to percede the heading "6. LONG–TERM DEBT") and inserting the parenthetical "(Nonmajor only)" at the end of the account 218 title;

(f) in account 449, by redesignating it as account 449 of Part 101 (to precede the heading "2. OTHER OPERATING REVENUES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 449 title;

(g) in account 502, by redesignating it as account 508 of Part 101 (to precede the heading "Maintenance") and inserting the parenthetical "(Nonmajor only)" at the end of the account 508 title;

(h) in account 506, by redesignating it as account 515 of Part 101 (to precede the heading "B. NUCLEAR POWER GENERATION") and inserting the parenthetical "(Nonmajor only)" following the word "plant" in the title;

(i) in account 532, by redesignating it as account 540.1 of Part 101 (to precede the heading *"Maintenance"*) and inserting the parenthetical "(Nonmajor only)" following the word "expenses" in the title;

(j) in account 535, by redesignating it as account 545.1 of Part 101 (to precede the heading "D. OTHER POWER GENERATION") and inserting the parenthetical "(Nonmajor only)" following the word "plant" in the title;

(k) in account 540, by redesignating it as account 550.1 of Part 101 (to precede the heading "*Maintenance*") and inserting the parenthetical "(Nonmajor only)" following the word "expenses" in the title;

(l) in account 543, by redesignating it as account 554.1 of Part 101 (to precede the heading "E. OTHER POWER SUPPLY EXPENSES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 554.1 title;

(m) in account 551, by redesignating it as account 567.1 of Part 101 (to precede the heading "*Maintenance*") and inserting the parenthetical "(Nonmajor only)" at the end of the account 567.1 title;

(n) in account 553, by redesignating it as account 574 of Part 101 (to precede the heading "3. DISTRIBUTION EXPENSES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 574 title;

(o) in account 562, by redesignating it as account 581.1 of Part 101 and inserting the parenthetical "(Nonmajor only)" at the end of the account 581.1 title;

(p) in account 571, by redesignating it as account 592.1 of Part 101 and inserting the parenthetical "(Nonmajor only)" at the end of the account 592.1 title;

(q) in account 572, by redesignating it as account 594.1 of Part 101 and inserting the parenthetical "(Nonmajor only)" at the end of the account 594.1 title;

(r) in account 907, by redesignating it as account 906 of Part 101 (to follow the heading "*Operation*") and inserting the parenthetical "(Nonmajor only)" at the end of the account 906 title;

(s) in account 910, by redesignating it as account 917 of Part 101 (preceding the heading "7. ADMINISTRATIVE AND GENERAL EXPENSES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 917 title;

(t) in account 933, by redesignating it as account 932 of Part 101 (preceding the heading "*Maintenance*" and inserting the parenthetical "(Nonmajor only)" at the end of the account 932 title;

(u) by removing the remaining text of Part 104 in its entirety and inserting, in its place, the following:

PART 104—[RESERVED]

(For the Uniform System of Accounts for all Public Utilities, see Part 101 of this subchapter).

22. Part 141 is amended as follows:

(a) The table of contents of Part 141 are amended to read as follows:

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

141.1 FERC Form No. 1, Annual report of electric utilities, licensees and others (Major).

141.2 Form No. 1–F, Annual report for public utilities and licensees, (Nonmajor).

* * * * *

§ 141.1 [Amended]

(b) in the heading of § 141.1, by removing the parenthetical "(Class A and Class B)" and inserting, in its place, the word "Major" preceding the word "electric";

(c) in paragraph (a) of §141.1, by removing the words "Class A and Class B" and inserting, in their place, the word "Major."

(d) in paragraph (b)(1)(i) of § 141.1, by removing footnote 1, and by removing the words "Class A and Class B [1] electric utility, license" and inserting, in their place, the words "Major electric utility (as defined in Part 101 of Subchapter C of this chapter)", by removing the words "having annual electric revenues of 1,000,000 or more" and inserting, in their place, the words "having sales or transmission service equal to Major as defined above".

(e) by removing paragraph (c) of § 141.1;

(f) in the heading of § 141.2, by removing the parenthetical "(Class C and Class D)" and by inserting the word "Nonmajor" preceding the word "public";

(g) in paragraph (a) of § 141.2, by removing the parenthetical "(Class C and Class D)" and by inserting the word "Nonmajor" preceding the word "Public";

(h) in paragraph (b)(1)(i) of § 141.2, by removing the words "Generally, Each public utility and licensee, as defined by the Federal Power Act, which is included in Class C on Class D as defined in Part 104 of this chapter,[1]" and inserting, in their place, the words "Generally. Each public utility and licensee as defined by the Federal Power Act, which is considered Nonmajor as defined in Part 101 of this Chapter."; and further by removing footnote 1.

§ 141.2 [Amended]

(i) n § 141.2, by removing paragraph (c) in its entirety.

PART 154—[AMENDED]

23. In Part 154, paragraph (b)(3) of § 154.63 is amended by removing the words "Class B, Class C and Class D companies defined as above" and inserting, in their place, the words "Nonmajor companies, defined above," and by removing the words "Class A companies (as defined in Subchapter F, Uniform System of Accounts of Natural Gas Companies, of this chapter)" and inserting, in their place, the following words:

Major natural gas companies (as defined in subchapter F, Part 201, Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act of this chapter)"

PART 159—[AMENDED]

21. In Part 159, paragraph (a)(1) of § 159.2a is amended by removing in two places the words "Class A and Class B" (immediately after words "each" and "all") and inserting, in their respective places, the word "Major".

PART 201—[AMENDED]

25. The title in Part 201 that follows the Subchapter heading "SUBCHAPTER F—ACCOUNTS, NATURAL GAS ACT" and the title in Part 201 that precedes the heading "Definitions" are amended by removing the parenthetical "(Class A and Class B)".

26. The Definitions section of Part 201 is amended as follows:

(a) in Definition 7, by removing the words "Federal Power Commission" and inserting, in their place, the words "Federal Energy Regulatory Commission.";

(b) in Definition 13, by inserting the words "in the case of Major natural gas companies," following the words "'Development costs,'";

(c) in Definition 15, by inserting the words "in the case of Major natural gas companies," following the words "'Exploration costs,'";

(d) in Definition 16, by inserting a comma "," and the words "in the case of Major natural gas companies," following the words "development costs";

(e) in Definition 27, by inserting the parenthetical "(Major natural gas companies)" following the words "distribution plant.";

(f) in paragraph B of Definition 29, by inserting a comma "," and the words "in the case of Major natural gas companies," following the parenthetical "(RD&D)";

(g) in Definition 35, by inserting a comma "," following the word "costs" and by removing the word "are" and inserting, in its place, the words "in the case of Major natural gas companies, means";

(h) in Definition 36, by inserting a comma "," following the word "Company" and removing the word "means" and inserting, in its place, the words "in the case of Major natural gas companies, means";

(i) by redesignating Definitions 18 through 37 as Definitions 20 through 39, and inserting new Definitions 18 and 19 to read as follows:

18. "Lease, capital" means a lease of property used in utility or non utility operations, which meets one or more of the criteria stated in General Instruction 19.

19. "Lease, operating" means a lease of property used in utility or non utility operations, which does not meet any of the criteria stated in General Instruction 19.

27. The General Instructions of Part 201 are amended as follows:

(a) in Instruction 1, by revising paragraphs A, B, and C to read as follows:

General Instructions

1. Classification of utilities

A. For the purpose of applying the system of accounts prescribed by the Commission, natural gas companies are divided into two classes, as follows:

Major—Each natural gas company as defined in the Natural Gas Act, whose combined gas sold for resale and gas transported or stored for a fee exceeds 50 million Mcf at 14.73 psi (60° F) in the previous calendar year.

Nonmajor—Natural gas companies that are not classified as a "Major company" (as defined above), and had total annual gas sales or volume transactions exceeding 200,000 Mcf at 14.73 psi (60°) in the previous calendar year.

B. This system applies to both Major and Nonmajor natural gas companies. Provisions have been incorporated into this system for those entities which prior to January 1, 1984, were applying the Commission's Uniform System of Accounts Prescribed for Class C and Class D (Part 104 of this Chapter) now revoked. The notations *Nonmajor* and *Major* have been used to indicate those instructions and accounts which by definition from the previous systems and classifications are not interchangeable without causing a loss of detail for the *Major* (previous Class A and Class B) or an increase in detail burden for the *Nonmajor* (previous Class C and Class D).

C. The class to which any natural gas company belongs shall originally be determined by its annual gas volume for the last three consecutive years, or, in the case of a newly established entity, the projected data shall be the basis. Subsequent changes in classification shall be made when the volume for each of the three immediately preceding years exceeds the upper limit, or is less than the lower limit of the classification previously applicable to the natural gas company.

* * * * *

(b) in Instruction 7, by removing:

(1) The words "not typical or customary business activities of the company" and inserting, in their place, the words "of unusual nature and infrequent occurrence";

(2) The words "would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business." and inserting, in their place, the words "are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.";

(3) The words "of a similar nature should be considered" and inserting, in their place, the words, "should be considered individually and not";

(4) The sentence in the parenthetical that reads "Dissimilar items should be considered individually; however, if they are few in number, they may be considered in aggregate." and inserting in the parenthetical, in its place, the sentence "However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate.";

(c) In Instruction 7.1, by revising the text to read as follows:

7.1 Prior Period Items.

A. Items of profit and loss related to the following shall be accounted for as prior period adjustments and excluded from the determination of net income for the current year.

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits of pre-acquisition operating loss carryforwards of purchased subsidiaries.

B. All other items of profit and loss recognized during the year shall be included in the determination of net income for that year.

(d) in the respective titles for Instructions 8, 12, 14, 15, and 16, by inserting the parenthetical "(Major natural gas companies)" at the end of each title;

(e) in paragraph G of Instruction 17, by removing the words "Account 283, Accumulated Deferred Income Taxes—Other" and inserting, in their place, the words "Account 282, Accumulated Deferred Income taxes—Other Property," and by removing the words "Account 283" and inserting, in their place, the words "Account 282";

(f) by adding Instructions 19, 20, and 21, following Instruction 18, to read as follows:

19. Criteria for Classifying Leases.

A. If at its inception a lease meets one or more of the following criteria, the lease shall be classified as a capital lease. Otherwise, it shall be classified as an operating lease.

(1) The lease transfers ownership of the property to the lessee by the end of the lease term.

(2) The lease contains a bargain purchase option.

(3) The lease term is equal to 75 percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(4) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs

such as insurance, maintenance, and taxes to be paid by the lessor, including any profit thereon, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by the lessor. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease. The lessee utility shall compute the present value of the minimum lease payments using his incremental borrowing rate, unless (A) it is practicable for the utility to learn the implicit rate computed by the lessor, and (B) the implicit rate computed by the lessor is less than the lessee's incremental borrowing rate. If both of those conditions are met, the lessee shall use the implicit rate.

B. If at any time the lessee and lessor agree to change the provisions of the lease, other than by renewing the lease or extending its term, in a manner that would have resulted in a different classification of the lease under the criteria in paragraph A had the changed terms been in effect at the inception of the lease, the revised agreement shall be considererd as a new agreement over its term, and the criteria in paragraph A shall be applied for purposes of classifying the new lease. Likewise, any action that extends the lease beyond the expiration of the existing lease term, such as the exercise of a lease renewal option other than those already included in the lease term, shall be considered as a new agreement, and shall be classified according to the above provisions. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the leased property) or changes in circumstances (for example, default by the lessee), shall not give rise to a new classification of a lease for accounting purposes.

20. Accounting for Leases.

A. All leases shall be classified as either capital or operating leases.

B. The utility shall record a capital lease as an asset in account 101.1, Property under Capital leases (or account 121, Non utility Property, if appropriate), and an obligation in account 227, Obligations under Capital Leases—Noncurrent or account 243, Obligations under Capital Leases—Current, at an amount equal to the present value at the beginning of the lease term of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, together with any profit thereon. However, if the amount so determined exceeds the fair value of the leased property at the inception of the lease, the amount recorded as the asset and obligation shall be the fair value.

C. Rental payments on all leases shall be charged to rent expense as they become payable.

D. For a capital lease, for each period during the lease term, the amounts recorded for the asset and obligation shall be reduced by an amount equal to the portion of each lease payment which would have been allocated to the reduction of the obligation, if the payment had been treated as a payment on an installment obligation (liability) and allocated between interest expense and a reduction of the obligation so as to produce a constant periodic rate of interest on the remaining balance.

21. Gas Well Records (Nonmajor Natural Gas Companies).

Each utility with natural gas operations shall maintain operating or accounting records for each well showing: (a) Acreage on which drilled, (b) dates of drilling period, (c) cost of drilling, (d) depth of well, (e) particulars and depth of each stratum drilled through, (f) geological formation from which gas is obtained, (g) initial rock pressure and open flow capacity, (h) sizes of casing used and lengths of each size, (i) total cost of well as recorded in gas plant accounts, (j) date well abandoned, for wells once productive, (k) date transferred to underground storage plant, for wells converted to storage use, and (l) date drilling discontinued, for wells determined to be nonproductive. The foregoing data, as appropriate, shall be maintained for each subsequent change in the depth of each well.

24. The Gas Plant Instructions of Part 201 are amended as follows:

(a) In Instruction 1, by inserting the parenthetical "(Major natural gas companies)" at the end of the title, and adding a new paragraph D, following paragraph C, to read as follows:

D. Plant acquired by lease which qualifies as capital lease property under General Instruction 19. *Criteria for Classifying Leases*, shall be recorded in Account 101.1, Property under Capital Leases.

(b) In paragraph A of Instruction 2, by removing the words "by the utility." and inserting, in their place, the words "by the utility, except for property acquired by lease which qualifies as capital lease property under General Instruction 19. *Criteria for Classifying Leases*, and is recorded in Account 101.1, Property under Capital Leases.";

(c) By amending Instruction 3 as follows:

(1) By redesignating the current text as paragraph A by removing the words "The cost of construction" and inserting, in their place, the words "A. For Major natural gas companies, the cost of construction;"

(2) In subparagraph (3), by removing from the note the words "$50 or less" and inserting, in their place, the words "$500 or less";

(3) In subparagraph (17), by inserting the parenthetical "(Major and Nonmajor Natural Gas Companies)" immediately preceding the word "includes.";

(4) In subparagraph (19), by inserting the parenthetical "(Major and Nonmajor Natural Gas Companies)" following the words " 'Training Costs' ";

(5) By adding a new subparagraph (22), directly following subparagraph (21), to read as follows:

(22) "Studies" includes the costs of studies such as operational, safety or environmental studies relative to plant under construction. Studies mandated by regulatory bodies relative to facilities in service shall be charged to Account 183.2, Other Preliminary Survey and Investigation Charges.

(d) In Instruction 3, by adding a new paragraph B, following paragraph A, to read as follows:

B. For Nonmajor natural natural gas companies, the cost of construction of property chargeable to the gas plant accounts shall include, where applicable, fees for construction certificate applications paid after grant of certificate, the cost of labor, materials and supplies, transportation, work done by others for the company, injuries and damages incurred in construction, privileges and permits, special machine service, allowance for funds used during construction, not be exceed without prior approval of the Commission amounts computed in accordance with the formula prescribed in paragraph (a) of subparagraph (17) above; training costs and such portion of general engineering, administrative salaries and expenses, insurance, taxes, and other analogous items as may be properly includible in construction costs. (See Operating Expense Instruction 4.) When the company employs its own funds in exploration and development on leases acquired after October 7, 1969, no allowance for funds used during construction on such funds shall be included in these accounts. The rates and balances of short-and long-term

debt, preferred stock, common equity and construction work in progress shall be determined as prescribed in paragraph (b) of subparagraph (17) above.

(e) In paragraph C of Instruction 4, by removing the words "The records supporting" and inserting, in their place, the words "For Major natural gas companies, the records supporting";

(f) In paragraph A of Instruction 6, by inserting the parenthetical "(For Nonmajor companies, account 404, Amortization of Limited-Term Gas Plant)" following the words "Limited-Term Gas Plant" and by inserting a sentence at the end of the paragraph to read "The provisions of this paragraph are applicable to property leased under either capital leases or operating leases.";

(g) By amending Instruction 7 as follows:

(1) In paragraph C, by inserting the parenthetical "(in the case of Major companies, account 105.1, Production Properties Held for Future Use)" following the words "Gas Plant Held For Future Use";

(2) In paragraph D, by removing the words "A parcel" and inserting, in their place, the words "In the case of Major companies, a parcel";

(3) In paragraph E, by inserting the parenthetical "(in the case of Major companies, the differences shall be included in accounts 411.6, Gains from Disposition of Utility Plant or 411.7, Losses from Disposition of Utility Plant, when such property has been recorded in account 105, Gas Plant Held for Future Use or 105.1, Production Properties Held for Future Use)" following the words "as appropriate";

(4) In paragraph G, by removing the words "Future Use, or Account 121." and inserting, in their place, the words "Future Use or, in the case of Major Companies, account 121";

(5) In the parenthetical of paragraph H, by removing the word "See" and inserting, in its place, the words "For Major companies, see";

(6) In paragraph H, by removing a comma "," and inserting a period "." following the words "Gas Plant" and inserting a sentence, following the words "Limited-Term Gas Plant", to read as follows:

For Nonmajor companies, see account 403.1, Depreciation and Depletion Expense, and account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Utility Plant.

(7) In paragraph H, by removing from the parenthetical the words "and account 797, Abandoned Leases" and by adding a sentence at the end of the text to read as follows:

See also account 797, Abandoned Leases, for the accounting for abandonments of natural gas leases which have never been productive.

(h) In paragraph G of Instruction 8, by inserting the parenthetical "(Major natural gas companies)" at the end of the following Items: Items 2, 6, 11, 12, 18, 19, 22, 28, 29, 32, 35, 36, 39, 40, 41, 42, 44, 45, 47, 49, 52, 53, 55, 58, 60, 61, 62, 64, 65, 66, and 67;

(i) In paragraph B of Instruction 9, by removing from the parenthetical the words "$50 or less" and inserting, in their place, the words "$500 or less";

(j) By amending Instruction 10 as follows:

(1) In paragraph E, by inserting a comma "," followed by the words "or in the case of Major companies, account" immediately following the words "Gas Plant Held for Future Use";

(2) In paragraph F, by inserting the parenthetical "(account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Utility Plant, in the case of Nonmajor companies)" following the words "Depreciation of Gas Plant in Service," and by inserting the parenthetical (account 110 for Nonmajor companies)" immediately following the words "credited to account 108"; and

(3) In paragraph G, by removing the words "The accounting for" and inserting, in their place, the words "In the case of Major companies, the accounting for";

(k) In paragraph C of Instruction 11, by removing the words "Each utility" and inserting, in their place, the words "In the case of Major companies, each utility";

(l) In Instruction 12, by removing the words "105.1, Production Properties Held For Future Use," and by inserting the parenthetical "(105.1, Production Properties Held for Future Use, in the case of Major companies)" following the words "Gas Plant Held for Future Use";

(m) In the Note to Instruction 12 by inserting after "Note:" the parenthetical "(Major Companies)";

(n) In the title to Instruction 14, by inserting the parenthetical "(Major natural gas companies)" at the end of the title of the instruction;

(o) By amending paragraph A of Instruction 15 as follows:

(1) In item (1), by adding the parenthetical "(account 180, Other Deferred Debits, in the case of Nonmajor companies)" following the words "Miscellaneous Deferred Debits,";

(2) In item (2), by adding the parenthetical "(the amounts recorded in account 186 shall be cleared to the appropriate plant accounts, in the case of Nonmajor companies)" following the words "plant accounts"; and

(3) In item (3), by adding the parenthetical "(Account 180 in the case of Nonmajor companies)" following the words "in account 186";

(p) By adding an Instruction 16 following Instruction 15 to read as follows:

16. Transmission and Distribution Plant (Nonmajor natural gas companies).

For the purposes of this system of accounts:

A. "Transmission System" means the land, structures, mains, valves, meters, boosters, regulators, tanks, compressors and their driving units and appurtenances, and other equipment used primarily for transmitting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas, to one or more distribution areas. The transmission system begins at the outlet side of the valve at the connection to the last equipment in a manufactured gas plant, the connection to gathering lines or delivery point of purchased gas, and includes the equipment at such connection that is used to bring the gas to transmission pressure, and ends at the outlet side of the equipment which meters or regulates the entry of gas into the distribution system or into a storage area. It does not include storage, land, structures or equipment. Pipeline companies, including those companies which measure deliveries of gas to their own distribution systems, shall include city gate and main line industrial measuring and regulating stations in the transmission function.

B. "Distribution System" means the mains which are provided primarily for distributing gas within a distribution area, together with land, structures, valves, regulators, services and measuring devices, including the mains for transportation of gas from production plants or points of receipt located within such distribution area to other points therein. The distribution system owned by companies having no transmission facilities connected to such distribution system begins at the inlet side of the distribution system equipment which meters or regulates the entry of gas into the distribution system and ends with and includes property on the customer's premises. For companies which own both transmission and distribution facilities on a continuous line, the distribution system begins at

the outlet side of the equipment which meters or regulates the entry of gas into the distribution system and ends with and includes property on the customer's premises. The distribution system does not include storage land, structures, or equipment.

C. "Distribution Area" as used herein means a metropolitan area or other urban area comprising one or more adjacent or nearby cities, villages or unincorporated areas, including areas contiguous to main highways.

29. The Operating Expense Instructions of Part 201 are amended by inserting, in the title to Instruction 1, the parenthetical "(Major natural gas companies)" at the end of the title.

30. The Balance Sheet Chart of Accounts and the Balance Sheet Accounts of Part 201 are amended by inserting the parenthetical "(Major only)" at the end of the titles of the following accounts: accounts 103, 105.1, 106, 108, 111, 115, 117, 123, 123.1, 125, 126, 128, 131–135, 151–153, 155, 156, 163, 164.3, 166, 167, 171–173, 183.1, 183.2, 184, 185, 188, 202, 203, 205–210, 216.1, 222, 238–241.

31. The Balance Sheet Chart of Accounts of Part 201 are amended as follows:

(a) By inserting a new account 101.1, following account 101, to read "101.1 Property under capital leases";

(b) By inserting a new account 103.1, following account 103, to read "103.1 Gas Plant in process of reclassification (Nonmajor only).";

(c) By removing the words "110 [Reserved]" and inserting, in its place, "110 Accumulated provision for depreciation, depletion, and amortization of gas utility plant (Nonmajor only)";

(d) By inserting an account 129, following account 128, to read "129 Special funds (Nonmajor only).";

(e) By inserting an account 130, preceding account 131, to read "130 Cash and working funds (Nonmajor only).";

(f) By redesignating account 182 as acccount 182.1 and inserting an account 182.2, directly following account 182.1, to read "182.2, Unrecovered plant and regulatory study costs.";

(g) By removing account 214 in its entirety;

(h) By inserting an account 218, following account 217, to read "218 Noncorporate proprietorship (Nonmajor only).";

(i) By removing the caption "9. OPERATING RESERVES" and by removing accounts 261, 262, 263, and 265;

(j) By redesignating Caption 8 as Caption 9 and Caption 7 as Caption 8 and inserting a new Caption 7 to read "7. *Other Noncurrent Liabilities*";

(k) By inserting accounts 227, 228.1, 228.2, 228.3, 228.4, and 229, after account 226, to read as follows:

227 Obligations under capital leases—noncurrent.
228.1 Accumulated provisiion for property insurance.
228.2 Accumulated provisiion for injuries and damages.
228.3 Accumulated provision for pensions and benefits.
228.4 Accumulated miscellaneous operating proviisons.
229. Accumulated provision for rate refunds.

(l) By inserting account 243, following Account 242, to read "243 Obligations under capital leases—current.".

32. The Balance Sheet Accounts of Part 201 are amended as follows:

(a) By adding a new account 101.1, following account 101, to read as follows:

101.1 Property Under Capital Leases.

A. This account shall include the amount recorded under capital leases for plant leased from others and used by the utility in its utility operations.

B. The gas property included in this account shall be classified separately according to the detailed accounts (301 to 399) prescribed for electric plant in service.

C. Records shall be maintained with respect to each capital lease reflecting: (a) Name of lessor, (b) basic details of lease, (c) terminal date, (d) original cost or fair market value of property leased, (e) future minimum lease payments, (f) executory costs, (g) present value of minimum lease payments, (h) the amount representing interest and the interest rate used, and (i) expenses paid.

(b) In paragraph C of Account 105, by removing the words "notify the Commission of such condition and request approval of journal entries to remove such property from this account." and adding, in their place, new text to read as follows:

request Commission approval of journal entries to remove such property from this account when the original cost of the property is $100,000 or more, prior to their being recorded. For individual properties with an original cost of less than $100,000, the company shall file with the Commission, on an annual basis, journal entries reflecting the removal of such property from this account. Such filings shall include the description and orginal cost of individual properties removed from this account, the accounts charged upon removal, and whether any associated gains or losses were realized upon disposition of such property.

(c) In paragraph C of account 105.1, by removing the words "notify the Commission of such condition and request approval of journal entries to remove such property from this account." and inserting, in their place, new text to read as follows:

request Commission approval of journal entries to remove such property from this account when the original cost of the property is $500,000 or more, prior to their being recorded. For individual properties with an original cost of less than $500,000, the company shall file with the Commission, on an annual basis, journal entries reflecting the removal of such property from this account. Such filings shall include the description and original cost of individual properties removed from this account, the accounts charged upon removal, and whether any associated gains or losses were realized upon disposition of such property.

(d) In **Note A** of account 107, by removing the words "Fderal Power Commission" and inserting, in their place, the words "Federal Energy Regulatory Commission";

(e) In account 110, by removing the word "[Reserved]";

(f) By amending account 154 as follows:

(1) In paragraph A, by inserting, following the words "maintenance purposes.", the following text:

For Nonmajor utilities, this account shall include the cost of fuel on hand and unapplied materials and supplies (except meters and house regulators);

(2) In paragraph A, by removing the words "It shall" and inserting, in their place, the words "For both Major and Nonmajor utilities, it shall";

(3) By inserting a subparagraph C, immediately following subparagraph B, to read as follows:

C. for Nonmajor utilities, inventories of materials, supplies, fuel, etc., shall be taken at least annually and the necessary adjustments shall be made to bring this account into agreement with the actual inventories. In effecting the adjustments, large differences which can be assigned to important classes of materials shall be equitably adjusted among the accounts to which such classes of materials have been charged since the previous inventory. Other differences shall be equitably apportioned among the accounts to which materials have been charged.

(4) By redesignating the current NOTE as "NOTE A" and revising the text and by adding a new NOTE B to read as follows:

Note A.—Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they may be

charged to a stores expense clearing account (account 163, Stores Expenses Undistributed, in the case of Major utilities), and distributed therefrom to the appropriate account.

Note B.—(Nonmajor utilities) When materials and supplies are purchased for immediate use, they need not be carried through this account but may be charged directly to the appropriate gas plant or expense account.

(g) In subparagraph A of account 186, by removing the words "This account shall" and inserting, in their place, the words "For Major companies, this account shall"; and by revising and redesignating subparagraph B as subparagraph C and inserting, a new subparagraph B to read as follows:

B. For Nonmajor companies, this account shall include the following classes of items:

(1) Expenditures for preliminary surveys, plans, investigations, etc. made for the purpose of determining the feasibility of projects under contemplation. If construction results, this account shall be credited with the amount applicable thereto and the appropriate plant accounts shall be charged with an amount which does not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to plant. If the work is abandoned, the charge shall be to account 426.5, Other Deductions, or to the appropriate operating expense accounts.

(2) Expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of acquiring land and land rights to provide a future supply of natural gas. If such land or land rights are acquired, this account shall be credited and the appropriate gas plant account (see gas plant instruction 6G) charged with the amount of expenditures related to such acquisition. Such preliminary survey and investigation charges transferred to gas plant shall not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to gas plant. If a project is abandoned involving a natural gas lease acquired before October 8, 1969, the expenditures related thereto shall be charged to account 723, Other Exploration. If a project is abandoned involving a lease acquired after October 7, 1969, the expenditures related thereto shall be charged to account 338, Unsuccessful Exploration and Development Costs.

(3) Undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing accounts shall be substantially cleared not later than the end of the calendar year unless items held therein relate to a future period.

(4) Balances representing expenditures for work in progress other than on utility plant. This includes jobbing and contract work in progress.

(5) Other debit balances, the proper final disposition of which is uncertain, and unusual or extraordinary expenses, not included in other accounts, which are in process of being written off.

(6) All fees related to certificate applications involving construction paid prior to the final disposition of the certificate application. If the certificate is granted and accepted, the amount recorded in this account shall be credited with the amount applicable thereto and charged to the appropriate plant accounts. If the certificate requested is not granted or is not accepted by the applicant, the fees recorded in this account shall be cleared to account 928, Regulatory Commission Expenses.

C. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to each deferred debit included herein. (In the case of Nonmajor companies, the records supporting entries for preliminary natural gas surveys and investigations shall be so kept that the utility can furnish, for each investigation, complete information as to identification and location of the territory investigated, the number or other identification assigned to the land tract or leasehold acquired, and the nature and respective amounts of the charges.)

(h) By removing the following accounts (including text) 261, 262, 263, and 265;

(i) In account 121, by redesignating paragraph B as paragraph C and inserting a new paragraph B to read as follows:

B. This account shall also include the amount recorded under capital leases for property leased from others and used by the utility in its nonutility operations. Records shall be maintained with respect to each lease reflecting: (a) Name of lessor, (b) basic details of lease, (c) terminal date, (d) original cost or fair market value of property leased, (e) future minimum lease payments, (f) executory costs, (g) present value of minimum lease payments, (h) the amount representing interest and the interest rate used, and (i) expenses paid.

(j) By redesignating account 182 as account 182.1 and inserting a new account 182.2, following account 182.1, to read as follows:

182.2 Unrecovered Plant and Regulatory Study Costs.

A. This account shall include: (1) Nonrecurring costs of studies and analyses mandated by regulatory bodies related to plants in service, transferred from account 183.2, Other Preliminary Survey and Investigation Charges, and not resulting in construction; and (2) when authorized by the Commission, significant unrecovered costs of plant facilities where construction has been cancelled or which have been prematurely retired.

B. This account shall be credited and account 407.1, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs, shall be debited, over the period specified by the Commission.

C. Any additional costs incurred, relative to the cancellation or premature retirement, may be included in this account and amortized over the remaining period of the original amortization period. Should any gains or recoveries be realized relative to the cancelled or prematurely retired plant, such amounts shall be used to reduce the unamortized amount of the costs recorded herein.

D. In the event that the recovery of costs included herein is disallowed in the rate proceedings, the disallowed costs shall be charged to account 426.5, Other Deductions, in the year of such disallowance.

(k) In account 183.2, by redesignating paragraph B as paragraph C and inserting a new paragraph B to read as follows:

B. This account shall also include costs of studies and analyses mandated by regulatory bodies related to plants in service. If construction results from such studies, this account shall be credited and the appropriate utility plant account charged. If the studies do not culminate in construction, such costs shall be charged to account 182.2, Unrecovered Plant and Regulatory Study Costs. The costs of such studies relative to plant under construction shall be included directly in account 107, Construction Work in Progress—Gas.

(l) In paragraph A of account 190, by removing the word "or" preceding the words "account 411.2", and by removing the word "Deductions" and inserting, in its place, the words "Deductions, or account 411.3, Provision for Deferred Income Taxes—Credit, Rate Refunds,";

(m) In paragraph B of account 190, by removing the work "or" preceding the words "account 410.2", and by removing the word "Deductions" and inserting, in its place, the words "Deductions, or

account 410.3, Provision for Deferred Income Taxes, Rate Refunds," and by removing the words "or 410.2" and inserting, in their place, the words "410.2 or 410.3";

(n) In paragraph D of account 192.1, by removing the words "transferred to account 191, Unrecovered Purchased Gas Costs," and inserting, in their place, the words "cleared from this account by a debit to account 805.2 and a credit to this account";

(o) In the **Notes** to account 204, by adding the parenthetical "(For Nonmajor companies, account 211, Miscellaneous Paid-In Capital)" immediately following the words "Premium on Capital Stock";

(p) By amending account 211 as follows:

(1) By adding a parenthetical and an **Items** section, immediately following the words "the foregoing accounts,", to read as follows:

(In the case of Nonmajor companies, this account shall be kept so as to show the source of the credits includible herein.)

Items (Nonmajor only)

1. Premium received on original issues of capital stock.
2. Donations received from stockholders or reduction of debt of the utility, and the cash value of other assets received as a donation.
3. Reduction in par or stated value of capital stock.
4. Gain on resale or cancellation of reacquired capital stock.

(2) By redesignating the current **Note** as **"Note A"** by removing the word **"Note:"** and inserting, in its place, the words "NOTE A: (Major companies)",

(3) By inserting a **Note B**, following **Note A**, to read as follows:

Note B.—(Nonmajor companies) Premium on capital stock shall not be set off against expenses. Further, a premium received on an issue of a certain class or series of stock shall not be set off against expense of another issue of the same class or series.

(q) By removing account 214 in its entirety;

(r) By inserting, following account 226, new accounts 227, 228.1, 228.2, 228.3, 228.4, and 229 to read as follows:

227 Obligations under Capital Leases—Noncurrent.

This account shall include the portion not due within one year, of the obligations recorded for the amounts applicable to leased property recorded as assets in account 101.1, Property under Capital Leases, or account 121, Nonutility property.

Special Instruction

No amounts shall be credited to these accounts unless authorized by a regulatory authority or authorities to be collected in a utility's rate levels.

228.1 Accumulated Provision for Property Insurance.

A. This account shall include amounts reserved by the utility for losses through accident, fire, flood, or other hazards to its own property or property leased from others, not covered by insurance. The amounts charged to account 924, Property Insurance, or other appropriate accounts to cover such risks shall be credited to this account. A schedule of risks covered shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered, not to exceed the account balance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

228.2 Accumulated Provision for Injuries and Damages.

A. This account shall be credited with amounts charged to account 925, Injuries and Damages, or other appropriate accounts, to meet the probable liability, not covered by insurance, for deaths or injuries to employees and others, and for damages to property neither owned nor held under lease by the utility.

B. When liability for any injury or damage is admitted by the utility either voluntarily or because of the decision of a court or other lawful authority, such as a workmens' compensation board, the admitted liability shall be charged to this account and credited to the appropriate current liability account. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

Note.—Recoveries or reimbursements for losses charged to this account shall be credited hereto; the cost of repairs to property of others if provided for herein shall be charged to this account.

228.3 Accumulated Provision for Pensions and Benefits.

A. This account shall include provisions made by the utility and amounts contributed by employees for pensions, accident and death benefits, savings, relief, hospital and other provident purposes, where the funds are included in the assets of the utility either in general or in segregated fund accounts.

B. Amounts paid by the utility for the purposes for which this liability is established shall be charged hereto.

C. A separate account shall be kept for each kind of provision included herein.

Note.—If employee pension or benefit plan funds are not included among the assets of the utility but are held by outside trustees, payments into such funds, or accruals therefor, shall not be included in this account.

228.4 Accumulated Miscellaneous Operating Provisions.

A. This account shall include all operating provisions which are not provided for elsewhere.

B. This account shall be maintained in such manner as to show the amount of each separate provision and the nature and amounts of the debits and credits thereto.

Note.—This account includes only provisions as may be created for operating purposes and does not include any reservations of income the credits for which should be carried in account 215, Appropriated Retained Earnings.

229 Accumulated Provision for Rate Refunds.

A. This account shall be credited with amounts charged to Account 414.2, Provision for Rate Refunds, to provide for estimated refunds where the utility is collecting amounts in rates subject to refund.

B. When a refund of any amount recorded in this account is ordered by a regulatory authority, such amount shall be charged thereto and credited to account 242, Miscellaneous Current and Accrued Liabilities.

(s) In paragraph B of account 236, by removing the sentence "However, if such corrections are so large as to seriously distort current expenses, see General Instruction 7.1.";

(t) In account 242, by adding, at the end of the account, a new Items section to read as follows:

Items (Nonmajor only)

1. Dividends declared but not paid.
2. Matured long-term debt.
3. Matured interest.
4. Taxes collected through payroll deductions or otherwise pending transmittal to the proper taxing authority.

(u) by inserting an account 243, following account 242, to read as follows:

243 Obligations under Capital Leases—Current.

This account shall include the portion due within one year, of the obligations recorded for the amounts applicable to leased property recorded as assets in account 101.1, Property under Capital Leases, or account 121, Non Utility Property.

(v) In account 282, by removing paragraph D in its entirety, and redesignating paragraph E as paragraph D.

33. The Gas Plant Chart of Accounts and the Gas Plant Accounts of Part 201 are amended by inserting the parenthetical "(Major only)" at the end of each title of the following accounts: accounts 363, 363.1, 363.2, 363.3, 363.4, 364.1, 364.2, 364.3, 364.4, 364.5, 364.6, 364.7, and 364.8.

34. The Gas Plant Accounts of Part 201 are amended as follows:

(a) In subparagraph C of account 302 and in subparagraph B of account 303, by adding the parenthetical "(For Nonmajor Companies; account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Utility Plant) following the words "Gas Utility Plant";

(b) In the Special Instructions immediately preceding account 325.1 paragraph B of account 338, by inserting the parenthetical "(for Nonmajor companies, 403.1, Depreciation and Depletion Expense)" following the words "Land Rights";

(c) In the paragraph preceding account 350.1, by adding the heading "SPECIAL INSTRUCTIONS—ACCOUNTS 350.1 THROUGH 363.5" preceding the text and removing the words "the accounts under subsections A and B hereunder." and inserting, in their place, the words "the above accounts." and removing the words "under Subsection C, Base Load Liquified Natural Gas Terminaling and Processing Plant" and inserting, in their place, the words "in accounts 364.1 through 364.8";

(d) In subparagraph B of account 352.3, by adding the parenthetical "(for Nonmajor companies, account 164.1, Gas Stored Underground)" following the word "Noncurrent";

(e) In the **Items** section of account 363.5, by redesignating Item No. 4 as Item No. 5, Item No. 3 as Item No. 4, and Item No. 2 as Item No. 3, and inserting a new Item No. 2 to read "2. Compressor.";

(f) In the **Items** section of account 367, by redesignating Items 11 through 23 as Items 12 through 24, and inserting a new Items 11 to read "11. Line Pack Gas.";

(g) In the **Items** section of account 376, by redesignating Items 8 through 25 as Items 9 through 26, and inserting a new Item 8 to read "8. Line Pack Gas.".

35. The Income Chart of Accounts and Income Accounts of Part 201 are amended by inserting the parenthetical "(Major only)" at the end of the titles of accounts: 403, 404.1, 404.2, 404.3, and 418.1.

36. The Income Chart of Accounts of Part 201 are amended as follows:

(a) In the title of account 401, by removing the word "Operating" and inserting, in its place, the word "Operation";

(b) By adding an account 403.1, following account 403, to read "403.1 Depreciation and depletion expense (Nonmajor only)"

(c) By adding an account 404, preceding account 404.1, to read "404 Amortization of limited-term gas plant (Nonmajor only)"

(d) In account 407.1, by removing the title and inserting, in its place, the title "Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs";

(e) By removing the reference to account 411.3 [Reserved], redesignating account 414 as account 414.1 and by adding, following account 414.1, new headings and references to accounts 414.2, 410.3 and 411.3 to read as follows:

Net utility operating income before provision for rate refunds. Rate Refunds
414.2 Provision for Rate Refunds.
410.3 Provision for Deferred Income Taxes, Rate Refunds.
411.3 Provision for Deferred Income Taxes—Credit, Rate Refunds. Rate refunds after taxes.
Net utility operating income after provision for rate refunds.

37. The Income Accounts of Part 201 are amended as follows:

(a) In account 407.1, by removing the account title and inserting, in its place, the title "Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs" and by removing the words "Account 182, Extraordinary Property Losses" and inserting, in their place, the words "Account 182.1, Extraordinary Property Losses, and Account 182.2, Unrecovered Plant and Regulatory Study Costs";

(b) In the *Special Instructions* following account 410, by removing the words "Accounts 410.1 410.2, 411.1, and 411.2, and inserting, in their place, the words "Accounts 410.1, 410.2, 410.3, 411.1, 411.2, and 411.3";

(c) In paragraph A under the *Special Instructions* following account 410, by removing the words "and 410.2" and inserting in their place, the words, "410.2 and 410.3", and removing the words "or 411.2" and inserting, in their palce, the words "411.2 or 411.3";

(d) In paragraph B under the *Special Instructions* following account 410, by removing the words "and 411.2" and inserting, in their place, the words "411.2 and 411.3", by and removing the words "or 410.2" and inserting, in their place, the words "410.2 or 410.3";

(e) By adding, following account 410.2, a new account 410.3 to read as follows:

410.3 Provision for Deferred Income Taxes, Rate Refunds.

This account shall include the amounts of those deferrals of taxes and allocations of deferred taxes which relate to rate refunds.

(f) By removing the reference account 411.3 [Reserved] and inserting, in its place, the following:

411.3 Provision for Deferred Income Taxes—Credit, Rate Refunds.

This account shall include the amounts of those allocations of deferred taxes and deferrals of taxes, credit, which relate to rate refunds.

(g) In accounts 411.6 and 411.7, by inserting the parenthetical "(Major only)" following the words "Production Properties Held For Future Use";

(h) In subparagraph B of account 413, by inserting the word and parenthetical "Depletion (Nonmajor only)" after the word "Depreciation";

(i) by redesignating account 414 as account 414.1 and adding an account 414.2, following account 414.1, to read as follows:

414.2 Provision for Rate Refunds.

A. This account shall be charged with provisions for the estimated pretax effects on net income of the portions of amounts being collected subject to refund which are estimated to be required to be refunded. Such provisions shall be credited to account 229, Accumulated Provision for Rate Refunds.

B. This account shall also be charged with amounts refunded when such amounts have not previously been accrued.

C. Income tax effects relating to the amounts recorded in this account shall be recorded in account 411.3, Provision for Deferred Income Taxes—Credit, Rate Refunds, as appropriate.

(j) In supbaragraph B of accounts 421.1 and 421.2, by inserting the parenthetical "(Major only)" following the words "Production Properties Held for Future Use";

(k) In account 425, by removing Item 3, and by revising Item 2 to read "2. Other miscellaneous amortization charges allowed to be included in this account by the Commission."

(l) In account 426.5, by adding a new Item 5, directly following Item 4, to read as follows:

5. Costs of preliminary abandonment costs recorded in accounts 182.1, Extraordinary Property Losses, and 182.2, Unrecovered Plant and Regulatory Study Costs, not allowed to be amortized to account 407.1, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs.

(m) In account 434, by removing the words, "nontypical, noncustomary,

infrequently recurring gains," and inserting, in their place, the words "gains of unusual nature and infrequent occurence,";

(n) In account 435, by removing the words "nontypical, noncustomary, infrequently recurring losses," and inserting, in their place, the words "losses of usual nature and infrequent occurrence,".

38. The Operating Revenue Chart of Accounts and Operating Revenue Accounts of Part 210 are amended by inserting the parenthetical "(Major only)" at the end of the title of account 482.

39. The Operating Revenue Accounts are amended as follows:

(a) In subparagraph C of account 481, by inserting the parenthetical "(Major companies)" preceding the words "Records shall";

(b) In Item 3 of account 488, by removing from the parenthetical the word "See" and inserting, in its place, the words "For Major Companies, see,";

(c) In Item 8 of account 495, by inserting the parenthetical "(Major companies)" immediately preceding the word "Include".

40. The Retained Earnings Accounts of Part 201 are amended by removing the text of account 439 and inserting, in its place, the following:

439 Adjustments to Retained Earnings.

A. This account shall, with prior Commission approval, include significant nonrecurring transactions accounted for as prior period adustments, as follows:

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits or pre-acquisition operating loss carryforwards of purchased subsidiaries.

B. All other items of profit and loss recognized during a year shall be included in the determination of net income for that year.

41. The Operation and Maintenance Expense Chart of Account and the Operation Maintenance Expense Accounts of Part 201 are amended by inserting the parenthetical "(Major only)" at the end of each title of the following accounts: accounts 700–708, 711–730, 732–735, 740–742, 751–754, 756, 757, 761, 762, 765–775, 777–791, 800–804.1, 806, 809.1, 809.2, 810–812, 815–822, 824, 830, 831, 833–837, 840–842, 842.1–842.3, 843.1–843.9, 844.1–844.8, 845.1–845.6, 846.1, 846.2, 847.1–847.8, 851–857, 859, 861, 862, 865–867, 871–873, 875–877, 880, 885–892, 894, 901, 905, 907–913 and 916;

42. The Operation and Maintenance Expense Chart of Accounts of Part 201 is amended as follows:

(a) By inserting an account 724.1, following account 724, to read "724.1 Fuel (Nonmajor only).";

(b) By inserting an account 729.1, following account 729, to read "729.1 Raw material (Nonmajor only).";

(c) By inserting an account 737, following account 736, to read "737 Operation supplies and expenses (Nonmajor only).";

(d) By inserting an account 743, following account 742, to read "743 Maintenance of production plant (Nonmajor only).";

(e) By inserting an account 769.1, following account 769, to read "769.1 Maintenance of other plant (Nonmajor only).";

(f) By inserting an account 792, following account 791, to read "792 Maintenance of products extraction plant (Nonmajor only).";

(g) By inserting an account 799, preceding account 800, to read "799 Natural gas purchases (Nonmajor only).";

(h) By inserting an account 812.1, following account 812, to read "812.1 Gas used in utility operations—Credit (Nonmajor only).";

(i) By inserting an account 827, following account 826, to read "827 Operation supplies and expenses (Nonmajor only).";

(j) By inserting new accounts 838 and 839, following account 837, to read as follows:

838 Maintenance of other underground storage plant (Nonmajor only).

839 Maintenance of local storage plant (Nonmajor only).

(k) By inserting an account 853.1 following account 853, to read "853.1 Compressor station fuel and power (Nonmajor only).";

(l) By inserting an account 857.1, following account 857, to read "857.1 Operation supplies and expenses (Nonmajor only).";

(m) By inserting an account 868, following account 867, to read " "868 Maintenance of other plant (Nonmajor only).";

(n) By inserting an account 880.1, following account 880, to read "880.1 Miscellaneous distribution expenses (Nonmajor only).";

(o) By inserting an account 892.1, following account 892, to read "892.1 Maintenance of lines (Nonmajor only).";

(p) By inserting an account 895, following account 894, to read "895 Maintenance of other plant (Nonmajor only).";

(q) By inserting an account 906, preceding account 907, to read "906 Customer service and informational expenses (Nonmajor only).";

(r) By inserting an account 917, following account 916, to read "917 Sales expenses (Nonmajor only).";

(s) By redesignating an account 932 as acount 933 and inserting an account 932 to read "932 Transportation expenses (Nonmajor only).";

43. The Operation and Maintenace Expense Accounts are amended as follows:

(a) In account 710, by redesignating the current text as paragraph A by removing the words "This account shall" and inserting, in their place, the words "A. For Major companies, this account shall", and adding a new paragraph B and ITEMS Section to read as follows:

B. For Nonmajor companies, this account shall include the cost of supervision and labor in the operation of manufactured gas production plants.

Items (Nonmajor only)

1. Supervising.
2. Operating or attending equipment and controls including boiler plant, power equipment and other auxiliaries.
3. Cleaning, lubricating and oiling equipment and auxiliaries.
4. Loading and unloading and other handling of coal, coke, other fuels, raw materials, residuals, waste materials, etc.
5. Observing, testing, checking and adjusting meters, gauges, and other instruments and equipment.
6. Keeping plant logs and other records and preparing reports on plant operation.
7. Cleaning boiler room, other buildings and yards.
8. Repacking glands and replacing gauge glasses and other similar work if work is of a minor nature and performed by regular operating crews. Where work is of a major character, such as that performed on high pressure boilers, the work shall be considered maintenance.
9. Testing water, etc.
10. Janitorial, messenger, watchmen and similar services.
11. Clerical and stenographic work at plant.

(b) In subparagraphs A and B of account 731, by inserting the parenthetical "(for Nonmajor companies, account 154, Plant Materials and Operating Supplies)" immediately following the words "Extracted Products";

(c) In account 750, by redesignating the current text as paragraph A by removing the words "This account shall" and inserting, in their place, the words "A. For Major companies, this account shall", and inserting at the end of the text a new paragraph B to read as follows:

B. For Nonmajor companies, this account shall include the cost of supervision and labor in the operation of gas wells, lines, compressors and other

equipment of the natural gas production and gathering system including miscellaneous labor such as care of grounds, building service, and general clerical and stenographic work at field offices.

(d) In account 750, by inserting the words "Major and Nonmajor:" between the title ITEMS and Item 1; and inserting new Items 5 through 21, at the end of the ITEMS section, to read as follows: Nonmajor only:

5. Gas well labor: turning wells on and off, bailing, swabbing, blowing wells, etc.
6. Preparing and maintaining production maps and land records, including surveys.
7. Field line labor: patrolling, attending and lubricating valves and other equipment, blowing and cleaning lines and drips, taking line pressures, etc.
8. Field compressor station labor: operating, attending, lubricating and servicing equipment, recording pressures, replacing charts, etc.
9. Measuring and regulating labor: recording pressures, changing charts, calculating gas volumes except for purchased gas and sales, adjusting and calibrating measuring equipment, taking gas samples and testing gas, inspecting and pumping drips, dewatering manholes and pits, etc.
10. Purification labor: attending and servicing purification apparatus, emptying, cleaning and refilling purifier boxes, unloading and storing glycol, etc.
11. Inspecting and testing equipment, not specifically to determine necessity for repairs or replacement of parts.
12. Lubricating equipment, valves, etc.
13. Hauling operating employees, materials, supplies, etc.
14. Moving equipment, minor structures, etc., not in connection with construction, retirement or maintenance work.
15. Keeping log and other operating records, preparing reports of operations, etc.
16. Cleaning structures, cutting grass and weeds, and minor grading around stations.
17. Cleaning debris, cutting grass and weeds on rights-of-way.
18. Cleaning and repairing tools.
19. Building and repairing gate boxes, foot bridges, stiles, tool boxes, etc.
20. Janitorial, watchmen and messenger services.
21. Clerical and stenographic work.

(e) By amending account 755 as follows:

(1) In paragraph A, by removing the words "stations, including" and inserting, in their place, the words "stations (including in the case of Major companies," and by inserting a bracket ") " following the word "expenses";

(2) In paragraph B, by removing the word "Respective" and inserting, in its place, the words "For Major companies, respective";

(3) By redesignating the current Note as Note (1) by inserting the parentheticals "(1) (Major Companies)" immediately following the word "Note"; and inserting a new Note (2) to read as follows:

Note (2) (Nonmajor companies): The cost of fuel, except gas, shall be charged initially to account 154, Plant Materials and Operating Supplies, and cleared to this account on the basis of fuel used.

(f) By amending account 759 as follows:

(1) By inserting the parenthetical "(Major companies only)" following the word "labor";

(2) By inserting the words "Major companies:" between the titles "Items" and "Labor"; and

(3) By inserting, at the end of the ITEMS section, eighteen new Items to read as follows:

Nonmajor Companies:
1. Scrubber oil.
2. Gas, gasoline, and oil, in pumping, bailing, heating and swabbing.
3. Well swabs.
4. Lumber, nails, and other materials used for upkeep of fences, making signs, etc.
5. Material for upkeep of roads, etc.
6. Hand tools.
7. Lubricants, wiping rags, waste, etc.
8. Gas used in field line operations.
9. Charts and printed forms.
10. Gauge glasses.
11. Water tests and treatment by other than employees.
12. Gas purifying supplies.
13. Geological and gas reserve services by others than employees in connection with gas production.
14. Office supplies, stationery, drafting materials, etc.
15. Janitor, washroom, landscaping, first aid supplies, etc.
16. Employees' transportation and travel expenses.
17. Freight, express, parcel post, trucking, and other transportation.
18. Utility services: lights, water, telephone.

(g) In account 776, by removing the words "blending and refining" and inserting, in their place, the words "in the case of Major companies, blending refining"; by inserting the parenthetical "(Major only)" following the title "Items"; and by inserting a Note, at the end of the account, to read as follows:

Note: (Nonmajor companies) If the products extraction operations of the utility are other than a relatively minor part of the utility's natural gas business, the utility shall use the accounts for products extration expenses of the Major Gas Utilities with the respective accounts prescribed therein identified as subaccounts to this account.

(h) In the Note of account 795, by inserting the parenthetical "(in the case of Nonmajor Companies, account 105, Gas Plant Held for Future Use)" following the words "Future Use";

(i) In Note A of account 796, by inserting the parenthetical "(in the case of Nonmajor companies, General Instruction 19, Gas Well Records)" following the words "Each Plant";

(j) By amending account 797 as follows:

(1) In subparagraph A, by removing the words "This account shall" and inserting, in their place, the words "For Major companies, this account shall"; and by adding a sentence, following the word "Productive.", to read as follows:

For Nonmajor companies, this account shall be charged with losses on abandonment of natural gas leases acquired before October 8, 1969, included in account 105, Gas Plant Held for Future Use, which have never been productive, unless otherwise authorized by the Commission. (See account 182.)

(2) In subparagraph B, by inserting the parenthetical "(Major only)" preceding the word "When";

(k) In the parenthetical of account 798, by inserting the words "for Major companies," preceding the word "see", and by removing the word "Charges" and inserting, in its place, the words "Charges; for Nonmajor companies, see account 186, Miscellaneous Deferred Debits";

(l) In subparagraph D of account 807, by inserting the parenthetical "(Major companies)" preceding the word "This";

(m) In paragraph A, accounts 808.1 and 808.2, by inserting the parenthetical "(in the case of Nonmajor companies, account 164.1, Gas Stored Underground)" following the word "Noncurrent";

(n) In account 813, by removing the word "including" and inserting, in its place, the words "including, in the case of Major companies,";

(o) In account 814, by redesignating the current text as paragraph A by removing the words "This account shall" and inserting, in their place, the words "A. For Major companies, this account shall"; and by inserting a new paragraph B and Items section to read as follows:

B. For Nonmajor companies, this account shall include the cost of supervision and labor in the operation of storage facilities including underground storage gas wells, lines, compressors and other equipment of the underground storage system, and the labor and expense of preparing and maintaining storage maps and land records.

Items (Nonmajor only)

1. Operation of other storage facilities.
2. Operation of underground storage system. (See account 750).

(p) In the parenthetical of account 823, by removing the word "See" and

inserting, in its place the words "For Major companies, see";

(q) In account 850, by redesignating the current text as paragraph A by removing the words "This account shall" and inserting, in their place, the words "A. For Major companies, this account shall"; and by inserting a new paragraph B and six Items, at the end of the text, to read as follows:

B. For Nonmajor companies, this account shall include the cost of supervision and labor in the operation of lines, compressor stations, and other equipment of the transmission system.

Items (Nonmajor only)

1. Load dispatching labor.
2. Transmission communication system labor.
3. Compressor station labor.
4. Mains labor.
5. Measuring and regulating station labor.
6. Miscellaneous labor.

(r) In account 865, by removing the account number "309" and inserting, in its place, the number "369";

(s) In account 870, by inserting a new parenthetical "(Major only)" following the word "dispatching" and by removing from the parenthetical the word "See" and inserting, in its place, the words "for Major companies, see";

(t) In the Items section of account 874, by inserting the parenthetical "(Major only)" immediately following the title "Labor"; and by inserting at the end of the Items section the following new Items to read as follows:

Labor (Nonmajor only):
1. Mains and Services labor.
2. Pumping station labor.
3. Measuring and regulating station labor.

Materials and expenses (Major and Nonmajor):
1. Line markers and warning signs.
2. Lumber, nails, etc., used in building and repairing gate boxes (foot bridges, stiles, tool boxes, etc.) (Major only).
3. Charts and printed forms.
4. Scrubber oils.
5. Hand tools.
6. Lubricants, wiping rags, waste, etc.
7. Freight, express, parcel post, trucking and other transportation.
8. Uniforms. (Major only).
9. Employee transportation and travel expenses (Major only).
10. Janitor and washroom supplies (Major only).
11. Utility services: light, water, telephone (Major only).
12. Gas used in mains operations (Major only).
13. Oil for fogging.

(u) In account 878, by inserting the parenthetical "(Major only)" at the end of Items 1–12 and 20;

(v) In account 879, by inserting the parenthetical "(Major only)" at the end of Items 1, 2, 4, 5, 6, 9, 11–13;

(w) In account 902, by revising Item 13 and adding new Items 14, following Item 13, to read as follows:

13. Communication service (Nonmajor only).
14. Miscellaneous office supplies and expenses and stationery and printing (Nonmajor only).

(x) In account 903, by inserting at the end of item 26 the parenthetical "(Major only)" and adding new Items 31 and 32, following Item 30, to read as follows:

31. Communication service (Nonmajor only).
32. Miscellaneous office supplies and expenses and stationery and printing (Nonmajor only).

(y) By amending account 924 as follows:

(1) In subparagraph A of account 924, by removing the words "It shall include" and inserting, in their place, the words "For Major companies, it shall include";

(2) In subparagraph (1) of Note B, by inserting the parenthetical "(stores expenses in the case of Nonmajor companies)" following the word "Undistributed";

(3) In subparagraph (2) of Note B by removing the word "Transportation" and inserting, in its place, the words "For Major companies, transportation"; and by adding, following the word "maintained.", the sentence "For Nonmajor companies, transportation and garage equipment, to account 933, Transportation expenses.";

(4) In Note C, by inserting the parenthetical "(Major only)" following the title "Note C";

(z) In subparagraph A of account 925, by removing the words "It shall also" and inserting, in their place, the words "For Major companies, it shall also";

(aa) In subparagraph D of account 926, by removing the word "Records" and inserting, in their place, the words "For Major companies, records";

(bb) In Item 4 of account 930.2, by removing the word "Research" and inserting, in its place, the words "For Major companies, research", and by adding the sentence "For Nonmajor companies, experimental and general research work for the industry" following the word "basis.";

(cc) In account 932, by redesignating this account as account 933, by adding a sentence immediately following the words "miscellaneous Equipment." to read "For Nonmajor companies, include also other general equipment accounts (not including transportation equipment)."; and by removing the Note (including text), and inserting, in its place, the following:

Functions	Account numbers	
	Major	Nonmajor
Manufactured Gas Production	708, 742	743
Natural Gas Production and Gathering	769	793
Natural Gas Products Extraction	791	
Underground Storage	837	838, 839
Local Storage	846.2	
Transmission Expenses	867	868
Distribution Expenses	894	895
Merchandising and Jobbing	416	416

Garages, Shops, etc.—appropriate clearing account, if used (or general expense, in the case of Nonmajor companies).

PART 204—[AMENDED]

44. Part 204 is amended as follows:

(a) In account 103, by redesignating it as account 103.1 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 103.1 title;

(b) In account 110, by redesignating it as account 110 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 110 title;

(c) In account 125, by redesignating it as account 129 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 129 title;

(d) In account 131, by redesignating it as account 130 of Part 201 (following the heading "3. CURRENT AND ACCURED ASSETS") and inserting the parenthetical "(Nonmajor only)" at the end of the account 130 title;

(e) In account 218, by redesignating it as account 218 of Part 201 (preceding the heading "6. LONG-TERM DEBT") and inserting the parenthetical "(Nonmajor only)" at the end of the account 218 title;

(f) In account 403, by redesignating it as account 403.1 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 403.1 title;

(g) In account 404, by redesignating it as account 404 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 404 title;

(h) In account 701, by redesignating it as account 724.1 of Part 201 (preceding the heading *"Gas Raw Materials"*) and inserting the parenthetical "(Nonmajor only)" at the end of the account 724.1 title;

(i) In account 702, by redesignating it as account 729.1 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 729.1 title;

(j) In account 703, by redesignating it as account 737 of Part 201 (preceding the heading *"Maintenance"*) and inserting the parenthetical "(Nonmajor only)" at the end of the account 737 title;

(k) In account 706, by redesignating it as account 743 of Part 201 (preceding the heading "B. *Natural Gas Production*

Expenses") and inserting the parenthetical "(Nonmajor only)" at the end of the account 743 title;

(l) In account 718, by redesignating it as account 792 of Part 201 (preceding the heading "C. EXPLORATION AND DEVELOPMENT EXPENSES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 792 title;

(m) In account 719, by redesignating it as account 769.1 of Part 201 (preceding the heading "B2. *Products Extraction"*) *and inserting the parenthetical "(Nonmajor only)" at the end of the account 769.1 title;*

(n) In account 730, by redesignating it as account 799 of Part 201 (following the heading D. *Other Gas Supply Expenses*) and inserting the parenthetical "(Nonmajor only)" at the end of the account 799 title;

(o) In account 735, by redesignating it as account 812.1 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 812.1 title;

(p) In account 742, by redesignating it as account 827 of Part 201 (preceding the heading *"Maintenance"*) and inserting the parenthetical "(Nonmajor only)" at the end of the account 827 title;

(q) In account 746, by redesignating it as account 838 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 838 title;

(r) In account 747, by redesignating it as account 839 of Part 201 (preceding the heading "B. *Other Storoge Expenses"*) and inserting the parenthetical "(Nonmajor only)" at the end of the account 839 title;

(s) In account 751, by redesignating it as account 853.1 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 853.1 title;

(t) In account 752, by redesignating it as account 857.1 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 857.1 title;

(u) In account 757, by redesignating it as account 868 of Part 201 (preceding the heading "4. DISTRIBUTION EXPENSES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 868 title;

(v) In account 765, by redesignating it as account 880.1 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 880.1 title;

(w) In account 767, by redesignating it as account 892.1 of Part 201 and inserting the parenthetical "(Nonmajor only)" at the end of the account 892.1 title;

(x) In account 769, by redesignating it as account 895 of Part 201 (preceding the heading "5. CUSTOMER ACCOUNTS EXPENSES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 895 title;

(y) In account 907, by redesignating it as account 906 of Part 201 (following the heading "6. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 906 title;

(z) In account 910, by redesignating it as account 917 of Part 201 (preceding the heading "8. ADMINISTRATIVE AND GENERAL EXPENSES") and inserting the parenthetical "(Nonmajor only)" at the end of the account 917 title;

(aa) In account 933, by redesignating it as account 932 of Part 201 (preceding the heading *"Maintenance"*) and inserting the parenthetical "(Nonmajor only)" at the end of the account 932 title;

(bb) By removing the remaining text of Part 204 in its entirety and inserting, in its place, the following:

(For the Uniform System of Accounts for Natural Gas Companies subject to the Natural Gas Act, see Part 201 of this Subchapter.)

45. Part 260 is amended as follows:

(a) the table of contents of Part 260 is amended to read as follows:

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Sec.

260.1 Form No. 2, Annual report for Major natural gas companies.

260.2 Form No. 2–A, Annual report for Nonmajor natural gas companies.

* * * * *

§ 260.1 [Amended]

(b) In the heading and paragraph (a) of § 260.1, by removing the parenthetical "(Class A and Class B)" and by inserting, the word "Major" immediately preceding the word "Natural";

(c) In paragraph (b) of § 260.1, by removing the words "included in Class A or Class B as defined in the Commission's Uniform System of Accounts as Prescribed for Natural Gas Companies, Subject to the Provisions of the Natural Gas Act" and by inserting, in their place, the words and parenthetical "a Major company (as defined in Part 201 of Subchapter F of this chapter)";

(d) In § 260.1, by removing paragraph (c);

§ 260.2 [Amended]

(e) In the heading and paragraph (a) of § 260.2, by removing the parenthetical "(Class C and Class D)" and by inserting the word "Nonmajor" preceding the word "Natural";

(f) In paragraph (b) of § 260.2, by removing the words "included in Class C or Class D as defined in Part 204 of this chapter," and by inserting, in their place, the words "considered Nonmajor as defined in Part 201 of Subchapter F of this Chapter,";

(g) In § 260.2, by removing paragraph (c);

§ 260.8 [Amended]

(h) In paragraph (a) of § 260.8, by removing the words "Class A" and by adding, the word "Major" in their place.

[FR Doc. 83–27402 Filed 10–11–83; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 489]

The Mendocino Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Mendocino County, California, to be known as "Mendocino." This proposal is the result of a petition from Mr. James A. Beckman, Vice-President of Guild Wineries and Disttilleries, and other industry members in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by November 28, 1983.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044+0385 (Attn: Notice No. 489).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th & Pennsylvania Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ed Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue

NW., Washington, D.C. 20226, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural features of the proposed area from surrounding areas;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. James A. Beckman, Vice-President of Guild Wineries and Distilleries, proposing an area within Mendocino County, California, as a viticultural area to be known as "Mendocino." The petition submitted by Mr. Beckman contains the names of 113 industry members in the area. This proposed viticultural area is located entirely in Mendocino County, California, in the southernmost one-third part of the county. The area consists of about 430 square miles (275,200 acres). Approximately 10,596 acres of grapes are estimated to be growing within the boundaries of the proposed viticultural area according to the 1981 California Grape Acreage Survey published by the California Crop and Livestock Reporting Service. There are 20 bonded wineries currently operating within the proposed viticultural area.

Viticultural Area Name

For many years the name "Mendocino" has been applied to geographical features and manmade structures within the proposed viticultural area, e.g. Lake Mendocino, Mendocino Loam (a type of residual soil), and Mendocino State Hospital. This information was documented on United States Geological Survey maps and United States Department of Agriculture Soil Survey maps. Also, the name "Mendocino" has been used as an appellation of origin on the labeling of wines produced and bottled by wineries located within the proposed viticultural area.

General Information

Grapes have been growing in the proposed "Mendocino" viticultural area since the earliest settlement in the mid 1800's. According to the Mendocino County Assessor's records, 25,000 grape vines (or about 40 acres) had been planted by 1871.

By 1910, grapes and wines from the area were listed as principal products of the county. At that time, there were 5,800 acres of grapes and nine wineries that produced 90,000 gallons of wine in the proposed viticultural area. The most popular grape variety of the time was Zinfandel, and today it is still one of the major grape varieties grown in the area. In the early 1970's large acreages of new vineyards were planted within the proposed viticultural area. As a result of this activity the wineries expanded.

"Mendocino" encompasses cultivated agricultural areas in the southernmost one-third of Mendocino County in California. "Mendocino" is shaped like the letter V with two forks. It includes the watershed areas and drainage basins of both the Navarro and Russian Rivers. The eastern fork, the area which encompasses the Russian River watershed, starts at the headwaters of the Russian River and extends approximately 30 miles south from there. At its widest point on the north end, the proposed viticultural area is about 12 miles wide, encompassing Redwood and Potter Valley with a hilly outcropping separating them. Its narrowest point just south of the middle is six miles wide. The east fork is approximately 30 miles inland from the Pacific Ocean and runs almost parallel to the coastline.

The west fork of the proposed area, consisting of agricultural areas found in both the Navarro and Russian Rivers watersheds, starts approximately one mile south of a fork in the Navarro River and extends southeast approximately 34 miles. At its widest point on the north end it is approximately eight miles wide and in the middle at its narrowest point it is four miles wide. The west fork also runs parallel to the Pacific coastline, approximately 15 miles inland. At its south end the west fork bends sharply to the east, joining the east fork at its southwestern boundary.

The majority of vineyards within the proposed viticultural area are at elevations ranging from 250 to 1,100 feet, with some vineyards as high as 1,600 feet on the hillsides in the area.

The mountain ridges surrounding the area define the Upper Russian River and Navarro River drainage basins. These ridges, some as high as 3,500 feet, are the natural boundaries of area climates and soil types referred to in the petition for the proposed "Mendocino" viticultural area.

Geographical Features

The petitioner claims the proposed viticultural area is distinguished from surrounding areas by climate. The petitioner bases this claim on the following:

(a) The "Mendocino" area generally separates the coastal and interior climate areas and has a very unusual climate pattern. It lies in a climate area called "Transitional." The area is unusual in climate because either the coastal or the interior climates can dominate the "Mendocino" climate for either short or long periods of time. Generally this is reflected by a warmer winter and a cooler summer than the interior climate area east of the proposed viticultural area. Also, it provides a grape growing season that has many warm, dry days, and generally cool nights.

(b) The north end of the west fork of the proposed area, near Philo, has a very unique microclimate. This area is cooler than the rest of the proposed viticultural area and is classified as Region I on the University of California heat summation scale developed by Amerine and Winkler. All references to heat summation and distribution of heat, mentioned throughout this document, were gathered from climate studies made by the University of California Agricultural Extension Service offices located at Lake, Mendocino and Sonoma Counties. The Boonville area, which is located southeast of Philo, is warmer and is therefore classified as Region II.

The overall climate of the Anderson Valley area is described as "Coastal" by the Mendocino County Farm Advisor's Office, in their booklet, *The Climate of Mendocino County*. The total average heat summation for "Mendocino" for the period of April through October is 3,097 cumulative degree-days and is therefore classified as Region III.

(c) The "Mendocino" area has a rainy season of moderate temperatures and a dry season with high temperatures. The rainy season occurs in the winter months from October through April and the rainfall in this area is greater than the Central Valley area of the State. The five months from May through September constitute the summer or dry season. The average annual temperature for the area is about 59 degrees Fahrenheit and the annual precipitation varies from about 44 inches in the northern area of the western fork of the proposed area to about 37 inches in the south.

(d) Climatically, "Mendocino" falls somewhere in the middle between Sonoma County and Lake County. The average "Mendocino" growing season is 268 days and rainfall averages 39.42 inches per year. The distribution of heat for June, July, and August averages 602 degree-days and falls between Lake County (678) and Sonoma County (541).

(e) In comparison, Sonoma County, a major grape-growing region to the south of "Mendocino," displays a profound marine influence. This is apparent in the distribution of heat summation (cumulative degree-days) for the area. Winter is mild, resulting in an average growing season of 308 days with the marine influence providing a slightly warmer spring which promotes a bud break up to 10 days earlier than in the "Mendocino" area or in Lake County. The marine air influence in Sonoma County extends throughout the summer, holding cumulative degree-days for June, July, and August to a lower average than either "Mendocino" or Lake County. The total average heat summation for Sonoma County for the period of April through October is 3,046 cumulative degree-days, placing it just at the lower range of Region III for grape growing as defined by the University of California. Average rainfall across Sonoma County is the lowest of the three areas being compared, with a range of from 40.50 inches to 24.10 inches and an average of 32.32 inches per year.

(f) Lake County, east of "Mendocino," represents a more harsh continental influence with some moderation occurring due to the location of Clear Lake. The average growing season in Lake County (223 days) is shorter than in "Mendocino" or Sonoma County. Also, cumulative degree-days for June, July and August are much higher in Lake County than in the other two areas. Average cumulative degree-days for Lake County for the months of June, July and August are 491, 771, and 771 degree-days respectively. The average heat summation of cumulative degree-days for Lake County for the months of April through October is 3,380 and is therefore classified at the higher range of Region III. In addition, the beginning of the Lake County growing season is cooler than Sonoma County, with a more rapid drop (comparatively) to winter temperatures. Also, annual rainfall is more variable throughout Lake County, ranging from 30.65 to 62.16 inches with an average of 45.21 inches.

Proposed Boundaries

The boundaries of the proposed Mendocino viticultural area may be found on seven U.S.G.S., 15 minute series maps. They are titled "Willits Quadrangle, California—Mendocino Co." (1961); "Potter Valley Quadrangle, California" (1960); "Ukiah Quadrangle, California" (1958); "Hopland Quadrangle, California" (1960); "Boonville Quadrangle, California—Mendocino Co." (1959); "Navarro Quadrangle, California—Mendocino Co." (1960); and "Ornbaun Valley Quadrangle, California" (1960). The specific description of the boundaries of the proposed viticultural area is found in the proposed regulations which immediately follow the preamble to this notice of proposed rulemaking.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Executive Order 12291

It has been determined that this proposal is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic region; and it will not have 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analyses (5 U.S.C. 603, 604) are not expected to apply to this proposed rule because the proposal, if promulgated as a final rule, is not expected to have a significant economic impact on a substantial number of small entities. Since the benefits to be derived from using a new viticultural area appellation of origin are intangible, ATF cannot conclusively determine what the economic impact will be on the affected small entities in the area. However, from the information we currently have available on the proposed Mendocino viticultural area, ATF does not feel that the use of this appellation of origin will have a significant economic impact on a substantial number of small entities.

Public Participation

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Mendocino viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Issues on Which Comments Are Requested

Name of Proposed Viticultural Area

The petitioner believes the name "Mendocino" is the most appropriate name for the proposed viticultural area. ATF is concerned, however, that using county names for viticultural areas, only without the word "County," may confuse and mislead the consumer. In the first place, such names will not be distinct from county names. And secondly, the consumer might be misled as to the percentage of wine required to be from grapes grown in the named appellation of origin. For a county appellation, the percentage which must come from the county is at least 75 percent. For a viticultural area appellation, the percentage which must come from the viticultural area is at least 85 percent.

ATF is concerned that consumers might not be able to distinguish the county appellation from the viticultural area appellation. We are also concerned that someone could, simply by adding the word "County," produce a wine which would ride on the reputation of the viticultural area name. For these reasons, ATF requests written comments from all interested persons concerning whether the name

"Mendocino" would be misleading or confusing to the consumer, and if so, what would be the most appropriate name for this proposed viticultural area.

Overlapping of Viticultural Areas

The proposed Mendocino viticultural area partially or totally overlaps with five other proposed or approved viticultural areas. These include McDowell Valley, Cole Ranch, Potter Valley, Anderson Valley, and North Coast.

ATF recognizes that in some cases it will be necessary to establish viticultural areas which totally or partially overlap with other proposed or approved viticultural areas. ATF, however, believes the significance of viticultural areas as delimited grape-growing regions distinguishable by geographical features may be eroded by the indiscriminate establishment of overlapping viticultural areas. Therefore, ATF will judge each petition which proposes a viticultural area that overlaps with other proposed or approved viticultural areas on a case-by-case basis. ATF will be guided in this judgment by evidence presented in the petition and by comments received from the public during the comment period.

For this reason, each petition which proposes a viticultural area that overlaps with other proposed or approved viticultural areas must fulfill the requirements of regulations relating to the establishment of viticultural areas and contain evidence to substantiate that the area of overlap should be included in the proposed viticultural area. All persons interested in this overlap issue are encouraged to submit written comments before the close of the comment period.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments which are confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Ed Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas and Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.93 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.93 Mendocino.

Par. 2. Subpart C is amended by adding § 9.93 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.93 Mendocino.

(a) *Name.* The name of the viticultural area described in this section is "Mendocino."

(b) *Approved maps.* The appropriate maps for determining the boundaries for the Mendocino viticultural area are seven U.S.G.S. maps. They are titled:

(1) "Willits Quadrangle, California—Mendocino Co.," 15 minute series (1961);

(2) "Potter Valley Quadrangle, California," 15 minute series (1960);

(3) "Ukiah Quadrangle, California," 15 minute series (1958);

(4) "Hopland Quadrangle, California," 15 minute series (1960);

(5) "Boonville Quadrangle, California—Mendocino Co.," 15 minute series (1959);

(6) "Navarro Quadrangle, California—Mendocino Co.," 15 minute series (1961);

(7) "Ornbaun Valley Quadrangle, California," 15 minute series (1960).

(c) *Boundaries.* The Mendocino viticultural area is located entirely within Mendocino County, California. The beginning point is the southeast corner of Section 30, Township 12 North (T. 12 N.), Range 10 West (R. 10 W.) located along the Mendocino County/Sonoma County line in the southeast quadrant of US.G.S. map "Hopland Quadrangle."

(1) From the beginning point, the boundary runs north along the eastern boundary of Sections 30, 19, 18, 7 and 6 to the point labeled Jakes CR (Jakes Creek) located at the northwest corner of Section 5, T. 12 N., R. 10 W.;

(2) Thence in a straight line in a northwest direction to the point labeled Bedford Rock in section 3, T. 13 N., R. 11 W.;

(3) Thence in a straight line in a northwest direction to a point labeled Red Mtn in Section 17, T. 14 N., R. 11 W.;

(4) Thence in a straight line in a northwest direction to the southeast corner of Section 25, T. 16 N., R. 11 W.;

(5) Thence in a straight line in a northeast direction to the northeast corner of Section 1, T. 16 N., R. 11 W. located along the Mendocino County/Lake County line;

(6) Thence in a straight line in a northwest direction to the northeast corner of Section 5, T. 17 N., R. 11 W.;

(7) Thence in a westerly direction along the T. 18 N./T. 17 N. township line until it intersects with the R. 13 W./R. 12 W. range line;

(8) Thence in a straight line in a southwest direction to the point labeled Eagle Rock located in Section 16, T. 15 N., R. 13 W.;

(9) Thence in a straight line in a southeast direction to the point labeled Bus McGall Peak located in Section 4, T. 13 N., R. 12 W.;

(10) Thence in a straight line in a westerly direction to an unnamed hilltop, elevation 2015 feet, in the northeast corner of Section 9, T. 13 N., R. 13 W.;

(11) Thence in a straight line in a northwest direction to the junction of Bailey Gulch and the South Branch, North Fork to the Navarro River, located in Section 8, T. 15 N., R. 15 W.;

(12) Thence in a straight line in a southwest direction to Benchmark (BM) 1057 located in Section 28, T. 15 N., R. 16 W.;

(13) Thence due south in a straight line approximately 1.4 miles to Greenwood Creek located in Section 33, T. 15 N., R. 16 W.;

(14) Thence following Greenwood Creek in a generally southeasterly and then a northeasterly direction to where it intersects with the south section line of Section 16, T. 14 N., R. 15 W., approximately .2 miles west of Cold Springs Road;

(15) Thence in an easterly direction along the south section lines of Sections

16, 15, and 14, T. 14 N., R. 15 W., to the intersection of the south section line of Section 14 with an unnamed creek;

(16) Thence in a straight line in a southeasterly direction to Benchmark (BM) 680 located in Section 30, T. 13 N., R. 13 W.;

(17) Thence continuing in a straight line in a southeasterly direction to the intersection of the southwest corner of Section 32, T. 12 N., R. 11 W., and the Mendocino County/Sonoma County line;

(18) Thence following the Mendocino County/Sonoma County line in an easterly, northerly, and then an easterly direction to the beginning point.

Approved: September 30, 1983.

W. T. Drake,

Acting Director.

[FR Doc. 83-27857 Filed 10-11-83; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2356-1]

Approval and Promulgation of Implementation Plans; Imperial County Air Pollution Control District, Air Pollution Control Regulations, State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Imperial County Air Pollution Control District (ICAPCD), California, adopted a New Source Review Rule on May 5, 1981. The Rule contains provisions comparable to EPA's requirements for New Source Review (NSR). It regulates construction and operation of new and modified major sources of nonattainment pollutants. Imperial County adopted the Rule to satisfy conditions on the approval of its previous NSR Rule. This Rule was submitted to EPA as a State Implementation Plan (SIP) revision on June 22, 1981. In this Notice, EPA is proposing to approve the Rule if the District corrects deficiencies cited in the EPA evaluation before EPA final rulemaking.

DATE: Comments may be submitted up to November 14, 1983.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, Air Operations Branch, New Source Section, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the revisions and EPA's Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office at the above address and at the following locations:

California State Air Resources Board, 1102 "Q" Street, Sacramento, CA 95814;

Imperial County Air Pollution Control District, County Courthouse, 939 West Main Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Willard Chin, New Source Section, Air Operations Branch, Air Management Division, Environmental Protection Agency, Region 9, (415) 974-7649.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1980, EPA proposed to disapprove the Imperial County Nonattainment Area Plan (NAP) because of the lack of an NSR Rule. On March 17, 1980, the State submitted the Imperial NSR Rule but it was received too late for EPA's April 1, 1980 Notice of Proposed Rulemaking. On November 10, 1980, EPA conditionally approved the NSR portion of the NAP with the exception of Rule 207 c.5 (LAER Exemption) which was disapproved. The condition of approval required the District to meet all requirements in EPA's amended regulations for NSR (August 7, 1980, 45 FR 52676).

The County is designated attainment by EPA for sulfur dioxide, carbon monoxide, and nitrogen oxides. The county is unclassified for particulates. The entire county is designated nonattainment for ozone.

NSR—Part D of the Clean Air Act (Sections 171 to 173) and 40 CFR 51.18 define the requirements for NSR programs, which apply to nonattainment pollutants. The most important requirements are that local NSR rules and programs require applicants for new sources or modifications to: (a) Meet the Lowest Achievable Emission Rate, (b) provide reductions at least equal to the emission increase (offsets) and consistent with RFP, and (c) certify that all major sources they own in the State comply with all air pollution emission limitations. It should be noted that Imperial County falls under EPA's rural ozone policy. (See 44 FR 20376).

The Imperial County APCD currently administers the NSR program under its conditionally approved Rule.

Description of Regulations

In response to the NSR requirements, the District adopted revisions to their air quality regulations on May 5, 1981. These revisions were submitted to EPA by the Governor's designee as official SIP revisions on June 22, 1981. Rules 207, 208, 209, 210, 211 and 212 adopted by the District include the following sections:

207: Standards for Permit to Construct
- Section A—Definitions 1–9
- Section B—General 1–2
- Section C—Applicability and Exemptions 1–4
- Section D—Calculation of Emissions 1–6
- Section E—Control Technology and Mitigation Requirements 1–2
- Section F—Permit Application Requirements
- Section G—Permit Condition Requirements 1–3
- Section H—Analysis, Notice and Reporting 1–3

208: Standards for Permit to Operate
- Section A—General 1–4
- Section B—Requirements
- Section C—Procedures
- Section D—Exemptions
- Section E—Definitions
- Section F—Severability

209: Implementation Plans

210: Denial of Applications

211: Appeals

212: Annual Renewal

Evaluation

EPA has evaluated the regulations listed above to determine whether they satisfy all of the criteria for an NSR program. In general, the Imperial rule does satisfy EPA's requirements. ICAPCD regulations will: (1) Require preconstruction review of the sources which would be subject to the federal guidelines; (2) require certification of statewide compliance, and application of LAER in a manner consistent with EPA's NSR requirements (40 CFR 51.18). The ICAPCD regulations also contain adequate guidelines and procedures for the administration and enforcement of the NSR programs.

EPA's review of the Rule found some deviations from EPA requirements. In all cases the ICAPCD is considering clarifications to or revisions of the Rule to eliminate the discrepancies. The significant issues are:

(1) Net emission change must require that:

—Actual emission decreases provide the same health and welfare impact as that attributed to the increase from the particular change.
—Changes are federally enforceable.
—Emissions decreases are below the lower of either actual or allowable emissions.
—Changes have not already been used for RFP or in NSR permits.

(2) The definition of the nonattainment area implies that the APCD, rather than EPA, determines attainment status.

(3) The source definition is incomplete. The Rule has a dual definition but it does not provide that:

—A source include pollutant emitting activities which belong to the same industrial grouping *(i.e., have the same two-digit SIC code).*

—A source includes units located on one or more contiguous or adjacent properties.

—An installation is an indentifiable piece of process equipment.

—Clarify the definition so that a source need not be a common production process.

(4) There is no definition for fugitive emissions and the related requirements are not addressed.

(5) The District Rule must restrict emissions reductions credits from shutdowns and production curtailments as provided in 51.18(j)(3)(ii)(e).

(6) The Rule does not specify the level of increase for each pollutant to be considered as a modification.

(7) The BACT/LAER provision requires EPA to determine what is the most stringent LAER found in any SIP. The Rule should be revised to have the District inform the source of the required LAER technology.

(8) There is no definition of reconstruction.

(9) Baseline emissions can be determined with the limitations from pollution control technology even if such limitations are not federally enforceable.

(10) The District rule does not make it clear that emissions already required for offsets, or netting, RFP and compliance with existing SIP requirements cannot be used to calculate net emissions change.

(11) Since actual emissions are used only when allowable emissions data is not available, the Imperial Rule accepts the use of allowable emissions to calculate emissions reduction credits.

(12) The Rule needs to insure that internal offsets (net emissions reduction credits) are federally enforceable.

(13) LAER and offset requirements are applied on the basis of violation of National Ambient Air Quality Standards rather than on the basis of the area designated nonattainment be EPA (CAA, Section 107).

(14) The Rule allows a resource recovery project to receive offsets based on projected higher emissions than would have resulted if an alternative technology had been used.

There are five additional but minor issues. The following will require rule revision: Beginning Time Period for Emissions Calculation, Source Responsibility Requirement, Alternative Site Requirement, and Definition of Construction.

Since Imperial is a rural ozone area, certain other rule deficiencies will not require remedies under EPA rural ozone policy. A complete discussion of all the issues is found in the evaluation report which includes a section on rule revisions that would be necessary if Imperial County becomes urbanized or nonattainment for other pollutants. (The report is available at the location listed in the Addresses section of this Notice).

Proposed Action

EPA proposes to approve under Section 110 and Part D of the Clean Air Act, the ICAPCD rules if the deficiencies identified above are corrected before final rulemaking. The District has expressed a willingness to remedy the problems. This EPA action applies only to the current designations for Imperial. If the District becomes urbanized or nonattainment for other pollutants, EPA will take new actions to make the appropriate determinations relevant to any new designations.

The District is also considering adopting the NSR Rule developed by the California Air Pollution Control Officers Association (CAPCOA) and the California Air Resources Board. Imperial County can either correct its submitted rule or adopt the latest NSR CAPCOA rule to meet EPA's NSR requirements.

EPA proposes also to rescind 40 CFR 52.232(a)(11)(i)(A) thereby eliminating the condition that the ICAPCD revise its NSR Rule. If the deficiencies cited are corrected, the rule fully satisfies the condition.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: Sections 110, 129, 171 to 173, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7503 and 7601(a)).

Dated: April 18, 1983.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 83-27665 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[AD-FRL 2448-3]

Revision to Oklahoma Regulation; Reports Required; Excess Emissions During Startup, Shutdown and Malfunction of Equipment

AGENCY: Environmental Protection Agency.

ACTION: Proposed approval.

SUMMARY: This action proposes approval of a revision to the State of Oklahoma Air Quality Control Implementation Plan which was submitted by the Governor on February 8, 1983. Specifically, the State revised Regulation 1.5—Reports Required: Excess Emissions During Startup, Shutdown and Malfunction of Equipment to ensure the use of the enforcement discretion approach by the State and to meet EPA's criteria for a malfunction regulation. Prior to this submittal, the State submitted a letter of clarification to Regulation 1.5 on October 18, 1982, in response to a preliminary review by EPA. The State submitted another letter of clarification on May 24, 1983.

DATE: Interested porsons are invited to submit comments on this proposed action on or before November 14, 1983.

ADDRESSES: Written comments should be submitted to the address below: Environmental Protection Agency, Air and Waste Management Division, Air Branch, State Implementation Plan Section, 1201 Elm Street, Dallas, Texas 75270.

Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following location: Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Griffith, Air and Waste Management Division, Air Branch, State Implementation Plan Section, 1201 Elm Street, Dallas, Texas 75270, (214) 767-9853.

SUPPLEMENTARY INFORMATION: On February 8, 1983, the Governor of Oklahoma submitted a SIP revision to Regulation 1.5 (Reports Required: Excess Emissions During Startup, Shutdown and Malfunction of Equipment), as revised on June 1, 1981. EPA reviewed the State's submittal and developed an evaluation report [1] in accordance with

[1] EPA Evaluation Report for Oklahoma Regulation 1.5—Reports Required: Excess Emissions During Startup, Shutdown and Malfunction of Equipment.

the minimum criteria established by the EPA policy memorandum dated, September 28, 1982 (Policy on Excess Emissions During Startup, Shutdown Maintenance and Malfunctions) and the clarification memorandum dated February 15, 1983. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and the other address listed above.

EPA believes that Oklahoma's Regulation 1.5 is consistent with EPA's malfunction policy. EPA's basic criterion in reviewing malfunction regulations is that the regulations must not provide for an automatic exemption during a maintenance/malfunction episode. The State's response to automatic exemptions as stated in their letter of clarification dated, May 24, 1983, is "the mere providing of the information mandated in Sections 1.5(c)(2)(A) (B), and (C) does not exempt the facility from enforcement of the violation. The violation can be pursued if the Chief (i.e., The Department) is not satisfied that excess that excess emissinons were not unavoidable." This is interpreted as the Chief exercising his enforcement discretion depending on the circumstances surrounding the excess emissions rather than an automatic exemption. The State will use the information submitted in response to the requirements of Regulation 1.5 to determine whether enforcement action is appropriate.

The policy memoranda list 5 other criteria which a State's malfunction regulation must meet and they are:

(1) to the maximum extent practicable, the air pollution control equipment, process equipment, or processes were at all times maintained and operated, in a manner consistent with good practice for minimizing emissions;

Regulation 1.5—This criterion is met under Section 1.5(e)(2)(H), along with the October 18, 1982, clarification letter. The State stated that "it is the intent that Section 1.5(e)(2)(H) allows the Chief of the Air Quality Service to require the submission of preventive maintenance plans necessary to prevent detect and correct malfunctions of equipment." EPA interprets this to include documentation on process equipment or processes.

(2) repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off shift and overtime labor must have been utilized to insure that such repairs were made as expeditiously as possible;

Regulation 1.5—This criterion is met under Section 1.5(c)(2)(B), along with the October 18, 1982, clarification letter. The State indicated that "Sources are also required to demonstrate to the satisfaction of the Chief of the Air Quality Service in a timely manner that measures such as off-shift and overtime labor have been used to effect repairs and minimize emissions."

(3) the amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

Regulation 1.5—This criterion is met under Section 1.5(e)(2) (B), (C), and (G).

(4) all possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and

Regulation 1.5—This criterion is met under Sections 1.5(c)(2)(B) and 1.5(e)(2) (F) and (G).

(5) the excess emissions are not part of a recurring pattern indicative of inadequate design, operation or maintenance.

Regulation 1.5—This criterion is met under Sections 1.5(c)(2)(C) and 1.5(f)(2)(C).

The State was asked to clarify excess emissions during scheduled maintenance under Section 1.5(c) Notification Requirements. Their May 24, 1983 clarification letter stated that "It is the intent of this regulation to allow the Chief not to pursue enforcement of violations due to removing control equipment from operation to perform maintenance * * * The regulation requires that pollution control equipment maintenance be accomplished to the extent possible when the process is shut down." Again, the State is using the enforcement discretion approach in regards to excess emissions during scheduled maintenance.

The State was also asked to clarify Section 1.5(f) Excesses Resulting From Engineering Limitations. Their May 24, 1983, clarification letter states "This section does not grant automatic exemptions. This section is designed to reduce the administrative burden on process startup/shutdowns. There are some processes that invariably will emit excess emissions during this phase of their operation * * * The approach requires prior approval, but upon approval allows the source to report these occasions on a quarterly basis. Thus, the State can review quarterly the occurrences to assure that excessive startup/shutdowns are not occuring. If excessive startup/shutdowns are occurring, the State will take appropriate action." EPA accepts this interpretation.

Regulation 1.5 along with the clarification letters dated, October 18, 1982, and May 24, 1983, meets all of EPA's minimum criteria for an approvable malfunction regulation. Based on this, EPA is proposing approval of Regulation 1.5.

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

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This notice of proposed approval is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particular matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: September 13, 1983.

Frances E. Phillips,

Regional Administrator.

[FR Doc. 27648 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Parts 52 and 81

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: Section 107(d) of the Clean Air Act, as amended, provides for the designation of areas as either attainment, nonattainment, or unclassified with respect to the National Ambient Air Quality Standards (NAAQS). EPA today proposes to remove the primary nonattainment designation for Ankeny, Cedar Rapids, Davenport, a portion of Des Moines, Mason City, and West Des Moines with respect to the NAAQS for total suspended particulates (TSP).

This notice also proposes to redesignate Des Moines to attainment with respect to the NAAQS for carbon monoxide (CO). In light of the proposal, EPA also proposes to rescind its disapproval of the Des Moines State

Implementation Plan (SIP) for CO, since the disapproval was based on the nonattainment status of Des Moines.

These redesignations are based on a request from the Iowa Department of Environmental Quality; supportive data were included.

DATE: Public comments should be received by November 14, 1983.

ADDRESSES: Public comments should be sent to: Larry A. Hacker, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. The State submission is available for inspection during normal business hours at the above address, and at the Iowa Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (816) 374–6525, or FTS 758–6525.

SUPPLEMENTARY INFORMATION: In response to Section 107(d) of the Clean Air Act, as amended, EPA and the State of Iowa have designated all areas of the State as attaining the NAAQS, not attaining the NAAQS, or having insufficient data to make a determination. An attainment area is one in which the air quality does not exceed the standards. A nonattainment area is one in which the air quality is worse than the standards. An unclassified area is one for which there are insufficient data to determine whether the area is attainment or nonattainment. At 40 CFR Part 81, Subpart C, the areas of the State which are nonattainment for one or more pollutants are identified.

On March 14, 1983, the Iowa Department of Environmental Quality submitted a request to redesignate the attainment status of Ankeny, Cedar Rapids, Davenport, a portion of Des Moines, Mason City, and West Des Moines. These areas were designated nonattainment with respect to the primary NAAQS for TSP on March 3, 1978 at 43 FR 8962 and redefined on March 8, 1980 at 45 FR 14569. The Des Moines TSP nonattainment status designation was amended on May 6, 1982 at 47 FR 19526. The State requested only that the primary nonattainment designations be removed for the above areas. The secondary nonattainment designations would remain. The State also requested that Des Moines be redesignated to attainment with respect to the NAAQS for carbon monoxide (CO).

The primary NAAQS for TSP consist of a 24-hour value of 260 micrograms per cubic meter (ug/m^3), not to be exceeded more than once per year, and an annual value (geometric mean) of 75 ug/m^3. The secondary NAAQS for TSP is a 24-hour value of 150 ug/m^3, not to be exceeded more than once per year.

The NAAQS for CO consists of a 1-hr standard of 10 milligrams per cubic meter (9 parts per million (ppm)), and an 8-hour standard of 40-milligrams per cubic meter (35 ppm). Neither standard is to be exceeded more than once per year.

The current Section 107 redesignation policy is summarized in a memo from Sheldon Meyers, dated April 21, 1983. In general, eight quarters of monitoring data should be used to support redesignation requests. The most recent four quarters can be used if dispersion modeling shows that the SIP strategy is sound, and that actual, enforceable emission reductions have occurred. Those areas listed below which have 8 quarters of data showing attainment [Ankeny, Davenport, Mason City, West Des Moines, and Des Moines (TSP)] have an EPA approved SIP control strategy.

(1) *Ankeny (TSP)*—There is one monitor within the currently designated primary nonattainment area. The monitoring data show two years (1981–1982) of primary NAAQS attainment, which complies with agency redesignation policy.

Action: EPA proposes to remove the primary nonattainment designation and retain the secondary nonattainment designation for the Ankeny TSP nonattainment area.

(2) *Davenport (TSP)*—There is one monitor within the currently designated primary nonattainment area. The monitoring data show two years (1981–1982) of primary NAAQS attainment, which complies with agency redesignation policy.

Action: EPA proposes to remove the primary nonattainment designation and retain the secondary nonattainment designation for the Davenport TSP nonattainment area.

(3) *Mason City (TSP)*—There are two monitors in the currently designated primary nonattainment area. The monitoring data show two years (1981–1982) of primary NAAQS attainment, which complies with agency redesignation policy.

Action: EPA proposes to remove the primary nonattainment designation and retain the secondary nonattainment designation for the Mason City TSP nonattainment area.

(4) *West Des Moines (TSP)*—There is one monitor in the currently designated primary nonattainment area. The monitoring data show two years (1981–1982) of primary NAAQS attainment, which complies with agency policy.

Action: EPA proposes to remove the primary nonattainment designation and retain the secondary nonattainment designation for the West Des Moines TSP nonattainment area.

(5) *Cedar Rapids (TSP)*—There are four monitoring sites within the currently designated primary nonattainment area. There were no violations of the 24-hour standard during 1981–1982. Violations of the annual primary standard did occur during 1981 at two sites, thus there is only one year (1982) of data in support of the State's request. Cedar Rapids has an EPA approved SIP for TSP which includes dispersion modeling and enforceable emission reductions. Attainment of the primary NAAQS for TSP by December 31, 1982 is demonstrated. Therefore, this redesignation request conforms to agency policy.

As a supplemental demonstration, the State has shown that fugitive emissions resulting from a freeway construction project (I–380) is largely responsible for many of the high monitored concentrations during the past few years. Their data chronicle the progress of the freeway construction from south to north through the city. Though not enforceable and thus not relied upon as a basis for the proposed action, the emission reductions resulting from the freeway completion are considered permanent as decreasing monitored concentrations would indicate.

Action: EPA proposes to remove the primary nonattainment designation and retain the secondary nonattainment designation for the Cedar Rapids TSP nonattainment area.

(6) *Des Moines (TSP)*—The State wishes to subdivide the currently designated nonattainment area along U.S. Highway 65 and 69 (East 14th Street). The western portion would be redesignated to secondary nonattainment, while the eastern portion would retain its primary nonattainment designation. There is one TSP monitor in each of the two subdivided areas. Data from the western monitor show no violations of the primary standard for eight consecutive quarters (1981–1982), while the eastern monitor continues to record violations. Having two years of data, the secondary nonattainment redesignation request for the western portion of this area complies with agency policy.

Action: EPA proposes to remove the primary nonattainment designation and retain the secondary nonattainment designation for the western portion of the Des Moines TSP nonattainment area.

(7) *Des Moines (CO)*—There are two CO monitors in the currently designated nonattainment area. There were no reported CO violations at either site during 1982 and the first quarter of 1983. The Des Moines SIP for CO is EPA approved except for the portion which addresses permitting requirements for new and modified major stationary sources CO. The SIP was disapproved on March 6, 1980 at 45 FR 14561. Since that date, there have been no new major CO sources nor major modifications in Des Moines, thus the SIP deficiency does not affect the State's redesignation request. Dispersion modeling, as part of SIP, shows attainment of the standard by December 31, 1982.

The Federal Motor Vehicle Contol Program provides actual, enforceable emission reductions. Maximum CO concentrations have been declining since 1979 which substantiates the effectiveness of the SIP control strategy. On the basis of the preceeding discussion, the State's request complies with agency policy.

In today's action, EPA also proposes to rescind its March 6, 1980 disapproval of the Des Moines SIP for CO (45 FR 14561). The plan was disapproved because the State had no adequate means of preventing new or modified major stationary sources of CO from constructing in violation of Section 173 of the Clean Air Act. If Des Moines is redesignated to attainment for CO, the requirements of Section 173 would no longer apply because Part D (sections 171–178) of the Clean Air Act applies only to nonattainment areas.

The State has adopted permit rules which would govern the installation and modification of minor stationary CO sources. Major CO sources would receive permits under the Prevention of Significant Deterioration (PSD) program.

Action: EPA proposes to approve the State's request that Des Moines be redesignated from nonattainment to attainment for CO. EPA also proposes to rescind its disapproval of the Des Moines SIP for CO.

EPA is soliciting comments on the State's submission and on EPA's action proposed in this document. The Administrator will consider comments received in deciding to approve or modify the State's redesignation requests.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

This notice of proposed rulemaking is issued under the authority of Sections 107 and 301 of the Clean Air Act, as amended (42 U.S.C. 7407 and 7601).

Lists of Subjects

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

40 CFR Part 81

National parks, Wilderness areas.

Dated: July 12, 1983.

Morris Kay,

Regional Administrator.

[FR Doc. 83-27553 Filed 10-7-83; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 180

[PP 2E2676/P313; PH-FRL 2449-5]

Pesticide Chemicals in or on Raw Agricultural Commodities; Proposed Tolerance; Maleic Hydrazide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide and plant regulator maleic hydrazide in or on the raw agricultural commodity cranberries. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before November 14, 1983.

ADDRESS: By mail, submit written comments to: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E2676 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Massachusetts.

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 herbicide and plant regulator maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) in or on the raw agricultural commodity cranberries at 15 parts per million (PPM).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a rat acute oral LD_{50} at 3.9 grams (g)/ kilograms (kg); a 2-year rat feeding study with a systemic no-observed-effect level (NOEL) of 1,872 mg/kg, highest dose tested (HDT); a 2-year rat oncogenic oncogenic study with no oncogenic effects at the highest dose tested (3,900 mg/kg); a 3-generation rat reproduction study with a systemic NOEL and a NOEL for reproductive effects at 3,900 mg/kg (HDT); and mutagenicity studies in bacterial, plant, and mammalian systems. Although many mutagenic studies confirm genetic activity in bacteria and plant cells, the mammalian studies reported negative or equivocal results for mutagenic effects (*in vivo* mouse cytogenetic assays, and *in vito* assays in Chinese hamsters cells). Additional studies which have been initiated by the manufacturer to assay the mutagenic potential of maleic hydrazide include: (1) Micronucleus assay, using CD–1 random-bred mice, (2) bacterial DNA repair test in *Escherichia coli*, and (3) mammalian cell mutation assay, using mouse lymphoma cells.

The Agency has concluded that the amount of maleic hydrazide added to the diet from the proposed use will not significantly increase dietary exposure in humans. The theoretical maximum residue contribution (TMRC) to the human diet from existing tolerances for a 1.5-kg daily diet is calculated to be 4.231 mg/day; the current action will increase the TMRC by 0.00675 mg/day (0.16 percent). Thus the tolerance that will be established by the proposed rule is considered to pose a negligible increment in risk.

The nature of the residues is adequately understood and an adequate analytical methodology, spectrophotometry, is available for enforcement purposes. Since there are no animal feed items involved, there should be no secondary residues in meat, milk, poultry and eggs.

Although there are presently no actions pending against the continued registration of maleic hydrazide, the chemical was reviewed in connection with a rebuttable presumption against registration (RPAR). The presumptions were based on information indicating potential oncogenic, mutagenic, and repro-original toxicological data, rebuttal comments, and new studies, and determined that "these data did not conclusively establish either the presence or the absence of adverse effects from maleic hydrazide." The RPAR proceedings for maleic hydrazide were concluded on January 5, 1983, [Notice of Determination: 48 FR 498] and registered products were returned to the registration process. (The suspension of diethanolamine maleic hydrazide, an action taken independently of the "Notice of Determination", remains in effect until and unless a registrant commits to provide the required studies for that chemical.)

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.175 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal 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 the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E2676/P313]. All written comments filed in response to this petition will be available in the Program Management and Support Division, Rm. 236, CM#2 at the above address given above 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. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 29, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.175 be revised to read as follows:

§ 180.175 Maleic hydrazide; tolerances for residues.

Tolerances for residues of the herbicide and plant regulator maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) are established in or on the following raw agricultural commodities:

Commodities	Parts per million
Cranberries	15.0
Onions, dry bulb	15.0
Potatoes	50.0

[FR Doc. 83-27961 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300078I PH-FRL 2449-2]

Pesticide Chemicals in or on Raw Agricultural Commodities; Proposed Exemptions From the Requirement of a Tolerance; Folic Acid, Nicotinamide, Pyridoxine, Cysteine, Glutamine, Methionine, Tryptophan, and Adenosine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that folic acid, nicotinamide, pyridoxine, cysteine, glutamine, methionine, tryptophan, and adenosine be exempted from the requirement of a tolerance when used as synergists in pesticide formulations. These proposed regulations were requested by Mandops, Inc.

DATE: Written comments must be received on or before November 14, 1983.

ADDRESS: By mail, submit comments to: Program Management and Support, Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of Mandops, Inc., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for folic acid, nicotinamide, pyridoxine, cysteine, glutamine, methionine, tryptophan, and adenosine when used as synergists limited to a maximum of 0.5 percent of the pesticide formulations.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredients may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substances under consideration, the names and address of the firm making the request for the exemptions, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemptions.

Name of inert ingredients: Folic acid, nicotinamide, pyridoxine, cysteine, glutamine, methionine, tryptophan, and adenosine.

Name and address of requestor: Mandops, Inc., Suite 500c, Plaza 1551, 1551 Forum Place, West Palm Beach, FL 33401.

Bases for approval: The synergists are common nutrients or amino acids that are readily available in human food items. At the levels to be used in these formulations (0.001 to 0.5 percent), no toxicological problems are expected.

Based on the above information and review of their use, it has been found that when used in accordance with good

agricultural practices, these ingredients are useful and do not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendments to 40 CFR Part 180 will protect the public health, and it is proposed that the regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains these inert ingredients, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal 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 the proposed regulations. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300078]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Program Support Division, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 8 a.m. to 4 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 establising 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. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 29, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the inert ingredients as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* *	* *	*
Adenosine (CAS Reg. No. 58-61-7).	Maximum of 0.5 % of formulation.	Synergist.
* *	* *	*
Cysteine (CAS Reg. No. 52-90-4).	Maximum of 0.5% of formulation.	Synergist. of formulation
* *	* *	*
Folic acid (CAS Reg. No. 59-30-3).	Maximum of 0.5% of formulation.	Synergist.
* *	* *	*
Glutamine (CAS Reg. No. 56-85-9).	Maximum of 0.5% of formulation.	Synergist.
* *	* *	*
Methionine (CAS Reg. No. 59-51-8).	Maximum of 0.5% of formulation.	Synergist.
* *	* *	*
Nicotinamide (CAS Reg. No. 98-92-0).	Maximum of 0.5% of formulation.	Synergist.
* *	* *	*
Pyridoxine (CAS Reg. No. 65-23-6).	Maximum of 0.5% of formulation.	Synergist.
* *	* *	*
Tryptophan (CAS Reg. No. 73-22-3).	Maximum of 0.5% of formulation.	Synergist.
* *	* *	*

* * * * *

[FR Doc. 83-27662 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 162

[OPP-30068; PH-FRL 2320-8]

Proposed Pesticide Use Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 40 CFR 162.31 by adding certain uses of additional active ingredients to the list of those which the Agency has classified for restricted use under the optional procedures of § 162.30.

DATE: Comments must be received on or before December 12, 1983.

ADDRESSES: Comments should bear the document control number OPP-30068 and should be submitted by mail to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460;

In person bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail:

Walter I. Waldrop, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460;

Office location and telephone number: Rm. 711C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, (703-557-7400.)

SUPPLEMENTARY INFORMATION: Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act requires that all pesticide uses be classified for general or restricted use. Pesticides that are classified for restricted use may be used only be certified applicators or persons under their supervision or subject to such other restrictions that may be imposed by regulations.

In the **Federal Register** of September 1, 1977 (42 FR 44169), the Agency issued a final regulation establishing optional procedures for the classification of pesticide uses for restricted use by regulation. The restriction imposed under these optional procedures is use limitation to certified applicators or persons under their supervision. These procedures were established to facilitate the restriction of those pesticides that presented the most hazard to the user and the environment. Three final regulations have been promulgated under these optional procedures and were published in the **Federal Register** of February 9, 1978 (43 FR 5781), August 1, 1979 (44 FR 45131), and January 19, 1981 (46 FR 5995). These three regulations restrict some or all uses of 44 different pesticide active ingredients. In addition, 13 other active ingredients or different uses/formulations of the 44 active ingredients referenced above have been proposed for restricted use as published in the **Federal Register** of August 1, 1979 (44 FR 45218).

This regulation will restrict the grain fumigant uses of four active ingredients, carbon tetrachloride, chloroform, ethylene dichloride and sulfur dioxide. Previous Agency actions have restricted other active ingredients used for grain fumigation. This regulation will complete the restriction of all active ingredients used for grain fumigation except for ethylene dibromide (EDB). EDB has not been included in this regulation because the Rebuttable Presumption Against Registration review of EDB is near completion.

In determining to impose these restrictions, the Agency applied the classification criteria specified in 40 CFR 162.11(c)(2), (3), and (4), which were published in the **Federal Register** on July 3, 1975 (40 FR 28242). These criteria require the Agency to examine the toxicity of formulations for purposes of identifying candidates for restricted use, reviewing label precautions for adequacy, and evaluating other hazards such as accident history to determine if a formulation should be restricted. With regard to the grain fumigant uses of

these four active ingredients, the Agency has based the proposed restriction on the accident history associated with their use. The Agency's Pesticide Episode Reporting System shows 52 episodes of human exposure involving these four chemicals in various combinations with each other and additional active ingredients from 1966–1980. These episodes include six fatalities, 16 persons requiring hospitalization, and 30 persons requiring medical attention.

A review of these episodes reveals that the label recommendations to wear a respirator or to follow commonly recognized safety precedures when fumigating grain were often not followed. Apparently the grain fumigant labels have failed to convey the hazardous nature of these chemicals. The hazards lie not so much with the acute toxicity of the chemicals, but with the circumstances of use, i.e., in enclosed areas, which often result in lethal and sublethal concentrations.

The restriction being imposed by this regulation is to limit the grain fumigant uses of carbon tetrachloride, chloroform, ethylene dichloride and sulfur dioxide to certified applicators or persons under their supervision.

Review Under Executive Order 12291

Under E.O. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This rule is not major because the estimated costs of compliance will not result in an annual effect on the economy of $100 million or more, nor will the rule result in other major cost increases or significant adverse effects as defined in the Executive Order.

Those affected by this rule include persons required to become certified to use restricted products, pesticide registrants who must change their product labels to reflect the restriction, companies that sell and distribute restricted products who may have additional recordkeeping requirements under various State laws, and State governments who will be responsible for ensuring that the sale and use of these products are only by or under the supervision of certified applicators.

It is not anticipated that any users of these products, retailers, distributors, or State governments will incur any significant increase in costs since over 2,000 products have already been restricted and this rule will increase the total by less than 200 additional products. Much of the cost associated with restricted use classification has already been incurred in establishing the applicator training and certification infrastructure.

The Agency has estimated that it will cost registrants who have to amend their labels to reflect the restriction an aggregate cost of less than $100,000. Further, the classification by regulation process has been ongoing since 1978 and none of the affected groups has voiced concern over compliance costs.

The restriction of these four active ingredients should also result in a more balanced competitive position in the grain fumigant market since other grain fumigants have already been restricted.

This proposed rule was submitted to OMB for review as required by E.O. 12291. Any comments from OMB to EPA and any response to those comments are available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Paperwork Reduction Act

The reporting or record keeping (information) provisions in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Specific information requests required by this proposed policy are covered under OMB clearances 2000–0013 and 2000–0483 which have been approved by OMB through July 1984.

Regulatory Flexibility Act

As required by section 3(a) of the Regulatory Flexibility Act, this proposed regulation has been reviewed and it has been determined that a regulatory flexibility analysis is not required since the regulation will not have a significant adverse impact on a substantial number of small businesses, small organizations, or small governments.

As mentioned under the discussion of E.O. 12291, this rule is one in a series of regulations, which began in 1978, that restrict products to use by certified applicators or persons under their supervision. Thus, program start-up costs have already been incurred.

Statutory Review

The U.S. Department of Agriculture has reviewed the proposed regulation in accordance with section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act and concurs with its publication in the **Federal Register**.

List of Subjects in 40 CFR Part 162

Administrative practice and procedure, Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests.

(7. U.S.C. 136 et seq.)

Dated: September 23, 1983

William D. Ruckelshaus,

Administrator.

PART 162—[AMENDED]

Therefore, it is proposed that Part 162 be amended by alphabetically inserting in § 162.31 the following items in the table:

§ 162.31 Pesticide use classification.

The following uses of pesticide products containing the active ingredients specified below have been classified for restricted use and are limited to use by or under the direct supervision of a certified applicator.

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
•	•	•	•	•
Carbon tetrachloride	All formulations	Grain fumigation	Restricted	Accident history-Inhalation hazard.
	All formulations	All uses other than grain fumigation	Under evaluation	
•	•	•	•	•
Chloroform	All formulations	Grain fumigation	Restricted	Accident history-Inhalation hazard.
		All uses other than grain fumigation	Under evaluation	
•	•	•	•	•
Ethylene dichloride	All formulations	Grain fumigation	Restricted	Accident history-Inhalation hazard.
		All uses other than grain fumigation	Under evaluation	
•	•	•	•	•
Sulfur dioxide	All formulations	Grain fumigation	Restricted	Accident history-Inhalation hazard.
		All uses other than grain fumigation	Under evaluation	
•	•	•	•	•

[1] "Under evaluation" means no classification decision has been made and the use/formulation in question is still under active review within EPA.

[FR Doc. 83-27594 Filed 10-7-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 56b; Notice No. 83-16]

49 CFR Part 27

Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance From the Department of Transportation

AGENCY: Department of Transportation.

ACTION: Clarification of notice of proposed rulemaking.

SUMMARY: This document clarifies a provision in a notice of proposed rulemaking (NPRM) that the Department of Transportation (DOT) recently published concerning Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance from DOT. The clarification is that recipients of Section 18 funds would send certification of compliance to UMTA rather than FHWA. This is because UMTA will begin administering this program on October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10105, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 926-4723. Hearing impaired persons may contact Mr. Ashby by using TTY (202) 755-7687. The NPRM has been taped for the use of visually-impaired persons.

SUPPLEMENTARY INFORMATION: On September 8, 1983, DOT published an NPRM to propose revisions to the existing DOT regulation concerning nondiscrimination on the basis of handicap in programs receiving Federal financial assistance from DOT (48 FR 40684). The NPRM concerns only the requirements that relate to recipients of assistance from UMTA.

Section 27.77(a)(2) proposes certain requirements for recipients of assistance under Section 18 of the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. 1614). Under the proposal, these recipients would be required to certify to the FHWA Division Administrator that they are complying with the regulation. This proposal reflects the fact that the FHWA currently administers the Section 18 program for UMTA.

On October 1, 1983, however UMTA will assume the responsibilities of administering the Section 18 program. The purpose of this notice is to clarify that since UMTA will be administering the program, Section 18 recipients' compliance certification would be sent to UMTA rather than FHWA. There would be no change in the proposed substantive requirements for Section 18 requirements, however.

Issued this 1st day of October, 1983, at Washington, D.C.

Jim Burnley,

General Counsel.

[FR Doc. 83-27787 Filed 10-11-83; 8:45 am]

BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC-172]

Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition jointly filed by two shipper associations, the Commission is proposing to withdraw antitrust immunity for collective ratemaking activities by motor carriers of property with respect to rates applicable to shipments under 1,000 pounds. Petitioners assert that continued antitrust immunity for collective ratemaking on these shipments is consistent with the transportation policy of 49 U.S.C. 10101(a). If the proposal is adopted, the Commission will require conforming amendments to rate bureau agreements already approved by the Commission and to those agreements currently pending approval. We intend to issue a final decision within 60 days of receipt of comments.

DATES: Comments on the proposal to withdraw antitrust immunity for rate bureau activity related to small shipments are due November 16, 1983. Comments on the question of whether antitrust immunity should be withdrawn altogether for motor carrier rate bureau activity are due December 12, 1983.

ADDRESSES: A copy of all comments should be served on petitioners' representative, the law firm of McCarthy, Swenney, & Harkaway, P.C. 1750 Pennsylvania Ave., NW., Washington, D.C. 20006.

The original and, if possible, 10 copies of comments should be sent to: Ex Parte No. MC-172, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Thomas T. Vining, (202) 275-7813 or Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10706(b), motor carriers of property may enter into collective ratemaking agreements. Any such agreement may be submitted to the Commission for approval. The Commission must grant approval upon finding that the agreement meets each requirment of the subsection, unless the Commission finds that the agreement is inconsistent with the transportation policy of 49 U.S.C. 10101(a). The practical effect of Commission approval is that activities conducted pursuant to an approved agreement are immune from antitrust liability.

In Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Imp. of Pub. L. 96-296*, 364 I.C.C. 464 (1981), The Commission adopted standards for approval of rate bureau agreements consistent with the new limitations on motor carrier collective ratemaking established in the Motor Carrier Act of 1980 (MCA), Pub. L. 96-296, 94 Stat. 793 (1980). The rate bureaus have submitted new or amended agreements for approval; pending final action on these agreements, the bureaus retain their previously granted antitrust immunity for activities not inconsistent with the standards in the MCA and in our decision in Ex Parte No. 297 (Sub-No. 5), *supra*.

On June 27, 1983, the National Small Shipments Traffic Conference, Inc. and the Drug and Toilet Preparation Conference, Inc. (petitioners) jointly filed a petition requesting the Commission withdraw antitrust immunity for collective ratemaking by motor carriers of property with respect to rates on shipments under 1,000 pounds.[1] Petitioners' members tender to motor carriers a large number of shipments, predominantly minimum charge and less-than-truckload (LTL) shipments under 1,000 pounds, which move under rates adopted collectively within individual rate bureaus. Petitioners assert that continued antitrust immunity for collective ratemaking on these shipments is inconsistent with the transportation policy of section 10101(a). Specifically, they not this policy includes the promotion of economical transportation (subsection (a)(1)(B)), reasonable rates for transportation without unreasonable discriminaton (subsection (a)((1)(D)),

[1] The United States Department of Justice and the National Industrial Traffic League have filed pleadings supporting institution of the rulemaking proceeding.

and competitive transportation services (subsection (a)(2). Petitioners contend that regulated motor carriers face little effective competition for LTL shipments beow 1,000 pounds. Given this lack of competition, they argue that collective ratemaking results in the imposition of unreasonable rates and the absence of rate competition among bureau members. Petitioners believe that such anticompetitive pricing practices allow bureau members to derive the major portion of their profits from revenues on small shipments.

In support of their position, petitioners emphasize the level of increases taken by the breaus on rates for small shipments during the past two and one half years. In 1981 and 1982, general rate increses by the nine major bureaus on minimum charge shipments averaged 12.76 percent and 13.55 percent, respectively. For those same years, prices as measured by the Consumer Price Index rose only 8.4 percent and 3.8 percent, respectively. General increases for the first seven months of 1983 averaged 12.4 percent on minimum charge shipments, 9.8 percent on shipments from one to 499 pounds, and 8.4 percent on shipments from 500 to 999 pounds. By contrast, increases on heavier LTL shipments averaged 5.1 percent, and increases on truckload (TL) shipments averaged 3.2 percent.

The substantial disparity in rate increases on different weight categories is attributed by petitioners to the relative absence of effective competition between regulated motor carriers on small shipments. They argue that confering antitrust immunity on collective ratemaking for small shipments discourages or eliminates potential competition. Petitioners note that, under 49 U.S.C. 10706(g), the Commission may act on its own initiative or on application to prescribe or change the conditions on which approval of rate bureau agreements is granted. They request that we act to promote rate competition for shipments under 1,000 pounds through withdrawal of antitrust immunity for collective ratemaking with respect to these shipments.

We believe that petitioners' arguments deserve attention. their general observations concerning competition for small LTL shipments are consistent with the conclusions of the Motor Carrier Ratemaking Study Commission in its report *Collective Ratemaking in the Trucking Industry* (June 1, 1983). That report, mandated by the MCA, states at pages 231–32:

> Competitors for TL include rail, private motor carriage and contract carriage. Competition for LTL freight is broad, involving some rail and private carriage as well as freight forwarders, shipper associations, air freight and package services. However, a substantial amount of the LTL freight that now moves by interstate regulated common motor carriage, particularly small shipments, moving long distances, is not consistently exposed to intensive competition from nonregulated trucking or other transportation modes. Many shippers still rely on ICC regulated LTL carriers for the bulk of their transportation needs. (footnote omitted) Thus, a shipper may need to ship from a few points to many destinations and have no practical use for either rail or private carriage. Such a shipper relies extensively on competition *among* regulated LTL carriers to restrain increasing rate levels.

The disparity between rate increases on LTL shipments below 1,000 pounds and increases on heavier LTL and TL shipments was also noted in the report. The Study Commission included among its 19 specific findings a conclusion that recent general rate increases "have shifted and imposed a substantially greater share of the wage and other cost burdens on shippers of small shipments." *Id* at 533. While factors other than those cited by NASSTRAC may have influenced the pattern of LTL ratemaking, we see some merit in petitioners' arguments.

The Commission's 1981 decision in Ex Parte No. 297 (Sub-No. 5), *supra*, indicated that rate bureau agreements entirely in compliance with the terms of that decision would be presumed not inconsistent with the transportation policy of section 10101(a). Nevertheless, the issues raised by petitioners, the recent findings of the Motor Carrier Ratemaking Study Commission, and our own consideration of the direction of motor carrier collective ratemaking since 1981 lead us to question the basis for continuing to extend antitrust immunity as broadly as that provided in the past. The Commission has a continuing responsibility to review collective ratemaking agreements and "shall change conditions of approval" when necessary to assure consistency with the national transportation policy. *See* 49 U.S.C. 10706 (f) and (g). *See also American Trucking Ass'n* v. *United States*, 688 F.2d 1337, 1343 (11th Cir. 1982).

Collective ratemaking with regard to rates on shipments under 1,000 pounds appears to inhibit competition and unduly discourage independent ratemaking. Such a result would be inconsistent with the transportation policy of section 10101(a) and with the broad procompetitive reforms adopted in the MCA. For these reasons, if the proposal is adopted antitrust immunity would be withdrawn for collective ratemaking activities by motor carriers of property with respect to rates applicable to shipments under 1,000 pounds. Additionally, the Commission would require conforming amendments to rate bureau agreements already approved by the Commission and to those agreements currently pending approval. Accordingly, a copy of this notice will be served on all motor carrier rate bureaus.

We invite comments from interested persons in response to the proposal made in this notice. We specifically request comment on whether 1,000 pounds or some other level is the appropriate point for defining small shipments in the context of this proposal. We also invite comments as to whether antitrust immunity should be withdrawn from any other areas of motor rate bureau activity. Finally, in view of the findings of the Motor Carrier Ratemaking Study Commission, we invite comments on the separate question of whether antitrust immunity should be withdrawn altogether from motor carrier rate bureau activity.

This action does not appear to affect significantly the quality of the human environment or the conservation of energy resources. Comments are welcome on this issue.

Regulatory Flexibility Analysis

The Commission certifies that adoption of the proposal in this notice will not have a significant economic impact on a substantial number of small entities. To the extent the proposal would affect small entities, the effects would be largely positive because of the increase in competition on small shipments. Comments on this issue are also invited.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Dated: September 23, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre dissented with a separate expression.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27900 Filed 10-11-83; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 48, No. 198
Wednesday, October 12, 1983

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

Agricultural Stabilization and Conservation Service

Flue-Cured Tobacco; 1984 National Marketing Quota for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA).

ACTION: Notice of Proposed Determination.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to announce by December 1, 1983, the amount of the national marketing quota for flue-cured tobacco for the 1984–85 marketing year. The public is invited to comment on the amount of the national marketing quota to be determined and other related factors, as set forth in this notice.

DATE: Comments must be received on or before November 4, 1983 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–3391.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Agricultural Economist, Analysis Division, ASCS, USDA, Room 3741—South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5187. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of proposed determinations 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 governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, and environment or 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 proposed notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires the Secretary to determine and announce by December 1, 1983, the amount of the national marketing quota, the national average yield goal, and the national acreage allotment for the 1984–85 marketing year for flue-cured tobacco. The 1984–85 marketing year is the second of three consecutive years for which marketing quotas, approved by producers in a national referendum, will be in effect for such kind of tobacco.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestc consumption and export needs in years of drought, flood, or other adverse conditions as well as in years of plenty. The phrase "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the yearly average quantity produced in the United States that was consumed during the ten marketing years immediately preceding the marketing year in which the quota must be announced (1983–84), adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the yearly average quantity produced in and exported from the United States during the ten marketing years immediately preceding the marketing year in which the quota must be announced (1983–84), adjusted for current trends in such exports.

The reserve supply level for the 1983–84 marketing year was determined to be 2,550 million pounds. This was based on a normal year's domestic consumption of 560 million pounds and a normal year's exports of 539 million pounds (48 FR 1781). The proposed reserve supply level for the 1984–85 marketing year is 2,363 million pounds, based on a normal year's domestic consumption of 500 million pounds and a normal year's exports of 530 million pounds.

Section 301(b)(16)(B) of the Act defines "total supply" as the carryover at the beginning of the marketing year (July 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The total supply for the 1983–84 marketing year is 3,067 million pounds based on carryover of 2,204 million pounds and estimated marketings of 863 million pounds.

Section 317(a)(1) of the Act defines "national marketing quota" for any kind of tabacco for a marketing year as the amount of the kind of tobacco produced in the United States which the Secretary estimates will be used domestically and exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The maximum downward adjustment is 15 percent of estimated domestic use and exports.

The amount of flue-cured tobacco produced and utilized domestically during the 1983–84 marketing year was 479 million pounds, and the amount exported was 456 million pounds, farm sales weight basis. The amount of the national marketing quota for the 1983–84 marketing year is 910 million pounds,

based upon estimated domestic utilization of 495 million pounds and exports of 505 million pounds with a downward adjustment of 90 million pounds to make an orderly reduction in supplies. For the 1984–85 marketing year, utilization in the United States is estimated to be approximately 450 million pounds and exports are estimated to be approximately 435 million pounds. The total supply for the 1983–84 marketing year is 704 million pounds more than the proposed reserve supply level, but the amount of the adjustment desirable for maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level is still being considered. However, the national marketing quota is proposed to be within the range of 760 million to 910 million pounds.

Section 317(a)(2) of the Act defines "national average yield goal" for any kind of tobacco as the yield per acre which on a national average basis the Secretary determines will improve or insure the usability of the tobacco and increase the net return to the growers. For the 1983 crop of flue-cured tobacco, the national average yield goal was determined to be 1,989 pounds per acre (See 48 FR 1781).

Section 317(a)(3) of the Act defines the "national acreage allotment" as the acreage determined by dividing the national marketing quota by the national average yield goal. The national acreage allotment for the 1983–84 marketing year was determined to be 457,516.34 acres (See 48 FR 1781).

A national acreage factor for apportioning the national acreage allotment to old farms will be determined by dividing the national acreage allotment, less the reserve for new farms and old farm corrections and adjustments, by the sum of the preliminary 1984 allotments for old farms prior to any adjustments for overmarketings, undermarketings, or reductions which are required to be made because of marketing quota violations. The national acreage factor for the 1983–84 marketing year was .9268 (See 48 FR 1781).

A national yield factor will be obtained by dividing the national average yield goal by the national average yield. The national average yield is computed by multiplying the preliminary farm yield for each farm by the acreage allotment determined for the farm prior to any adjustments for overmarketings, undermarketings, or reductions which are required to be made because of marketing quota violations, adding the products, and dividing the sum of the products by the national acreage allotment. The national yield factor for the 1983–84 marketing year was .9020 (48 FR 1781).

For each marketing year for which acreage-poundage quotas are in effect, section 317(e) of the Act provides that a reserve may be established from the national acreage allotment in an amount equivalent to not more than one percent of the national acreage allotment to be available for making corrections of errors in farm acreage allotments, adjusting inequities, and for establishing acreage allotments for new farms, which are farms on which no tobacco was produced or considered produced during the immediately preceding five years. A reserve of 200 acres was established for the 1983–84 marketing year (48 FR 1781). The establishment of a reserve is also proposed for the 1984–85 marketing year.

Section 317(g)(1) of the Act provides that if the Secretary, in his discretion, determines it is desirable to encourage the marketing of grade N2 tobacco, or any grade of tobacco not eligible for price support, in order to meet the normal demands of export and domestic markets, the Secretary may authorize the marketing of such tobacco without the payment of penalty or deduction from subsequent quotas to the extent of 5 percent of the marketing quota for the farm on which the tobacco was produced. The marketing of any such tobacco in this manner has never been authorized under the acreage-poundage program and is not proposed for the 1984–85 marketing year.

Proposed Determinations

Accordingly, the Secretary of Agriculture proposes to determine and announce with respect to the 1984–85 marketing year for flue-cured tobacco:

(1) A reserve supply level in the amount of 2,363 million pounds.

(2) A national marketing quota in an amount within the range of 760–910 million pounds.

(3) A national average yield goal of 1,989 pounds.

(4) A reserve from the national acreage allotment in an amount within a range of 100 acres and 4,000 acres.

(5) The marketing of N2 or other grades of tobacco which are not eligible for price support, without payment of penalty or deduction from subsequent quotas, will not be authorized.

The national acreage allotment, the national acreage factor, and the national yield factor will be computed using the final determinations which will be made with respect to items set forth in (1) through (4) above.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741—South Building, 14th and Independence Avenue, SW., Washington, D.C. 20013.

(Secs. 301, 313, 317, 375, 52 Stat. 38, as amended, 47 as amended, 66 as amended, 79 Stat. 66 as amended (7 U.S.C. 1301, 1313, 1314c, 1375))

Signed at Washington, D.C. on October 6, 1983.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 83-27612 Filed 10-11-83; 8:45 am]

BILLING CODE 3410-05-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: October 27 and 28, 1983.

Time: 10:30 a.m. Thursday, October 27, 1983, Room 5941; 9:00 a.m. Friday, October 28, 1983, Room 7516.

Place: State Department Building, Washington, D.C.

Type of Meeting: Closed.

Contact Person: Dr. Charles M. Kupperman, Executive Director of the General Advisory Committee, Room 5927, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, telephone (202) 632-5176.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will include the following discussions and presentations:

October 27

A.M. and P.M.—Compliance

October 28

A.M.—Compliance

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated September 27, 1983, made pursuant to

the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.

John E. Grassle,

Committee Management Officer.

[FR Doc. 83-27497 Filed 10-11-83; 8:45 am]

BILLING CODE 6820-32-M

CIVIL AERONAUTICS BOARD

[Oder 83-10-21]

Fitness Determination of Clearwater Flying Service, Inc.d.b.a. Empire Airways

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 83-10-21, Order to Show Cause.

SUMMARY: The Board is proposing to find that Clearwater Flying Service, Inc. d. b. a. Empire Airways is fit, willing, and able to provide commuter air carrier service under section 419(c) (2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than October 26, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorites Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachemnt A to the order.

FOR FURTHER INFORMATION CONTACT: Stephen Davis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5105).

SUPPLEMENTARY INFORMATION: The Complete text of Order 83-10-21 is is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metroplitan area may send a postcard request for Order 83-10-21 to that address.

By the Civil Aeronautics Board: October 6, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-27664 Filed 10-11-83; 8:45am]

BILLING CODE 6320-01-M

[Order 83-10-19]

Fitness Determination of Pegasus Aviation, Inc.; Order to Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 83-10-19, Order To Show Cause.

SUMMARY: The Board is proposing to find that Pegasus Aviation, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than October 24, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADRESSE: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5328.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-10-19 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-10-19 to that address.

By the Civil Aeronautics Board: October 6, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-27683 Filed 10-11-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 41414]

Northern Air Lines, Inc., Fitness Investigation; Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to be held on October 25, 1983, is hereby postponed to November 10, 1983, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., October 5, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-27682 Filed 10-11-83; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Louisiana Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 2:00 p.m. and will end at 10:00 p.m. on October 25, 1983 and will convene again at 8:00 a.m. and will end at 10:00 p.m. on October 26, 1983, at the Holiday Inn-Holidome, U.S. Hwy. 165 at I-20, P.O. Box 7860, Monroe, LA 71203. The purpose of the meeting on October 25, 1983, is to hold an orientation and planning meeting. On October 26, the Committee will hold a factfinding meeting on public school desegregation in Louisiana.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Dr. Louis C. Pendleton, 1514 Gary, Shreveport, LA 71103, (318) 424-1297; or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio TX 78204, (512)5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-27758 Filed 10-11-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Decision on Application for Duty-Free Entry of Scientific Instrument; East Carolina University

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review

between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83–200. Applicant: East Carolina University, Purchasing Department, Greenville, NC 27834. Instrument: N–15 analyzer, Model NOI–5. Manufacturer: Packard-Becker B.V., The Netherlands. Intended use of instrument: See notice on page 27282 in the **Federal Register** of June 14, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can rapidly determine N–15 abundance in very small (microgram) samples. The National Institutes of Health advises in its memorandum dated September 7, 1983 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no comparable domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other comparable instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83–27639 Filed 10–11–83; 8:45 am]

BILLING CODE 3510–05–M

Decision on Application for Duty-Free Entry of Scientific Instrument; Massachusetts Institute of Technology

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 83–218. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Complete Sputter Cryo System, PSP–2000. Manufacturer: EMscope, United Kingdom. Intended use of instrument: See notice on page 29036 in the **Federal Register** of June 24, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument permits specimens to be fast-frozen, transferred, fractured, etched and sputter coated under vacuum and transferred to the microscope for examination. The National Institutes of Health advises in its memorandum dated September 7, 1983 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83–27626 Filed 10–11–83; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Micromanipulators; Northwestern University Medical School

The following is a consolidated decision on applications for duty-free entry of micromanipulators pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83–192. Applicant: Northwestern University Medical School, Dept. of Pharmacology, Ward Bldg.; Rm. 12–031, 303 East Chicago Avenue, Chicago, IL 60611. Instrument: 2 (each) Three-dimensional Hydraulic Microdrive and K-type Micromanipulator. Manufacturer: Narashigi Scientific Instruments Laboratory, Japan. Intended use of instrument: See notice on page 23285 in the **Federal Register** of May 24, 1983. Advice submitted by: National Institutes of Health: September 7, 1983.

Docket No. 83–193. Applicant: Northwestern University Medical School, Dept. of Pharmacology, Ward Bldg., Rm. 12–031, 303 East Chicago Avenue, Chicago, IL 60611. Instrument: 1 (each) Three-dimensional Hydraulic Microdrive and K-type Micromanipulator. Manufacturer: Narashigi Scientific Instruments Laboratory, Japan. Intended Use of Instrument: See notice on page 23285 in the **Federal Register** of May 24, 1983. Advice submitted by: National Institutes of Health: September 7, 1983.

Comments: No comments have been received in regard to either of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instruments, for such purposes as these instruments are intended to be used, is being manufactured in the United States.

Reasons: Each foreign instrument provides finely controlled movements in three orthogonal directions with controls calibrated in micrometers. The National Institutes of Health advises in its respectively cited memoranda that: (1) The capability described above is pertinent to the purposes for which each foreign instrument is intended to be used and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to either of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to either of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11-105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-27627 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; The Pennsylvania State University

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83-219. Applicant: The Pennsylvania State University, Department of Biology, 208 Mueller Laboratory, University Park, PA 16802. Instrument: Scanning Microdensitometer, M85a. Manufacturer: Vickers Instruments, United Kingdom. Intended use of Instrument: see notice on page 29036 in the **Federal Register** of June 24, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides scanning and integrating cytophotometry with a reproducibility of 0.5% standard deviation in the 0 to 2.0 optical density range. The National Institutes of Health advises in its memorandum dated September 7, 1983 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-27625 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; The Rowland Institute for Science, Inc.

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Consitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83-244. Applicant: The Rowland Institute for Science, Inc., 100 Cambridge Parkway, Cambridge, MA 02142. Instrument: Nuclear Magnetic Resonance Spectrometer, Model GX 400/54/RSX. Manufacturer: JEOL, Japan. Intended use of Instrument: See notice on page 33508 in the **Federal Register** of July 22, 1983.

Comments: No comments have been recevied with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in United States.

Reasons: The foreign instrument is equipped with a model CIDNP probe, which permits a light source to be focused on the sample while the nuclear magnetic resonance spectrum is being collected. The National Institutes of Health advises in its memorandum dated August 9, 1983 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-27624 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Veterans Administration Medical Center

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83-198. Applicant: Veterans Administration Medical Center, Medical Research Service, 5901 East Seventh St., Long Beach, CA 90822. Instrument: Thin layer Countercurrent Distribution Apparatus. Manufacturer: Workshop of University of Lund, Sweden. Intended use of Instrument: See notice on page 27282 in the **Federal Register** of June 14, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides counter current two phase partitioning (between immiscible phases of solutions of different water soluble polymers) in the thin layer configuration using precisely machined partitioning plates. The National Institutes of Health advises in its memorandum dated September 7, 1983 that: (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-27628 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Florida.

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83-235. Applicant: University of Florida, Purchasing Divison, Gainesville, Fl 32611. Instrument: Thermal Ionization Mass Spectrometer, Model MM354H and Accessories. Manufacturer: VG Isotopes, Ltd., United Kingdom. Intended use of instrument: See notice on page 31684 in the **Federal Register** of July 11, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is a termal emmission magnetic sector mass spectrometer that provide a multiple (16 sample) handling system and a Daly pulse detector. The National Bureau of Standards advises in its memorandum dated September 13, 1983 that: (1) The characteristics of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument of apparatus or equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-27629 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-044]

Chains and Parts Thereof, of Iron or Steel, From Spain; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On August 18, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on chains and parts thereof, of iron or steel, from Spain. The review covers the period January 1, 1981 through December 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 37505) the preliminary results of its administrative review of the countervailing duty order on chains and parts thereof, of iron or steel, from Spain (43 FR 3258, January 24, 1978). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Spanish chains and parts thereof, of iron or steel. Such merchandise is currently classifiable under items 652.2410 through 652.2450, 652.2710 through 652.2740, 652.3010 through 652.3040, 652.3310 through 652.3330, and 652.3510 through 652.3530 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1981 through December 31, 1982, and the following programs: (1) A rebate of indirect taxes upon exportation under the Desgravacion Fiscal a la Exportacion ("the DFE"), and (2) an operating capital loans program.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the net subsidy to be 14.89 percent *ad valorem* during 1981 and 14.65 percent *ad valorem* during 1982. The Department will instruct the Customs Service to assess countervailing duties of 14.89 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1981 and on or before December 31, 1981, and 14.65 precent on any shipments exported on or after January 1, 1982 and entered, or withdrawn from warehouse, for consumption on or before June 20, 1982.

On June 21, 1982, the International Trade Commission ("the ITC") notified the Department that the Spanish government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties, in the amount of the estimated duties required to be deposited, on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, and through the date of the ITC's notification to the Department of its determination.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 13.90 percent of the f.o.b. invoice price, as provided for by section 751(a)(1) of the Tariff Act, on any shipment of Spanish chains and parts thereof, of iron or steel, entered, or withdrawn from warehouse, for

consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department is now beginning the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: October 5, 1983.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 83-27693 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-25-M

[Docket No. A-588-066]

Impression Fabric of Man-Made Fiber From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On September 29, 1982, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on impression fabric of man-made fiber from Japan. The review covers the four known exporters of this merchandise to the United States currently covered by the finding and varying time periods through April 30, 1981.

Interested parties were given an opportunity to submit oral or written comments on the preliminary results. At the request of one exporter, Nissei Sangyo Co., Ltd., the Department held a public hearing on November 3, 1982. As result of our review of the comments received and our review of one of the adjustments, we have changed the margin for Nissei Sangyo from 5.76 percent to 6.89 percent. We have made no changes in the final results for the other companies from those presented in our preliminary results of review.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia McClenahan or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Wahington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1978, a dumping finding with respect to impression fabric of man-made fiber from Japan was published in the **Federal Register** as Treasury Decision 78-143 (43 FR 22344). On September 29, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 42770-1) the preliminary results of its administrative review of the finding. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of impression fabric of man-made fiber ("impression fabric"), currently classifiable under item numbers 338.5001, 338.5002, and 347.6020 of the Tariff Schedules of the United States Annotated. The review covers the four known exporters of impression fabric to the U.S. currently covered by the finding and varying timne periods through April 30, 1981.

Analysis of Comments Received

Interested parties were invited to comment on the preliminary results. One exporter, Nissei Sangyo Co., Ltd., requested a hearing which was held on November 3, 1982.

(1) *Comment:* The Treasury Department's affirmative final determination discountinued the investigation of Shirasaki Tape Co., Ltd. The petitioner, the Ad Hoc Impression Fabric Group, argues that the Department is ignoring its own regulations (19 CFR 353.53(e)) by failing to review the discountinuance. If there are legitimate grounds perceived by the Department for not reviewing the discontinuance, then the Department should make them public.

Department's Position: On September 29, 1983, the Department published in the **Federal Register** (48 FR 44587) a notice of proposed rulemaking proposing to remove § 353.53(e) from title 19 of the Code of Federal Regulations, because that regulation originally was promulgated without legal authority. We are therefore holding in abeyance the petitioner's comment regarding the Shirasaki discontinuance pending final action on this rulemaking proceeding.

(2) *Comment:* The petitioner argues that adjustments to foreign market value for differences in circumstances of sale must be directly related expenses tied to a particular sale and incurred prior to the sale. Section 773(a)(4) of the Tariff Act of 1930 ("the Tariff Act") does not permit adjustments to be made without a demonstration that differences in price between the home market and the U.S. market are wholly or partly due to the differences in the circumstances of sale. Nissei Sangyoi's claims for credit expenses, technical services, and warranty costs do not meet these criteria.

Department's Position: The Department maintains that its allowances of credit expenses, technical services, and warranty costs are in accordance with § 353.15(d) of the Commerce Regulations, which states that reasonable allowances will be made for the costs to the seller of any differences in circumstances of sale. The Department has, however, reduced the downward adjustment for differences in the technical services. See Comment #5.

(3) *Comment:* The petitioner believes that the adjustment for differences in merchandise should be denied since Nissei Sangyo did not demonstrate that the differences in the prices in the two markets were related to the differences in merchandise.

Department's Position: The Department's allowance for differences in merchandise is in accordance with § 353.16 of the Commerce Regulations. The actual slitting costs per roll are uniform regardless of the number of reels produced. The cost of each reel, therefore, is dependent upon the yield per roll. Since the yield per roll for the U.S. market is higher than the yield per roll for the home market, the cost per reel in the home market is greater than in the U.S. market.

(4) *Comment:* Nissei Sangyo asserts that the Department's adjustment for differences in direct selling expenses is contrary to the Department's regulations.

The Department incorrectly identitied certain unattributable selling expenses for travel and communications as direct selling expenses.

Department's Position: The Department has reviewed the selling expenses adjustment and agrees with the respondent.

(5) *Comment:* The respondent claims that the adjustment for techincal services should be allowed in full. Since Nissei Sangyo is a trading company mainly involved in sales, *all* components of its technical services' costs should be allowed.

Department's Position: After publication of the preliminary results the Department determined that the technical services' adjustment was based incorrectly on the total technical services' costs. We also discovered a mathematical error. Correction of these

problems resulted in a reduction in the downward adjustment for technical services. The technical services' expenses allowed in accordance with § 353.15(a) of the Commerce Regulations are those which are directly related to sales. Expenses such as salaries of the technical services' staff are incurred regardless of specific sales, and are, therefore, not considered directly related expenses.

(6) *Comment:* Sales of 1.6" fabric to the United States should be compared to sales of similar merchandise in the home market. The only home market sale of 41mm fabric, deemed by the Department to be identical merchandise, was in fact a sample shipment and was custom made. It was also smaller in quantity than the U.S. sale. The proper comparison should therefore be to sales of similar merchandise based on data previously submitted.

Department's Position: The Department discussed the question of the proper basis of comparison for the U.S. merchandise with the respondent prior to publication of the preliminary results. At no time did Nissei Sangyo describe the home market sale as being a custom made sample shipment. Indeed, the respondent specifically requested that the sale of 41mm fabric be compared to the sale of 1.6" fabric. The Department believes that this is the proper basis for comparison.

Final Results of the Review

After analysis of the comments received, we have altered the margin for Nissei Sangyo. For the other companies the final results of our review are the same as the preliminary results of review and we determine that the following weighed-average margins exist:

Exporter	Time period	Margin (percent)
Nissei Sangyo Co., Ltd	05/25/78-04/30/81	6.89
Nissei Company, Ltd	05/01/80-04/30/81	10.12
Mitsui & Co., Ltd	09/01/77-04/30/81	7.5
Maruberi Corp	05/25/78-04/30/81	7.5

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries with purchase dates during the periods of review. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Japanese impression fabric of man-made fiber from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any shipment from a new exporter not covered in this review, unrelated to any covered firm, a cash deposit shall be required at the rate for the only responding firm with shipments, that is, 6.89 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675)(a)(1) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: September 30, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-27694 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-DS-M

[A-429-009, A-485-010, A-461-011]

Pig Iron From Romania, The U.S.S.R. and East Germany; Preliminary Results of Administrative Review of Antidumping Findings

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Findings.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping findings on pig iron from Romania, the U.S.S.R., and East Germany. The review covers the three known exporters of this merchandise to the United States and the period October 1, 1981 through September 30, 1982. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties on future entries equal to the margins calculated on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Connell or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On July 13 and July 16, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 30276, 30276-77, 31031-32) the final results of its last administrative reviews of the antidumping findings on pig iron from Romania, the U.S.S.R., and East Germany (33 FR 15904, October 29, 1968), respectively, and announced its intent to conduct its next administrative review by the end of September 1983. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machine parts. Such merchandise is currently classifiable under items 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated.

The review covers the three known exporters of Romanian, Soviet and East German pig iron to the United States and the period October 1, 1981 through September 30, 1982. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties, based on the most recent margin calculated for the following firms, shall be required on all shipments of Romanian, Soviet, or East German pig iron entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review:

Exporter (country)	Cash deposit (percent)
Metalimport (Romania)	[1] 70.00
Promsyrioimport (U.S.S.R.)	[1] 70.00
Deutsche Stahl—Metall (East Germany)	[1] 70.00

[1] No shipments during the period.

All three exporters failed to respond to our questionnaire for the review period. The above rate is the most recent margin for all three firms; it was calculated during the original fair value investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days on the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: October 6, 1983.

[FR Doc. 83-27695 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

[Docket No. 30812-160]

Proposed Federal Information Processing Standard for Representation of Geographic Point Locations for Information Interchange

Correction

In FR Doc. 83-25102 beginning on page 41478 in the issue of Thursday, September 15, 1983, make the following corrections:

1. On page 41479, first column, twenty-seventh line from the bottom, *"Presentation of"* should have read *"Representation of"*.

2. On the same page, same column, fourth paragraph, fifth line, insert the following after "and": "Administrative Services Act of 1949, as amended, Public Law".

3. On the same page, middle column, third complete paragraph, second line, "x3.61" should have read "X3.61".

4. On the same page, same column, fifth paragraph, sixteenth line, "such a" should have read "such as".

5. On the same page, same column, seventh paragraph, third line, "x3.61" should have read "X3.61".

6. On the same page, last column, last paragraph, third line, "program Manager" should have read "Program Manager".

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Issuance of General Permit; Associacao. dos Armadores da Pesca Longinqua

A general permit was issued on October 3, 1983, to the Associacao dos Armadores da Pesca Longinqua, Lisboa, Portugal, to take marine mammals incidental to commercial fishing operations under Category 1: Towed or Dragged Gear, pursuant to 50 CFR 216.24.

The general permit allows the taking of not more than 20 cetaceans and 20 phocid seals (*Phoca vitulina*) annually by certificate holders operating under this permit within the U.S. fishery conservation zone of the North Atlantic Ocean. The permit is valid until December 31, 1984.

This general permit is available for public review in the Office of the Assistance Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW. Washington, D.C.

Dated: October 5, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-27610 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-22-M

Modification No. 3 to Permit No. 227

Notice is hereby given that pursuant to the provisions of Section 215.13(f) of the Regulations Governing the Public Display of Fur Seals (50 CFR Part 215), Public Display Permit No. 227 issued to Mystic Marinelife Aquarium, Mystic, Connecticut 06355, on March 28, 1978 (43 FR 14532), is modified to extend the period of authorized taking for three years.

Accordingly, Section B-8 is deleted and replaced by: "8. This permit is valid with respect to the taking authorized herein until December 31, 1986."

This modification becomes effective upon publication in the **Federal Register.**

The Permit as modified and documentation pertaining to the modification are 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, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: October 3, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-27611 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Shipments of Cotton, Wool and Man-Made Fiber Textiles and Apparel in Excess of Bilateral Agreement Limits

October 6, 1983.

It has come to CITA's attention that some textile and apparel products may be shipped in excess of 1983 limits with the expectation that they will be entered and charged against the limits of the 1984 quota year. This notice serves to remind interested parties that charges against the limits of U.S. bilateral textile and apparel agreements are by date of export and not date of entry. Shipments made in one year in excess of agreed limits are in violation of the terms of the bilateral agreement.

It has been the practice of the Committee for the Implementation of Textile Agreements (CITA) to charge merchandise exceeding the limit(s) established for one agreement period, if entered or withdrawn from warehouse for consumption, to the limit(s) established for the immediately subsequent agreement period. The purpose of this notice is to advise the public that CITA reserves the right under the bilateral agreements to deny entry permanently to goods which have been overshipped, or to allow entry and charge to the following restraint period merchandise exported during a prior agreement period which exceeds the

restraint limit(s) established for that period.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27608 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-DR-M

Soliciting Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China To Include a Review of Trade in Categories 336 and 639 and Controlling Imports in Those Categories

October 6, 1983.

(1) Soliciting public comment on bilateral textile consultations with the Government of the People's Republic of China concerning trade in Categories 336 and 639 and

(2) Controlling imports of cotton dresses in Category 336 and women's, girls', and infants' knit shirts and blouses of man-made fibers in Category 639 produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on October 1, 1983 and extends through December 29, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

SUMMARY: On September 30, 1983, pursuant to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton and man-made fiber apparel products in Categories 336 and 639 from the People's Republic of China.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 336 and 639 under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textiles and apparel included in these Categories, is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th St. and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for futher consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Under the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of these products during the ninety-day period to the following amounts:

Category	90-day level of restraint (Oct. 1 to Dec. 29, 1983)
336	27,854 doz.
639	217,567 doz.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve months following the ninety-day consultation period to the following amounts:

Category	12-month level of restraint (Dec. 30, 1983 to Dec. 29, 1984)
336	72,268 doz.
639	631,639 doz.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of cotton and man-made fiber textile products in Categories 336 and 639 for the ninety-day period, at levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limits established for Categories 336 and 639 for the ninety-day period are exceeded, such excess amounts, if they are allowed to enter at the end of the restraint period, shall be charged to the levels (described above) for those categories defined in the agreement for the subsequent twelve-month period.

EFFECTIVE DATE: October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On August 19, 1983 there was published in the **Federal Register** (48 FR 37685) a letter to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1983. The notice document which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 336 and 639, which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in Categories 336 and 639 produced or manufactured in the People's Republic of China and exported during the indicated ninety-day period, in excess of the designated levels of restraint.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 6, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on October 13, 1983 entry into the

United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 336 and 639, produced or manufactured in the People's Republic of China, and exported during the ninety-day period which begin on October 1, 1983 and extends through December 29, 1983, in excess of the following levels of restraint:

Category	90-day level of restraint [1]
336	27,854 doz.
639	217,567 doz.

[1] The levels of restraint have not been adjusted to reflect any imports exported after September 30, 1983.

Textile products in Categories 336 and 639 which have been exported to the United States prior to October 1, 1983 shall not be subject to this directive.

Textile products in Categories 336 and 639 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924)).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports of cotton and man-made fiber textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27609 Filed 10-11-83; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket 79-1]

Order Directing Further Distribution of 1978 Cable Royalty Fees

The Copyright Royalty Tribunal published in the **Federal Register** of Sept. 23, 1980 (45 FR 63026) its final determination in the 1978 cable royalty distribution proceeding. All 1978 fees were subsequently distributed. Some cable operators have made late payment of 1978 royalty fees. It is ordered that these fees be distributed as of Nov. 10, 1983 in accordance with the Tribunal's final determination of Sept. 23, 1980.

Edward W. Ray,

Chairman.

October 6, 1983.

[FR Doc. 83-27703 Filed 10-11-83; 8:45 am]

BILLING CODE 1410-13-M

[CRT Docket 80-4]

Order Directing Partial Distribution of 1979 Cable Royalty Fees

The Copyright Royalty Tribunal on June 3, 1982 (47 FR 24175) directed the distribution of 50% of the amounts allocated in the Tribunal's notice of Final Determination of the 1979 cable royalty fund. We have resolved that retention of 20% of the royalty fund will accommodate the practical consequences of any adjustments resulting from judicial review. It is therefore orderd that 30% of the amount allocated in the Tribunal's Final Determination of March 8, 1982 be distributed to the claimants effective Nov. 10, 1983.

The distribution to be allowed at this time is as follows:

	Percent
MPAA	20.349
Joint Sports	4.500
PBS	1.575
U.S. Television (NAB)	1.518
Music Peforming Rights	1.275
Canadian Television	.225
National Public Radio	.075
Multimedia	.336
SIN	.147
Total	30.000

Edward W. Ray,

Chairman.

October 6, 1983.

[FR Doc. 83-27704 Filed 10-11-83; 8:45 am]

BILLING CODE 1410-13-M

[CRT Docket 82-1]

1981 Cable Distribution Proceeding and Partial Distribution of Fee.

The Copyright Royalty Tribunal has been informed of agreements and stipulations by all Phase I claimants to the 1981 cable royalty fund whereby all Phase I issues have been resolved. Subject to the disposition of the claims of the Devotional Claimants, it has been resolved that the awards to Phase I claimants shall be in the percentages determined by the Tribunal in the 1979 and 1980 cable royalty proceedings. Under the terms of a stipulation, if there should ultimately be a Phase I award to the Devotional Claimants in the 1979 cable royalty distribution proceeding (which is currently on appeal) the same percentage of the 1981 royalty fund shall be awarded to the Devotional Claimants. The Phase I controversy is terminated, and all present Phase I procedural dates are extended indefinitely.

The Tribunal in an order of July 8, 1983 (48 FR 31450) directed partial distribution of 85% of the royalty fund. The tribunal has resolved that the retention of 10% of the Royalty Fund is adequate to accommodate the reasonably anticipated future developments in this proceeeding. It is ordered that 5% of the fund be distributed as of November 17, 1983, in accordance with the terms of the order of July 8, 1983. The distribution ordered at the present time is as follows:

	Percent
MPAA	3.3915
Joint Sports	.7500
PBS	.2625
U.S. Television (NAB)	.2530
Music Performing Rights	.2125
Canadian Television	.0375
NPR	.0125
Multimedia	.0560
SIN	.0245
Total	5.0000

In preparation for Phase II of the 1981 proceeding, the Tribunal directs that not later than November 7, 1983 each claimant category shall notify the Tribunal of any voluntary agreements for distribution of royalty fees among the claimants within a category. The Tribunal directs that not later than November 15, 1983 any claimant desiring to present evidence during Phase II shall notify the Tribunal of such intention, and the Phase II issues to be decided. The Tribunal directs that not later than November 23, 1983 parties shall file with the Tribunal and exchange with other parties their direct, written cases, including lists of witnesses, pre-hearing statements, any written witness statements, and all documentary evidence.

The Tribunal later will announce necessary Phase II hearing dates.

Edward W. Ray,

Chairman.

October 6, 1983.

[FR Doc. 83-27705 Filed 10-11-83; 8:45 am]

BILLING CODE 1410-13-M

[CRT Docket 83-1]

1982 Cable Distribution Proceeding and Partial Distribution of Fees

The Copyright Royalty Tribunal in accordance with 17 U.S.C. 111(d)(5)(B) finds the existence of a controversy concerning the distribution of the 1982 cable royalty fund.

For the reasons set forth in the Tribunal's order of July 8, 1983 (48 FR 31 450) and in accordance with the terms of that order, the Tribunal directs, effective Dec. 1, 1983, the distribution of 90% of the 1982 royalty fund. The distribution ordered at the present time is as follows:

	Percent
MPAA	61.0470
Joint Sports	13.5000
PBS	4.7250
U.S. Television (NAB)	4.5540
Music Performing Rights	3.8250
Canadian Television	.6750
National Public Radio	.2250
Multimedia	1.0080
SIN	.4410
Total	90.0000

The Tribunal subsequently will announce necessary procedural dates in this proceeding.

Edward W. Ray,

Chairman.

October 6, 1983.

[FR Doc. 83-27706 Filed 10-11-83; 8:45 am]

BILLING CODE 1410-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 14–15 November 1983 at the AGED Secretariat, 1925 N. Lynn Street, Suite 1000, Arlington, VA 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 1 § 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: October 6, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-27618 Filed 10-11-83; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices Notice of Advisory Committee Meeting

Working Group B (Mainly Low Power Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 1—2 November 1983 at RADC, Griffiss AFB 13441.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 1§ 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: October 6, 1983.

M.S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-27619 Filed 10-11-83; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices Notice of Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 16 November 1983 at the AGED Secretariat, 201 Varick Street, 11th Floor, New York, NY 10014.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 1 § 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: October 6, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-27620 Filed 10-11-83; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Conventional Strike Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO), Executive Panel Advisory Committee, Conventional Strike Warfare Task Force will meet October 26–27, 1983, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of key issues related to conventional strike warfare and related intelligency. These matters constitute classified information that is

specifically authorized by Executive order to be kept secret in interest of national defense and is in fact, properly classified pursuant to such executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander R. Robinson Harris, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Telephone (202) 694–8422.

Dated: October 5, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 83–27685 Filed 10–11–83; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, Department of Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the scheduled and proposed agenda of a forthcoming meeting of the full Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting, except for October 21, 1983, from 1:30 p.m. to 5:00 p.m., as it is closed to the public.

DATES: October 21, 1983, 9:00 a.m. to 5:00 p.m. (1:30 p.m. to 5:00 p.m. closed); October 22, 1983, 9:00 a.m. to 5:.00 p.m.

ADDRESS: Red LIon Inn, 2050 Gateway Place, San Jose, California 95110, (408/279–0600).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White NACIE Advisor, National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street, NW., Washington, D.C. 20004, (202/376–8882).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under Section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to programs genefiting Indian children and adults.

On October 21, 1983, from 1:30 p.m. to 5:00 p.m., the Council will be establishing criteria for the evaluation of applicants for the position of Director, Indian Education Programs. The meeting will be closed, for that time period, under authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 1), and under exemption (2) of Section 552b(c) of the Government in the Sunshine Act [Pub. L. 94–409; 5 U.S.C. 552b(c)(2)].

The remainder of the meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report
(2) NACIE Advisor's Report
(3) Review of NACIE FY'83 and FY'84 Budgets
(4) Action on Previous Minutes
(5) Election of Officers
(6) Establishing Criteria for the Evaluation of Applicants for the Position of Director, Indian Education Programs (closed)
(7) Committee Discussions and Reports
(8) Public Testimony

All Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located in the Pennsylvania Building, Suite 326, 425 13th Street, NW, Washington, D.C. 20004.

Date: October 4, 1983. Signed at Washington, D.C.

Lincoln C. White,

NACIE Advisor, National Council on Indian Education.

[FR Doc. 83–27686 Filed 10–11–83; 8:45 am]

BILLING CODE 4000–01–M

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the fuctions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463, Section 10(a)(2)).

DATE: November 2, 1983 beginning at 9:30 a.m. and ending at 9:30 p.m.

ADDRESS: Marriott's Hunt Valley Inn, Hunt Valley, Maryland.

FOR FURTHER INFORMATION CONTACT: Sven Groennings, director, Fund for the Improvement of Postsecondary Education, 7th and D Streets, SW., Washington, D.C. 20202 (202–245–8091).

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1003 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a–1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education . . . on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board will be open to the public. The proposed agenda includes:

(a) Reviewing and recommending possible program directions for fiscal year 1983–84.

(b) Becoming more closely familiar with FIPSE projects through meetings with project directors.

Records shall be kept of all Board proceedings, and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 7th and D Streets, SW., Room 3100, Washington, D.C. 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal holidays.

Dated: October 6, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83–27759 Filed 10–11–83; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Special Services for Disadvantaged Students Program; Application Notice for New Awards for Fiscal Year 1984

Applications are invited for new awards under the Special Services for Disadvantaged Students Program.

Authority for this program is contained in sections 417A and 417D of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1b)

The Secretary is authorized to make grants under this program to institutions of higher education only. The purpose of the grant awards is to permit applicants

to carry out projects designed to provide supportive services to disadvantaged students who are pursuing programs of postsecondary education.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered by December 6, 1983.

Applications Delivered by Mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.042 (Special Services for Disadvantaged Students), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) private metered postmark, or (2) a private mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The Secretary is accepting applications for up to three years of funding. However, the Department of Education will not fund an applicant for a period of time longer than is requested by the applicant in the application. Applicants requesting multi-year funding must submit information that shows why a multi-year project is needed; a detailed work plan and budget for the first year of the project; and an outline of the work plan and an estimate of the Federal funds needed for each additional year requested.

The applications for new awards will be evaluated competitively under the selection criteria for new awards, 34 CFR 646.31. In addition, applicants that have been funded within the three previous years may receive additional points on the basis of their prior experience. The prior experience section of the application will be evaluated on the basis of the provisions in 34 CFR 646.32.

Suggestions for Fiscal Year 1984 Applicants for Special Services Funds: Experience has shown that the most successful Special Services projects have certain common characteristics. They are:

1. Projects which have a strong institutional commitment to their objectives. This often takes the form of in-kind or cash contributions to enhance the opportunities which are available to students through the Special Services project.

2. Projects which are fully understood by and which work closely with all of the administrative and academic departments of a participating institution.

3. Projects which provide mechanisms for continually monitoring student performance, both in project sponsored academic programs and in regular course work being undertaken at the institution.

4. Projects which establish high standards and expectations for students, including the belief that all students, regardless of family background, can reach high levels of academic achievement.

5. Projects which follow-up on their Special Services "graduates" by monitoring the progress and performance of those students who have entered another postsecondary educational institution or graduate school.

6. Projects which give priority to the strengthening of basic and higher level skills of their Special Services participants in mathematics, science, English language literacy in reading, writing, and speaking, and foreign language literacy.

7. Projects that actively seek to improve equal educational opportunity and access for all students, particularly those who traditionally have not participated fully in higher education, including projects which address the special skill needs of members of racial or ethnic minority groups, women, and the handicapped.

In view of this experience, the Secretary encourages applicants to incorporate these characteristics into their applications. Applicants should note that these characteristics are included only to assist them in developing potentially successful projects. The characteristics themselves in no way amend the selection criteria in 34 CFR 646.31.

Application Preparation Workshops: The Department of Education will conduct Application Preparation Workshops to assist prospective applicants to develop applications for the Special Services Program. Each workshop will be approximately a half day long. The presentation will include a review of the requirements for filing applications for the Special Services Program and a review of the program regulations. In addition, there will be a discussion of the suggested application development guide. Each workshop will begin with registration at 8:30 a.m., and presentations are scheduled from approximately 9:00 a.m. to 12 noon. Time will be provided in the afternoon for informal discussions and questions and answers. There is no registration fee for the workshops. The host person listed for each workshop location will assist you if you need directions to the workshop site.

The scheduled dates and locations are as follows: *October 19:*

New York, New York
Columbia University, McMillin Theater, 116 St. and Broadway
Host Person:
Ms. Bert Pinkney, Office of Government Relations and Community Affairs (212) 280-4469

October 21:

Atlanta, Georgia
Atlanta University, Robert W. Woodruff Library, Exhibition Hall, Upper Level, 111 Chestnut Street, S.W. (Corner of Chestnut and Beckwith Streets)
Host Person:
Mr. Marvin King, Morris Brown College (404) 525-7831 ext. 250 or 252

October 24:

Denver, Colorado
Auraria Higher Education Center, St. Cajetans Building (Corner of Lawrence and 9th Streets)
Host Person:
Mr. Kelly Espinoza, Metroplitan State College (303) 629-2533 or 2534

October 26:

Chicago, Illinois
Roosevelt University, Room 320, 430 S. Michigan Avenue
Host Person:

Dr. Clifton Washington, Director, Learning Resource Center (312) 341–3877

October 26:

Dallas, Texas
North Lake College, Performance Hall, 5001 North MacArthur Blvd., Irving, Texas
Host Person:
Bev Flusche (214) 659–5240

October 28:

San Francisco, California
University of San Francisco, Parina Lounge, University Center, Main Entrance, Golden Gate Avenue and Kitteridge
Host Person:
Mr. Robert Norris, Upward Bound Project (415) 666–6476

Available Funds: The Continuing Resolution enacted by the Congress on September 30, 1983, effective through November 10, 1983, authorizes the funding level of $164,740,000 for the Special Programs for Students from Disadvantaged Backgrounds for fiscal year 1984. Of this amount, approximately $65,000,000 would be available for the Special Services Program.

Pending resolution of the final level of appropriations, applications are invited to allow sufficient time for their evaluation and for the completion of the grants process prior to the end of the fiscal year.

Application Forms: Application forms and program information packages are expected to be ready for mailing by October 21, 1983. Application packages will not automatically be mailed to all institutions of higher education. However, they will be mailed to all currently funded Special Programs projects. Application packages may be obtained by contacting the Division of Student Services, Information Systems and Program Support Branch, U.S. Department of Education (Room 3514, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone number: (202) 245–7070.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary suggests that the narrative portion of the application not exceed fifty (50) pages in length. The Secretary further suggests that only the information required by the application form be submitted.

Applicable Regulations: Regulations applicable to this program are:

(a) Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78; and

(b) Regulations governing the Special Services Program (34 CFR Part 646).

Further Information: For further information contact William L. Garrison, Program Development Branch, Division of Student Services, U.S. Department of Education (Room 3514, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone number: (202) 245–2511.

(20 U.S.C. 1070d, 1070d–1b)

(Catalog of Federal Domestic Assistance Number: 84.042—Special Services for Disadvantaged Students Program)

Dated: October 6, 1983.

T. H. Bell,

Secretary of Education.

[FR Doc. 83-27828 Filed 10-11-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Environmental Record of Decision on the 1983 Wholesale Power Rate Final Environmental Impact Statement

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of Decision.

SUMMARY: I have decided to submit to the Federal Energy Regulatory Commission (FERC) a proposal to adjust BPA's wholesale power rates in order to achieve total revenues of $5.0 billion for the rate period November 1, 1983, through June 30, 1985. The decisions made regarding the proposed wholesale power rates are incorporated into the wholesale power rate schedules which are included in the submittal to FERC. These decisions are based on a comprehensive review of BPA's Final Environmental Impact Statement (EIS) on the 1983 initial wholesale power rate proposal, as well as all other materials appurtenant to the rate process. A Draft EIS was prepared on BPA's wholesale power rate proposal and circulated to the public for review and comment. Notice of availability of the Draft EIS was published in the **Federal Register** and comments were accepted through July 5, 1983. A Final EIS was prepared based on the Draft EIS and comments received on the Draft EIS. Copies of the Final EIS have been distributed to interested public and additional copies are available upon request from the BPA Environmental Manager.

The proposed rates would permit BPA to collect sufficient revenue to meet its statutorily mandated repayment requirement. Pending FERC approval, the proposed rate adjustment is scheduled to be effective from November 1, 1983, through June 30, 1985. A formal appeal process allows those who desire to comment on the Final EIS or the Record of Decision to intervene by filling a petition with FERC.

This Record of Decision is being issued shortly after the publication of the Final EIS pursuant to Council on Environmental Quality Regulations (40 CFR 1506.10(b)(2)).

SUPPLEMENTARY INFORMATION:

Alternatives Considered and Environmental Impacts

A number of alternative revenue levels and rate designs were evaluated in the EIS. These alternatives were selected in a manner intended to insure consideration of the range of all reasonable alternatives.

Revenue Level Alternatives: The EIS examined five basic revenue alternatives: base rate, no action, the initial proposal, direct financing, and long run incremental cost (LRIC) pricing.

The base rate alternative assumes that BPA's rates remained unchanged subsequent to those which went into effect on December 20, 1974. With the rates remaining constant, revenue levels would increase only as loads increase. This alternative establishes what would have happened had BPA taken no rate actions to increase revenues subsequent to 1974. under this alternative, the revenue shortfall would increase throughout the period of analysis to the year 2000. The base rate alternative significantly undercollects revenue and would consistently violate BPA's statutory requirement to collect revenue sufficient to meet present costs. It would also render BPA financially insolvent, and require development of a mechanism to recover from future ratepayers funds to meet this increasing shortfall.

The no action alternative recognizes historic rate increases and assumes that BPA would maintain its existing rate structure. The no action alternative would also result in serious revenue deficiencies, providing only 85 percent of the revenue requirement used to develop BPA's initial proposal. This revenue shortfall would have to be added to revenue required during subsequent rate periods to allow BPA to meet its long-term financial obligations.

The no action alternative would violate BPA's statutory requirement to be self-financing, since the agency would be unable to fully cover all financial obligations.

Revenue derived under the proposed revenue level alternative would be sufficient to meet BPA's rate period revenue requirement as determined in BPA's initial proposal and would represent a 19 percent increase over the estimated revenue that would be collected under current rates during the rate period using the initial load forecast. This alternative allows BPA to meet all financial obligations and provides that customers receiving service during the rate period would pay the full costs incurred during the same period to provide that service.

Under the direct financing alternative, BPA would finance completion of Washington Public Power Supply System Plant 2 and maintain the construction schedule for completion of Plant 3 through revenue rather than bond sales. The direct financing alternative should provide sufficient revenue to meet BPA's rate period revenue requirement if the decision were made to finance completion of Supply System Plants 2 and 3. Provided load forecasts are accurate, this alternative would not create the problems of under or overcollecting revenue.

LRIC or marginal cost based rates would price wholesale power at the projected long run cost of acquiring new power resources in the Pacific Northwest. Rates based on the long run incremental costs developed in BPA's 1983 Time-Differentiated Long Run Incremental Costs Analysis, if applied to BPA's projected rate period's sales volume would produce revenue significantly in excess of BPA's repayment requirement for the rate period and all years for the foreseeable future.

The revenue level based on LRIC pricing appears to be inconsistent with the directive in the Bonneville Project Act that BPA rates be the lowest possible consistent with sound business principles. Potential questions also would be raised as to how excess revenue should be distributed or invested. In the long run, however, the LRIC alternative would reduce the construction and operation of major new generation resources and encourage the highest level of conservation of electricity.

Increases in the price of electricity discourage consumption. Correspondingly, the level of adverse physical environmental impact associated with the production and consumption of electricity can be expected to vary inversely with the price of electricity (i.e., revenue level). These changes in impact would be offset to some extent by changes in the use of alternative forms of energy such as wood, oil, and natural gas. Some alternative energy sources (e.g., solar or wind) may involve lower levels of environmental impact than those associated with conventional thermal generation; other alternatives (e.g., wood) may involve higher levels of impact.

In contrast to physical environmental impacts, the short-term socioeconomic impacts would be expected to increase directly with the price of electricity (i.e., revenue level). The level of revenue produced by rates based on marginal cost, for example, could have adverse financial impacts in the short run on virtually all regional power consumers, particularly energy-intensive industry, irrigators, and low income residential consumers. BPA's initial rate proposal would have significantly less adverse financial effects in the short term than the LRIC proposal (EIS Chapter II (B)(3)).

It is BPA's conclusion after reviewing all pertinent information that the proposed revenue increase is environmental preferred because it will best promote the national environmental policy as expressed in Section 101 of the National Environmental Policy Act "* * * to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans" 42 U.S.C. 4331(a). It recognizes both the need to minimize potential adverse impacts to the physical environment associated with increases in the use of electricity, as well as the need to take account of the socioeconomic consequences of increases in electricity rates. BPA believes that the socioeconomic effects of this increase are within reason and would not result in undue hardship for BPA's customers. BPA recognizes that, on the one hand, the impacts of this rate increase may include reduced growth in the demand for electricity, a lowered rate of new resource additions, and spurred development of alternative energy sources. On the other hand, these impacts also may include additional air pollution, associated with increased use of woodstoves, and a strain on the budgets of lower income groups. The revenue increase also will enable BPA to conform to its statutory guidelines for meeting repayment requirements and to ensure the prudent operation of the Federal Columbia River Power System.

Rate Design Alternatives: BPA considered the environmental effects of a number of potentially feasible rate design elements and rate alternatives in arriving at a decision regarding the design of specific rate schedules. Such alternatives included those applicable to classification and allocation of costs, rate adjustments, revenue stability measures, a special irrigation rate, and the structure of the Nonfirm Energy rate.

As proposed, BPA has decided to continue to classify costs between capacity and energy based on cost causation principles. This method reflects the cost causation of BPA's resource mix. The rates which result from this method properly signal the relative costs of providing energy and capacity, and encourage consumption in a manner consistent with efficient long run allocation of resources.

Alternative classification methods which were considered included use of a fixed/variable approach, a LRIC classification of exchange resource costs, and a LRIC classification of all costs. BPA has also evaluated additional environmental effects associated with these alternatives. Alternatives which result in proportionately more costs classified to capacity, such as the fixed/variable approach, would constitute a disincentive for consumers to conserve energy. In the long run, BPA would need to add baseload thermal generation at an earlier date, resulting in an increase to BPA's revenue requirement in future years, higher wholesale rates, and localized effects to air, land, and water due to construction and operation of the new baseload plants. On the other hand, alternatives which classify more costs to energy, such as the LRIC classification of exchange costs and the LRIC classification of all costs, would result in rates which have adverse financial impacts in the short run on energy intensive consumers. While this would encourage more energy conservation and delay the need for large thermal plants, these effects would be offset by other impacts. First, there would be less of an incentive for consumers to practice load management to hold down peak demands. BPA would eventually have to add combustion turbines at an earlier date, relative to the proposed alternative, to meet peak demands. Therefore, this would constitute a shift of long run impacts to the physical environment, such as noise and air pollution, from areas in which baseload thermal plants would have been located to locations in which combustion turbines are installed and operated. In addition, there would be a greater likelihood of socioeconomic impacts

associated with cutbacks or shutdowns of energy intensive industries if more costs were classified to energy.

With respect to test year hydro capability, BPA has decided to assume that Federal hydro capability will be levelized over the critical period. This assumption increases BPA's capability for surplus firm power sales during the rate period, while assuring enough energy in later years of the critical period to support anticipated long term surplus firm power sales. Therefore, this action is expected to enhance BPA's revenue levels during the rate period and maximize the efficiency of the hydro system, without significant long term adverse socioeconomic or physical impacts to the environment.

Beginning with this rate period, BPA has decided to include May in the lower cost summer demand period to reflect the decreased probability of a load loss during that month because of fish enhancement activities. This shift will benefit irrigators because May is part of the irrigation season.

BPA has decided to modify the billing factors for computed requirements customers to enhance revenue stability. Changing the billing factors to reflect BPA's obligation to provide a given level of service to these customers will compensate BPA for incurred costs. As other customers would otherwise have been assessed revenue underrecovery potentially caused by the computed requirements customers, this design feature will more fairly distribute costs.

BPA has decided to include a contract charge to recover a portion of the costs of conservation. Such a charge may act as a disincentive to utilities to participate in BPA's conservation programs. This could have negative physical environmental impacts on air and water quality associated with the added operation of generation facilities. However, BPA has concluded that a contract charge is a necessary mechanism for recovering costs which cannot be equitably recovered through rates. The charge is relatively small, thereby, minimizing its negative impact.

BPA has decided to continue to credit the direct service industrial (DSI) customers for the value of the reserves they provide for the Federal system. Having the DSI's provide reserves has positive physical environmental benefits, as measured by avoidance of air and water pollution associated with the construction and operation of generation facilities. There are also positive socioeconomic impacts associated with the avoidance of the costs of those generation facilities. The impact of the credit which lowers the DSI rate may be a higher level of industrial production. This may have positive employment benefits in the region and negative physical impacts relating to the impact of the increased production levels on air and water quality. BPA considered but rejected an alternative to allow a credit to the DSI's based on the full amount of the value of reserves rather than sharing the savings with BPA's other customers. This alternative would have further lowered the DSI rate and would have raised the other rates for firm power.

BPA has decided to charge the DSI's to enhance revenue stability. Although some plants might foresee operating levels which are too low to justify incurring the customer charge, BPA has concluded that the benefits of this charge to BPA's revenue stability and the stability of wholesale rate levels in future years outweight the small probability associated with shutdowns of less economic plants during the rate period.

To further enhance revenue stability from the DSI's BPA has decided to include an opportunity for BPA and the DSI's to agree on a lower rate. This "incentive rate" would be offered in exchange for commitments from the DSI's to operate at a specified level. This option would benefit both parties. The DSI's would have lower power rates and, therefore, be able to increase production levels with positive employment benefits for the region. BPA would have higher and more stable revenue with positive socioeconomic benefits for the region.

BPA has included two new automatic adjustment clauses for the purpose of improving revenue stability: The Exchange Adjustment Clause and the Supply System Adjustment Clause. The automatic nature of these clauses will allow for increases or decreases in rates, and thus a closer tracking of costs, without the delay and expense of formal rate hearings. These clauses will have positive socioeconomic impacts on the region by assuring that the costs scheduled for recovery during the rate period will actually be recovered from the rate period. Failure to achieve this would mean that future ratepayers could be allocated any revenue underrecovery.

As provided for in the Regional Act, BPA has again decided to include a Special Industrial rate for Hanna Nickel Smelting Company. The rate includes two options. The base rate is equal to the proposed Priority Firm rate and includes a value of reserves credit. A special rate of 7 mills per kilowatthour is also included for offpeak hour consumption with a limitation of no more than 10 percent of their Contract Demand requested during the peak period. The special offpeak rate would remain in effect until Hanna requests a higher percentage of peak period Contract Demand. The offpeak rate may allow Hanna to resume operation and thereby have a positive employment benefit in the region. There are also negative physical impacts on air and water quality associated with the operation of the smelter as a result of this rate adjustment.

BPA considered and rejected a special irrigation rate. The proposed Priority Firm Power rate already includes changes which benefit irrigators. While the irrigators as a consumer class do exhibit characteristics which are favorable to the Federal system, the proposed rate already reflects their contribution to lower system costs.

BPA has decided to continue the current structure of the Nonfirm Energy rate. As an alternative, BPA considered eliminating the Spill rate in order to increase overall revenue and improve revenue stability. BPA rejected this alternative in favor of delaying the implementation of the Spill rate by using the Displacement rate until it appears that moving to the Spill rate will result in greater BPA revenue or more thermal displacement. This decision will result in positive environmental impacts on air and water quality associated with increased displacement of thermal plants. The increased BPA revenue from added sales will have a positive socioeconomic benefit by reducing BPA's firm power rate levels.

Decision Factors

BPA based its decisions concerning level and design of the rates on legal requirements, rate design objectives, and a consideration of environmental impacts.

1. Legal Requirements

The Bonneville Project Act requires BPA to establish rates that will recover all costs associated with production, acquisition, and transmission of electric power and to recover the Federal investment in the Federal Columbia River Power System. This Act directs that rates be designed to "* * * encourage the widest diversified use of electric energy * * *" at the "* * * lowest possible rate * * * consistent with sound business principles" 16 U.S.C. 832. The Transmission System Act placed BPA on a self-financing basis, requiring it to pay all operating expenses with revenue collected from its rates (16 U.S.C. 837).

The Pacific Northwest Electric Power Planning and Conservation Act

reaffirms directives in previous statutes and expands BPA's responsibilities. The Act contains specific provisions regarding power sales, rates, and procedures for establishing rates (16 U.S.C. 839).

2. Rate Design Objectives

In addition to meeting legal requirements, BPA rates are designed to: (1) Meet its revenue requirement while distributing the burden in an equitable manner among recipients of the service; (2) encourage conservation and minimize environmental impacts; and (3) encourage efficient use of resources by reflecting costs incurred and benefits received. Additionally, consideration is given to rate continuity, ease of administration, revenue stability, customer acceptability, and ease of understanding.

3. Environmental Impacts

BPA's analysis of the environmental impacts of the alternatives revealed that the 1983 proposed revenue level would reduce regional load requirements from that expected if rates were not increased. By the year 2000, decreases in electricity load growth would reduce the regional need for new generation resources by the equivalent capacity of 49 megawatts of conservation, 1,131 megawatts of large thermal, 11 megawatts of cogeneration and 416 megawatts of small hydro. Elimination of the new generation would avoid accompanying land use, solid waste, water, and air quality impacts associated with power production. These environmental benefits would be somewhat offset by adverse physical environmental effects resulting from increases in use of alternative energy sources.

The short-term socioeconomic impacts of the proposed revenue level would impact certain types of consumers more than others. Low-income consumers would be more affected by an increase in electricity rates than other residential consumers. Although the operation of the DSI's has been significantly curtailed even under current rates, they are forecast to increase production considerably under the proposed revenue level as the national economy improves. Some energy intensive industrial consumers could hasten decisions to either improve plant efficiency or shut down operations. While total acres of irrigated agriculture are expected to increase, some individual farmers could be forced to go out of business. While creating short-term economic hardships for those employed in these areas, there may be certain benefits to the physical environment.

The proposed rate design would not cause environmental impacts significantly different than those experienced under BPA's current rate design.

Mitigation

Existing and proposed conservation programs offered by BPA could mitigate socioeconomic impacts of the proposed rate increase. In FY 1981, BPA started energy conservation programs targeted at primary customer groups, State and local governments and nonprofit consumers in the Northwest. These programs would help residential consumers decrease electricity used for space and water heating, improve the use and distribution efficiencies of irrigators, and would aid commercial and industrial consumers in conserving electricity used in industrial processes and water heating. Also, under the terms of the Regional Act, BPA is required, among other things, to provide for the development of plans to protect and enhance fish and wildlife resources and to provide for environmental quality. BPA's proposed increase includes the cost of implementing these requirements. However, implementation of specific plans, programs, and projects will be undertaken independently of the above decisions on wholesale power rates and will undergo separate decisionmaking processes. Therefore, no monitoring or enforcement programs are applicable for mitigation of the adverse impacts of the proposed action and none have been adopted.

Integration With Other Records

This Environmental Record of Decision has been integrated into the Record of Decision filed by the Administrator with FERC in support of BPA's proposed 1983 wholesale power rate increase.

FOR FURTHER INFORMATION CONTACT:
Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208; telephone (503) 230–5136.

Issued in Portland, Oregon, September 29, 1983.

Peter T. Johnson,

Adminstrator.

[FR Doc. 83–27702 Filed 10–11–83; 8:45 am]
BILLING CODE 6450–01–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463, 86, Stat. 770), notice is hereby given that the American Statistical Association's Committee on Energy Statistics will meet with representatives of the Energy Information Administration (EIA) on Thursday, October 27, 1983, at the International Hotel, 10 Thomas Circle, Northwest, Washington, D.C., from 1:30 p.m. to approximately 5:00 p.m. The meeting will continue on Friday, October 28, 1983, in the International Hotel, from 9:00 a.m. until approximately 3:30 p.m.

The purpose of the meeting is to enable the EIA to utilize the American Statistical Association's Committee on Energy Statistics to obtain advice on EIA programs and to benefit from the Committee's expertise concerning other energy statistical matters.

The tentative agenda is as follows:

A. Opening Remarks.

B. Major Topics:

1. Integrated Forecasting Using the Intermediate Future Forecasting System (IFFS)—Introduction.

A. Linking the Short-Term Annual Forecast (IFFS/STIFS).

B. Linking IFFS with Macroeconomic Forecasts.

C. Linking With the Oil and Gas Modeling Systems.

D. Implementation of a Coal Supply Model in IFFS.

E. IFFS Sensitivity Analysis.

2. Statistical Confidentiality Legislation: Federal and EIA.

A. Federal Statistical Confidentiality Legislation.

B. Progress Report: EIA Confidentiality Legislation.

3. Sample Control Procedures for the Weekly Petroleum Status Report.

4. Approaches to Verifying Model Documentation.

5. Problems in Estimating Monthly Oil and Gas Well Completions.

6. Statistical Aspects in Analyzing the Fuel Diet and Operating Characteristics of Light Water Reactors.

C. Public Comments.

D. Topics for Future Meetings:

The meeting is open to the public. Any member of the public may file a written statement with the EIA for forwarding to the Committee, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Ms. Kathleen Repass Weigl, EIA Committee Liaison, (202) 252–6463, or Dr. Fred C.

Leone, Executive Director of the American Statistical Association, (202) 393–3253, at least five days prior to the meeting and reasonable provisions will be made to include their presentations on the agenda. Subsequent to approval by the Committee, minutes of an executive summary of the meeting will be available for public review and copying at the Office of Planning and Resources, EI–32, EIA, 1000 Independence Avenue, SW., Room 2H–055, Washington, D.C. 20585, (202) 252–6460, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued at Washington, D.C. on September 29, 1983.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 83-27448 Filed 10-11-83; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Committee on Petroleum Inventories and Storage Capacity; Meeting

Notice is hereby given that the Committee on Petroleum Inventories and Storage Capacity of the National Petroleum Council will meet in October. The National Petroleum Council was established pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), to provide advice, information, and recommendations to The Secretary of Energy on matters relating to oil and natural gas or the oil and gas industries. The Committee on Petroleum Inventories and Storage Capacity will study and update the analysis of minimum operating levels as well as update the estimates of total storage capacity available for use.

The Committee will hold its meeting on Thursday, October 20, 1983, starting at 10:00 a.m., in the Monticello Suite of the Jefferson Hotel, 1200 Sixteenth Street, N.W., Washington, D.C.

The tentative agenda for the Committee meeting follows:

1. Review the draft report on Petroleum Inventories Storage Capacity—An Interim Report.
2. Review the progress of the Secondary and Tertiary Storage Task Group.
3. Review the schedule for completion of the Committee's assignment.
4. Discuss any other matters pertinent to the overall assignment from The Secretary.

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should contact Jimmie L. Petersen, Office of Oil and Gas, Energy Information Administration, Forrestal Building—Room 2H–058, Washington, D.C., 202/252–6401, prior to the meeting and reasonable provision will be made for their appearance on the agenda. Less than 15 days notice is being given for the meeting due to the need for immediate advice and recommendations concerning the content of the study which will be used in Energy Information Administration publications beginning in January 1984.

A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, Room 1E–190, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Issued at Washington, D.C. on October 5, 1983.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 83-27615 Filed 10-11-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangements; International Atomic Energy Agency

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of Finland Concerning Civil Uses of Atomic Energy, the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended, and as authorized by the Taiwan Relations Act of 1979 (Pub. L. 96–8).

The subsequent arrangements to be carried out under the above mentioned agreements and authority involve approval for the supply of the following materials:

Contract Number WC–EU–249, to Franco-Belge de Fabrication de Combustibles, Dessel, Belgium, 105.7 grams of uranium enriched to 4.3 percent in U-235, 10 grams of uranium enriched to 1.5 percent in U-235, amd 5 grams of uranium enriched to 2.0 percent in U-235.

Contract Number WC–EU–250, to Franco-Belge de Fabrication de Combustibles, France, 105.7 grams of uranium enriched to 4.3 percent in U-235, 10 grams of uranium enriched to 1.5 percent in U-235, and 5 grams of uranium enriched to 2.0 percent in U-235.

Contract Number WC–EU–251, to AGIP Nucleare S.P.A., Bolgna, Italy, 105.7 grams of uranium enriched to 4.3 percent in U-235, 10 grams of uranium enriched to 1.5 percent in U-235, and 5 grams of uranium enriched to 2.0 percent in U-235.

Contract Number WC–EU–252, to Centre D'Etude de L'Energie Nucleaire, Mol, Belgium, 105.7 grams of uranium enriched to 4.3 percent in U-235, 10 grams of uranium enriched to 1.5 percent in U-235, and 5 grams of uranium enriched to 2.0 percent in U-235.

Contract Number WC–EU–253, to Fabbricazioni Nucleari S.P.A., Allessandria, Italy, 105.7 grams of uranium enriched to 4.3 percent in U-235.

Contract Number WC–EU–254, to CEN/SACLAY, France, 2 grams of uranium enriched to 1.5 percent in U-235, and 1 gram of uranium enriched to 2.0 percent in U-235.

Contract Number WC–EU–255, to CEA/CEN/GRENOBLE, France, 105.7 grams of uranium to 4.3 percent in U-235, 10 grams of uranium enriched to 1.5 percent in U-235, and 5 grams of uranium enriched to 2.0 percent in U-235.

Contract Number WC–EU–256, to Societe Comurhex, Pierrelatte, France, 105.7 grams of uranium enriched to 4.3 percent in U-235, 10 grams of uranium enriched to 1.5 percent in U-235, and 5 grams of uranium enriched to 2.0 percent in U-235.

Contract Number WC–EU–257, to Alpha-Chemie und-Metallurgie Gmbh.,

Hanau, the Federal Republic of Germany, 105.7 grams of uranium enriched to 4.3 percent in U-235, 10 grams of uranium enriched to 1.5 percent in U-235, and 5 grams of uranium enriched to 2.0 percent in U-235.

Contract Number WC-EU-258, to Kenforschungsanlage Juelich Gmbh, the Federal Republic of Germany, 10 grams of uranium enriched to 1.5 percent in U-235, and 5 grams of uranium enriched to 2.0 percent in U-235.

Contract Number WC-EU-259, to Bundesanstalt Fuer Materialpruefung, Berlin, the Federal Republic of Germany, 105.7 grams of uranium enriched to 4.3 percent in U-235.

Contract Number WC-EU-260, to the Atomic Weapons Research Establishment, the United Kingdom, 2 grams of uranium enriched to 1.5 percent in U-235, and 1 gram of uranium enriched to 2.0 percent in U-235.

Contract Number WC-EU-261, to the Springfield Works, the United Kingdom, 211.4 grams of uranium enriched to 4.3% in U-235, and 10 grams of uranium enriched to 1.5% in U=235, and 5 grams of uranium enriched to 2.0% in U-235.

Contract Number WC-EU-262, to Belgonucleaire, Dessel, Belgium, 105.7 grams of uranium enriched to 4.3% in U-235.

Contract Number WC-EU-263, to the Netherlands Energy Research Foundation, Petten, the Netherlands, 105.7 grams of uranium enriched to 4.3% in U-235, 20 grams of uranium enriched to 1.5% in U-235, and 10 grams of uranium enriched to 2.0% in U-235.

Contract Number WC-IA-132 to the International Atomic Energy Agency, Vienna, Austria, 105.7 grams of uranium enriched to 4.3% in U-235, 10 grams of uranium enriched to 1.5% in U-235, and 5 grams of uranium enriched to 2.0% in U-235.

Contract Number WC-JA-44, to Japan Nuclear Fuel, Co., Ltd., Japan, 105.7 grams of uranium enriched to 4.3% in U-235.

Contract Number WC-JA-45, to the Power Reactor and Nuclear Fuel Development Corp., Japan, 105.7 grams of uranium enriched to 4.3% in U-235, 20 grams of uranium enriched to 1.5% in U-235, and 10 grams of uranium enriched to 2.0% in U-235.

Contract Number WC-JA-46, to the Safeguards Analytical Laboratory, Nuclear Material Control Center, Japan, 105.7 grams of uranium enriched to 4.3% in U-235, 10 grams of uranium enriched to 1.5% in U-235, and 5 grams of uranium enriched to 2.0% in U-235.

Contract Number WC-JA-47, to the Mitsubishi Nuclear Fuel Co., Ltd., Japan, 105.7 grams of uranium enriched to 4.3% in U-235, 10 grams of uranium enriched to 1.5% in U-235, and 5 grams of uranium enriched to 2.0% in U-235.

Contract Number WC-FI-12, to the University of Helsinki, Department of Radiochemistry, Finland, 105.7 grams of uranium enriched to 4.3% in U-235, 10 grams of uranium enriched to 1.5% in U-235, and 5 grams of uranium enriched to 2.0% in U-235.

Contract Number WC-SW-7, to ASEA-ATOM, Sweden, 105.7 grams of urnaium enriched to 4.3% in U-235, 10 grams of uranium enriched to 1.5% in U-235, and 5 grams of uranium enriched to 2.0% in U-235.

Contract Number WC-CI-9, to the Institute of Nuclear Energy Research, Taiwan, 105.7 grams of uranium enriched to 4.3% in U-235, 20 grams of uranium enriched to 1.5% in U-235, and 10 grams of uranium enriched to 2.0% in U-235.

The above materials are to be utilized in the Safeguards Analytical Laboratory Evaluation (SALE) Program. This program is designed to evaluate the capability of participating laboratories to analyse materials to be safeguarded in the nuclear fuel cycle, and to provide means by which measurement capability may be enhanced through the interchange of measurement technology.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 5, 1983.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-27614 Filed 10-11-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER83-765-000]

Carolina Power & Light Co.; Filing

October 6, 1983.

Take notice that Carolina Power & Light Company (CP&L) filed on September 26, 1983, revised rates for its coustomers that would produce a two-step rate increase. CP&L has also tendered for filing Revised Sheet Nos. 5-8A to its FPC Electric Tariff, First Revised Volume No. I, containing revised rates and charges applicable to CP&L's three municipal, one private distribution utility, 18 rural electric cooperatives, and one partial requirements sales-for-resale customers. The revised rates for the Phase I increase are contained in proposed Resale Service Schedules RS83-2, and RS83-3 applicable to CP&L's electric cooperative customers, municipal and private distribution utility customers, and partial requirements customers, respectively. The revised rates for the Phase II rate increase are contained in proposed Resale Service Schedules RS83-1A, RS83-2A, and RS83-3A for CP&L's cooperative, municipal and private, and partial requirements customers, respectively. Accompanying resale fuel adjustment Rider No. 83A is applicable to all rate schedules. CP&L proposes to place the revised tariff sheets for Phase I of the increase into effect as of November 26, 1983, and the revised tariff sheets for Phase II of the increase into effect as of November 27, 1983. The revised rates and charges for Phase I would increase revenues from jurisdictional sales by $19,000,000, if the rates were in effect for all of the 12-month period ending December 31, 1984. The revised rates and charges for Phase II would increase revenues and additional $11,711,167 during the same period, for a total revenue increase from the two phases of $30,711,167.

CP&L states that, under the rates currently in effect, it expects to realize a rate of return on equity during Period II (calendar year 1984) from service to its electric cooperative resale customers of 6.3%, from its municipals and private utility resale customers of 7.3%, and from the partial requirements customer of 6.2%. These rates of return on common equity are lower than the Company's cost rate for both long-term debt and preferred stock, and are clearly inadequate to compensate the common stockholder.

Copies of the filing have been served upon CP&L's jurisdictional resale customers and the State Commissions of North Carolina and South Carolina.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1983. 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 motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27711 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-764-000]

Cleveland Electric Illuminating Co.; Filing

October 6, 1983.

Take notice that on September 23, 1983, Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 15 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI proposes an effective date of September 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1983. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27712 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-21-006 (PGA83-4a, IPR83-2, AP83-2)]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1983.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 27, 1983, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on September 1, 1983: Ninetieth Revised Sheet No. 16, Substitute Second Revised Sheet Nos. 16B through 16D, Substitute Thirtieth Revised Sheet No. 64.

Columbian states that the foregoing tariff sheets are being filed in compliance with Ordering Paragraph (B)(3) of the Commission's Order issued August 31, 1983, directing Columbia to file revised tariff sheets to reflect any downward revisions to its pipeline supplier rates tracked in its original filing of July 29, 1983. The foregoing revision results in: (1) A revised Purchased Gas Cost Applicable to Sales Rate Schedules in the amount of $3,044,858, which is $30,209,080 less than that filed on July 29, 1983, and (2) a revised Purchased Gas Surcharge Applicable to Rate Schedule SGES in the amount of $1,359,509, which is $45,395 less than that of filed on July 29, 1983.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Rules 211 and 214 or the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 14, 1983. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27713 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT83-23-000]

Columbia Gas Transmission Corp. Proposed Changes in FERC Gas Tariff

October 6, 1983.

Take notice that on September 26, 1983, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes in its FERC Gas Tariff, to be effective November 1, 1983:

Original Volume No. 1

Title Page:
Sixth Revised Sheet No. 2
Ninth Revised Sheet No. 3
Thirteenth Revised Sheet No. 4
Thirteenth Revised Sheet No. 5
Sixteenth Revised Sheet No. 5A
Fifteenth Revised Sheet No. 5B
Thirteenth Revised Sheet No. 5C
Fourteenth Revised Sheet No. 5D
First Revised Sheet No. 5E

Original No. 2

Title Page:
Sixth Revised Sheet No. 1
Ninth Revised Sheet No. 2
Thirteenth Revised Sheet No. 3
Thirteenth Revised Sheet No. 4
Sixteenth Revised Sheet No. 4A
Fifteenth Revised Sheet No. 4B
Thirteenth Revised Sheet No. 4C
Fourteenth Revised Sheet No. 4D
First Revised Sheet No. 4E

Columbia states that these proposed revisions are being filed to provide for a name change on its Title Pages and to revise the Table of Contents tariff sheets to reflect an up-to-date listing of the Special Rate Schedules currently on file with the Federal Energy Regulatory Commission.

Copies of this filing were served upon each of Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426. In accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 21, 1983. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27714 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-761-000]

Florida Power & Light Co.; Filing

October 6, 1983.

Take notice that on September 23, 1983, Florida Power & Light Company (FPL) tendered for filing a document entitled "Amendment Number One to Contract for Interchange Service Between FPL and Tampa Electric Company" (TECO).

FPL states that under the Amendment FPL and TECO have modified their

existing 230 kV interconnection facilities between TECO's Big Bend Substation and FPL's Manatee Substation, which increases the inter-system power transfer capability of the interconnection facilities. FPL further states that the proposed amendment will have no effect on sales, services or revenues.

FPL requests an effective date of June 21, 1983, and therefore request waiver of the Commission's notice requirements.

Copies of the filing were served upon TECO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1983. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27715 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-762-000]

Iowa—Illinois Gas and Electric Co.; Filing

October 6, 1983.

Take notice that on September 23, 1983, Iowa-Illinois Gas And Electric Company (Iowa-Illinois) tendered for filing an Interconnection Agreement (Agreement) with Iowa Power and Light Company, (Iowa Power) dated June 13, 1983, with schedules reflecting facilities and points of connection, metering, facilities furnished one party for the other (to which separate facilities schedules may be appended), and transmission service schedules (to which separate transmission service schedules may be appended).

Iowa-Illinois states that the Agreement is proposed effective as of its execution date. Included as an addendum to the facilities service schedules is Facilities Schedule No. 1 dated June 13, 1983, proposed effective as of its execution date, perpetuating under current circumstances an existing facilities arrangement. Included as an addendum to the transmission service schedule is Transmission Service Schedule No. 1, dated June 13, 1983, proposed effective on July 1, 1983. Waiver of the Commission's notice requirements has been requested by the parties accordingly.

Iowa-Illinois further states that the Agreement and its service schedules do not provide for power and energy transactions, but that the Agreement provides a useful vehicle for the perpetuation of facilities arrangements and additional facilities and transmission arrangements as may be mutually agreeable.

Copies of the filing were mailed to Iowa Power, the Iowa State Commerce Commission, and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1983. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27716 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-500-000]

K N Energy, Inc.; Application

October 6, 1983.

Take notice that on September 8, 1983, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP83-500-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of natural gas with Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), pursuant to the terms of a gas exchange agreement (agreement) dated October 19, 1979, as amended, 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 K N and Northern each own and operate natural gas gathering systems in Roger Mills County, Oklahoma. In order for K N and Northern to obtain their respective shares of gas from wells in this area and in order to avoid the unnecessary and expensive duplication of facilities, K N and Northern entered into an agreement dated October 19, 1979, as amended June 30, 1981, which provides for Northern to deliver certain volumes of gas to K N in Roger Mills County and for K N to deliver certain volumes of gas to Northern in Roger Mills County, it is further stated. K N states that equal volumes of gas, on a thermally equivalent basis, are to be exchanged and that no transportation fees are to be charged to either party. It is also asserted that K N and Northern have agreed to utilize existing interconnections between their facilities in Kearny County, Kansas, and Seward County, Kansas, for balancing purposes. Exchanges have occurred only within the field gathering system, it is further asserted. K N avers that Commission authorization is required in order to utilize the balancing points.

K N proposes

(1) To use the balancing points;

(2) To take delivery of Northern's gas pursuant to the terms of the agreement and to transport the volumes of Northern's gas to the existing interconnection between K N and Northern in Seward County; and

(3) To add and delete wells or other delivery and balancing points as required from time to time and to report such additions and deletions, annually on or before January 31 of each year.

It is further stated that no new facilities would be required.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 27, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion 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 motion 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 motion 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 K N to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27717 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP80-107-015, et al.]

Natural Gas Pipe Line Company of America, et al.; Filing of Pipeline Refund Reports and Refund Plans

October 6, 1983.

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 the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 18, 1983. 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
8/4/83	Natural Gas Pipe Line Company of America.	RP80-107-015	Report.
9/19/83	East Tennessee Natural Gas Company.	RP78-65-017	Report.
9/20/83	Consolidated Gas Supply Corporation.	RP80-61-015	Report.
9/21/83	Columbia Gas Transmission Corporation.	RP81-83-008 and RP82-120-007.	Report.
9/22/83	Tennessee Gas Pipeline Company.	G-19983-000	Report.
9/23/83	National Fuel Gas Supply Corporation.	RP80-135-031	Report.
9/29/83	United Gas Pipe Line Company.	RP78-68-021	Report.

[FR Doc. 83-27718 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST83-574]

Natural Gas Pipeline Co. of America; Self-Implementing Transactions

October 6, 1983.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F" indicates a fuel oil displacement transaction implemented pursuant to § 284.202 of the Commission's Regulations. Any interested persons may file a complaint concerning such transaction pursuant to Section 284.205(d) of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G (HT)" or "G (HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Kenneth F. Plumb.

Secretary.

Docket No.[1] and Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation Rate (¢/MMBtu)
ST83-574 Natural Gas Pipeline Co. of America	Bridgeline Gas Distribution Co	8/1/83	B		
ST83-575 Tennessee Gas Pipeline Co	Creole Gas Pipeline Co	8/2/83	B		
ST83-576 Tennessee Gas Pipeline Co	Cajun Natural Gas Co	8/2/83	B		
ST83-577 Tenessee Gas Pipeline Co	Cajun Natural Gas co	8/2/83	B		
ST83-578 Tennessee Gas Pipeline Co	Creole Gas Pipeline Co	8/2/83	B		
ST83-579 National Fuel Gas Supply Corp	Kaufman's Bakery, Inc	8/2/83	F		
ST83-580 National Fuel Gas Supply Corp	Edison International, Inc	8/3/83	F		
ST83-581 National Fuel Gas Supply Corp	Koppers Company, Inc	8/3/83	F		
ST83-582 Columbian Gulf Transmission Co	Producer's Gas Co	8/3/83	B		
ST83-583 Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	8/3/83	B		
ST83-584 Gas Company of New Mexico	El Paso Gas Transportation Co	8/4/83	G(HT)		
ST83-585 Transcontinental Gas Pipe Line Corp	Consolidated Edison Co	8/5/83	B		
ST83-586 Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	8/5/83	B		
ST83-587 Transcontinental Gas Pipe Line Corp	Carolina Pipeline Co	8/5/83	B		
ST83-588 Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	8/5/83	G		
ST83-589 Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	8/5/83	B		
ST83-590 Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	8/5/83	B		
ST83-591 Transcontinental Gas Pipe Line Corp	Consolidated Edison Co	8/5/83	B		
ST83-592 Transcontinental Gas Pipe Line Corp	Carolina Pipeline Co	8/5/83	B		
ST83-593 Transcontinental Gas Pipe Line Corp	Public Service Electric & Gas Co	8/5/83	B		
ST83-594 United Gas Pipe Line Co	Florida Gas Transmission Co	8/5/83	G		

Docket No.[1] and Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation Rate (¢/MMBtu)
ST83-595 Tennessee Gas Pipeline Co	Consolidated Edison Co	8/5/83	B		
ST83-596 Tennessee Gas Pipeline Co	Long Island Lighting Co	8/5/83	B		
ST83-597 Tennessee Gas Pipeline Co	Public Service Electric & Gas Co	8/5/83	B		
ST83-598 Columbia Gulf Transmission Co	Delhi Gas Pipeline Corp	8/8/83	B		
ST83-599 Cranberry Pipeline Corp	Cabot Corporation	8/8/83	F	1/5/83	60.00
ST83-600 Natural Gas Pipeline Co. of America	Northwest Central Pipeline Co	8/10/83	G		
ST83-601 Natural Gas Pipeline Co. of America	Northwest Central Pipeline Co	8/10/83	G		
ST83-602 Tennessee Gas Pipeline Co	Laurel Fuel Co	8/10/83	B		
ST83-603 East Tennessee Natural Gas Co	Tennessee Gas Pipeline Co	8/11/83	G		
ST83-604 East Tennessee Natural Gas Co	Tennessee Gas Pipeline Co	8/11/83	G		
ST83-605 Superior Offshore Pipeline Co	Texas Eastern Transmission Corp	8/11/83	G		
ST83-606 Northern Natural Gas Co	Delhi Gas Pipeline Corp	8/11/83	B		
ST83-607 Natural Gas Pipeline Co. of America	Bridgeline Gas Distribution Co	8/11/83	B		
ST83-608 Natural Gas Pipeline Co. of America	United States Steel Corp	8/12/83	F		
ST83-609 Tennessee Gas Pipeline Co	United States Steel Corp	8/12/83	F		
ST83-610 MGTC, Inc	MIGC	8/12/83	C		
ST83-611 United Gas Pipe Line Co	Energy Gathering, Inc	8/12/83	B		
ST83-612 National Fuel Gas Supply Corp	Stackpole Carbon Corp	8/12/83	F		
ST83-613 Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	8/12/83	G		
ST83-614 Transcontinental Gas Pipe Line Corp	Cajun Natural Gas Co	8/12/83	B		
ST83-615 Transcontinental Gas Pipe Line Corp	Consolidated Edison Co	8/12/83	B		
ST83-616 Transcontinental Gas Pipe Line Corp	Bridgeline Gas Distribution Co	8/12/83	B		
ST83-617 Transcontinental Gas Pipe Line Corp	Texas Eastern Transmission Co	8/12/83	G		
ST83-618 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	8/12/83	B		
ST83-619 Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	8/12/83	B		
ST83-620 Arkansas Western Gas Co	Natural Gas Pipeline Co. of America	8/12/83	C	1/9/83	20.23
ST83-621 National Fuel Gas Supply Corp	Arco Carbon Division of Boc, Inc	8/15/83	F		
ST83-622 Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	8/15/83	B		
ST83-623 Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	8/15/83	G		
ST83-624 Transcontinental Gas Pipe Line Corp	Laurel Fuel Co	8/15/83	B		
ST83-625 Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	8/15/83	B		
ST83-626 Transcontinental Gas Pipe Line Corp	Producer's Gas Co	8/15/83	B		
ST83-627 Producer's Gas Co	Florida Gas Transmission Corp	8/15/83	C	1/12/84	23.00
ST83-628 Natural Gas Pipeline Co. of America	People Natural Gas Co	8/16/83	B		
ST83-629 United Gas Pipe Line Co	Louisiana State Gas Corp	8/16/83	B		
ST83-630 Tennessee Gas Pipeline Co	Gulftide Gas Corp	8/16/83	B		
ST83-631 El Paso Natural Gas co	El Paso Gas Transportation Co	8/17/83	B		
ST83-632 East Tennessee Natural Gas Co	Tennessee Gas Pipeline Co	8/17/83	G		
ST83-633 Northern Natural Gas Co	People Natural Gas Co	8/19/83	B		
ST83-634 Producer's Gas Co	Washington Gas Light Co	8/19/83	D		
ST83-635 Delhi Gas Pipeline Corp	United Gas Pipe Line Co	8/19/83	C		
ST83-636 El Paso Natural Gas Co	People Natural Gas Co	8/19/83	B		
ST83-637 Northern Natural Gas Co	Endeavco Oil and Gas Co	8/22/83	B		
ST83-638 Northern Natural Gas Co	People Natural Gas Co	8/22/83	B		
ST83-639 Northwest Central Pipeline Corp	Natural Gas Pipeline Co. of America	8/22/83	G		
ST83-640 Panhandle Eastern Pipe Line Co	Energy Gathering, Inc	8/24/83	B		
ST83-641 Panhandle Eastern Pipe Line Co	Kansas Power & Light Co	8/24/83	B		
ST83-642 Panhandle Eastern Pipe Line Co	Kansas Power & Light Co	8/24/83	B		
ST83-643 Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	8/24/83	G		
ST83-644 Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	8/24/83	G		
ST83-645 Houston Pipe Line Co	United Gas Pipe Line Co	8/24/83	C		
ST83-646 Oasis Pipe Line Co	El Paso Natural Gas Co	8/24/83	C		
ST83-647 Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	8/24/83	B		
ST83-648 Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	8/25/83	B		
ST83-649 Valero Transmission Co	El Paso Natural Gas Co	8/25/83	C		
ST83-650 Southern Natural Gas Co	Florida Gas Transmission Co	8/25/83	G		
ST83-651 Southern Natural Gas Co	Natural Gas Pipeline Co. of America	8/25/83	G		
ST83-652 Texas Eastern Transmission Corp	Penn Fuel Gas, Inc	8/25/83	B		
ST83-653 Michigan Wisconsin Pipe Line Co	Texas Eastern Transmission Corp	8/26/83	G		
ST83-654 Michigan Wisconsin Pipe Line Co	Michigan Consolidated Gas Co	8/26/83	G		
ST83-655 Michigan Wisconsin Pipe Line Co	Mid Louisiana Gas Co	8/26/83	G		
ST83-656 Michigan Wisconsin Pipe Line Co	Louisiana Intrastate Gas Corp	8/26/83	B		
ST83-657 Michigan Wisconsin Pipe Line co	Delhi Gas Pipeline Corp	8/26/83	B		
ST83-658 Michigan Wisconsin Pipe Line Co	Producer's Gas Co	8/26/83	B		
ST83-659 Harry C. Boggs Natural Gas Co	Columbia Gas Transmission Corp	8/28/83	C		
ST83-660 Sugar Bowl Gas Corp	Florida Gas Transmission Co	8/29/83	C		
ST83-661 Southern Natural Gas Co	Cajun Natural Gas Co	8/29/83	B		
ST83-662 Oklahoma Natural Gas Co	Northern Natural Gas Co	8/30/83	C		
ST83-663 Tennessee Gas Pipeline Co	Monterey Pipeline Co	8/30/83	B		
ST83-664 Tennessee Gas Pipeline Co	Cajun Natural Gas Co	8/30/83	B		
ST83-665 Oklahoma Natural Gas Co	Northern Natural Gas Co	8/31/83	C		
ST83-666 Texas Eastern Transmission Corp	Transcontinental Gas Pipe Line Corp	8/31/83	G		
ST83-667 Great Lakes Gas Transmission Co	Transcontinental Gas Pipe Line Corp	8/31/83	G		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The Interstate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 83-27719 Filed 10-11-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-512-000]

Northwest Arkansas Transmission Co.; Application

October 6, 1983.

Take notice that on September 16, 1983, Northwest Arkansas Transmission Company (Applicant), P.O. Box 3166, Tulsa, Oklahoma 74101, filed in Docket No. CP83-512-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline and related facilities and for the transportation of natural gas for Agrico Chemical Company (Agrico), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has been formed to accomplish the construction and operation of a pipeline system for the purpose of transporting natural gas to be acquired by Agrico for use at its Blytheville, Arkansas, ammonia fertilizer plant. Applicant proposes the construction and operation of 24 miles of 16-inch O.D. pipeline extending in a generally westerly direction from a point of interconnection with Texas Gas Transmission Corporation (Texas Gas) in Lauderdale County, Tennessee, to its terminus at the Agrico plant in Mississippi County, Arkansas. Applicant further proposes to transport, on a firm basis, up to 50 billion Btu of natural gas per day for Agrico. It is indicated that Agrico would initially acquire such natural gas from Louisiana Resources Company and arrange with Texas Gas for transportation of such gas to Applicant's facilities.

Applicant states that Arkansas Louisiana Gas Company is the sole supplier and transporter of natural gas to Agrico's Blytheville plant. It is asserted that the proposed construction and operation of facilities will provide Agrico with access to other suppliers and transporters and better enable Agrico to obtain an economic and reliable supply of natural gas. Applicant alleges that the construction and operation of facilities will ensure the continued demand for natural gas which otherwise will be lost because of the artificially high sales price assessed by Agrico's existing supplier and thus stimulate future production of natural gas. It is further stated that the construction and operation of facilities will facilitate the matching of currently available natural gas supplies with currently available market demand in the most expeditious and unencumbered manner possible and thus further the Federal Energy Regulatory Commission's current objective of ordering the natural gas market through direct sale and other similar end-user oriented approaches.

Applicant indicates that the estimated cost of the pipeline facilities is $8,729,326. Applicant states that the financing of the project would be met through the investment of $3,250,000 in equity by Applicant's parent and through the issuance of long-term debt of $4,870,000.

Applicant proposes to charge for the transportation service a two-part rate consisting of a demand charge of $1.65167 per month per million Btu of daily contract quantity and a commodity charge of $.04292 per million Btu.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 27, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 proceeeding or to participate as a party in any hearing therein must file a motion 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 is no motion to intervene if 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 motion 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. 83-27720 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST83-711-000]

Oklahoma Natural gas Co., and ONG Western, Inc.; Application for Approval of Rates

October 6, 1983.

Take notice that on September 16, 1983 Oklahoma Natural Gas Company, a division of ONEOK Inc., and ONG Western Inc. (Applicants), 624 South Boston Avenue, Tulsa, Oklahoma 74119, filed in Docket No. CP83-711-000 an application pursuant to Section 284.123(b)(2) of the Commission's Regulations for approval of the rates and charges to be assessed by Applicants for transportation services to be provided for Kansas Power and Light Company (KP&L), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they have entered into an agreement to transport natural gas on behalf of KP&L. Applicants proposed to charge a transportation fee of 10.0 cents per million Btu and assert that such rate is fair and equitable and not in excess of the rates an interstate pipeline would be permitted to charge for similar services. Applicants indicate that the Oklahoma Corporation Commission has been notified of the transportation agreement and presumes that all revenues received by an intrastate pipeline in connection with this transportation arrangement have been or will be taken into account for purposes of establishing transportation rates charged by Applicants for transportation for intrastate customers. Applications further state that all of the documentation and materials provided in Docket No. ST82-478 is incorporated into the subject docket.

Any person desiring to be heard or to make any protest with reference to said application should on or before

October 27, 1983, file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a motion to intervene or a protest in accordance with requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 motion to intervene in accordance petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27721 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6521-001]

Olympic Hydro-Power; Surrender of Preliminary Permit

October 6, 1983.

Take notice that Olympic Hydro-Power, Permittee for the Ziegler Creek Project, FERC No. 6521, has requested that its preliminary permit be terminated. The Preliminary Permit was issued on January 3, 1983, and would have expired on June 30, 1984. The project would have been located on Ziegler Creek within the Olympic National Forest in Grays Harbor County, Washington.

Olympic Hydro-Power filed the request on September 12, 1983, and the surrender of the preliminary permit for Project No. 6521 is deemed accepted as of September 12, 1983, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27722 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6679-001]

Olympic Hydro-Power; Surrender of Preliminary Permit

October 6, 1983.

Take notice that Olympic Hydro-Power, Permittee for the Gatton Creek Project, No. 6679 has requested that the preliminary permit be terminated. The preliminary permit for Project No. 6679 was issued on January 12, 1983, and would have expired on July 31, 1984. The project would have been located on Gatton Creek in Grays Harbor County, Washington.

Olympic Hydro-Power filed the request on September 12, 1983, and the surrender of the preliminary permit for Project No. 6679 is deemed accepted as of September 12, 1983, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27723 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5298-000]

Small Scale Hydropower; Surrender of Preliminary Permit

October 6, 1983.

Take notice that Small Scale Hydropower, Permittee for the North Fork Clackamas Water Power Project No. 5298, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 5298 was issued on June 28, 1982, and would have expired on November 30, 1983. The project would have been located on North Fork of the Clackamas River, near Estacada, in Clackamas County, Oregon.

Small Scale Hydropower filed the request of September 19, 1983, and the surrender of the preliminary permit for Project No. 5298 is deemed accepted as of September 19, 1983, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27724 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-131-001]

Texas Gas Transmission Corp.; Filing

October 6, 1983.

Take notice that on September 27, 1983, Texas Gas Transmission Corporation (Texas Gas) tendered for filing Substitute Original Sheet No. 7-AA to its FPC Gas Tariff, Third Revised Volume No. 1.

On September 9, 1983, Texas Gas filed in Docket No. RP83-131 to establish a new rate schedule entitled Additional Incentive Charge (AIC). The purpose of submitting this substitute sheet is to state the AIC rate on an MMBtu basis rather than on an Mcf basis as reflected in the September 9, 1983 filing.

Copies of the filing are being mailed to all of Texas Gas' jurisdictional customers and interested state commissions. A copy of the filing is also available for public inspection in the office of Texas Gas at Owensboro, Kentucky.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All such petitions or protests should be filed on or before October 14, 1983. 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. 83-27725 Filed 10-11-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST80-37-002]

Valero Interstate Transmission Co.; Exstension Reports

October 6, 1983.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. A "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before November 1, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214).

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 party to a proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No. and Transporter/Seller	Recipient	Date filed	Part 284 subpart	Effective date
ST80-37-002 Valero Interstate Transmission Co., P.O. Box 500, San Antonio, TX 78296[1]	Valero Transmission Co	9/7/83	B	9/8/83
ST80-62-002 Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas, TX 75201	Transwestern Pipeline Co	9/1/83	C	12/1/83
ST80-81-002 Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110 [1]	Pacific Gas and Electric Co	9/1/83	B	8/31/83
ST80-101-002 Texas Gas Transmission Corp., P.O. Box 1160, Owensboro, KY 42302 [1]	City of Murray, Kentucky	9/14/83	B	12/11/83
ST80-106-002 United Texas Transmission Co., P.O. Box 1478, Houston, TX 77001	United Gas Pipe Line Co	9/14/83	C	12/18/83
ST81-348-001 Mountain Fuel Supply Co., P.O. Box 11368, Salt Lake City, UT 84139 [1]	Pacific Gas and Electric Co	9/6/83	B	11/7/83
ST82-78-001 Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292 [1]	Natural Gas Pipeline Co. of America	9/1/83	C	11/30/83
ST82-81-001 Louisiana Resources Co., P.O. Box 3102, Tulsa, OK 74101	Southern Natural Gas Co	9/1/83	C	12/3/83
ST82-96-001 Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Texas Eastern Transmission Corp	9/12/83	G	12/10/83
ST82-97-001 Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Dow Intrastate Gas Co	9/12/83	B	12/10/83
ST82-103-001 Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas, TX 75201	Transwestern Pipeline Co	9/2/83	C	12/16/83
ST82-104-001 The East Ohio Gas Co., 1717 East Ninth St., Cleveland, OH 44114	Panhandle Eastern Pipe Line Co	9/13/83	G(HT)	12/18/83
ST82-108-001 United Texas Transmission Co., P.O. Box 1478, Houston, TX 77001	United Gas Pipe Line Co	9/1/83	C	12/6/83
ST82-111-001 Natural Gas Pipeline Co. of America, 122 South Michigan Ave., Chicago, IL 60603 [1]	Southern Natural Gas Co	9/16/83	G	12/1/83
ST82-123-001 Valero Interstate Transmission Co, P.O. Box 500, San Antonio, TX 78296	Valero Transmission Co	9/15/83	B	12/15/83
ST82-133-001 Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102 [1]	Northern States Power of Wisconsin	9/13/83	B	11/2/83
ST82-135-001 Natural Gas Pipeline Co. of America, 122 South Michigan Ave., Chicago, IL 60603	Transcontinental Gas Pipe Line Corp	9/15/83	G	12/14/83
ST82-153-001 Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Valero Interstate Transmission Co	9/15/83	C	12/15/83

[1] These extension reports were filed after the date specified by the Commission's regulations, and shall be the subject of a further commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's regulations.

[FR Doc. 83-27726 Filed 10-11-83; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-40009B; PH-FRL 2412-2]

Department of the Interior Federal Agency Plan; Intent To Approve Plan for Certification of Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with terms of the **Federal Register** notice of August 19, 1977 (42 FR 41907), the U.S. Department of the Interior (DOI) has submitted an amended Federal Agency Plan for the certification of its employees to apply restricted use pesticides in the performance of their duties. The Administrator has reviewed this amended plan and finds that it complies with the terms of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended and the August 19, 1977 **Federal Register** notice. Accordingly, notice is hereby given of the intention of the Administrator to approve the DOI Plan. Interested persons are invited to submit written comments on the proposed plan.

DATE: Comments must be received on or before November 28, 1983.

Written comments should be submitted to: By mail: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments should bear the identifying notation OPP-40009B. Comments received on this notice will be available for public inspection in Rm. 236 at the address noted above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

ADDRESSES: The entire plan, together with attachments and comments, will also be available for examination during business hours at the following locations:

U.S. Department of the Interior, Bureau of Land Management (230), 1725 I St., NW., Washington, D.C. 20240;
U.S. Environmental Protection Agency, Region I, John F. Kennedy Bldg., Boston, MA 02203;
U.S Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278;
U.S Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Sts., Philadelphia, PA 19106;
U.S Environmental Protection Agency, Region IV, 345 Courtland St., NE., Atlanta, GA 30365;
U.S Environmental Protection Agency, Region V, Pesticides Branch, 230 South Dearborn St., Chicago, IL 60604;
U.S Environmental Protection Agency, Region VI, 1201 Elm St., 1st International Building, Dallas, TX 75270;
U.S Environmental Protection Agency, Region VII, 324 East 11th St., Kansas City, MO 64106;
U.S. Environmental Protection Agency, Region VIII, 1860 Lincoln St., Suite 900, Denver, CO 80295;
U.S. Environmental Protection Agency, Region IX, 215 Fremont St., San Francisco, CA 94105;
U.S. Environmental Protection Agency, Region X, 1200 6th Ave., Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: John MacDonald, Compliance Monitoring Staff (EN-342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. 2624E, 401 M St., SW., Washington, D.C. 20460, (202-382-7846).

The plan is also available for inspection at selected DOI installations throughout the country. Interested persons desiring the location of the installation nearest them should contact Buck Waters at DOI (202-653-8866).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 15, 1982 (47 FR 40706), the Agency granted final approval to DOI's pesticide applicator certification plan. However, the original pesticide applicator certification plan applied only to the Bureau of Land Management employees within DOI. The amended DOI pesticide applicator certification plan applies to Bureau of Land Management employees and to employees of the Bureau of Indian Affairs and the National Park Service. The amended DOI pesticide applicator certification plan also retains the commercial applicator categories of the

original plan in addition to adopting a new category entitled, Agriculture Pest Control—Animal.

Summary of Plan

The DOI Certification Plan at present applies to employees of the Bureau of Land Management, Bureau of Indian Affairs, and the National Park Service. If the department should at a later date wish to include others under the certification plan, the submission and approval of a new certification plan or an amendment to this certification plan, should it be approved, would be required.

Federal employees are considered by EPA to be commercial applicators. The DOI has proposed certification of its employees in the following commercial applicator categories: Agriculture Pest Control—Plant; Agriculture Pest Control—Animal; Forest Pest Control; Ornamental and Turf Pest Control; Aquatic Pest Control; Right-of-Way Pest Control; Industrial, Institutional, Structural, and Health Related Pest Control; Public Health Pest Control; and Demonstration and Research Pest Control.

Certification is based on the taking and passing of a written examination and is valid for a period not to exceed three years. Recertification will also require the taking and passing of a written examination. It is anticipated that training for certification and recertification will often be provided by outside organizations, in particular the Department of Defense which has an approved certification plan in operation. When training is provided by outside organizations, a DOI examination will still have to be passed before certification or recertification is granted.

Certified applicators will be issued a certificate and wallet-size identification card to be carried when applying pesticides or supervising their use. These documents will identify the certified applicator, the category in which the applicator is certified, the date of issuance, expiration date, and issuing authority. Examples of these documents are contained in the plan.

General use and restricted use pesticide will be applied either by a certified applicator or by a person under the direct supervision of a certified applicator. The certified applicator will retain responsibility for the actions of the non-certified applicator and be available if and when required.

The plan provides for the hiring of non-DOI employees for pest control operations. Such persons must be certified commercial applicators, or under the direct supervision of a certified commercial applicator, holding certification valid in the State or territory where the services are performed.

Authority for denying, suspending, and revoking DOI certification rests with the officials responsible for carrying out the plan. Any applicator who falsifies records or who violates any provision of FIFRA, including the prohibition against the misuse of pesticides, may have the applicator's certificate suspended or revoked.

Records regarding the kinds, amounts, uses, dates, and places of use of restricted use pesticides will be maintained for two years from the date of application of the restricted use pesticides. Such records will be available for inspection and copying by Federal and State pesticide officials.

Incidents of pesticide misuse and record falsification by any person will be reported to the appropriate EPA or State authority. EPA and State enforcement personnel will have access to DOI property at reasonable times for sampling, inspection, and observation.

The DOI Plan requires personnel to comply with substantive State standards for pesticide regulation which are more stringent than, or are in addition to, standards established in the plan, as required by E.O. 12088. In cases where the State decides its substantive standards are more stringent than those of the DOI it may notify the Secretary of the Interior and request compliance. In any case where the Secretary and the State disagree as to the need for employees to comply with a State standard, the Administrator of EPA will arbitrate the dispute.

Annual reports will be submitted by the Department of the Interior to the Administrator, EPA. The report will contain information as outlined in 40 CFR 171.7(d)(1), such as, numbers of applicators certified, changes in commercial subcategories, summary of enforcement actions, and significant proposed changes in standards of competency. Other reports will be submitted as required by 40 CFR 171.7(d)(2).

(Sec. 4, as amended, 92 Stat. 827, (Pub. L. 95-396))

Dated: September 28, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-27265 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50608; PH-FRL 2449]

Pesticides; Issuance of Experimental Use Permits; BASF/Wyandotte Corp.

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: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

7969-EUP-18. Extension. BASF Wyandotte Corporation, 100 Cherry Hill Road, P.O. Box 181, Parsippany, NJ 07054. This experimental use permit allows the use of 14,560 pounds of the fungicide N-cyclohexyul-N-methoxy-2,5-dimethyl-3-furancarboximide on cottonseed to evaluate the control of *Rhizoctonia solani*. A total of 7,500 tons of seed is involved; the program is authorized only in the States of Arizona, California, Mississsippi, and Texas. The experimental use permit is now effective from December 6, 1983 to December 6, 1984. (Henry M. Jacoby, PM 21, Rm. 227, CM#2 (703-557-1900))

1471-EUP-50. Amendment. Elanco Products Company, 740 S. Alabama St., Indianapolis, IN 46285. This experimental use permit, which allows the use of 7,500 pounds of the fungicide fenarimol on turfgrasses to evaluate the control of various diseases, has been amended to add an additional acre in the District of Columbia to the program. A total of 2,994 acres is now involved; the program is authorized in the District of Columbia and all 50 States except Alabama, Alaska, Hawaii, Michigan, Mississippi, Vermont, Virginia, and Wisconsin. The experimental use permit is effective from March 31, 1983 to March 31, 1984. (Henry M. Jacoby, PM 21, 227, CM#2 (703-557-1900))

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 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, Pub. L. 95-396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: September 28, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-27659 Filed 10-11-83; 8:45 a.m.]

BILLING CODE 6560-50-M

[OPTS-140040; BH-FRL 2448-8]

CRCS, Inc., and Dynamac Corp.; Transfer of Data to Contractor and Subcontractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will transfer to its contractors, CRCS, Inc. (CRCS) (primary contractor) and Dynamac Corporation (Dynamac) (subcontractor), information which has been or will be submitted by manufacturers and importers under sections 4 and 8 of the Toxic Substances Control Act (TSCA), as well as information submitted voluntarily to EPA. Some of the information may be claimed to be confidential. CRCS and Dynamac will review this information as part of their responsibilities for providing technical support to the TSCA Interagency Testing Committee (ITC). This will expand the scope of confidential business information currently being transferred to CRCS and Dynamac.

DATE: The transfer of data submitted to EPA and claimed to be confidential will occur no sooner than 10 working days after publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The ITC is required by section 4(e) of TSCA to recommend to the EPA Administrator chemical substances and mixtures (chemicals) which should be given priority consideration for the promulgation of testing rules. In making its recommendations the ITC must consider, among other relevant factors, the quantities of chemicals manufactured, the extent of human and environmental exposure, the existence of data concerning effects on health and environment, and similarity to chemicals known to have adverse health or environmental effects. To accomplish this, the ITC requires the assistance of outside experts. The EPA has selected CRCS, Inc. (primary contractor) of Reston, Virginia, and Dynamac Corporation (subcontractor) of Rockville, Maryland (Contract No. 68-01-6650), to perform reviews of information which may be helpful to the ITC in making its recommendations.

In a previous notice published in the Federal Register of December 6, 1982, (47 FR 54865), the EPA announced that it would begin the transfer of confidential business information received under section 8(b) of TSCA to CRCS and Dynamac. This process has been in operation since the latter part of December 1982.

The EPA and ITC have determined that important data dealing with exposure, testing, and effects on health and the environment relevant to chemicals reviewed by the ITC have been submitted to EPA under provisions of sections 4 and 8 of TSCA. CRCS and Dynamac will examine information, including confidential business information, submitted to EPA in accordance with rules promulgated under these sections of TSCA and other information submitted voluntarily by industry in order to support the ITC in making determinations on the need for further testing of chemicals.

Pursuant to 40 CFR 2.306(j), EPA has determined that it will need to disclose confidential business information to CRCS and Dynamac. Any reports prepared by CRCS and Dynamac dealing with this confidential business information will be treated as confidential. After reviewing the information obtained, CRCS and Dynamac will return the information and any reports they prepare containing confidential business information to EPA.

Under the EPA security manual "Contractor Requirements for the Control and Security of TSCA Confidential Business Information," CRCS and Dynamac will be authorized to have access to this information. EPA has approved the security plans of CRCS and Dynamac and has conducted the required inspections of their facilities and found them to be in compliance with the requirements of the manual.

Since CRCS and Dynamac will review information claimed to be confidential, EPA is issuing this notice to inform all submitters of information under sections 4 and 8 of TSCA and information which may be submitted voluntarily that this contractor and subcontractor will have access to confidential business information from EPA.

In accordance with the contractor requirements security manual, CRCS and Dynamac are legally required to safeguard confidential business information from any unauthorized disclosure. CRCS and Dynamac personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to such information.

Dated: September 30, 1983.

Marcia E. Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-27064 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[License No. 1091]

Independent Ocean Freight Forwarder; Airport Clearance Service; Order of Revocation

On September 28, 1983, Airport Clearance Service, Cargo Service Bldg., #80, J. F. Kennedy Int'l Airport, Jamaica, NY 11430 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 1091.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 9.09(e) dated September 27, 1983:

It is ordered, that Independent Ocean Freight Forwarder License No. 1091 issued to Airport Clearance Service, be revoked effective September 28, 1983.

It is further ordered, that Independent Ocean Freight Forwarder License No. 1091 issued to Airport Clearance Service be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Airport Clearance Service.

Robert G. Drew,

Director Bureau of Tariffs.

[FR Doc. 83-27637 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

[License No. 620]

Independent Ocean Freight Forwarder; Bar-Zel Expediters Inc.; Order of Revocation

On September 20, 1983, Bar-Zel Expediters, Inc., 156 William Street, New York, NY 10038 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 620.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwarder License No. 620 issued to Bar-Zel Expediters Inc., be revoked effective September 20, 1983.

It is further ordered, that Independent Ocean Freight Forwarder License No. 620 issued to Bar-Zel Expediters Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this order be published in the **Federal Register** and served upon Bar-Zel Expediters Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 83-27639 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

[License No. 2566]

Independent Ocean Freight Forwarder; Clell S. Donald d.b.a. Worldwide; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Clell S. Donald d.b.a Worldwide, 1000 Dorado Drive, St. Augustine, FL 32084 was cancelled effective September 22, 1983.

By letter dated August 25, 1983, Clell S. Donald d.b.a. Worldwide was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2566 would be automatically revoked unless a valid surety bond was filed with the Commission.

Clell S. Donald d.b.a. Worldwide has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2566 be and is hereby revoked effective September 22, 1983.

It is ordered, that Independent Ocean Freight Forwarder License No. 2566 issued to Clell S. Donald d.b.a. Worldwide be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Clell S. Donald d.b.a. Worldwide.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 27635 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

[License No. 2220]

Independent Ocean Freight Forwarder; Cosmopolitan Forwarders, Ltd.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Cosmopolitan Forwarders, Ltd., 20 West Main Street, Hohenwald, TN 38462 was cancelled effective September 23, 1983.

By letter dated August 30, 1983, Cosmpolitan Forwarders, Ltd. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2220 would be automatically revoked unless a valid surety bond was filed with the Commission.

Cosmopolitan Forwarders, Ltd. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2220 be and is hereby revoked effective September 23, 1983.

It is ordered, that Independent Ocean Freight Forwarder License No. 2220 issued to Cosmopolitan Forwarders, Ltd. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Cosmopolitan Forwarders, Ltd.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 83-27634 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

[License No. 1413]

Independent Ocean Freight Forwarder; Hosea International Corporation; Order of Revocation

Hosea International Corporation, P.O. Box 298, Newport, Kentucky, requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 1413 effective November 30, 1983.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwarder License No. 1413 issued to Hosea International Corporation, be revoked effective November 30, 1983 without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight Forwarder License No. 1413 issued to Hosea International Corporation be returned to the Commission for cancellation.

It is further ordered, that a copy of this order be published in the **Federal Register** and served upon Hosea International Corporation.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 83-27636 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

[License No. 2572]

Independent Ocean Freight Forwarder; Tiger Intermodal, Inc. D.B.A. Seatiger; Order of Revocation

On September 19, 1983, Tiger Intermodal, Inc. d.b.a. Seatiger, P.O. Box 2451, Long Beach, CA 90801 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2572.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwarder License No. 2572 issued to Tiger Intermodal, Inc. d.b.a. Seatiger, be revoked effective

September 19, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight forwarder License No. 2572 issued to Tiger Intermodal, Inc. d.b.a. Seatiger be returned to the Commission for cancellation.

It is further ordered, that a copy of this order be published in the **Federal Register** and served upon Tiger Intermodal, Inc. d.b.a. Seatiger.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 83-27638 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

[License No. 2533]

Independent Ocean Freight Forwarder; Victor A. Cienfuegos, D.B.A. Cione Forwarding; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Victor A. Cienfuegos, d.b.a. Cione Forwarding, 11403 Davenrich Street, Santa Fe Springs, CA 90670 was cancelled effective August 31, 1983.

By letter dated August 3, 1983, Victor A. Cienfuegos, d.b.a. Cione Forwarding was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2533 would be automatically revoked unless a valid surety bond was filed with the Commission.

Victor A. Cienfuegos, d.b.a. Cione Forwarding has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2533 be and is hereby revoked effective August 31, 1983.

It is ordered, that Independent Ocean Freight Forwarder License No. 2533 issued to Victor A. Cienfuegos, d.b.a. Cione Forwarding be returned to the Commission for cancellation.

It is further ordered, that a copy of this order be published in the **Federal Register** and served upon Victor A. Cienfuegos, d.b.a. Cione Forwarding.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 83-27633 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Wyndham Company, et al; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 75 (stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Wyndham Young, d.b.a. Wyndham Company, 240 Chattanooga Street, Apt. No. 6, San Francisco, CA 94114

Helstern & Associates, 4100–17th Street, Suite No. 6, San Francisco, CA 94114. Officer: Jay Helstern, Sole Officer

Young Moon Kim, d.b.a. Express Service International, 1205 St. Paul Street, Baltimore, MD 21221

Tri-Way Movers, Inc., 15702 Producer Lane Unite "C", Huntington Beach, CA 92649. Officer: James W. Wager, Sole Officer

American Packing & Shipping, Inc., 426 Swann Avenue, Alexandria, VA 33201. Officers: Manfred Schwitzer, President, Rose L. Schwitzer, Vice President/Secretary, Haile Mesghinna, Assistant Vice President

Al-Rad International, Inc., 5625 North Pearl Street, Rosemont, IL 60018. Officers: Albert George, President/Director, Glenn Raddatz, Executive Vice President/Director, Philip Storms, Vice President/Ocean Operations

Amity International Forwarding, Inc., 144–30 156th Street, Jamaica, NY 11434. Officer: Michael Emposimato, President

Pedro M. Concha, 305 East 24th Street, New York, NY 10010

Evans and Wood & Company, Inc., c/o 9918 Hornpipe, Houston, TX 77080. Officers: Holland B. Evans, President/Director, Floy Wood Evans, Executive V.P./Director

Tropical Customs Brokers, Inc., 2151–A N.W. 72nd Avenue, Miami, FL 33122. Officers: Jose M. Meyer, Jr., Stockholder, Jose M. Meyer, Ph.D. President, Victoria Meyer, Vice President/Secretary, Pedro M. Carreras, Vice Pres./Traffic Manager

Queen's Maritime Ltd., c/o 238 Monte Vista Lane, Daly City, CA 94015. Officers: Lope O. Angangoco, Director/Chairman, Amado L. Bituin, Director/President, Oscar B. Santos, Director/Treasurer

Smith Air, Inc., 3002 Air Freight Road, Houston, TX 77205. Officers: James Fletcher Mooring, President, Jack B. (i.o.) Morgan, Vice President, Blanche Rose Glassburn, Secretary/Treasurer, Harry Platzer, Director

Liberty International, Inc., 144 Westminister Street, Providence, RI 02903. Officers: Kenneth J. Charnley, President, Nicholas J. Cioe, Jr., Vice President, Charles J. Cannon, Treasurer, Vincent J. Passanati, Secretary

North-American Solmar Inc., 71 Broadway, Suite 1306, New York, NY 10006. Officer: George B. Badre, Vice President

Francis C. Hurney,

Secretary.

Dated: October 6, 1983.

[FR Doc. 83-27632 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Matson Terminals, Inc. et al.

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 2053, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T–4143.

Title: Matson Terminals, Inc. & Korea Marine Transport Company, Limited Container Terminal Services Agreement.

Parties: Matson Terminals, Inc. (Matson) and Korea Marine Transport (KMTC).

Synopsis: Agreement No. T-4143 provides that Matson will perform terminal services for vessels owned or chartered and operated by KMTC at the ports of Oakland and Terminal Island, California. Until the agreement is approved, terminal services will be performed by Matson for KMTC under terms of a terminal tariff on file with the Federal Maritime Commission. Agreement No. T-4143 supersedes Agreement No. T-3737, between the parties.

Filing Party: Mr. Peter P. Wilson, Senior Counsel, Matson Navigation Company, P.O. BOX 7452, San Francisco, California 94120.

Agreement No.: 57-121.

Title: Pacific Westbound Conference.

Parties:

American President Lines Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co. Ltd.
A.P.Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 57-121 would amend the basic agreement to allow independent action to any tariff or tariffs except local or overland tariffs to Japan.

Filing Party: Charles L. Coleman, III, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No.: 57-122.

Title: Pacific Westbound Conference.

Parties:

American President Lines Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
A. P. Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line, Inc.
Sea-Land Service, Ltd.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 57-122 would amend the basic agreement to insure that only those members who actually serve particular destination areas will be entitled to vote on freight rates or destination charges to those destination areas.

Filing Party: Charles L. Coleman, III, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No.: 57-123.

Title: Pacific Westbound Conference.

Parties:

American President Lines Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
A. P. Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line, Inc.
Sea-Land Service, Ltd.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 57-123 would amend the basic agreement by adding a new Article 16 to the Appendix changing the present two-thirds majority voting requirement for Conference action on rate matters to a simple majority requirement for rate matters other than general rate increases.

Filing Party: Charles L. Coleman, III, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No.: 57-124.

Title: Pacific Westbound Conference.

Parties:

American President Lines Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
A. P. Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line, Inc.
Sea-Land Service, Ltd.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 57-124 would amend the basic agreement by revising Article 25 to allow member lines to disclose, in private communications to individual or potential shippers, forwarders or consignees their own position on any matter considered or action taken by the Conference, or the status of any matter before the Conference.

Filing Party: Charles L. Coleman, III, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No.: 57-125.

Title: Pacific Westbound Conference.

Parties:

American President Lines Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
A. P. Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 57-125 would amend the basic agreement by adding a new paragraph (e) to Article 1 to authorize the Conference to establish uniform rules and allowances regarding container freight stations, container yards and container depots other than affiliates or Conference members.

Filing Party: Charles L. Coleman, III, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No.: 57-126.

Title: Pacific Westbound Conference.

Parties:

American President Lines Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
A. P. Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 57-126 would amend the basic agreement by replacing the existing Executive Committee with a new committee to be known as the Pacific Westbound Conference Owners' Management Committee.

Filing Party: Charles L. Coleman, III, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No.: 57-127.

Title: Pacific Westbound Conference.

Parties:

American President Lines Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
A. P. Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 57-127 would amend the basic agreement to

restate in its entirety the agreement incorporating all amendments.

Filing Party: Charles L. Coleman, III, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Fancisco, California 94111.

Agreement No.: 10266–8.

Title: Intercontinental Transport (ICT) B.V./Compagnie Generale Maritime Joint Service Agreement.

Parties: Intercontinental Transport (ICT) B.V. Compagnie Generale Maritime.

Synopsis: Agreement No. 10266–8 would modify the agreement by (1) establishing a prospectively applicable ceiling of 600 TEU's weekly on their container carryings in the U.S. Gulf and South Atlantic/Europe trade and (2) reducing from 12 months to 90 days the notice period required for unilateral termination of the Agreement.

Filing Party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., 1800 Massachusetts Avenue, Northwest Washington, D.C. 20036.

Agreement No.: 10266–9.

Title: Intercontinental Transport (ICT) B.V./Compagnie Generale Maritime Joint Service Agreement.

Parties: Intercontinental Transport (ICT) B.V. Compagnie Generale Maritime.

Synopsis: Agreement No. 10266–9 would modify the agreement by (1) substituting for the joint service and revenue pooling agreement between the parties an arrangement whereby the parties would separately market their services, without pooling of revenues and expenses and (2) would provide for separate conference participation by each party.

Filing Party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., 1800 Massachusetts Avenue, Northwest Washington, D.C. 20036.

Agreement No.: 10318–1.

Title: United States-European Trade Carriers Cooperative Study Arrangement.

Parties:
Atlantic Container Line GIE.
Dart Containerline Co., Limited.
Hapag-Lloyd AG.
Johnson Scanstar.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.

Synopsis: Agreement No. 10318–1 would modify the basic agreement by extending its duration for a further term of three years through January 25, 1987.

Filing Party: Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

By Order of the Federal Maritime Commission.

Dated: October 5, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-27640 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-1-M

Security for the Protection of the Public

Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Premier Cruise Lines, Ltd., c/o Premier Cruise Lines, P.O. Box 573, 101 George King Blvd., Cape Canaveral, Florida 32920.

Dated: October 6, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-27641 Filed 10-11-83; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Council on Social Security; Meeting

AGENCY: Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Council on Social Security, as established by the Secretary of Health and Human Services in accordance with Section 706 of the Social Security Act, 42 U.S.C. Section 907.

DATE/ADDRESS: The meeting will be held November 3–4, 1983, from 9:00 AM to 4:00 PM each day, in Room 503A of the Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Thomas R. Burke, Executive Director, Advisory Council on Social Security, 200 Independence Avenue, SW., Washington, D.C. 20201; telephone (202) 755–8670/71.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Attendance will be limited to the space available.

Sign language interpreting services will be provided if requested in advance.

The proposed meeting agenda includes further briefings and discussion on the Medicare program; and such other business as the Chairperson, the Executive Director, or the membership may put before the Council.

A previous meeting of the Advisory Council on Social Security was announced in 48 FR 43095, September 21, 1983.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Administrative Officer, Advisory Council on Social Security, Room 317–H, HHH Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Thomas R. Burke,

Executive Director.

[FR Doc. 83-27696 Filed 10-11-83; 8:45 am]

BILLING CODE 4120-03-M

Food and Drug Administration

[Docket No. 83D–0282]

Draft Guidelines on Freedom of Information Summaries for NADA's; Availability

Correction

In a corrections document on page 44113 in the issue of Tuesday, September 27, 1983, correcting FR Doc. 83–22618, the docket number in the heading was incorrect and should read as set forth above.

BILLING CODE 1505-01-M

[Docket No. 83M–0323]

New England Nuclear®; Premarket Approval of Rianen™ [^{3}H] Progestin Receptor Assay Kit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of RIANEN™ [^{3}H] Progestin Receptor Assay Kit, sponsored by New England Nuclear®, North Billerica, MA. After reviewing the recommendaiton of the Clinical Chemistry Device Section of the Clinical Chemistry and Hematology Devices Panel, FDA notified the sponsor

that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by November 14, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On August 3, 1982, New England Nuclear® North Billerica, MA, submitted to FDA an application for premarket approval of the RIANEN™ [^{3}H] Progestin Receptor Assay Kit an in vitro device used to measure progestin receptor (PR) binding capacity in tissue cytosol prepared from breast tumor. Assay results are indicated for use as an aid in the choice of therapy in the treatment and management of breast cancer patients. However, the results of PR analyses using the RIANEN™ [^{3}H] Progestin Receptor Assay Kit should not be interpreted as an indication for selecting a particular therapy without consideration of other clinical criteria normally used in the management of breast cancer. The application was reviewed by the Clinical Chemistry Device Section of the Clinical Chemistry and Hematology Devices Panel, an FDA advisory committee, which recommended approval of the application. On August 31, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 14, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 4, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-27613 Filed 10-11-83; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register,** Vol. 46, No. 223, pp. 56911-56934, dated Thursday, November 19, 1981 and **Federal Register,** Vol. 48, No. 3, pp. 512-518, dated Wednesday, January 5, 1983) is amended to reflect the Secretary's approval of changes to the organizational structure of HCFA. A brief summary of the changes follows:

- *Office of the Associate Administrator for External Affairs*

—abolishing the two existing divisions in the Office of Public Affairs in their entirety.

- *Office of the Associate Administrator for Management and Support Services*

—establishing a Performance Management Staff with reporting authority directly to the Director, Office of Management and Budget (OMB).

—abolishing the functional statements and organizational titles for the Division of Management Support and the Division of Management Planning and Analysis, Office of Management Services, OMB and establishing new functional statements and new division organization titles.

—abolishing the Procurement Policy Staff, Office of Human Resources and Administrative Services, OMB, in its entirety.

—abolishing the Systems Policy and Planning Staff (SPPS), Bureau of Support Services (BSS), and transferring the program information planning and evaluation functions from SPPS to the Office of Information Planning and Development (OIPD), Bureau of Data Management and Strategy (BDMS). Renaming the OIPD as the Office of Information Resources Management. Modifying the BSS functional statement to include ADP liaison and systems security.

—transferring the End-Stage Renal Disease (ESRD) statistical functions from the Division of Program Management Systems, Office of Administrative Systems, BSS, to the Division of Data Production, Office of Statistics and Data Management, BDMS.

- *Office of the Associate Administrator for Operations*

—abolishing functional statements and organization titles for the Bureau of Program Operations, the Bureau of Quality Control and the Health Standards and Quality Bureau in their entirety and replacing them with new functional statements and organizational titles.

—abolishing the Division of Quality Control, Office of the Regional Administrators' (ORA) in its entirety, and revising the functional statements for the Division of Health Standards and Quality and the Division of Financial Operations, ORA.

- *Office of the Associate Administrator for Policy*

—establishing the Office of the Executive Officer within the Bureau of Eligibility, Reimbursement and Coverage and abolishing the Management Staff and the Executive Secretariat.
—abolishing the Division of Health Systems, Office of Legislation (OL), Office of Legislation and Policy (OLP), in its entirety.
—changing the organization title of the Division of Coverage and Benefits, OL, OLP, to the Division of Coverage and Eligibility.
—establishing a new Division of Legislative Reference and Coordination, OL, OLP.

The specific changes to Part F. are detailed below:

• Section FG.20. Office of the Associate Administrator for External Affairs (FG) (Functions) is amended as follows:

1. Section FG.20.C. Office of Public Affairs (FGC) is amended by deleting the organization titles, functional statements and administrative codes for Section FG.20.C.1. Division of Public Information (FGC1) and Section FG.20.C.2. Division of Program Development (FGC2) in their entirety.

• Section FH.20. Office of the Associate Administrator for Management and Support Services (FH)(Functions) is amended as follows:

1. Section FH.20.A. Office of Management and Budget (FHA) is amended by adding a new organizational unit between Section FH.20.A. Office of Management and Budget (FHA) and FH.20.A.1. Office of Financial Management Services (FHA–1).

The new organizational unit will be titled the Performance Management Staff (FHA–1). The new organization will be designated as number 1., therefore, the numerical order of the new staff office and the other three offices under the Office of Management and Budget will change accordingly to:

1. FH.20.A.1. Performance Management Staff;
2. FH.20.A.2. Office of Financial Management Services;
3. FH.20.A.3. Office of Management Services; and
4. FH.20.A.4. Office of Human Resources and Administrative Services.

The new organization, functional statement and administrative code is as follows:

1. Performance Management Staff (FHA–1)

Operates HCFA's Performance Management System by developing and maintaining a system to ensure that individual Senior Executive Service (SES) and merit pay workplans fully reflect the individual's responsibilities for completing elements in the Administrator's organizational workplan. Reviews individual workplans to ensure that performance standards are rigorously and uniformly applied. Monitors individual performance appraisals for appropriate rating spreads and patterns. Maintains the Administrator's workplan by which HCFA plans, organizes and controls its activities to accomplish its programmatic and administrative goals. Analyzes components' progress on the initiatives incorporated in the Administrator's organizational workplan to assess the accomplishment of Agency goals and objectives. Develops reports and briefings for the Administrator and HCFA senior staff and advises of any significant progress and/or problems regarding the organizational and individual workplans. Coordinates HCFA's efforts in support of the Department's Operations Management System (OMS). Prepares HCFA's periodic OMS reports for submission to the Office of the Secretary (OS) and maintaines liaison with OS. Provides staff support to HCFA's Performance Review Board (PRB).

2. Section FH.20.A.2. Office of Management Services (FHA–2) is amended by deleting the organization titles and functional statements for Section FH.20.A.2.a. Division of Management Planning and Analysis (FHA–21), and Section FH.20.A.2.b. Division of Management Support (FHA–22) in their entirety. New division organization titles and functional statements for Section FH.20.A.2. appear below. Wherever possible, current administrative codes have been retained.

a. Division of Management Analysis and Review (FHA–21)

Plans, implements and operates the Agency-wide internal management studies program designed to ensure appropriate utilization of HCFA resources, efficiency and effectiveness of HCFA procedures, identify the potential for fraud, abuse and waste, and ensures HCFA's conformance with higher level administrative direction. Performs ongoing review of HCFA's administrative issuances and their conformance to higher level direction, as well as Central and Regional Office performance in these areas. Evaluates the operation of all HCFA internal control processes. Manages HCFA-wide implementation of OMB Circular A–123 "Internal Control Systems" which includes promulgation of HCFA instructions, training of appropriate personnel, conduct of vulnerability assessments, inventory of internal control areas, conduct of detailed studies and negotiation with Department of Health and Human Services (DHHS) and the Executive Office of Management and Budget (EOMB) on HCFA implementation of the Internal Control Systems program. Establishes and maintains a reports management program for other than public-use reports, which includes setting up a current HCFA-wide inventory of all recurring reports with the exception of public-use reports; maintains a file on each report in the HCFA-wide inventory; responds to all Departmental or higher level inquiries about the reports management program and the reports in the inventory; prepares and submits the HCFA "Annual Summary of Reports Management" to the DHHS Reports Management Officer; provides assistance to Central and Regional Office components when requested; conducts periodic review of the HCFA Reports Management Program and reporting requirements. Monitors HCFA-wide Secretarial savings initiatives to ensure that HCFA components have achieved projected dollar savings during a given fiscal year. Reports HCFA overall savings achievement and negotiates acceptance by the Department on a quarterly basis. Plans, implements, and operates the HCFA-wide internal consulting program to provide operating managers with an in-house capability for obtaining assistance in resolving management problems. Conducts studies and reviews at the request of all levels of management designed to resolve management problems of operating systems.

b. Division of Organizational Analysis (FHA–22)

Develops and conducts an ongoing HCFA-wide organizational planning, analysis and appraisal program. Conducts studies of HCFA organizational and functional arrangements and develops plans for assimilating new or modified functions into the HCFA organization. Provides advice and assistance to HCFA managers in the development of organizational proposals. Reviews and analyzes proposals to establish, abolish, or change organizational structures and functional statements. Coordinates the organizational approval process and prepares recommendations to the Director, Office of Management and Budget, the Associate Administrator for Management and Support Services, and the Administrator on all proposed

organizational changes. Initiates special management analysis studies concerning delegations of authority, position management, organizational/functional activities and other studies concerning functional activities including the proper placement of functions within HCFA and the relationships of HCFA's functions to those of other Federal and non-Federal organizations. Designs, develops, implements and maintains a system for initiating, analyzing, reviewing and approving HCFA-wide program and administrative delegations of authority. Initiates and develops requests for new or revised delegations from the Secretary or other Office of the Secretary (OS) components to the Administrator of HCFA. Analyzes proposed delegations to and within HCFA and conducts periodic studies of existing delegations to determine their appropriateness and the need for amendments. Develops procedures for the coordination and control of interagency agreements. Manages the HCFA interagency agreement approval process. Maintains the official HCFA records for organizational structures, functional statements, delegations of authority, administrative codes and interagency agreements. Develops administrative policies in all of the functional areas described above. Manages HCFA's Consultant Services (8–15) program to insure compliance with OMB Circular A–120. Manages HCFA's A–76 (Commercial and Industrial Activities) program by maintaining inventories of activities, preparing periodic reports, and reviewing completed cost comparisons for completeness and compliance with OMB Circular A–76. Develops administrative policy for and monitors HCFA-wide activity in the control and dissemination of management directives and administrative issuances. Conducts studies to identify areas in which these policies and procedures do not currently exist and works with the affected components to develop the necessary guidelines. Reviews cross-cutting issuances to assure adequate coordination of decisionmaking between affected components. Develops lists of potential indicators of performance as a by-product of policy and procedures analysis functions.

c. Division of Public Information Collection (FHA23)

Develops the annual Information Collection Budget (ICB) and monitors the Agency's performance against approved budget levels insuring that HCFA operates within the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Develops administrative policies, procedures and control mechanisms for the implementation of HCFA-wide programs for paperwork reduction and the clearance of public-use data collections. Monitors compliance with these programs. Assesses the need for public-use data collections; negotiates with components in those situations where the need for the information no longer exists, or where the frequency of scope may be reduced. Monitors and reviews regulations, notices, issuances contracts, and other like decuments to insure that all public-use information collections are necessary and are approved. Negotiates with the Executive Office of Management and Budget (EOMB) and the Office of the Assistant Secretary for Management and Budget (ASMB) in carrying out the responsibilities of the division.

3. Section FH.20.A.3.e. Procurement Policy Staff (FHA3–5) including functional statement and administrative code is deleted in its entirety.

4. Section FH.20.B. Bureau of Support Services (FHB) is amended by adding the following which will become the last three sentences:

Negotiates and administers agreements and provides ADP liaison between HCFA users, the Social Security Administration and other external organizations for the provision of ADP capacity and support services. Develops, coordinates and directs the HCFA ADP systems security program, including its application to Medicare contractors, in accordance with the EOMB, General Services Administration (GSA) and Departmental guidelines.

5. Section FH.20.B.2. Systems Policy and Planning Staff (FHB–2) is deleted in its entirety.

6. Section FH.20.D.3. Office of Information Planning and Development (FHE3) is deleted in its entirety.

7. Section FH.20.D.3. is further amended by adding a new organization title—Office of Information Resources Management (FHE4) including functional statements for the Office as well as a new subordinate division-level structure. The new section added will read as follows:

3. Office of Information Resources Management (FHE4)

Serves as the focal point for the planning and evaluation of HCFA's information systems and data standards development including coding conventions. Develops and assures compliance with HCFA's long- and short-range information plans and processes. Determines, through coordination with other components, information needed by HCFA to carry out its functions. Determines and assures compliance with internal HCFA Automated Data Processing (ADP) policies, standards and procedures including: information systems planning, systems approval, data base management, office automation, security and privacy. Provides systematic identification, assessment and certification of new, revised, or existing HCFA information systems and processes in accordance with Departmental and HCFA policies, standards and information plans. Accomplishes macro design and evaluation of prototype information systems. Develops and maintains an inventory of HCFA's information systems, files and data elements. Works with various components throughout the health care industry in the development of concepts, plans and policy to improve the efficiency and effectiveness of information management. Coordinates and provides liaison on information systems policy, planning and standards within HCFA and between HCFA and other governmental agencies and non-governmental groups (e.g., AMA, AHA). Serves as the HCFA lead in conducting, monitoring and evaluating selected paperwork burden reduction reviews.

a. Division of Information Systems Planning (FHE41)

Develops and assures compliance with HCFA's long-range and short-range ADP program information plans and processes. Determines, through coordination with other components, program information needed by HCFA to carry out its functions. Determines and assures compliance with HCFA ADP policies. Accomplishes macro design and evaluation of prototype program information systems.

b. Division of Information Systems Planning (FHE42)

Determines and assures compliance with HCFA ADP policies for information systems approval. Provides systematic identification, assessment and certification of new, revised, or existing HCFA Information systems and processes in accordance with Departmental and HCFA policies, standards and information plans.

c. Division of Data Policy and Standards (FHE43)

Determines and assures compliance with HCFA ADP policies in the area of data base management and office automation. Develops and maintains an inventory of HCFA's information systems, files and data elements for

both programmatic and administrative systems. Coordinates and provides liaison on program information systems policy, planning and standards within HCFA and between HCFA and other governmental agencies and non-governmental groups (e.g., AMA, AHA). Works with various components throughout the health care industry in the development of concepts, plans and policies to improve the efficiency and effectiveness of information management. Serves as the focal point for the planning and evaluation of HCFA's information systems and data standards development, including coding conventions.

8. Section FH.20.B.3. Office of Administrative Systems (FHB3) is amended by deleting the ten-word phrase, "End-Stage Renal Disease master file and cost analysis systems." The phrase to be deleted starts on line 9 of the section after the word "systems" and ends on line 11 just prior to the word "operational."

9. Section FH.20.B.3.b. Division of Program Management Systems (FHB32) is amended by deleting the ten-word phrase, "End-Stage Renal Disease master file and cost analysis systems." The phrase to be deleted starts on line 10 of the section after the word "systems" and ends at the end of line 11.

10. Section FH.20.D.2. Office of Statistics and Data Management (FHE2) is amended by deleting the functional statement for the Office in its entirety as well as deleting the functional statements only for the Office's four subordinate divisions in their entirety, i.e., section FH.20.D.2.a., FH.20.D.2.b., FH.20.D.2.c. and FH.20.D.2.d. New Office and divisional statements will replace the deleted ones. The organizational titles and administrative codes will remain the same. The new functional statements for section FH.20.D.2. are as follows:

2. Office of Statistics and Data Management (FHE2)

Directs the development, maintenance and publication of HCFA program statistical information. Designs and manages systems and computer programs to establish and maintain HCFA statistical files and produces information from these files. Disseminates HCFA program date through a variety of media including published notes and bulletins, annual program statistical series and an executive data compendium. Provides health statistical information in response in inquiries on HCFA programs. Develops special purpose statistical data bases for supporting HCFA responsibilities in areas such as cost containment, end-stage renal disease, impact analysis of proposals for program changes and special research and evaluation studies.

a. Division of Data Production (FHE21)

Designs, develops and maintains the continuous operation of computer systems which prepare the statisitcal files and reports required to measure and evaluate the effectiveness of HCFA programs. Develops and maintains data base systems, file management systems, data storage techniques, information retrieval systems and systems documentation. Establishes user files for the Bureau of Data Management and Strategy (BDMS) ans other HCFA components on an ongoing basis. Prepares special purpose data bases for actuarial estimates, end-stage renal disease purposes, and demonstration evaluations. Provides operations support to BDMS components. Develops descriptive statistical tabulations for publication.

b. Division of Data Standards and Quality (FHE22)

Develops standards for and monitors the quality and statistical reliability of data received and processed by the Office of Statistics and Data Management (OSDM) including quality control activities for decriptive Medicare statistical information for publication. Evaluates and participates in determining data requirements and optimum methodologies for collecting, organizing and retrieving the required statistical data. Develops and maintains the Hospital Cost Report Information System; an automated central data collection, processing and report generation system for institutional cost report data. Monitors and improves the accuracy and completeness of information obtained from HCFA contractors and other sources prior to compilation of statistical data. Prepares and maintains a file documentation library and consults on appropriate utilization and limitations of HCFA statistical data. Coordinates with other BDMS divisions for producing ongoing statiscal series and numerous ad hoc data requests. Arranges for necessary revisions in OSDM source records due to legislation or changes in administrative operations.

c. Division of Systems Development and Statistical Programming (FHE23)

Coordinates the development and use of special purpose statistical data bases required for supporting HCFA in such areas as cost containment, impact analysis of proposals for changing health care financing programs, special research and evaluation studies and for general data dissemination. Provides statistical services, mathematical modeling and simulation, systems analysis and statistical programming for analyzing Medicare, Medicaid and End-Stage Renal Disease (ESRD) data. Designs data bases and software packages for scientific applications and special purpose information retrieval and processing in support of projects undertaken by HCFA. Processes and disseminates nonrecurring technical documents and information.

d. Division of Information Analysis (FHE24)

Conducts evaluations and statistical analyses of health data for a variety of HCFA applications and dissemination. Provides statistical data, prepares estimates, and conducts issue-related analyses on health-related programs in response to questions from legislators, program administrators, policymakers and health specialists in the public and private sectors. Develops, prepares and publishes Medicare program statistical information and combined Medicare/Medicaid reports for use in evaluation of current HCFA programs and proposed modifications, as well as for providing public accountability of program activities.

• Section FP.20. Office of the Associate Administrator for Operations (FP) (Functions) is amended by the following actions:

1. Section FP.20.A. Bureau of Program Operations (FPA) is amended by deleting the functional statement only for the Bureau of Program Operations and then every subsequent organization title, functional statement and administrative code thereafter within Section FP.20.A. The deleted sections are to be replaced by the following updated functional statements, organization titles and administrative codes. (Wherever possible, current administrative codes have been retained.)

A. Bureau of Program Operations (FPA)

Provides direction and technical guidance for the nationwide administration of HCFA's health care financing programs. Develops, negotiates, executes and manages contracts with Medicare contractors. (State survey activities are performed by HSQB.) Manages Medicare/Medicaid financial management systems and national budgets for States and Medicare contractors. Establishes national policies and precedures for the procurement of claims processing and related sevices from the private sector.

Defines the relative responsibilities of all parties in health care financing operations and designs the operational systems which link these parties. directs the establishment of standards of performance for contractors and State agencies (excepts State survey agencies). Prepares recommendaions regarding terminations, awards, penalties, nonrenewals or other appropriate contract actions. Establishes national operational policy and procedures in accordance with the standards contained in 4 CFR Parts 101–105 of the joint General Accounting Office/Department of Justice regulations for contractor recovery of overpayments. Directs the processing of Part A beneficiary appeals and beneficiary overpayments.

1. Executive Office (FPA–1)

Develops, coordinates and implements a Bureau management program which includes operational analysis, organizational analysis and planning, management information, internal Bureau financial management including formulation and execution of the Bureau's budget, execution workplanning programs, manpower utilization and personnel administration. Develops and implements a variety of Bureau-level program and administrative delegations of authority. Coordinates, monitors and assesses Regional Office operations in areas of Bureau jurisdiction and ensures regional participation in formulating Medicare and Medicaid operating policies and procedures. Coordinates for the Director, Bureau of Program Operations (BPO), matters of Bureau policy. Provides Bureau-wide guidance and technical assistance on correspondence tracking and control procedures and on standards of content for correspondence and memoranda. Serves as the primary focal point for the Bureau on operational as well as administrative inquiries. coordinates Bureau replies on audit reports received from the General Accounting Office (GAO), Office of the Inspector General, etc.

2. Office of Program Administration (FPA3)

Administers contracts with private organizations to perform Medicare program operations. Develops, negotiates, maintains and modifies all primary contracts and agreements with intermediaries, carriers and other organizations, such as Health Maintenance Organization (HMOs), required under Titles XVIII and XIX of the Social Security Act. Provides direction and guidance to Central Officer and Regional Office staff on program contracts and contracting activities. Develops, directs and implements program contract procurement including design, development and evaluation of related experiments. Establishes and prioritizers expenditure levels for Medicare contractors and for Medicare experiments and procurements. Develops, implements and administers national policies, standards and administrative procedures for the Medigap program. Establishes policies and procedures to be used by all HCFA contractors and States in procurement of equipment, facilities management, Medicaid Management Information System (MMIS), software and other services. Investigates operating problems which are national in scope and recommends corrective action. Initiates and implements operational experiments. Assesses operational impact of program experiments proposed by HCFA's research and demonstration staffs. Develops operational policies and procedures and administrative initiatives affecting the health of low income children. Administers the Early and Periodic Screening, Diagnosis and Treatment program (EPSDT) under. Title XIX. Coordinates HCFA resources and activities with other Departmental operating divisions to ensure achievement of the Department of Health and Human Services (DHHS) Child Health Strategy. Establishes quantitative standards and qualitative requirements for contractors, State agencies (other than State survey agencies) and fiscal agents participating in the Medicare and Medicaid programs or in experimental arrangements. Coordinates responses to interested organizatins prior to formal issuance of new standards and requiremens.

a. Division of Procurement (FPA31)

Develops, directs and implements HCFA program contract procurement policies and activies. Directs and supports contractor, State and Regional Office program contract procurement activities. Reviews contractor configuration and recommends contractors to serve in specified areas. Establishes policies and procedures to be used by all HCFA contractors and States in procurement of equipment, facilities managements, AMMIS, software and other services. Reviews and recommends approval of Request for Proposals (RFPs) and evaluates Regional Office oversight of data processing procurement activities. Prepares procurement-related policy, regulations, general instructions and operating procedures. Formulates national Medicare contractor strategy, including scope of related experimental contracting. Makes recommendations regarding program contract actions, i.e., nonrenewals, terminations, consolidations, etc. Directs and participates in the design, development and evaluation of HCFA contract-related operational experiments. Designs, directs and a HCFA's Central Office representative, participates in all transition activities relating to contract limitations , terminations, extensions, nonrenewals and awards of contracts, including incentive-type agreements. Maintains responsibility for the smooth and orderly transition of contract, administrative and program functions and duties.

b. Division of Contracts (FPA3)

Develops, maintains, negotiates and modifies all primary contracts and agreements with intermediaries, carriers and State agencies (except State survey agencies) and other organizations as provided under Titles XVIII and XIX of the Social Security Act including those awarded on an experimental basis. Develops procedures for award, nonrenewal, termination, extension and amendments of contracts. Approves program contracts and proposals to contract by State agencies under Title XIX of the Act. Serves as the Bureau of Program Operation's representative in adjudicating contractor claims because of changes in work statements or other disputes involving the selection or non-selection of contractors. Directs programs contract related surveys requested by either the Executive or Legislative Branches of the Federal government. Provides direction and guidance to Central Office and Regional Office staff on program contracts and contract procurement and maintains an oversight role on regional activity in the area of Titles XVIII and XIX contracting. Reviews States' Memoranda of Understanding with PSROs in support of the Health Standards and Quality Bureau. Directs and coordinates all Bureau Title XIX compliance activities. Evaluates State compliance with program requirements and makes recommendations concerning formal program compliance hearings and the resolution of issues. Administers a prior consulation program to obtain comments from Medicare contractors and providers on proposed HCFA operating policies and instructions. Coordinates Fiscal Intermediary Group (FIG) and Carrier Representative Group (CRG) activities. Responsible for designation of intermediaries for chain organization issues, other policies

relating to intermediary availaibity, and provider nominations.

c. Division of Operational Initiatives (FPA33)

Serves as focal point in the Bureau for legislative matters affecting program operations. Recommends and develops legislative proposals and regulations for contractor and State program operations. Develops and implements operational experiments other than contract experiments and serves as liaison with the Office of Research and Demonstrations and other HCFA components involved in program initiatives impacting on operations. Investigates operating problems which are national in scope and develops corrective action programs. Evaluates all operating experiments, including contract experimentation and prepares reports for Congress and others. Coordinates the Bureau's regulation review activities. Directs the planning, development and execution of HCFA's strategy to improve its Third Party Liability (TPL) recovery programs. Develops, implements and administers national policies, standards and administrative procedures for the Medigap program. Coodinates the Bureau's replies on reports received from the General Acounting Office (GAO) and the Office of the Inspector General (OIG) service delivery assessment reports, etc. Serves as the focal point within HCFA on operational matters of child health. Determines the need for operational instructions to implement new program policies and legislation and coordinates the development of such instructions within BPO. Serves as the focal point in HCFA for the operational aspects of special programs or projects (e.g., Rural Health, Home and Community Based Waivers, etc.) and for interprogram matters (e.g., coordination of Medicare and Medicaid with the Indian Health Service programs) that require interagency/interprogram coordination.

d. Division of Operations Standards (FPA38)

Establishes qualitative and quantitative performance standards and requirements for Part A and Part B Medicare contractors and Medicaid State agencies and fiscal agents. In terms of cost, quality and timeliness of operations, as well as adequacy of beneficiary services, quantifies and describes the acceptable levels of performance by which intermediaries, carriers, State agencies and fiscal agents are evaluated as participants in the Medicare or Medicaid programs or in operational experiments. Negotiates with Regional Offices, contractors, State agencies, fiscal agents, other HCFA components and national public and private professional organizations to arrive at a consensus on proposed or revised performance standards requirements prior to their formal issuance. Analyzes all quantitative and qualitative standards and program requirements to assess their operational validity and makes recommendations for appropriate changes. In response to special program needs, designs, develops and conducts special studies and/or coordinates with other HCFA components on the conduct of demonstration projects relating to the areas of responsibility of the Office of Program Administration.

3. Office of Program Operations Procedures (FPA4)

Develops and promulgates specifications, requirements, methods, systems, standards and procedures to implement and maintain operational systems for Medicare and Medicaid programs including detailed definitions of the respective responsibilities of providers, State agencies, contractors, HCFA and the beneficiaries of HCFA programs. Reviews and evaluates systems, systems plans and proposals and Automated Data Processing (ADP) acquisition/modifications involving carriers, intermediaries and State agencies and approves Federal Financial Participation for State Medicaid systems. Plans, directs and coordinates operational policy, systems and procedures for the establishment and maintenance of Medicare entitlement, premium billing and collection and Medicaid eligibility. Directs and coordinates systems security with respect to Medicare and Medicaid contractors and State agencies.

a. Division of Systems Requirements (FPA41)

Develops standards, procedures, guidelines and methodologies pertaining to the review, evaluation and assessment of contractors and State agency automated systems to determine their compliance with published Federal requirements. Designs and employs test criteria to determine the accuracy and effectiveness of claims processing systems. Reviews State agency or fiscal agent MMIS for approval of increased Federal Financial Participation. Provides technical assistance to the Office of Program Administration and Regional Offices with respect to Electronic Data Processing (EDP) procurements and reviews proposed hardware/software modifications and/or equipment upgrades. Establishes technical specifications for EDP procurement procedures and, where appropriate, conducts onsite reviews to determine the necessity and accuracy of such procurement requests. Serves as a clearinghouse for technical innovations and cost effective methodologies pertaining to the state of the art in EDP development. Provides technical support for experimentation projects pertaining to the combined processing of Medicare Part A with Part B claims and Medicare with Medicaid claims.

b. Division of Systems Planning and Development (FPA42)

Develops, directs and cooordinates systems plans and studies for the effective integration of all Medicare and Medicaid automated and nonautomated processing systems at the State agency or contractor level. Designs and conducts studies, demonstrations and surveys to improve Medicare and Medicaid operational systems, methods and procedures. Designs and tests new automated information systems and model systems. Conducts, reviews and performs analyses for future development of model systems functions in such areas as data management, data base systems analysis and design, distributed processing, terminal operations, mini-computers and operational security. Coordinates systems demonstration projects and participates in the review and evaluation of systems-related projects. Plans, develops and monitors systems requirements for Titles XVIII and XIX and coordinates systems requirements for related programs such as child health assurance.

c. Division of Eligibility Systems (FPA43)

Plans, directs and coordinates the development and improvement of operational policy, systems and procedures for the establishment and maintenance of Medicare entitlement records, for the billing and collection of Medicare premiums, for administering the State buy-in agreements and for coordinating eligibility for individuals covered under the Medicare and Medicaid programs. Assists States to plan, develop and implement Medicaid eligibility systems either as separate eligibility systems or in coordination with other related eligibility systems. Assesses the impact of operating systems on beneficiaries of HCFA programs and develops proposals to better meet their needs. Reviews adequacy of services furnished by the Social Security Administration (SSA) in

establishing eligibility for Medicare beneficiaries and collecting premiums. Plans, directs and coordinates the development and improvement of operational policy, systems and procedures at the contractor or State agency level with respect to systems security.

d. Division of Methods and Systems Procedures (FPA44)

Directs the development and issuance of specifications, requirements, procedures, functional standards and instructional material to implement and maintain operational systems for precessing Medicare and Medicaid claims and defining their applications to Medicare contractors, providers and suppliers of services, HCFA, States and beneficiaries of HCFA programs. Prepares general systems plans and develops requirements for the detailed design and programming for model systems used by Medicare contractors and by States in the administration of the Medicaid program. Plans, conducts and evaluates studies aimed at long-range improvements in systems, methods and procedures as they relate to the administration of the Medicare and Medicaid programs and integration of systems within the framework of HCFA policies, goals and objectives and to promote efficiency and cost effectiveness. Provides direction to, and liaison with, HCFA components involved in the maintenance of health insurance utilization records and contractor-HCFA date exchange systems and procedures.

4. Office of Financial Operations (FP A7)

Sets policies and procedures by which State agencies (except State survey agencies), contractors and Regional Offices prepare and submit periodic budget estimates. In consultation with other HCFA and Bureau of Program Operations (BPO) components, develops and negotiates the national budget for Medicare contractors, including workload and funds estimates. Controls and manages the Medicare cash flow and related banking activities. Compiles estimates of benefit payments and administrative costs for the State Medicaid program. Issues and administers the Medicaid grant awards. Reviews all State Claims for Federal reimbursement under Title XIX. Reviews periodic contractor and State agency expenditure reports to evaluate budget execution and determine the allowability of costs. Provides definitive HCFA interpretation of Medicaid administration and training cost reimbursement policy. Issues clarifications to Regional Offices regarding operational Federal Financial Paticipation (FFP) issues. Prepares analyses of Medicare and Medicaid expenditure trends and patterns. Determines allowability of State Medicaid reimbursement claims, serves as focal point in Central Office for defense of disallowances before the Departmental Grant Appeals Board (GAB) and interprets and disseminates GAB decisions to pertinent HCFA staff. Ensures implementation of GAB decisions. Reviews contractor, State agency and State fiscal agent performance in determining the correct amount of provider, physician and supplier overpayments and assists contractors, State agencies and fiscal agents in negotiations related to the acceptability of the technique for determining the amount of overpayment and the methods of recovery. Prepares cases when compromises are not appropriate and overpayments are uncollectable and assists the Claims Collection Officer in preparing such cases for disposition. Prepares manual instructions concerning the procedures for recovery of provider cost report overpayments. Designs, implements and maintains a Medicare/Medicaid overpayment tracking system. Directs the processing of all Medicare (Part A) beneficiary overpayments and appeals. Plans, directs and coordinates the processing of claims submitted for reconsideration and hearings. Develops, plans and conducts a comprehensive program to incorporate Group Health Plans Operations into Medicare and Medicaid programs.

a. Division of Contractor Financial Management (FP A71)

Formualtes and approves the national budget for Medicare contractor administrative costs. Directs the Medicare contractor budget process. Develops, implements and monitors cash management letter-of-credit procedures for contractors and servicing banks. Sets requirements and procedures for contractors and Regional Offices to prepare and submit periodic budget estimates and reports. Analyzes and evualtes budget estimates submitted by contractors for ADP systems proposals. Participates in experimental contract Request for Proposal (RFP) preparation and proposal evaluation made by the Bureau of Program Operations (BPO). Participates in negotiations and approval of all related price adjustments. Reviews periodic contractor expenditure reports to evaluate budget execution and determinations of the allowability of costs. Designs, maintains and, as necessary, prepares specifications to revise the automated Contractor Administrative Cost Information System (CACIS). Analyzes contractor administrative cost data and trends. Directs and prepares instructions to guide Regional Offices in conducting reviews of specific financial management areas and reviews Regional Office performance to assure consistency in implementation of instructions. Interprets cost reimbursement principles and policies for contractors related to operational accounting issues. Determines compliance with accepted accounting principles and procedures.

b. Division State Agency Financial Management (FP A72)

Establishes policies and procedures by which Medicaid State agencies and Regional Offices submit periodic budget estimates and reports. Analyzes budget estimates and formulates the national Medicaid budget. Administers the State grants process for administrative and program payments. Reviews all State claims for Federal reimbursement under Title XIX. Reviews periodic State agency expenditure reports to evaluate budget execution and determine the allowability of costs. Reviews Regional Office disallowances of State claims for Medicaid reimbursements. Serves as focal point in the Bureau of Program Operations for defense of disallowance decieions before the Grant Appeals Board (GAB), analyzes and disseminates GAB decisions and monitors their implementation. Sets and interprets fiscal requirements and procedures for use by States and Regional Offices. Develops HCFA insturctions for regional staff concerning the financial review of the Medicaid program and reviews Regional Office performance to assure consistency in implementation of instructions. Directs and coordinates the fiscal aspects of the Title XIX program activities. Provides definitive HCFA interpretation of Medicaid cost rembursement policy for administration and training. Responsible for operational policies regarding avaliability of Federal Financial Participation (FFP), designation of appropriate FFP rates and for issuing interpretations to Regional Offices regarding operational FFP issues.

c. Division of Provider Overpayment (FP A73)

Analyzes capabilities of the Medicare/Medicaid intermediaries, carriers, fiscal agents and State agencies to ascertain the most efficient application of funds available for auditing providers and suppliers.

Develops approaches and methods to reduce the incidence of overpayments by suggesting modification of reimbursement practices and other circumstances that give rise to overpayments. Prepares manual instructions for Regional Offices, Contractors, State agencies and fiscal agents on the proper procedures for recovery of overpayments of Medicare and Medicaid funds. Analyzes, controls and monitors outstanding overpayments to assure that contractors, State agencies and fiscal agents are timely identifying and collecting overpayments. Advises and assists Regional Offices, contractors, State agencies and fiscal agents in negotiations with providers, physicians and suppliers relatiing to the acceptability of particular techniques of determining the amount of overpayments, the responsibility for repayment and the method of recovery. In cases for which recovery action is pursued, maintains the control system relating to the statute of limitations for filing suit and processes uncollectable overpayment cases. Provides the Claims Collection Officer with complete documentation regarding overpayment cases being referred to the U.S. Attorney.

d. Division of Beneficiary Appeals and Overpayments (FP A74)

Directs the processing of all Medicare (Part A) beneficiary appeals and overpayment. Plans, directs and coordinates the processing of claims submitted for reconsideration and hearings. Reviews decisions by the Office of Hearings and Appeals, SSA, with respect to the liability and amount of beneficiary overpayments. Evaluates and provides input to other HCFA components on the performance of contractors with respect to the processing of beneficiary appeals and overpayments.

e. Division of Group Health Plans Operations (FPA75)

Develops, plans and conducts a comprehensive program to contract with and make payments to Group Health Plans (Health Maintenance Organizations, Group Practice Prepayment Plans and Comprehensive Health Centers) for provision of services under the Medicare program. Coordinates and monitors the implementation with other HCFA and HHS components, as necessary, on problems involving capitation formulae, medical reimbursement policies, systems and data collection. Determines the payments to Group Health Plans and the amounts, methods and frequency of retroactive adjustments. Evaluates cost reporting and conducts a continuing audit program to determine final program liability. Conducts or participates in studies aimed at long-range improvements and the overall evaluation of the Group Health Plans. Develops, plans and conducts a comprehensive program to incorporate Group Health Plans into the Medicaid program.

2. Section FP.20.B. Bureau of Quality Control (FPC) is amended by deleting the functional statement only for the Bureau of Quality Control and then every subsequent organization title, functional statement and administrative code thereafter within Section FP.20.B. The deleted sections are to be replaced by the following updated functional statements, organizational titles and administrative codes. (Whenever possible, current administrative codes have been retained.)

B. Bureau of Quality Control (FPC)

Operates statistically based quality control programs and conducts problem-focused assessments in the areas of claims payment, institutional reimbursement, eligibility, third-party liability and utilization control and develops similar additional quality control programs which measure the financial integrity of Medicare and Medicaid. Following coordination with pertinent HCFA components, notifies carriers, fiscal intermediaries and State agencies of findings resulting from quality control programs. Makes recommendations to the Associate Administrator for Operations regarding financial penalties authorized and determined appropriate under regulations. Assists State Medicaid fiscal agents and Medicare contractors in improving the management of Federally required quality control programs. Develops, operates and manages a program for the performance evaluation of Medicare contractors and Medicaid State agencies and fiscal agents. Compiles operational and performance data for recurring and special reports to reflect status and trends in program operations effectiveness. Identifies significant trends and priority problems through comprehensive analyses of program operations and performance and evaluates findings surfaced through various assessment programs. Develops and conducts comprehensive analyses and studies of selected areas of policy and operations to evaluate the appropriateness, cost effectiveness or other impact resulting from implementation of law, regulations, policies or operational procedures and systems. Develops recommendations for specific policy or operational improvements based on assessment findings. Coordinates, monitors and evaluates all corrective action initiatives resulting from program assessment findings. Develops program-wide policies, regulations, procedures, guidelines and studies dealing with program effectiveness, oversight and improvement.

1. Executive Operations Staff(FPC–1)

Coordinates, for the Director, Bureau of Quality Control (BQC), matters of Bureau policy. Manages the development of Federal regulations prepared by the Bureau. Implements BQC correspondence tracking and control procedures including standards for style of correspondence and memoranda. Serves as primary contact point with the HCFA Office of Executive Operations. Exercises responsibility for BQC organizational planning, management analysis and informational functions, financial management, manpower control, training, administrative support activities, management advisory services, an Equal Employment Opportunity (EEO) program and related personnel and financial functions.

2. Office of Quality Control Programs (FPC2)

Designs and implements statistically based reviews and structural assessment programs to determine the overall effectiveness of quality control programs operated by carriers, intermediaries, State agencies, the HCFA Office of Direct Reimbursement and other related organizations. Develops and applies polices, standards and guidelines for quality control programs to provide uniform and comparative assessment of State and contractor performance in the areas of program eligibility and reimbursement, claims payment, utilization control and beneficiary services. Designs, develops and implements procedures for assessing adherence to requirements for various Medicaid Management Information System (MMIS) criteria. Designs and implements new or modified quality control programs to assure proper stewardship of Federal funds by carriers, intermediaries, State agencies and other HCFA-related organizations. Initiates recommendations for financial penalties and disallowances on the basis of formal review results. Evaluate Regional Office performance in monitoring quality control programs and conducting sample reviews. Participates with other HCFA components in developing

regulations, policies and procedures for program administration. Provides consultation and technical guidance to carriers, fiscal intermediates, State agencies and Regional Offices on quality control.

a. Division of Program Payment Assessment (FPC21)

Develops, implements and directs national quality control programs to determine the effectiveness of Medicare contractors' and Medicaid State agencies' performance in the area of claims payment. Assures uniform national assessment of contractor and State agency compliance with claims payment standards and program requirements. Designs, develops and implements procedures for assessing adherence to requirements for various Medicaid Management Information System (MMIS) criteria. Provides documentation and analysis necessary to initiate and support actions on sanctions that read from established claims payment quality control program incentives and corrective action requirements. Reviews and recommends action for adjudicating appeals of these sanctions. Promulgates guidelines and requirements for operation and direction of assessment and quality control programs. Establishes and operates systems for analyzing results of assessment and quality control programs identifying performance deficiencies. Develops, implements and operates a comprehensive system for assessing and assuring adherence to requirements for operating quality control and assessment systems. Systematically reviews established quality control and assessment programs and implements appropriate enhancements. Prepares recurring and special reports of quality control findings in the area of claims payment to document performance assessment results, present comparative analyses of individual State and contractor performance, interpret quantifiable findings and to indentify trends, significant problems and corrective action indicators. Consults with other components in evaluating the impact of existing and proposed program requirements on claims payment effectiveness and in developing proposals for legislative, policy or operational reform.

b. Division of Institutional Reimbursement Assessment (FPC22)

Develops, implements, directs and operates national quality control programs to determine the effectiveness of Medicare contractors' and State agencies' reimbursement to institutional providers, including assessment of cost-based, prospective and alternative reimbursement systems and oversight of chain providers' home office costs. Assures uniform national assessment of Medicare contractors' and State agencies' compliance with institutional reimbursement performance standards and program requirements. Promulgates guidelines and requirements for direction of reimbursement assessment and quality control programs. Establishes and operates systems for analyzing results of reimbursement assessment and quality control programs, assessing performance, identifying performance deficiencies and trends and determining need for new tracking and evaluation techniques. Develops, implements and operates a comprehensive system for assessing and assuring adherence to requirements for operating institutional reimbursement, quality control and assessment programs. Systematically reviews established reimbursement quality control and assessment programs and implements appropriate enhancements reflecting operational, legislative and administrative changes. Prepares recurring and special reports of operational effectiveness in institutional reimbursement to document performance assessment results, present comparative analyses of individual State and contractor performance, interpret quantifiable findings, and identify trends, significant problems and appropriate corrective actions. Consults with other components in evaluating the impact of existing and proposed program requirements for effective reimbursement to institutional providers and in developing proposals for legislative, policy or operational reform.

c. Division of Program Benefits Assessment (FPC23)

Develops, implements, directs and operates national quality control programs to determine the effectiveness of Medicare contractors' and Medicaid State agencies' performance in the areas of eligibility determinations and beneficiary services. Assures uniform national assessment of contractor and State agency compliance with eligibility and beneficiary service standards and program requirements. Promulgates guidelines and requirements for operation and direction of assessment and quality control programs. Establishes and operates systems for analyzing results of assessment and quality control programs identifying performance deficiencies and trends. Provides documentation and analysis necessary to initiate and support actions on disallowances, sanctions and corrective action requirements, and on adjudication of appeals of disallowances and sanctions. Develops, implements and operates a comprehensive system for assessing and assuring adherence to requirements for operating quality control and assessment systems. Systematically reviews established quality control and assessment programs and implements appropriate enhancements. Prepares recurring and special reports of quality control findings in areas of eligibility and beneficiary services to document performance assessment results, present comparative analyses of individual State/contractor performance, interpret quantifiable findings and to identify trends, significant problems and corrective action indicators. Develops, implements, directs and operates mathematical/statistical procedures and data generating systems for all BQC quality control assessment systems and special studies. Designs and maintains sampling procedures, formulas for calculating findings, data reporting systems and procedures for statistical analyses for Office programs. Consults with other components in evaluating the impact of existing and proposed program requirements on eligibility and beneficiary services' effectiveness, and in developing proposals for policy or operational reform.

3. Office of Program Quality Evaluation (FPC3)

Conducts comprehensive analyses of overall program operations and performance and evaluates key findings surfaced through multiple assessment programs. Compiles operational and performance data for recurring and special reports to reflect status and trends in program operations effectiveness. Identifies significant trends and priority problems, draws broad conclusions about vulnerable program management areas and identifies emerging problem areas. Provides information and analysis necessary for long-range assessment planning, and develops recommendations for more effective oversight in priority areas. Provides data and systems analysis support to other components for production and interpretation of program operations and performance indicators.

a. Division of Program Quality Evaluation (FPC31)

Analyzes a broad range of program operations indicators and key findings from all BQC assessment programs. Prepares summary interpretive reports reflecting overall analysis of key

operational performance findings. Serves as a resource regarding significant findings and trends. Provides a comprehensive evaluation of significant trends in the cost and effectiveness of program operations and identifies priority or recurring problems surfaced through multiple assessment approaches. Identifies indicators of apparent causes and effects and draws broad conclusions about vulnerable program areas. Identifies emerging and potential problem areas and develops recommendations for refocusing BQC assessment programs. Serves as the focus for information and analysis to support long-range planning of Bureau activities.

b. Division of Reports and Analysis (FPC32)

Designs and develops a system of reports that generates Medicare contractor and Medicaid State agency and fiscal agent data regarding program administration. Reviews contractors', State agencies' and fiscal agents' reporting systems for consistency and ability to transmit the required information and prepares appropriate reporting changes. Prepares written interpretations and analyses of operating data to provide other Bureau components with information necessary in conducting performance evaluations. Develops specifications for an automated administrative information system for Medicare and Medicaid. Coordinates the development of the data set. Prepares recurring and special reports of status and trends in program administration and operational effectiveness. Provides technical assistance to Regional Offices, contractors, State agencies and fiscal agents on reporting requirements.

c. Division of Quality Control Systems Analysis (FPC33)

Provides the Bureau of Quality Control with internal systems expertise to produce and interpret operational performance indicators from the manipulation of computer-stored financial and program data and to review the integrity of operating systems. Identifies and accesses operating computer-stored programs and financial information in order to develop lead information for in-depth reviews by other BQC units or the Division of Quality Control Systems Analysis directly. Develops methods and programs for manipulating operating data and statistics to identify trends and to improve interpretive analyses through cross comparison of key data. On the basis of this information or lead information from other sources, tests selected Medicare and Medicaid systems onsite to identify system deficiencies which may contribute to erroneous payments. Reviews model systems or other systems requirements developed by the Bureau of Program Operations or other HCFA components in order to assure the capability of HCFA-reimbursed systems to prevent erroneous payments.

4. Office of Operational Reviews (FPC6)

Develops, conducts and/or directs Regional Office (RO) participation in intensive analyses of selected areas of quality control and asessment policy and operations. Assessments are conducted to document and evaluate the incidence and cause/effect of specific priority problems or other impact resulting from implementation of laws, regulations, policies or operational procedures and systems. Where inappropriate payments exist, develops analytical reports and specific recommendations for more effective policy or operational controls. Makes independent, nonroutine assessments of systemic policies and operational processes and concerns to asure that results are consistent with the needs and goals of the Medicare/Medicaid programs. Develops program-wide regulations, procedures, guidelines and studies dealing with program effectiveness, oversight and improvement. Develops, implements and maintains programs for comprehensive performance evaluation of Medicare contractors and Medicaid State agencies and fiscal agents to compare and consolidate operational and cost effectiveness data with findings from a variety of assessment and quality control programs. Provides technical direction and guidance to ROs in their overall evaluation of the performance of contractors, State agencies and fiscal agents. Assures timely production of individual and composite reports which document and evaluate the performance of State agencies and Medicare contractors. Oversees corrective action (CA) policies and processes affecting State agencies and Medicare contractors, including criteria for corrective action plans, assessment of value of planned and implemented corrective actions monitoring of CA progress and effectiveness, and recommendations for imposing or waiving penalties and fiscal disallowances. Provides overall counsel to Bureau management, Central Office and field components in the priorities, direction and accomplishments of the Office.

a. Division of Issue Analysis (FPC61)

Designs and conducts problem-focused analyses of available information about program performance, operations and expenditures to evaluate the probable cause, incidence and impact of selected program problems. Reviews and evaluates the effectiveness of selected policies and operational processes to ensure fiscal accountability and consistency with program management objectives. Where conclusions can be supported by comparative analyses of available data, prepares interpretive reports to advise policy and operating officials of key findings and to present documented recommendations for problem resolution. Identifies areas where further assessment and documentation are needed to fully interpret problem indicators, explain probelm causes or support recommendations for improvement. Accomplishes preliminary research, provides lead information and develops detailed proposals for more in-depth problem assessment and documentation by other components. Assures that recommendations surfaced through Office assessments are fully documented, reflect relevant collateral sources and concerns and are effectively presented so that appropriate action may be taken. Directs Bureau liaison activity relating to sanctions, civil money penalties, audits and other actions initiated by external monitoring agencies. Identifies Office data needs and provides specialized analyses to Office components. Develops guidelines and evaluation criteria, and monitors and evaluates all corrective action activity flowing from review and assessment recommendations having to do with improving program quality and effectiveness. Prepares recommendations concerning limitations, withholding of Federal funds, penalties, sanctions, or adverse actions of Medicare contractors and/or Medicaid State agencies. Coordinates with BERC, BPO and other HCFA components to assure that program review recommendations are appropriately resolved. Evaluates and takes necessary action to refer all proposed administrative remedies regarding compliance of State agencies to appropriate HCFA authorities. Acts as clearinghouse for all recommended operational programmatic changes forwarded by Regional Office components.

b. Division of Program Effectiveness Reviews (FPC62)

Undertakes in-depth assessment of selected programmatic areas to determine whether established policy and operational criteria are effectively met to thoroughly evaluate the appropriateness and cost effectiveness of selected HCFA-wide operational procedures and systems and to supplement available data with additional documentation and understanding of priority problems. Coordinates with policymaking officials in designing reviews, developing protocols and conducting reviews. Conducts and/or directs RO participation in reviews. Recommends specific policy or operational modifications directed to parties responsible for effectuating change. Consults with HCFA policy and operational components and prepares specific recommendations for regulatory and legislative initiatives to enhance cost-effective program management. Develops and conducts studies to evaluate the potential impact resulting from implementation of proposed law, regulation, and/or policy and determines the need for improved policy or operational controls to assure fiscal accountability and effective program management. Conducts special surveys in critical areas, identifying problems and barriers to problem resolution and developing and recommending alternative solutions. Develops, conducts and/or direct RO participation in pilot reviews of selected areas to determine the potential benefit of conducting comprehensive analyses of selected program problem areas. Determines data analysis needs and develops specifications for use in conduct of pilot studies and national effectiveness reviews. Recommends program-wide policies, regulations, procedures, guidelines and studies dealing with program effectiveness, oversight and improvement.

c. Division of Performance Analysis (FPC63)

Develops, implements and conducts a program for comprehensive performance evaluation of Medicare contractors, Medicaid State agencies and fiscal agents. Develops, implements and maintains the Contractor Performance Evaluation Program (CPEP) and the State Assessment Program for the evaluation of Medicare contractors, State agencies and fiscal agents against established performance standards. Provides technical direction and guidance to Regional Offices in their overall evaluation of the performance of contractors, State agencies and fiscal agents. Analyzes CPEP and State assessment results, in conjunction with relevant operational and cost data, to determine the operational effectiveness of individual contractors, State agencies or fiscal agents. Prepares composite evaluation reports and comparative rankings of individual contractor and State agency performance. Coordinates the review of Regional Office evaluations of contractor and State agency conformance with Central Office policies and procedures. Identifies significant operational problems and/or issues of national concern with respect to contractors and State agencies and makes recommendations for corrective action to appropriate Office of the Associate Administrator for Operations (OAAO) components. Identifies pervasive problems and surfaces areas needing further evaluation by other Bureau components.

3. Section FP.20.C. Health Standards and Quality Bureau (FPE) is amended by deleting the functional statement only for the Health Standards and Quality Bureau and then every subsequent organization title, functional statement and administrative code thereafter within Section FP.20.C. The deleted sections are to be replaced by the following updated functional statements, organization titles and administrative codes. (Wherever possible, current administrative codes have been retained.)

C. Health Standards and Quality Bureau (FPE)

Provides leadership and overall programmatic direction for implementation and enforcement of health quality and safety standards for providers and suppliers of health care services and evaluates their impact on the utilization, quality and cost of health care services. Plans, develops and establishes procedures and guidelines for administering and evaluating the nationwide Medicare and Medicaid survey and certification program. Monitors and validates the process for certifying that participating providers and suppliers are in compliance with established conditions and standards. Responsible for implementation and operation of professional review and other medical review programs. Administers a comprehensive system for assessment of individual professional and medical review organizations to determine compliance with program requirements and to document the effectiveness and impact of their activities. Establishes specifications for information and data reporting, collection and systems requirements for the survey and certification, professional review and other medical review activities.

1. Office of Program Support (FPE2)

Provides management of personnel, financial material and data systems resources within the Health Standards and Quality Bureau (HSQB) including work planning, the administrative budget, management analysis, procurement, contracts and grants and other areas of administration. Provides for the Bureau, management of staff personnel utilization and personnel programs including staff placement, personnel actions and employee appraisal systems. Manages for the Bureau a variety of management planning, reporting and monitoring systems required by HCFA and HHS. Formulates the Bureau's administrative budget and operating plans including trends and reprogramming as necessary. Provides management of the Bureau's records, files and correspondence progams. Provides Bureau policy, standards and procedures governing the design, development and maintenance of publications and forms. Manages Bureau printing, duplicating, reprographics and distribution services. At the Bureau level, interprets and implements Department and HCFA management and administrative policies, procedures and systems and conducts analyses as required. Maintains liaison with HCFA, the Department and other government components in order to provide management advice and support to the Bureau. Participates in assessing and evaluating HSQB organizational performance and compliance in carrying out HSQB and HCFA policies and procedures. In accordance with policies and standards established by the Bureau of Data Management and Strategy, develops data systems procedures and requirements. Monitors the development and design of data systems for AAO components. Designs and prepares computer programming for major AAO systems, program-related data base systems and special systems due to legislative or program initiatives. Provides technical assistance to AAO components to facilitate the implementation of data systems, data quality control, analysis and reporting.

2. Office of Medical Review (FPE3)

Coordinates implementation of professional review and other medical review programs. Develops and implements operational procedures and instructions relating to fiscal management of professional review

programs, including the principles of reimbursement for review, development of program related budgets, accounting procedures, reports management, statistical reporting, and auditing requirements applicable to such professional review organizations. Establishes guidelines relating to the oversight of professional and other medical review organizations. Provides advice and assistance to Regional Office staffs and other organizations conducting professional review concerning fiscal and program management activities. Prepares issues for the Office of the General Counsel reviews relating to legal aspects of professional review and quality assurance.

a. Division of Program Operations (FPE31)

Provides overall programmatic and technical management of contracts and any other financing agreements with organizations conducting professional and medical review including establishment of expenditure levels, final approval of funding requests and resolution of audit findings. Provides program guidance and assistance to Regional Office staff in performance of their responsibilities. Communicates and interprets HCFA medical review policies to professional and medical review organizations and provides or arranges for the provision of technical assistance. Administers a comprehensive system for assessment of individual, professional and medical review organizations to determine compliance with program requirements and to document the effectiveness and impact of their activities. Initiates, designs and carries our studies and analyzes data provided through HSQB data systems on a routine and special basis.

b. Division of Reveiw Programs (FPE32)

Develops and interprets methodologies and systems for all programs related to professional review of medical necessity, reasonableness and appropriateness of services (e.g., ancillary, inpatient, ourpatient, or suppliers or practitioner care) reimbursed under Titles V, XI, XVIII and XIX of the Social Security Act. Professional review includes review performed by PSROs, fiscal intermediaries and carriers, hospital utilization review committees and Medicaid State agencies. Develops and interprets policies related to the conduct of professional review at various levels of care. Develops and interprets operational policies for the involvement of physicians and other health care professionals in the conduct of professional review. Develops, with other office of medical review components, criteria for objective setting and the application of norms, criteria and standards of professional review. Develops criteria for evaluation of professional review. Develops and interprets medical review policies regarding the impact of review on technical issues such as waiver of liability, inappropriate level of care, "grace days", and denials of reimbursement based on medical necessity with attendant reconsiderations and appeals. Monitors legislative, regulatory and operational developments related to medical review. Identifies and initiates necessary changes resulting from such developments. Develops legislative agenda and proposals related to statutory changes in medical review policies or procedures. Serves as a technical resource within the Bureau of resolving medical review issues and providing assistance on other program decision areas.

3. Office of Survey and Certification (FPE5)

Develops and establishes procedures and oversees the implementation and enforcement of health and safety standards for providers and suppliers of health services under Medicare, Medicaid and other Federal health programs. Administers and monitors the nationwide Medicare and Medicaid provider and supplier certification program. Develops procedures and guidelines for regional certification responsibilities under Medicare and Medicaid. Monitors and validates the application of health and safety standards and the adherence to Medicare and Medicaid certification program. Develops procedures and guidelines for regional certification responsibilities under Medicare and Medicaid. Monitors and validates the application of health and safety standards and the adherence to Medicare and Medicaid policies by State survey agencies and other approved accrediting bodies. Monitors and evaluates regional performance of oversight responsibilities in survey and certification. Reviews the validity and effectiveness of existing standards. Develops and analyzes national data on the administration of the Medicare and Medicaid survey and certification program and develops methods for improvements. Conducts training, informational and other initiatives for improving the performance of State survey agencies and the providers and suppliers under the Medicare and Medicaid programs.

a. Division of Data and Program Analysis (FPE56)

Initiates, designs, and carries out analyses of programmatic and health management data generated by the centralized Medicare and Medicaid Automated Certification Systems (MMACS) on a routine and special basis. Serves as the Office focal point in identifying survey and certification issues and in developing program assessment methodologies. Develops criteria for assessing the performance and efficiency of the survey and certification activity at both the Regional and the State level. Provides technical assistance and training to Central and Regional Office personnel involved in the utilization of data output. Develops new approaches for survey and certification on the basis of needs identified through MMACS data, Regional Office direct surveys, comments from State survey agencies and other program areas. Tests improvements in the State agencies' certification process including modification of reporting procedures, utilization of personnel and use of financial incentives. Develops criteria for setting surveyor qualifications and methods for reviewing the performance of survey personnel. Collects and anlayzes data derived from MMACS for use by Regional Offices and State agencies in pinpointing specific certification problems and for development of criteria and procedures to assess the quality of care being recorded by Medicare and Medicaid providers. Examines and revises, in coordination with two other standards and certification divisions, the Division of Survey Procedures and Training and the Division of Institutional and Ambulatory Services within HSQB, as well as other concerned organizations within HCFA or HHS, the survey report forms, guidelines and instructions to ensure consistency of application and interpretation by both surveyors and providers.

b. Division of Survey Procedures and Training (FPE57)

Develops and coordinates administrative and fiscal procedures and guidelines for State survey and certification agencies. Monitors and evaluates State agency operations and certification functions through the comprehensive program review of State agency activities. Develops procedures for evaluating the effectiveness of Regional Office oversight of State

survey agency performance. Makes periodic onsite reviews of the Division of Health Standards and Qualtiy in Regional Offices and of State agencies. Assists Regional Offices by arrangeing for supplemental personnel to participate in direct sample surveys of provider institutions and by participating in program and administrative reviews conducted by communications to State agencies and regions relating to provider certification and State agency management. Develops and conducts a survey and certification training program for regional and State agency personnel. Promotes provider/supplier personnel training programs based on analysis of deficiency patterns, study results and suggestions from provider groups. Develops and/or updates existing training materials and techniques for surveyor and provider personnel. Provides technical assistance to educational institutions, professional organizations and State agencies in developing training activities.

c. Division of Institutional and Ambulatory Services (FPE58)

Directs and coordinates activities that implement, enforce and monitor health quality and safety standards and other health care procedures for all providers and suppliers under Medicare, Medicaid and other Federal programs. Applies regulations, procedures and guidelines for the improvement of standards enforcement and validation processes. Reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality and cost of provider and supplier services and initiates new or revised instructions or standards, as necessary. Develops, reviews and maintains guidelines and instructions for interpretation, implementation and enforcement of health quality and safety standards by the Regional Offices and State survey agencies. Prepares provider/supplier participation materials and instructions. Develops survey and certification forms and procedures utilized by State survey agencies in the survey and certification process. Monitors the enforcement of health quality and safety standards and compliance with established policy by State survey agencies and other public and private organizations participating in the Medicare and Medicaid programs. Directs and coordinates division functions with the Bureau of Program Operations and Bureau of Eligibility, Reimbursement and Coverage. Conducts liaison with professional groups and standards setting organizations. Services as the focal point for responding to Regional Office, State agency, Congressional, organizational and individual inquiries relating to the application of health and safety requirements including those of the Clinical Laboratories Improvement Act and certification procedures for participating providers and suppliers.

4. Section FP.20.D. The Office of the Regional Administrator (FP D(I–X)) is amended by deleting the organization title, functional statement and administrative code for Section FP.20.D.2. Division of Quality Control (FP D(I–X)B) in its entirety.

5. Section FP.20.D.1. Division of Health Standards and Quality (FP D(I–X)A), the functional statement is deleted in its entirety and replaced by a new functional statement. The organization title and administrative code remains the same. The new functional statement is:

1. Division of Health Standards and Quality (FP D (I–X)A)

Under the direction of the HCFA Regional Administrator, the Division of Health Standards and Quality assures that health care services provided under Medicare and Medicaid are furnished in the most effective and efficient manner consistent with recognized professional standards of care. Serves as the regional focus for assuring accountability to health care consumers for the quality of health care services. Participates in the formulation and development of health standards and quality policies and programs; interprets and implements health safety standards and evaluates their impact on the utilization and quality of health care services. Ensures appropriate review and application of conditions of participation for providers and suppliers of health services under Medicare and Medicaid and other related Federal programs. Exercises authority for approval/denial/termination of all provider/supplier certification actions under the Medicare program. Makes final determination on all initial budget requests submitted by State survey agencies. Exercises authority on all fiscal matters relating to section 1864 Medicare State Survey Agency agreements. Resolves conflicts involving the State survey agency and professional review and medical review organizations. Oversees, monitors and evaluates the Medicaid State Agency, State survey agencies and professional review and medical review organizations. Maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries. Participates in the conduct of national studies and conducts comprehensive regional reviews by selectively evaluating indicators of policy or operational weaknesses to provide information concerning the effectiveness and cost implications of HCFA policy and operational decisions. Coordinates State and contractor responsibilities and activities related to sanctions, civil money penalties, and other Office of the Inspector General (OIG) activities. Recommends corrective action within functional areas of responsibility including Federal/State statutory and regulatory changes to Central Office and States respectively. Interprets and implements policies and procedures for review and utilization control programs under the Social Security Act and other Federal programs. Oversees the negotiation and award of grants and the operation of local professional review and medical review organizations. Performs regional responsibilities relating to experimental and demonstration projects. Develops and implements a program of liaison with organizations representing health care professionals and providers of health care services, and assumes responsibility for associated program training. Provides current feedback to Central Office on operations, activities, and problems. Provides regional perspective in the development of Central Office policies, objectives, and work plans. Monitors and assesses performance and provides technical assistance to End-State Renal Disease (ESRD) networks by overseeing financial management and compliance with program policies and regulations and ensures coordination with States and local planning agencies and PSROs.

6. Section FP.20.D.3. Division of Financial Operations (FP D(I–X)C), the functional statement is deleted in its entirety and replaced by a new functional statement. This section is also to be renumbered as Section FP.20.D.2. The organization title and administrative code remains the same. The new functional statement is:

2. Division of Financial Operations (FPD(I–X)C)

Under the direction of the HCFA Regional Administrator, the Division of Financial Operations is responsible for financial management, institutional reimbursement, and Automated Data Processing (ADP) systems of Medicare contractors and Medicaid State Agencies. Assures continuing surveillance and apprasial of Medicare contractors regarding the implementation of Medicare institutional reimbursement policy and procedures. Monitors contractor

overpayment identification and collection activities; prepares overpayment cases for submission to the General Accounting Office (GAO) for collectioin and/or to the Department of Justice for possible litigation. Identifies problems and initiates action to ensure contractor adherence to national Medicare financial management policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth surveys to evaluate the effectiveness of the Medicare program with respect to the Division's areas of responsibility. Conducts Part B quality assurance program and on-site performance appraisals. Negotiates and approves contractor budgets, modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities; reviews and evaluates the cost allocation procedures of contractors. Plans, manages and provides Federal leadership and assistance to Medicaid State Agencies in implementation, mainteneance, and regulatory review of Medicaid State Agency activities with respect to institutional reimbursement, financial management and ADP systems. Interprets Medicaid program and financial policy with respect to institutional reimbursement, financial management, and automated data processing activities. With respect to areas of the Division's responsibility, maintains day-to-day liaison with Medicaid State Agencies and monitors their Medicad program activities and practices by conducting periodic comprehensive on-site program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves and monitors Medicaid State Agency institutional reimbursement plan. Reviews cost allocation plans, determines whether such plans are approvable from the Medicaid standpoint and advises Regional Administrative Support Centers of such determinations. Reviews, analyzes, and approves Medicaid State Agency expenditures for Medicaid contracts. Resolves audits with States. Reviews State's quarterly estimates of expenditures under the Medicaid program and recommends the estimated amount to be approved by HCFA in the quarterly grants. Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers reimbursement action on questionable State claims, reviews the claims for allowability and recommends appropriate action. Issues orders suspending Federal financial participation in State payments to ineligible Title XIX provider institutions and revokes such suspension orders. Advises, provides technical assistance, supports, and evaluates State management information and claims payment systems. Operates systematic Medicare and Medicaid quality control programs in a variety of areas, including Medicaid claims payment, Medicaid eligibility, third-party liability, Medicaid utilization control and Medicare Part B end-of-line bill review. Makes recommendations to the Regional Administrator regarding financial penalties and final decisions regarding Federal/State quality control differences. Assists Medicaid State Agencies and Medicare contractors in improving the management of federally required quality control programs. Recommends corrective action by contractors and State agencies. Provides for State and regional input to operational plans, policy, regulations, legislation, and budget formulation with respect to areas of responsibility. Provides current feedback to Central Office counterparts on operations, activities, and problems. Provides regional perspective in the development of central policy, objectives and work plans related to areas of responsibility.

7. Section FP.20.D.4. Division of Program Operations (FPD(I–X)D) is to be renumbered as Section FP.20.D.3.

Section FQ.20. The Office of the Associate Administrator for Policy (FQ) (Functions) is amended by the following actions:

Section FQ.20.A. Bureau of Eligibility, Reimbursement and Coverage (FQA) is amended by deleting Section FQ.20.A.1. Management Staff (FQA–1) and Section FQ.20.A.2. Executive Secretariat (FQA–2) in their entirety.

2. Section FQ.20.A. is further amended by adding a new organizational unit which will be entitled the Office of the Executive Officer (FQA8). This new organization will be designated number 2. Therefore, the sequence of the major offices within Section FQ.20.A. will change as follows

1. Regulations Staff (FQA–3)
2. Office of Executive Officer (FQA8)
3. Office of Coverage Policy (FQA7)
4. Office of Reimbursement Policy (FQA5)
5. Office of Eligibility Policy (FQA6)

The new organization functional statement and administrative code is as follows:

1. The Office of the Executive Officer (FQA8)

Directs the planning, development and coordination of a comprehensive program of management activities including: financial management, management analysis and information, field liaison, Freedom of Information operations, State Medicaid waiver requests, and an executive secretariat for the Bureau. Serves as principal advisor to the Director, as well as the executive staff of the Bureau of Eligibility, Reimbursement and Coverage, on the full range of management and related administrative issues. Responsible for handling highly sensitive and complex assignments requiring the Director's and Deputy Director's personal attention often involving inter-Bureau and office coordination and direction.

3. Section FQ.20.C.1.a. Division of Coverage and Benefits (FQCC1), is deleted in its entirety and replaced by a new organization title and a new functional statement. The administrative code will remain the same. Section FQ.20.C.1.a. is revised by adding the following new division title and functional statement.

a. Division of Coverage and Eligibility (FQCC1)

Conducts legislative planning and analysis and provides recommendations to senior HCFA and Departmental officials on coverage policies and standards under Medicare and Medicaid for services provided by institutional and noninstitutional providers, coverage policies and legislative standards includes conditions of participation for services provided by individual health care practitioners and suppliers; and policies on eligibility for Medicare and Medicaid including conditions of participation. Provides input to the development of technical specifications for legislation. Provides consultative services to Senators, House Representatives, congressional staff and the public on coverage and eligibility legislative issues. Transmits congressional information, views and inquiries to the appropriate HCFA component(s). Prepares testimony and provides briefings materials for congressional hearings.

4. Section FQ.20.C.1.b. Division of Health Systems (FQCC2) is deleted in its entirety.

5. Section FQ.20.C.1.c. Division of Administration and Reimbursement (FQCC3) the functional statement is

deleted in its entirety and replaced by a new functional statement. This section is also to be renumbered as Section FQ.20.C.1.b. The organization title and administrative code remain the same. The new functional statement is:

b. Division of Administration and Reimbursement (FQCC3)

Conducts legislative planning and analysis and provides recommendations to senior HCFA and Departmental officials concerning Medicare and Medicaid programs in the areas of program administration, reimbursement and reimbursement reform, program interrelationships and any other specific operational aspects. Prepares testimony and provides briefing materials for congressional hearings. Provides consultative services to Senators, House Representatives, congressional staffs, and the public on legislative issues. Transmits congressional information, views and inquiries to the appropriate HCFA component(s). Provides input to the development of technical specifications for legislation.

6. A new section FQ.20.C.1.c. Division of Legislative Reference and Coordination (FQCC4) is added to read as follows:

c. Division of Legislative Reference and Coordination (FQCC4)

Directs and coordinates preparations for the appearance of HCFA witnesses before congressional committee hearings and mark-up sessions. Directs and coordinates HCFA support to Departmental witnesses when they appear before Congress. Coordinates the development of HCFA's fiscal year legislative package and acts as liaison for HCFA legislative activity involving Congressional Budget and Appropriation Committees. Produces a number of information documents on a regularly scheduled basis as well as special reports on special legislative issues and activities. Maintains and services HCFA with a legislative and legislative support reference library and coordinates with the Department on the preparation of bill reports and bill report clearances. Monitors and reports on HCFA contacts and meetings with congressional staff.

Dated: September 28, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-27692 Filed 10-11-83; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Heart and Vacular Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, November 1-2, 1983. The meeting will be held in Conference Room 6 (C Wing), Building 31, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public on November 1 from 8:30 a.m. to recess and from 8:30 a.m. to adjournment on November 2 to discuss new initiatives and program policies and issues. Attendance by the public is limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of meetings and rosters of committee members. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20205, phone (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: October 4, 1983.

Betty J. beveridge,

NIH Committee Management Officer.

[FR Doc. 83-27708 Filed 10-11-83; 8:45 am]

BILLING CODE 4140-01-M

Genetic Basis of Disease Review Committee; Amended Notice of Meeting

Notice is hereby given of a change in the meeting date and place of the Genetic Basis of Disease Review Committee, sponsored by the National Institute of General Medical Sciences, which was published in the **Federal Register** on September 29, 1983 (48 FR 44659).

This meeting was to have convened at 8:30 a.m. on November 14, 1983, Building 31C, Conference Room 7, National Institutes of Health, but has been changed to 8:30 a.m. on November 15, 1983, Westwood Building, Conference Room 3.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m.

Dated: October 4, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institution of Health

[FR Doc. 83-27710 Filed 10-11-83; 8:45 am]

BILLING CODE 4140-01-M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on October 27, 1983, 8:30 a.m. to adjournment, at the Holiday Inn Hotel, 480 King Street, Old Town Alexandria, Virginia 22314. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of current digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the Hotel lobby.

Dr. Ralph Bain, Exective Director, National Digestive Diseases Advisory Board, P.O. Box 30377, Bethesda, Maryland 20084, (301) 496-2232, will provide an agenda and roster of members. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31 Bethesda, Maryland 20205, (301) 496-5765.

Dated: October 4, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-27709 Filed 10-11-83; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Title II and Title XVI Research Grants; Announcement of the Availability of Grant Funds

Correction

In FR Doc. 83-27119 beginning on page 45469 in the issue of Wednesday, October 5, 1983, make the following correction on page 45471: In the middle column, the second line, the date should read "December 5, 1983".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise three existing system of records notices. The records system notices, describing records maintained by the U.S. Geological Survey, are titled as follows:

1. Payroll, Attendance and Leave Records—Interior, GS–1 (Published at 48 FR 28746 on 6/23/83).
2. Accounts Receivable—Interior, GS–3, (Published at 48 FR 28747 on 6/23/83).
3. Travel Files—Interior, GS–14 (Published at 48 FR 28748 on 6/23/83).

The three notices are being revised to clarify that records on employees of the Minerals Management Service are included in each system of records. Also, the existing statement in each notice providing for disclosures to consumer reporting agencies is revised in accordance with guidance issued by the Office of Management and Budget on July 22, 1983. The revised system notices are published in their entirety below.

5 U.S.C 522a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before November 14, 1983, will be considered. The system notices shall be effective as proposed without further notice at the end of the comment period unless comments are received which would require a contrary determination.

Dated: September 30, 1983.

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

INTERIOR/EGS–1

SYSTEM NAME:

Payroll, Attendance and Leave Records—Interior, GS—1.

SYSTEM LOCATION:

(1) Branch of Financial Management, Geological Survey, National Center, Reston, Virginia 22092. (2) Input documents supplied by all facilities of the U.S. Geological Survey and the Minerals Management Service. (For specific addresses, contact the System Manager).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Geological Survey and Minerals Management Service Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, grade, step and salary; organization, retirement or FICA data as applicable; Federal, State and local tax deductions, as appropriate; IRS tax lien data; savings bond and charity deductions; regular and optional Government life insurance deductions; health insurance deduction and plan or code; cash award data, jury duty data; military leave data; pay differentials; union dues deductions; allotments, by type and amount; financial institutions code and employee account number; leave status and leave data of all types; time and attendance records; cost of living allowances; mailing address; co-owner and/or beneficiary of bonds, marital status and number of dependents; and "Notification of Personnel Action", and includes information on individual debts owed to the Government as a result of overpayment, refunds owed or a debt referred for collection on a transferred employee. The individual records listed are included only as pertinent to the individual employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101, et seq.; Title 6, GAO Policy and Procedure Manual; 31 U.S.C. 66(a); Sections 112(a) and 113 of the Budget and Accounting Procedures Act of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to (a) to issue pay to employees, and (b) distribute pay according to the directions of employees for allotments, financial institutions, savings bonds, charitable institutions and other purposes authorized. Disclosures outside the Department of the Interior may be made to: (1) Report and send tax withholdings to the Internal Revenue Service and state and local taxing authorities; (2) report and send FICA deductions to the Social Security Administration; (3) report and send withholdings for health and life insurance to the Office of Personnel Management and authorized insurance carriers; (4) report and send contributions to agents of charitable institutions; (5) report and send deductions for dues to labor unions; (6) send W–2 statements annually to taxing authorities; (7) to the U.S. Department of Justice when related to litigation or anticipated litigation; (8) of information indicating a violation or potential violation of a statute, regulation, rule, order license, to appropriate Federal, State, local or foreign agencies responsibile for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (9) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (10) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (11) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Both machine readable and manual.

RETRIEVABILITY:

By name or social security number of employee.

SAFEGUARDS:

Storage equipment and rooms locked when not in use. Access is restricted to authorized personnel only. Computer and payroll personnel are instructed as to the need for security and confidentiality.

RETENTION AND DISPOSAL:

Retained on-site until GAO audit, then destroyed or transferred to Federal Records Center, as appropriate according to GAO fiscal records program, or GSA General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Financial Management, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written and signed

request is required from anyone seeking information concerning him/her. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access to records should be addressed to the System Manager and must meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Petitions for amendment should also be addressed to the System Manager and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject individuals, supervisors, timekeepers and personnel records.

INTERIOR/EGS-3

SYSTEM NAME:

Accounts Receivable-Interior, GS-3.

SYSTEM LOCATION:

Geological Survey, National Center, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Debtors owing money to the Geological Survey and Minerals Management Service, including employees, former employees, business firms, institutions and private individuals. (The records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships. Some of the records in the system which pertain to individuals may reflect personal information, however. Only the records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, SSN, ID number, amount owed, invoice or bill number, reason for the debt, and any other information on debts owed to the Bureaus.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701-09; FPMR 101-7; Treasury Fiscal Requirements Manual; Pub. L. 97-365.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The primary use of the records is to bill persons and firms owing money to the Geological Survey and the Minerals Management Service. Disclosures outside the Department of the Interior may be made to: (1) The Office of Personnel Management for reporting purposes; (2) to the U.S. Department of Justice when related to litigation or anticipated litigation; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit; (6) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual form in file folders.

RETRIEVABILITY:

By individual name and Social Security number.

SAFEGUARDS:

Handling by authorized personnel only.

RETENTION AND DISPOSAL:

Retained until payment received and account audited, then disposed of in acordance with Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Financial Management, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

A written and signed request from the requester seeking information about him/her is required and is submitted to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the System Manager and must meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Petitions for amendment should be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject individual, contracting officer, accounting records.

INTERIOR/EGS-14

SYSTEM NAME:

Travel Files-Interior, GS-14.

SYSTEM LOCATION:

Geological Survey, National Center, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Geological Survey and the Minerals Management Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, social security numbers; destination; itineraries; modes and purposes of travel; dates; expenses including advances; amounts claimed and reimbursed; travel orders; vouchers; receipts and passport record cards, and information pertaining to an amount owed on an outstanding or delinquent travel advance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701, 31 U.S.C. 66a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (a) Account for travel advances; (b) compute vouchers to determine amounts claimed and reimbursed; (c) account for travel orders; maintaining records of modes and purposes of travel and itineraries; (d) maintain records of passports. Disclosure outside the Department of the Interior may be made to: (1) The U.S. Treasury Department of payments; (2) the U.S. Department of State for passports; (3) to the U.S. Department of Justice when related to litigation or anticipated litigation; (4) of information indicating a violation or potential violation of a statute, regulations, rule, order or license, to appropriate Federal, State, local or foreign agencies for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (5) from the

record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (6) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (7) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act [15 U.S.C. 1681a(f)] or the Federal Claims Collection Act of 1966 [31 U.S.C. 3701(a)(3)].

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine readable.

RETRIEVABILITY:

Filed by name, social security number or travel order number.

SAFEGUARDS:

Storage facilities are in secured premises with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Retained according to GSA Federal Travel Regulations, and disposed of according to Records Control Schedule and GSA General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Financial Management, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

System Manager. A written and signed request is required from anyone seeking information concerning him or herself. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the System Manager and meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject individuals, supervisors and standard finance office references.

[FR Doc. 83-27309 Filed 10-11-83; 8:45 am]
BILLING CODE 4310-31-M

Bureau of Land Management

New Mexico; Filing of Plat of Survey

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on September 27, 1983.

New Mexico Principal Meridian

A dependent resurvey of a portion of the south and west boundaries and the subdivision of section 31 in T. 7 S., R. 2 W., NMPM, under Group 806, and was accepted August 17, 1983.

This survey was executed to meet certain administrative needs of this Bureau.

The plat will be placed in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Dated: September 29, 1983.

Leroy C. Montoya,

Deputy State Director, Operations.

[FR Doc. 83-27644 Filed 10-11-83; 8:45 am]
BILLING CODE 4310-84-M

Availability of the Record of Decision for the Chevron Phosphate Fertilizer Plant Complex; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of record of decision.

SUMMARY: The Bureau of Land Management has completed its decisions on Chevron Chemical Company's application for various rights-of-way associated with a proposed phosphate fertilizer plant near Rock Springs, Wyoming. The decision is to proceed with the issuance of rights-of-way for a phosphate ore slurry line located in Daggett and Uintah Counties, Utah, and Sweetwater County, Wyoming and a railroad spur, water supply pipelines, and powerlines in Sweetwater County, Wyoming. The decision was based in part on the information contained in the Chevron Phosphate Plant complex final environmental impact statement published in July 21, 1983.

EFFECTIVE DATE: The record of decision was signed on September 19, 1983.

FOR FURTHER INFORMATION CONTACT:

Donald H. Sweep, District Manager, Rock Springs District Office, P.O. Box 1170, Rock Springs, Wyoming 82902-1170, (307-382-5350); and

Lloyd Ferguson, District Manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078, (801) 789-1362; or

State Director (934), Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003 (307) 772-2328.

SUPPLEMENTARY INFORMATION: The authority for this decision is derived from Title V of the Federal Land Policy and Management Act and the regulations contained in 43 CFR 2800.

Maxwell T. Lieurance,

State Director, Wyoming.

[FR Doc. 83-27810 Filed 10-11-83; 8:45 am]
BILLING CODE 4310-84-M

Alaska; Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Withdrawal and Opportunity for Public Comment and Public Hearing.

SUMMARY: Subject to valid existing rights, this notice segregates approximately 1,297,300 acres of land for a period of up to 2 years from settlement, sale, location, or entry under the general public land laws, including the mining laws and from selection under the Alaska Statehood Act, for possible addition to the Arctic National Wildlife Refuge.

EFFECTIVE DATE: October 12, 1983.

ADDRESS: Comments and suggestions should be sent to: Robert Arndorfer, Deputy State Director for Conveyance Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

On October 6, 1983, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw, subject to valid existing rights, the following described public lands from settlement, sale, location, or entry under the general public land laws, including the mining laws and from selection under the Alaska Statehood Act:

Fairbanks Meridian, Alaska (Unsurveyed)

T. 33 N., Rs. 17 through 30 E.
T. 34 N., Rs. 17 through 30 E.
T. 35 N., Rs. 17 through 30 E.
T. 36 N., Rs. 17 through 19 E.
T. 36 N., R. 20 E., all land outside of the Arctic National Wildlife Refuge.
T. 36 N., Rs. 21 through 30 E.

T. 37 N., Rs. 17 through 18 E.
T. 37 N., Rs. 19 through 20 E., all land outside of the Arctic National Wildlife Refuge.
T. 37 N., Rs. 21 through 29 E.

Umiat Meridian, Alaska (Unsurveyed)

T. 14 S., R. 36 E., all land outside of the Arctic National Wildlife Refuge.
T. 15 S., R. 36 E., all land outside of the Arctic National Wildlife Refuge.
T. 16 S., Rs. 36, 37, and 38 E., all land outside of the Arctic National Wildlife Refuge.
T. 17 S., R. 36 E.
T. 17 S., Rs. 37 and 38 E., all land outside of the Arctic National Wildlife Refuge.

The areas described aggregate approximately 1,297,300 acres.

The purpose of the proposed withdrawal is to add lands to the Arctic National Wildlife Refuge.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. Rights-of-way, mineral exploration, and other nondisposal type uses will be allowed during the period of segregation consistent with existing authorities.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of lands by the U.S. Fish and Wildlife Service.

Robert F. Burford,

Director.

[FR Doc. 83-27678 Filed 10-11-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

[INT-DES 83-69]

Availability of Draft Supplement to the Final Environmental Statement; Ruedi Reservoir Round 2 Water Sale, Fryingpan-Arkansas Project, Colorado

Pursuant to section 102(2)(C) of the National Environmental Policy act of 1969, as amended, the Department of the Interior has prepared a draft supplement to the Fryingpan-Arkansas Project, Colorado final environmental statement (INT-FES 75-43) on a proposed water sale that would provide for future competing water demands that include industrial (primarily oil shale), municipal, recreation, wildlife, and fisheries.

This supplement was prepared from an environmental assessment completed in March 1983 that evaluated an array of water sale level scenarios for Ruedi Reservoir. Written comments may be submitted to the Regional Director by the date stamped in the draft supplement.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343-4991.

Division of Management Support, General Services, Library Section, Code 950, engineering and Research Center, Denver Federal Center, Denver, Colorado, Telephone: (303) 234-3019.

Regional Director, Bureau of Reclamation, P.O. Box 25247, Building 20, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 234-4441.

Fryingpan-Arkansas Project Office, Bureau of Reclamation, 219 West 5th Street, Room 222W, P.O. Box 515, Pueblo, Colorado 81002.

Single copies of the supplement may be obtained on request to the Director, Office of Environmental Affairs, Bureau of Reclamation or the Regional Director, at the above addresses. Copies will also be available for inspection at the following libraries.

Pitking County Library, 120 East Main, Aspen, Colorado 81611.

Glenwood Springs Branch Library, 806 Cooper Avenue, Glenwood Springs, Colorado 81601.

Mesa County Public Library, 530 Grand Avenue, Grand Junction, Colorado 81501.

Dated: October 6, 1983.

Robert A. Olson,

Assistant Commissioner of Reclamation.

[FR Doc. 83-26129 Filed 10-1-83; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Conoco, Inc.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Conoco Inc., Unit Operator of the Main Pass Block 296 Federal Unit Agreement No. 14-08-0001-20238, submitted on September 27, 1983, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the Main Pass Block 296 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 am. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the code of Federal Regulations.

Dated: October 4, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-27621 Filed 10-11-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 30, 1983. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 27, 1983.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Marengo County

Demopolis, *Demopolis Public School*, 601 S. Main Ave.

CALIFORNIA

San Diego County

Jacumba vicinity, *Table Mountain District*, NE of Jacumba.

DISTRICT OF COLUMBIA

Mayflower Hotel, 1127 Connecticut Ave., NW.

FLORIDA

Alachua County

Micanopy, *Micanopy Historic District*, Roughly Cholokka Blvd. from US 441 to Ocala St. then Smith St. W to Okehumkee St.

Washington County

Vernon vicinity, *Moss Hill Church*, Vernon-Greenhead Rd.

MARYLAND

Baltimore (Independent City)

Paca Street Firehouse, 106 N. Paca St.

NEW MEXICO

Grant County

Silver City, *Black's Addition Historic District*, Roughly bounded by College Ave., Black, Market, and E Sts.
Silver City, *Silver City Water Works Building*, Little Walnut Rd.

San Miquel County

Las Vegas, *Las Vegas Amory*, 917 Douglas Ave.

PENNSYLVANIA

Berks County

Reading, *Foos, Charles S., Elementary School*, Douglass and Weiser Sts.
Reading, *Metropolitan Edison Building*, 412 Washington St.

Chester County

Exton, *Colebrook Manor (West Whiteland Township MRA)*, 637 W. Lincoln Hwy.
Exton, *Exton Hotel (West Whiteland Township MRA)*, 423 E. Lincoln Hwy.
Exton, *Lewis, Evan, House (West Whiteland Township MRA)*, 117 N. Ship Rd.
Exton, *Ship Inn (West Whiteland Township M R A)*, 100 N. Ship Rd.
Exton, *St. Paul's Church (West Whiteland Township M R A)*, 901 E. Lincoln Hwy.
Exton, *West Whiteland Inn (West Whiteland Township M R A)*, 609 W. Lincoln Hwy.
Kirkland, *Rush, Benjamin House (Chesteridge) (West Whiteland Township M R A)*, Boot Rd.
West Whiteland, *Autun (West Whiteland Township M R A)*, 371 E. Boot
West Whiteland, *Bell, John, Farm (West Whiteland Township M R A)*, 463 N. Ship Rd.
West Whiteland, *Boyer, Riter, House (West Whiteland Township M R A)*, 350 W Boot Rd.
West Whiteland, *Church Farm School (West Whiteland Township M R A)*, US 30
West Whiteland, *Cox, Hewson, House (West Whiteland Township M R A)*, Church Farm Rd.
West Whiteland, *Everhart, William, House (West Whiteland Township M R A)*, S. Ship and Boot Rds.
West Whiteland, *Fox Chase Inn (West Whiteland Township M R A)*, 613 Swedesford Rd.
West Whiteland, *Greenwood School (West Whiteland Township M R A)*, 700 King Rd.
West Whiteland, *Grove Historic District (West Whiteland Township M R A)*, S. Whitford Rd.
West Whiteland, *Hoffman, George, House (West Whiteland Township M R A)*, 1311 Grove Rd.
West Whiteland, *Jacobs, Benjamin, House (West Whiteland Township M R A)*, 325 N. Ship Rd.
West Whiteland, *Kennedy, Francis W., House (West Whiteland Township M R A)*, 1417 Highland ave.
West Whiteland, *Kinbawn (West Whiteland Township M R A)*, 405 Highland Ave.
West Whiteland, *Kirkland Station (West Whiteland Township M R A)*, 1370 Kirkland Ave.
West Whiteland, *Lochiel Farm (West Whiteland Township M R A)*, 111A N. Ship Rd.
West Whiteland, *Meredith, Daniel, House (West Whiteland Township M R A)*, 1358 Glen Echo Rd.
West Whiteland, *Morstein (West Whiteland Township M R A)*, 1401 and 1426 Lewis Lane
West Whiteland, *Newlin Miller's House (West Whiteland Township M R A)*, 1240 Samuel Rd.
West Whiteland, *Oaklands (Thomas TR) (West Whiteland Township M R A)*, 349 W. Lincoln Hwy.
West Whiteland, *Pennypacker, Benjamin, House (West Whiteland Township M R A)*, 800 E. Swedesford Rd.
West Whiteland, *Price, Joseph, House (West Whiteland Township M R A)*, 401 Clover Mill Rd.
West Whiteland, *Sleepy Hollow Hall (West Whiteland Township M R A)*, 109 E. Lincoln Hwy.
West Whiteland, *Solitude Farm (West Whiteland Township M R A)*, Church Farm Rd.
West Whiteland, *Thomas Marble Quarry Houses (West Whiteland Township M R A)*, Quarry Lane
West Whiteland, *Thomas Mill and Miller's House (Thomas T R) (West Whiteland Township M R A)*, 130 W. Lincoln Hwy.
West Whiteland, *Thomas, Charles, House (Thomas T R) (West Whiteland Township M R A)*, 225 N. Whitford rd.
West Whiteland, *Wee Grimmet (West Whiteland Township M R A)*, 624 W. Lincoln Hwy.
West Whiteland, *White, Hannah, Log House (West Whiteland Township M R A)*, 545 W. Boot Rd.
West Whiteland, *Whitford Garne (Thomas T R) (West Whiteland Township M R A)*, 201 W. Boot Rd.
West Whiteland, *Whitford Hall (Thomas T R) (West Whiteland Township M R A)*, 145 W. Lincoln Hwy.
West Whiteland, *Whitford Station House (West Whiteland Township M R A)*, 405 S. Whitford Rd.
West Whiteland, *Woodland Station (West Whiteland Township M R A)*, 408 King Rd.
West Whiteland, *Zook House (West Whiteland Township M R A)*, 300 Exton Sq.

Lancaster County

Lancaster, *Lancaster Historic District (Boundary Increase)*, Bounded by E. Vine, S. Christian, Washington, S. Duke, and Church Sts.

Philadelphia County

Philadelphia, *Estey Hall*, 1701 Walnut St.

TENNESSEE

Davidson County

Nashville, *Treppard-Baldwin House*, 3338 Whites Creek Pike

Hamilton County

Chattanooga, *King, M.L., Boulevard Historic District*, Roughly M.L. King Blvd. between Browns and University Sts.

TEXAS

Grayson County

Denison, *Denison Commercial Historic District*, Roughly Woodard, Main and Chestnut Sts.

Wichita County

Wichita Falls, *Hamilton, William Benjamin, House*, 1106 Brook Ave.

WISCONSIN

Washington County

Germantown vicinity, *Christ Evangelical Church*, N of Germantown on Fond du Lac Ave.

Waukesha County

Waukesha, *Arcadian Bottling Works (Waukesha MRA)*, 900 N. Hartwell Ave.
Waukesha, *Blair, Sen. William, House (Waukesha MRA)*, 434 Madison St.
Waukesha, *College Avenue Historic District (Waukesha MRA)*, Fountain St., S. East and College Aves.
Waukesha, *Cook, Alexander, House (Waukesha MRA)*, 600 E. North St.
Waukesha, *Cutler, Morris, House (Waukesha MRA)*, 401 Central Ave.
Waukesha, *Downtown Historic District (Waukesha MRA)*, Roughly bounded by Broadway, Grand Ave., Clinton and South Sts.
Waukesha, *Dwinnell, George, House (Waukesha MRA)*, 442 W. College Ave.
Waukesha, *Elliott, Dr. F. C., House (Waukesha MRA)*, 501 Dunbar Ave.
Waukesha, *First Baptist Church (Waukesha MRA)*, 247 Wisconsin Ave.
Waukesha, *Frame, Andrew, House (Waukesha MRA)*, 507 N. Grand Ave.
Waukesha, *Grace, Perry, House (Waukesha MRA)*, 307 N. West Ave.
Waukesha, *Grand View Health Resort (Waukesha MRA)*, 500 Riverview Ave.
Waukesha, *Howitt, John, House (Waukesha MRA)*, 407 N. Grand Ave.
Waukesha, *Jones, Robert O., House (Waukesha MRA)*, 501 W. College Ave.
Waukesha, *Laflin Historic District (Waukesha MRA)*, W. Laflin and Garfield Aves.
Waukesha, *Louis Yanke Saloon (Waukesha MRA)*, 200 Madison Ave.
Waukesha, *Mann, William G., House (Waukesha MRA)*, 346 Maple Ave.

Waukesha, *Moore, Dr. Volney L., House (Waukesha MRA)*, 307 E. Main St.
Waukesha, *National Hotel (Waukesha MRA)*, 235 W. Main St.
Waukesha, *Nickell, William A., House (Waukesha MRA)*, 511 Lake St.
Waukesha, *Pokrandt Blacksmith Shop (Waukesha MRA)*, 128 E. St. Paul Ave.
Waukesha, *Pratt, Hannah, House (Waukesha MRA)*, 501 Barney St.
Waukesha, *Putney, Frank H., House (Waukesha MRA)*, 223 Wisconsin Ave.
Waukesha, *Resthaven Hotel (Waukesha MRA)*, 915 N. Hartwell Ave.
Waukesha, *Sanger, Caspar M., House (Waukesha MRA)*, 507 E. College Ave.
Waukesha, *Silurian Mineral Springhouse (Waukesha MRA)*, Post Office Circle.
Waukesha, *Sloan, William P., House (Waukesha MRA)*, 912 N. Barstow St.
Waukesha, *Smith, Camillia, House (Waukesha MRA)*, 603 N. West Ave.
Waukesha, *St. Joseph's Catholic Church Complex (Waukesha MRA)*, 818 N. East Ave.
Waukesha, *St. Matthias Episcopal Church (Waukesha MRA)*, 111 E. Main St.
Waukesha, *Totten-Butterfield House (Waukesha MRA)*, 515 N. Grand Ave.
Waukesha, *Waukesha Post Office (Waukesha MRA)*, 235 W. Broadway Ave.
Waukesha, *Waukesha Pure Food Company (Waukesha MRA)*, 550 Elizabeth St.
Waukesha, *Welch, C. A., House (Waukesha MRA)*, 1616 White Rock Ave.
Waukesha, *Wisconsin Avenue Historic District (Waukesha MRA)*, Wisconsin and Maple Aves.

The 15-day commenting period for the following property (originally listed in the **Federal Register** as pending on October 4, 1983) is to be waived in order to assist the building's preservation through rehabilitation under the Economic Recovery Tax Act of 1981, as amended.

CALIFORNIA

Orange County

Fullerton, *Fullerton Union Pacific Depot*, 100 E. Santa Fe Ave.

[FR Doc. 83-27677 Filed 10-11-83; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Annual Evaluation Reports on the Administration of State Regulatory and Abandoned Mine Lands Programs Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Notice of availability.

SUMMARY: OSM is announcing the availability of five annual evaluation reports on the administration of State regulatory and abandoned mine lands (AML) programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The five reports, covering the States of Alabama, Arkansas, Illinois, Ohio and Pennsylvania, were prepared under the provisions of OSM's oversight policy and have been transmitted to Congress.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for the addresses where copies of the reports may be obtained.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone (202) 343-5351.

SUPPLEMENTARY INFORMATION:

Addresses.

Copies of the reports are available, free of charge, at the respective OSM offices listed below:

Alabama

Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209, Telephone: (205) 254-0890

Arkansas

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927

Illinois

Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Springfield, Illinois 62701, Telephone: (217) 492-4495

Ohio

Columbus Field Office, Office of Surface Mining, 2242 South Hamilton Road, Columbus, Ohio 43227, Telephone: (614) 866-0578

Pennsylvania

Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036

Background

Under Section 503 of SMCRA, a State may elect to assume primary responsibility for regulating surface coal mining and reclamation operations within its borders by submitting a program to the Secretary of the Interior which demonstrates the State's capability to carry out the provisions of SMCRA. Once the Secretary approves the program, the State is granted primacy, and the Federal government assumes a monitoring and evaluation role. OSM has developed an evaluation policy, in consultation with the States, which is implemented primarily through OSM's Field Offices. Monitoring of the State's administration and enforcement of its regulatory and AML programs is conducted throughout the year. The Field Office Directors compile and analyze the data gathered during the evaluation period and prepare annual evaluation reports for transmittal to Congress. The schedule for the reports calls for staggered completion dates.

The first 19 evaluation reports for this year have been completed. Notices announcing the availability of the first 14 reports were published in the **Federal Register** on August 23, 1983 (48 FR 38317) and September 12, 1983 (48 FR 40959). The Arkansas and Illinois reports were completed and sent to Congress September 20, 1983. The Alabama, Ohio and Pennsylvania reports were completed and sent to Congress September 30, 1983. These final reports are now publicly available. As the remaining reports are completed, OSM plans to make them available also.

Dated: October 5, 1983.

James R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83-27642 Filed 10-11-83; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-36 (Sub-No. 18)]

Oregon Short Line Railroad Co. and Union Pacific Railroad Co.; Abandonment and Discontinuance of Service in Cassia County, ID; Findings

The Commission has issued a certificate authorizing the Oregon Short Line Railroad Company and the Union Pacific Railroad Company to abandon and discontinue service respectively over a 10.46-mile line of railroad between milepost 11.69 near Martin and milepost 22.15 at the end of the line near Oakley, Cassia County, ID. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on

the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–27623 Filed 10–11–83; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30222]

J. and J. Railroad, Inc.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission grants the exemption requested by J. and J. Railroad, Inc., from the requirements of 49 U.S.C. 10901, 10746 and 11301 in connection with (1) operation of 8.34 miles of abandoned track between Hardin and Murray, in Marshall and Calloway Counties, KY; (2) transportation of agricultural commodities in which petitioner has an interest; and (3) issuance of securities, respectively. No employee protective conditions are imposed.

DATES: These exemptions are effective on October 12, 1983. Petitions to reopen must be filed by November 1, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30222 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

Petitioner representative:

(2) Stanley E. Hilton, LaRoe, Winn & Moerman, Eighth Floor, 1120 G Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

DECIDED: October 3, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, and Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–27622 Filed 10–11–83; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[83–84]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Q-Med Research and Development Limited Partnership 1983, of Wyckoff, New Jersey, a limited, exclusive, revocable license to practice the following inventions:

U.S. Patent No. 3,420,223 Electrode For Biological Recording; issued January 7, 1969.

U.S. Patent No. 3,490,440 Pressed Disc Type Sensing Electrodes; issued January 20, 1970.

U.S. Patent No. 3,665,064 Method of Making a Perspiration Resistant Biopotential Electrode; issued May 23, 1972.

The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by December 12, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP–4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 755–3954.

Dated: October 3, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83–27617 Filed 10–11–83; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Subcommittee on Mechanical Engineering and Applied Mechanics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Mechanical Engineering and Applied Mechanics (MEAM)

Date, Time and Place: October 27 and 28, 1983—9:00 a.m.–5:00 p.m. each day, Review Center, Room 543

Type of Meeting: OPEN

Contact Person: Dr. John A. Weese, Division Director, Mechanical Engineering and Applied Mechanics, Room 1108, National Science Foundation, Washington, D.C. 20550 (202) 357–9542

Summary Minutes: May be obtained from Delores Wade, Division of Mechanical Engineering and Applied Mechanics, Room 1108, National Science Foundation, Washington, D.C. 20550, (202) 357–9542

Purpose of Subcommittee: To provide directions for Mechanical Engineering and Applied Mechanics research

Agenda: *Thursday, October 27th—Open—9:00 a.m.–5:00 p.m.*

9:00—Welcoming Remarks
Dr. Edward Knapp, Director, NSF
Dr. Carl W. Hall, Acting Assistant Director for Engineering Directorate

9:45—A Review of the Mechanical Engineering and Applied Mechanics Division by Dr. John A. Weese, Director, MEAM
Discussion

10:45—Review of the MEAM Division's Programs Fluid Mechanics—Dr. George K. Lea Heat Transfer—Dr. Win Aung Solid Mechanics—Dr. Clifford Astill Mechanical Systems—Dr. Elbert Marsh Production Research (Data)—Dr. Weese
Discussion

12:15—*Recess for Lunch*

1:30—Engineering Directorate Issues and Their Relationship to the Division
Class VI Computing Resources—Dr. Lea
Thermal Systems—Dr. Aung
Engineering Initiatives—Dr. Weese

3:45—Administrative Issues Staffing & Structure of Division Composition and Leadership of this Subcommittee

5:00—*Recess for the day*

Friday, October 28—Open—9:00 a.m.–5:00 p.m.

9:00—Review of Production Research Program by Dr. Spurgeon

9:20—Preliminary Subcommittee Reactions to The Continuing Program of the Division
Thermal Systems
Class VI Computing Resources
Engineering Initiatives
Staff & Structure of the Division
Composition & Leadership of the Subcommittee

11:15—Joint Discussion—Planning, Promoting, and Coordinating the Division's Efforts with the Research Community
12:15—*Recess for Lunch*
1:15—Subcommittee Briefing for the Acting Assistant Director for Engineering
2:00—Assignment of Subcommittee Report Responsibilities
5:00—*Adjourn*

Dated: October 6, 1983.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 83-27707 Filed 10-11-83; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Performance Review Board, Senior Executive Service; Appointment of Members

Appointments of Performance Review Board members are required to be published in the **Federal Register** by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to, and will serve on Performance Review Boards for senior executives in the National Transportation Safety Board:

Patricia A. Goldman
J.R. Kissinger
John Wheatley
Lloyd Miller
B. Michael Levins
Thomas DeW. Styles
James Danaher
John Stuhldreher
Herbert Banks
Robert W. Pyle
Barry Sweedler

Robert W. Pyle,

Director of Personnel.

October 2, 1983.

[FR Doc. 83-27688 Filed 10-11-83; 8:45 am]

BILLING CODE 4910-58-M

Appointment, Reassignment, Transfer, and Development in the Senior Executive Service

The title of each career reserved position shall be published in the **Federal Register** as required by 5 U.S.C. 3393(f).

The following is a newly established career reserved position at the National Transportation Safety Board:

Director, Bureau of Field Operations

Robert W. Pyle,

Director of Personnel.

September 20, 1983.

[FR Doc. 83-27690 Filed 10-11-83; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Revised Meeting

In accordance with the purposes of Section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on October 13–15, 1983 in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on September 28, 1983, and it is being revised to reflect deferral of ACRS consideration of the Big Rock Point Nuclear Plant.

The agenda for the subject meeting will be as follows: *Thursday, October 13, 1983:*

8:30 A.M.–8:45 A.M.: Opening Remarks (Open)—The ACRS Chairman will report briefly on matters of current interest regarding ACRS activities.

Portions of this session may be closed to discuss matters related solely to the internal personnel rules and practices of the agency.

8:45 A.M.–12:45 P.M.: Limerick Generating station Units 1 & 2 (Open)—The Committee members will hear and discuss reports of its Subcommittee and consultants who may be present, representatives of the NRC Staff, and the Applicant regarding the request for an operating license for this Station.

Portions of this session may be closed as necessary to discuss Proprietary Information applicable to this matter.

1:45 P.M.–345 P.M.: PIUS Nuclear Reactor Concept (Open)—Representatives of ASEA–ATOM will brief the Committee members regarding the process inherent ultimately safe reactor concept.

3:45 P.M.–4:45 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the reports of the ACRS Subcommittees on Extreme External Phenomena and the Diablo Canyon Nuclear Power Station regarding application of the "Tau" effect to the seismic design of this plant. Representatives of the NRC Staff and the Applicant will participate to the degree considered appropriate.

4:45 P.M.–6:30 P.M.: Nuclear Steam Generator Tube Integrity (Open)—The members of the Committee will hear and discuss reports of its Subcommittee and consultants who may be present and representatives of the NRC Staff regarding proposed NRC generic recommendations regarding steam generator tube integrity and Consideration of multiple steam generator tube failure in the design and operation of nuclear power plants.

Friday, October 14, 1983:

8:30 A.M.–11:30 A.M.: Combustion Engineering Nuclear Steam Supply System (Open)—The Committee will hear and discuss reports of its Subcommitte and consultants who may be present, representative of the NRS Staff and Combustion Engineering, Inc., regarding the capability for decay heat removal and depressurization for Combustion Engineering nuclear steam supply systems without PORVs.

11:30 A.M.–1:00 P.M.: Class-9 Accidents (Open)—The members will hear and discuss report by representatives of the NRC Staff regarding activities related to reevaluation of the NRC severe accident research program plan.

2:00 P.M.–2:30 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS Subcommittee activities and proposed full Committee future activities.

2:30 P.M.–4:30 P.M.: Proposed Revision of 10 CFR Part 20 (Open)—The ACRS members will hear and discuss the report of its Subcommittee and consultants who may be present as well as representatives of the NRC Staff and other regulatory agencies regarding a proposed revision of 10 CFR Part 20, Standard for Protection Against Radiation.

4:30 P.M.–6:00 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the reports of designated subcommittees regarding current activities including cracking in BWR primary coolant systems piping, fire protection in nuclear plants, reactor radiological effects including related NRC research activities and proposed disposal of radwastes, and use of PRA in the regulatory process.

Saturday, October 15, 1983:

8:30 A.M.–10 A.M.: ACRS Reports to NRC (Open/Closed)—The members will discuss proposed ACRS reports to NRC regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to matters being discussed and material involved in an adjudicatory proceeding.

10:00 A.M.–11:00 A.M.: ACRS Subcommittee Activity (Open)—The members will hear and discuss reports of ACRS Subcommittees regarding designated activities including conduct of ACRS activities consistent with 41 CFR 101–6, scope and conduct of ACRS activities, 10 CFR 50.55a, Codes and Standards.

11:00 A.M.–11:30 A.M.: Appointment of New Members (Closed)—The members will discuss the qualifications of candidates nominated for appointment to the ACRS.

11:30 A.M.–12:30 P.M.: Conclusion (Open)—The members will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1982 (48 FR 44291).

In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as

practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], information related solely to the internal personnel rules and practices of the agency [5 U.S.C. 552b(c)(2)], information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)], and information involved in an adjudicatory proceeding [5 U.S.C. 552b(c)(10)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: October 4, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-27676 Filed 10-11-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Company; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–6, issued to Consumers Power Company (the licensee), for operation of the Big Rock Point Plant located in Charlevoix County, Michigan.

The amendment would incorporate Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits for fuel assemblies G13 and G14 into the Big Rock Point Technical Specifications (TS). These two assemblies are currently covered by MAPLHGR limits in the existing TS for reload "G" fuel. The current limits are applicable until these assemblies reach a burnup of 36.29 Gigawatt-Days per Standard Metric Ton (GWD/STM). These two assemblies were reconstituted from spent "G" design fuel assemblies as part of the Big Rock Point Extended Burnup Program sponsored by the Department of Energy. The new limits are based on safety analyses performed by Exxon Nuclear Company (the fuel vendor) using calculational methods previously approved for the "G" fuel design. The new limits would allow a total burnup of 42.0 GWD/STM for the G13 and G14 fuel assemblies. These changes are in accordance with the licensee's application for amendment dated September 7, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870, April 6, 1983). One of the examples of actions involving no significant hazards consideration relates to reload amendments involving no fuel assemblies significantly different from those previously found acceptable at the facility in question. The G13 and G14 fuel assemblies do not constitute a reload in the normal used sense because the reactor was actually reloaded with H–3 fuel as approved by the NRC. However, the G13 and G14 assemblies were reconstituted from "G" fuel which was previously approved by the NRC for Big Rock Point. The G13 and G14 fuel has already been used in the reactor in previous cycles and, therefore, has already experienced some level of burnup. The G13 and G14 fuel are currently still within the burnup limits approved for "G" fuel. Therefore, the G13 and G14 assemblies are not significantly different from the previously approved "G" fuel. The new burnup limits and MAPLHGR values were calculated using the same methods as were used for the previous "G" fuel reload.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By November 14, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Dennis M. Crutchfield: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Judd L. Bacon, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplmental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Dated at Bethesda, Maryland, this 4th day of October, 1983.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief Operating Reactors Branch #5 Division of Licensing.

[FR Doc. 83-27872 Filed 10-11-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corporation, et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainsville, 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), for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (the facility) located in Citrus County, Florida.

The amendment, as proposed by the licensees, related to the Cycle 5 reload, which has an increased cycle lifetime of 460 effective full power days (EFPD) instead of 350 EFPD in the previous cycle. The licensees' application for the amendment was dated March 31, 1983, and was supplemented by submittals dated June 17, June 22, and July 6, 1983. Notice of consideraiton of issuance of this amendment was published in the **Federal Register** on June 6, 1983 (48 FR 25292). Portions of the amendment request were granted. Those portions relating to the Cycle 5 core reload and to various plant modifications accomplished during the refueling period were authorized by Amendment No. 64, issued and effective on July 12, 1983. Notice of issuance of Amendment No. 64 was published in the monthly **Federal Register** notice on July 20, 1983 (48 FR 33099).

However, a portion of the licensees' request of March 31, 1983, was to extend the time interval for shutdown surveillance requirements from once each 18 months to once each 24 months. The justification for extending these time intervals was to minimize the impact of the extended core lifetime on accomplishment of the surveillance within the specified time interval. This portion of the licensees' amendment application was evaluated by the Commission and subsequently denied

on the basis of inadequate justification. The licensees were notified of the Commission's denial of this request and the reason for denial by letter dated June 20, 1983. The Commission's position in regard to extending surveillance intervals to longer than 18 months was also made known to all licensees and applicants by issuance of Generic Letter No. 83-27 dated July 6, 1983.

By November 14, 1983, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to S.A. Brandimore, Florida Power Corporation, Vice President and General Counsel, P.O. Box 14042, St. Petersburg, Florida 33733.

For further details with respect to this action, see the application for amendment dated March 31, 1983, as supplemented June 17, June 22, and July 6, 1983, and (2) the Commission's letter to Florida Power Corporation dated June 20, 1983, which 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 Item (2) 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 20th day of September 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 83-27073 Filed 10-11-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-354-OL]

Public Service Electric & Gas Co., Atlantic City Electric Co.; Special Prehearing Conference

October 5, 1983.

On August 10, 1983, the Nuclear Regulatory Commission published in the Federal Register a Notice of Opportunity for Hearing on the application for a facility operating license for the Hope Creek Station, Unit 1, filed by the Applicants Public Service Electric and Gas Company *et al.*[1] This facility is a boiling water nuclear reactor located in Lower Alloways Creek Township, Salem County, New Jersey. The reactor is designed to operate at a steady-state power level of 3293 megawatts thermal, with an equivalent net electrical output of approximately 1067 megawatts.

The Commission's Notice further provided that by September 9, 1983, a request for hearing and petitions for leave to intervene may be filed by any person whose interest may be affected by this proceeding, pursuant to the provisions of 10 CFR Part 2. On September 9 the Public Advocate, State of New Jersey, filed a "Motion to Hold Public Hearing and to Admit Public Advocate as a Party-Intervenor Under 42 U.S.C. 2239, in Operating License Proceedings." The Applicants filed an answer opposing such motion (or petition) on September 24, 1983. The Staff filed its response on September 29, 1983, not opposing the petition for intervention provided that suitable contentions were framed within applicable time limits. The petition for leave to intervene will be granted, and a special prehearing conference will be scheduled pursuant to the provisions of 10 CFR 2.751a.

The Public Advocate's motion for hearing and intervention will be treated as a timely petition for leave to intervene, in accordance with the notice of opportunity for hearing. The petitioner requested that he be admitted as a party pursuant to 10 CFR 2.714 and 2.715. The latter section provides for the participation of "representatives of an interested State" in licensing proceedings. It has been established in NRC practice that a governmental entity such as a State may participate as a full party under § 2.714, as well as an interested State under § 2.715(c).[2] Of course, if a State elects to become a full party under § 2.714, in an operating license proceeding where it is the sole intervenor, it must affirmatively file one or more cognizable contentions sufficient to trigger an operating license hearing, and otherwise observe the procedural rules of the Commission.[3]

The Public Advocate's petition identified several aspects of the subject matter of the proceeding as to which intervention was sought, including quality assurance and control and emergency planning. These subjects could form the core of viable contentions if they were framed with the specificity and description of the bases therefor required by § 2.714(b). That section of the Rules of Practice requires that not later than 15 days prior to the holding of a special prehearing conference, the "petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." Those requirements are applicable to the instant petition to intervene.

The Applicants oppose the petition in part on the grounds that "* * * the Public Advocate has failed to demonstrate affirmatively any grant of authority by the Legislature to initiate or participate in this proceeding."[4] They further argue that the Board must satisfy itself "that State officers purporting to exercise their discretion under delegated powers" are in fact doing so within the confines of their authority.[5] We decline to be drawn into a complex philosophical discussion of the New Jersey statutes governing "the practice and procedure of the Division of Public Interest Advocacy in the Department of the Public Advocate."[6] The petition alleges that the Public Advocate is a cabinet level officer of the State of New Jersey who is empowered to represent the interests and rights "inhering in the citizens of this State or in a broad class of such citizens (N.J.S.A. 52: 27 E-30), in administrative and judicial proceedings (N.J.S.A. 27 E-18, 29 and 30)."[7] It is further alleged that the Public Advocate has participated (without objection) in several NRC proceedings.

The petition adequately pleads the interest, status and authority of the Public Advocate in representing the State of New Jersey in this OL proceeding under both §§ 2.714 and 2.715. If the Applicants desire to challenge seriously the status of the Public Advocate under the New Jersey statutes and regulations, they may do so in the appropriate State courts. We do not deem it either necessary or desirable to convert this proceeding into a judicial

---

[1] 48 FR 36357-58, Aug. 10, 1983.

[2] Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392 (1976).

[3] *Id.* at 393. *See also* Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768 (1977); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-25, 6 NRC 535, 537, n.1 (1977).

[4] Applicants' Answer to Motion etc., at p. 25.

[5] *Id.*, at p. 13.

[6] Rules 15A: 1-1.1 *et seq.*, adopted pursuant to authority of N.J.S.A. 52: 27 E-1-*et seq.*

[7] At pages 1 and 2.

forum to interpret New Jersey statutes relating to the legal status and authority of the Public Advocate.

The petition for intervention and a public hearing is granted. It will be incumbent upon the petitioner to comply with the requirements of § 2.714 by filing, not later then 15 days before the special prehearing conference, one or more viable contentions with the bases therefor set forth with reasonable specificity.

A special prehearing conference will be held in this operating license proceeding pursuant to the provisions of 10 CFR 2.751a, on Tuesday, November 22, 1983, commencing at 9:00 a.m., local time, in the Freeholders' Meeting Room, Courthouse, 92 Market Street, Salem, New Jersey 08079.

Members of the public may request permission to make a limited appearance statement, either oral or written, pursuant to § 2.715(a) of the Commission's Rules of Practice, 10 CFR Part 2. A person making a limited appearance does not become a party but may state his position on the issues and may raise relevant questions which he wishes to have answered by the parties. Limited appearances will be received at the November 22 prehearing conference at the discretion of the Board within such limits and on such conditions as may be set by the Board.

It is so ordered.

Dated at Bethesda, Maryland this 5th day of October, 1983.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 83-27874 Filed 10-11-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determinations and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-77 and DPR-79, issued to Tennessee Valley Authority (the licensee), for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

One amendment would permit the pressurizer pressure to be less than 2220 psia during the performance of power coefficient physics tests and certain surveillance requirements. The tests are made difficult to perform with the current restriction due to the competing effects of cooling the reactor coolant system to make the measurements and still maintaining the pressurizer pressure above the specified limit in the technical specifications. Allowing the pressure to fall below the minimum value during the tests will not compromise core protection because the overtemperature delta-T reactor trip of the protection system will assure fuel clad integrity for all combinations of pressures and temperatures.

A second amendment would revise the table of Containment Isolation Valves to reflect the proper interpretation of the definition of operability of the containment isolation valves and a notation of valves that will be in an isolated position with power removed. The change is acceptable since the valves will still perform their safety function in this position in addition to improving plant operations.

A third amendment would reduce the number of igniters to be tested in the hydrogen mitigation system to 10% rather than 100% every 18 months because of ALARA considerations. Some igniters are physically locatd in areas that would expose test personnel to relatively high radiation levels. The igniters are considered to be reliable long-life devices. Verification of their operability and temperatures can be checked through methods other than visual inspection; consequently a test procedure which involves visually inspecting 10% of the total number is acceptable. These amendments were requested in the licensee's application for amendments dated July 21, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments involve no significant hazards consideration based on the examples cited in 48 FR 14870. One of the examples relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By November 14, 1983, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for hearings and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If requests for hearings or petitions for leave to intervene are filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the requests and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later then fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Herbert S. Sanger, Jr., Esq., General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(A)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Dated at Bethesda, Maryland, this 4th day of October 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Divisions of Licensing.

[FR Doc. 83-27875 Filed 10-11-83; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-20252, File No. SR-AMEX-83-21]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Treasury Note Options Expiration Cycle

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 29, 1983, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or the "Exchange") is proposing to move its 10-year U.S. Treasury note ("Treasury note") options from a March/June/September/December expiration Cycle ("March cycle") to a February/May/August/November expiration cycle ("February cycle").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Ten-year Treasury notes are issued during the months of February, May, August and November, with an auction held approximately two weeks prior to each issue date. The Exchange is proposing to move its 10-year Treasury note options to a February cycle so that their expirations will coincide with the cycle on which the underlying notes are issued. The exchange believes that this change will increase the utility of its Treasury note options for hedging purposes.

Primary dealers and other market professionals who have purchased 10-year Treasury notes at an auction generally distribute the bulk of their positions in the notes to investors during the three-month period preceding the next auction, and trading in the notes is heaviest during that time. Each note tends to trade actively on a when-issued basis during the two-week period between its auction and issuance and to continue trading actively until new 10-year notes are auctioned. Thus, traders' hedging needs with respect to a particular Treasury note tend to be greatest during the three-month period following its auction.

Since the expiration months of the Exchange's Treasury note options are different from the months in which the notes are issued, the options are not now as useful as the Exchange believes they could be for hedging purposes. Under the Exchange's current system, the options listed on a newly auctioned note expire approximately 1½ and 4½ months after they commence trading.[1] For example, following the August 1983 auction, options on the new 10-year notes were opened for trading with expirations in September 1983 and December 1983. From the perspective of a dealer expecting to maintain an inventory of the notes until the next auction (probably early November), the September options would expire too soon, and the December options would expire later than necessary. Options expiring in November would correspond more precisely with the dealer's hedging needs. Accordingly, the Exchange believes that moving its Treasury note options to a February cycle would enchance their utility for hedging purposes.

The use of a February expiration cycle will also enable the Exchange to establish only one expiration month for options on each underlying note—the third month after the note's issuance. With Treasury note options trading on the March cycle, the Exchange has found it necessary to list options on a new note expiring in two different months after the note is auctioned because, as described above, the nearest available expiration date occurs only 1½ months after the auction—too soon for the option to satisfy hedging needs. Since moving Treasury note options to a February cycle will permit the Exchange to provide a 3½ month option on each new 10-year Treasury note at the time the note is auctioned, and since trading in 10-year notes normally diminishes three months after they are auctioned, the Exchange believes that it is not now necessary to list option series expiring 6½ months or more after a note's auction.[2]

The procedure contemplated by the Exchange may be illustrated as follows: Immediately after the auction of 10-year notes due in November 1993 (probably the first week of November 1983), the Exchange would open trading in options expiring in February 1984 on the newly auctioned notes. Upon the expiration of those options, no additional options on the November 1993 notes would be listed. Similarly, immediately after the auction of 10-year notes due in February 1994 (probably the first week of February 1984), the Exchange would open trading in options expiring in May 1984 on the newly auctioned notes; and, upon the expiration of those options, no additonal options on the February 1994 notes would be listed. This process would continue with each succeeding auction of a new note. Thus, except for the period between a note auction and an option expiration, options on only one Treasury note would be traded at any given time. For example, immediately prior to the auction of notes due in February 1994 (probably the first week of February 1984), the only available Treasury note options would be those on the November 1993 notes. Between that auction and the expiration of the options on the November 1993 notes (approximately the third week of February 1984), options would be traded on both November 1993 and February 1994 notes. After the February option expiration, options on the February 1994 notes would be the only Treasury note options traded on the Exchange until the auction of notes due in May 1994 (probably the first week of May 1984), when options expiring in August 1984 on the newly auctioned notes would be listed.

The Exchange believes that this procedure will facilitate the development of its Treasury note options market by reducing the potential for fragmentation and by helping the specialist to maintain an orderly market. Due to the fact that a new 10-year Treasury note bearing a new coupon is auctioned every three months, the market for Treasury note options has been more susceptible to fragmentation than the market for options on any of the Exchange's other underlying securities. For example, suppose that upon the auction of each new note, the Exchange were to list options on that note having three different expiration months and that, upon the expiration of near-term option series, new nine-month options were listed on the same underlying note. Assuming the trading of options series having three different exercise prices per expiration month (a conservative estimate), there would be 18 different option series open for trading with respect to each underlying note (9 puts and 9 calls), leading to a total of at least 72 different Treasury note option series after four auctions.

The Exchange has concluded that such a proliferation of different option series on very similar underlying instruments is unwarranted in light of the relatively low overall trading volume to date in Treasury note options. In addition to concerns about fragmentation, the existence of such a large number of illiquid option series places an unreasonable burden on the specialist, since the relationships among the prices of the various underlying Treasury notes require him to update all of his Treasury note options quotations at the same time. The Exchange has previously sought to reduce the number of Treasury note option series open for trading at any given time by eliminating nine-month options and by quickly phasing out old underlying notes. The current plan represents an additional step in this process.

The Exchange believes that moving its 10-year Treasury note options to a February expiration cycle and generally establishing only one expiration month for options on each underlying note would be consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange, and, in particular, Section 6(b)(5) of the Act, in that these changes would help to increase the utility of Treasury note options to market participants, thereby serving to protect

[1] The Exchange lists options on a new note as soon as possible after an auction, so that the options are available during the when-issued period.

[2] The Exchange would, however, open more distantly expiring three-month options on an underlying Treasury note if and when the note is reissued.

investors and to further the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Judiciary Plaza, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 3, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27680 Filed 10-11-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20259; File No. SR-MSTC-83-18]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company Relating to a Reduction in NIDS Confirm Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 23, 1983 the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the MST System Administrative Bulletin regarding a reduction in NIDS confirm fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce the NIDS confirm fees. NYSE Rule 387 and similar rules have resulted in an increase in the number of NIDS confirms. This increase has enabled MSTC to reduce the fee for NIDS confirms from $0.25 to $0.20. The $0.05 per confirm reduction will also apply to magnetic tape and facsimile transmission, reducing charges for these services to $0.35 and $0.40 respectively.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. 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 Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th St., NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th St., NW., Washington D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should

be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1983.

George A. Fitzsimmons,

Secretary.

Exhibit A

September 16, 1983.

To: All Participants
Attention: Operations Manager/Head Cashier
Subject: Reduced NIDS Confirm Fees

NYSE Rule 387 and similar rules have resulted in an increase in the number of NIDS confirms. This increase has enabled Midwest to reduce the fee for NIDS confirms from 25¢ to 20¢, effective August 1, 1983.

The new fees will be as follows:

Confirms:

a. 20¢ to brokers, whether or not the broker receives a copy of the confirm (and an additional 20¢ to the broker for any interested party).

b. 20¢ to banks if the banks request the confirm.

c. 20¢ to investment managers (for each confirm whether or not affirmed).

The 5¢ per confirm reduction will also apply to magnetic tape and facsimile transmission, reducing charges for these services to 35¢ and 40¢ respectively.

Questions regarding this notice may be directed to your Participant Services Representative.

William P. Alberth,

Vice President, MCC/MSTC.

[FR Doc. 83-27680 Filed 10-11-83; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

October 4, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Ametek, Inc.
Common Stock, $1 Par Value (File No. 7-7123)
Amstar Corporation
Common Stock, $1 Par Value (File No. 7-7124)
Ball Corporation
Common Stock, $2.50 Par Value (File No. 7-7125)
Big Three Industries, Inc.
Capital Stock, $2.50 Par Value (File No. 7-7126)
Cameron Iron Works, Inc.
Common Stock, $0.2083 Par Value (File No. 7-7127)
Collins Foods International, Inc.
Common Stock, $.10 Par Value (File No. 7-7128)
Cox Communications Inc.
Common Stock, $1 Par Value (File No. 7-7129)
Diamond Shamrock Corporation
Common Stock, $1 Par Value (File No. 7-7130)
ENSTAR Corporation
Common Stock, $1 Par Value (File No. 7-7131)
Evans Products Company
Common Stock, $1 Par Value (File No. 7-7132)
General Re Corporation
Capital Stock, $.50 Par Value (File No. 7-7133)
Heileman Brewing Company, Inc.
Common Stock, $1 Par Value (File No. 7-7134)
Hershey Foods Corporation
Common Stock, $1 Par Value (File No. 7-7135)
Lone Star Industires, Inc.
Common Stock, $1 Par Value (File No. 7-7136)
MEI Corporation
Common Stock, $.10 Par Value (File No. 7-7137)
Masonite Corporation
Common Stock, No Par Value (File No. 7-7138)
National Intergroup Inc. (Holding Company)
Capital Stock, $5 Par Value (File No. 7-7139)
Robertson (H.H.) Company
Common Stock, $1 Par Value (File No. 7-7140)
Royal Crown Companies, Inc.
Common Stock, $1 Par Value (File No. 7-7141)
Scovill Inc.
Common Stock, $6.25 Par Value (File No. 7-7142)
Wometco Enterprises, Inc.
Class A Common Stock, $1 Par Value (File No. 7-7143)
Altex Oil Corporation
Common Stock, $.01 Par Value (File No. 7-7144)
ALZA Corporation
Class A Common Stock, No Par Value (File No. 7-7145)
Charter Medical Corporation
Class A Common Stock, $.25 Par Value (File No. 7-7147)
Cross (A.T.) Company
Class A Common Stock, $1 Par Value (File No. 7-7148)
Huntington Health Services, Inc.
Common Stock, $.20 Par Value (File No. 7-7149)
Pall Corporation
Common Stock, $.50 Par Value (File No. 7-7150)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 26, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27681 Filed 10-11-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0441]

ALPHA Financial Corp.; License Surrender

Notice is hereby given the ALPHA Financial Corporation, 485 Morris Avenue, Springfield, New Jersey 07081 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). ALPHA Financial Corporation was licensed by the Small Business Administration on October 13, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on September 16, 1983, and accordingly, all rights privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 5, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-27696 Filed 10-11-83; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2104]

Georgia; Declaration of Disaster Loan Area

The area of Brunswick Mall on Altama Street in the City of Brunswick, Glynn County, Georgia, constitutes a

disaster area because of damage resulting from a fire which occurred on September 20, 1983. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 5, 1983, and for economic injury until the close of business on July 5, 1984, at the address listed below: U.S. Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St. SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are:

Homeowners with credit available elsewhere, 12.125%.

Homeowners without credit available elsewhere, 6.125%.

Businesses with credit available elsewhere, 11.000%.

Businesses without credit available elsewhere, 8.000%.

Businesses (EIDL) without credit available elsewhere, 8.000%.

Other (non-profit organizations including charitable and religious organizations), 11.375%.

Date: October 4, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-27697 Filed 10-11-83; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting from 9:30 A.M. to 4:00 P.M., Thursday, November 8, 1983, at the Holiday Inn-Lake Monroe Marina, 530 Palmetto Ave., Sanford, Florida 32771, to discuss such Business as may be presented by members, the staff of the U. S. Small Business Administration, and others attending.

For further information, contact Douglas E. McAllister, District Director, U.S. Small Business Administration, Box 35067, 400 W. Bay Street, Jacksonville, Florida 32202; telephone (904) 791-3103.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 30, 1983.

[FR Doc. 83-27700 Filed 10-11-83; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9:30 a.m., on Friday, November 18, 1983, at the Federal Building—915 Second Avenue, Room 2866, Seattle, Washington, to discuss such matters as may be presented by members, the staff of the U. S. Small Business Administration, and others present. For further information, write or call John J. Talerico, District Director, U.S. Small Business Administration, 1792 Federal Building, 915 Second Avenue, Seattle, Washington 98174, (206) 442-2786.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 30, 1983.

[FR Doc. 83-27698 Filed 10-11-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Monterey County, California

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Monterey, County, CA.

FOR FURTHER INFORMATION CONTACT: Albert J. Gallardo, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, CA 95809, Telephone: (916) 440-2804.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) on a proposal to improve the traffic flow of 1.7 miles of roadway and reduce cross traffic conflicts on State highway 68 in the vicinity of Toro Regional Park. The project is necessary to reduce the long delays presently required for traffic to cross or enter the highway from the existing side streets.

Alternatives under consideration include: (1) Take no action; (2) construct a 4-lane expressway; (3) construct a 4-lane expressway with a signalized intersection at Portola Drive; (4) construct a 4-lane freeway with an interchange near Toro Regional Park.

A public informational meeting and several meetings with the County of Monterey have been held to encourage affected parties to identify crucial issues in the early stages of review. No further scoping meetings have been scheduled at this time. Additional meetings will be scheduled to insure that matters of importance are not overlooked.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: September 28, 1983.

Albert J. Gallardo,

District Engineer, Sacramento, California.

[FR Doc. 83-27643 Filed 10-11-83 8:45 a.m.]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Solicitation For Draft Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Solicitation for draft regulations.

SUMMARY: The Department of the Treasury and the Internal Revenue Service are listing additional items for which fully annotated sets or partial set of draft regulations are being solicited from interested individuals and organizations.

DATES: Drafts with respect to any project should be submitted by the date specified for that project in this document.

ADDRESS: Director, Legislation and Regulations Division, Attention: George H. Bradley, CC:LR.T, Room 4429, Internal Revenue Service, Washington D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George H. Bradley, 202-566-3486 (not a toll free number).

SUPPLEMENTARY INFORMATION: On July 29, 1983, the **Federal Register** published (48 FR 34569) a notice of solicitation for draft regulations from professional organizations, law and accounting firms, companies and interested individuals. These drafts of regulations or portions of regulations are intended to assist the Treasury Department and Internal Revenue Service during the formative period of the regulatory process. Included in that notice was the list of regulations projects for which drafts of regulations or portions of regulations are invited. In addition, it was stated that the list would be revised from time to time. This notice adds seven regulations projects to the list published on July 29, 1983.

Draft regulations or portions of regulations should be submitted by the

date specified for that project so that the attorneys responsible for developing the regulations may have the benefit of the material submitted. The Treasury Department and the Internal Revenue Service will not delay the development of regulations to await the submission of drafts. Pre-submission communications with respect to any project will be limited to matters of procedure.

All material submitted will be available for public inspection and copying.

The following is a list of additional regulations projects for which drafts of regulations or portions of regulations are being solicited.

Code section and file number	Subject	Latest date for submission
Sec. 47, LR-315-81.	Amendment of investment credit recapture rules.	Mar. 30, 1984.
Sec. 103(b)(4), LR-190-78.	Exemption for industrial development bonds for water facilities.	Dec. 30, 1983.
Secs. 108, 1017, LR-91-81.	Discharge of indebtedness.	Nov. 30, 1983.
Sec. 338(h)(9).	Elective recognition of gain or loss by target corporation.	Nov. 30, 1983.
Secs. 465, 1502, LR-75-79.	Application of "at risk" rules to corporations filing consolidated returns.	Jan. 31, 1984.
Secs. 1491, 1057, LR236-76.	Excise tax on transfer of property to foreign persons to avoid the Federal income tax.	Mar. 30, 1984
Secs. 4051-4053, LR-30-83.	Retailers tax on heavy duty trucks (especially gross vehicle weight).	Nov. 30, 1983.

Roscoe Egger,

Commissioner of Internal Revenue.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-27671 Filed 10-11-83; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 198
Wednesday, October 12, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
African Development Foundation	1
Federal Deposit Insurance Corporation	2, 3
Federal Reserve System	4
Legal Services Corporation	5
National Transportation Safety Board	6, 7
Postal Service	8

1

AFRICAN DEVELOPMENT FOUNDATION

October 6, 1983.

TIME AND DATE: 9 a.m., October 19, 1983.

PLACE: Conference Room of the Inter-American Foundation, 1515 Wilson Boulevard, Rosslyn, Virginia.

SUBJECT: Organization and operation of the African Development Foundation (ADF). This is the initial meeting of the ADF Board of Directors.

STATUS: Open.

PERSON TO CONTACT FOR MORE INFORMATION: Douglas Robbins, ADF Liaison Office, (703) 235-1882.

Douglas Robbins.

[S-1431-83 Filed 10-6-83; 4:22 pm]

BILLING CODE 6116-01-M

2

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, October 17, 1983, 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.

Recommendations with respect to the initiation, termination, or conduct of adminstrative 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:

Application for consent to merge and establish three branches:

First State Bank, Gulfport, Mississippi, an insured State nonmenber bank, for consent to merge, under its charter and title, with The Metropolitan National Bank, Biloxi, Mississippi, and for consent to establish the three offices of The Metropolitan National Bank as branches of the resultant bank.

Application for consent to purchase certain assets and assume liabilities and establish two branches:

Citizens Savings Bank, Providence, Rhode Island, an insured mutual savings bank, and its subsidiary, Citizens Trust Company, Providence, Rhode Island, and insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Westerly Branch of Old Stone Bank, Providence, Rhode Island, and for consent to establish that branch as a branch of Citizens Savings Bank and of Citizens Trust Company.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to 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 NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: October 7, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1434-83 Filed 10-7-83; 12:10 pm]

BILLING CODE 6714-01-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 p.m. on Monday, October 17, 1983, 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.

Application for consent to convert to a non-FDIC-insured institution:

Geneva Savings Bank, Geneva, New York.

Application for consent to merge and establish two branches:

First South Bank, Fort Valley, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Exchange Bank of Wrightsville, Wrightsville, Georgia, and First State Bank, Marshallville, Georgia, and for consent to establish the sole offices of Exchange Bank of Wrightsville and First State Bank as branches of the resultant bank.

Applications for consent to establish branches:

Barnett Bank of Palm Beach County, Riviera Beach, Florida, for consent to establish a branch in the Village Square Shopping Center, Woolbright Road and Military Trail, Boynton Beach, Florida.

Fidelity Bank of Southfield, Southfield, Michigan, for consent to establish a branch at 29777 Telegraph Road, Southfield, Michigan.

The Howard Savings Bank, Newark, New Jersey, for consent to establish a branch in the Troy-Hills Shopping Center at the intersection of Beverwyck Road and U.S.

Route 46, Parsippany-Troy Hills, New Jersey.

Applications for consent to establish remote service facilities:

Sangamon Bank and Trust, Springfield, Illinois, for consent to establish two remote service facilities at 2490 Wabash Avenue and 1987 Wabash Avenue, both locations in Springfield, Illinois.

Equibank, Pittsburgh, Pennsylvania, for consent to establish a remote service facility in the Amoco-Buy 'N Fly, 4108 William Penn Highway, Murrysville, Pennsylvania.

Applications for consent to establish branch-detached facilities:

The Academy Boulevard Bank, Colorado Springs, Colorado, for consent to establish a branch-detached facility at 3360 Citadel Drive North, Colorado Springs, Colorado.

The Central Colorado Bank, Colorado Springs, Colorado, for consent to establish a branch-detached facility at 331 N. Meade Street, Colorado Springs, Colorado.

Recommedations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Franklin National Bank, New York, New York

Memorandum and Resolution re: Guaranty Bond State Bank, Redwater, Texas

Memorandum and resolution re: Proposed amendments to Parts 304 and 349 of the Corporation's rules and regulations, entitled "Forms, Instructions, and Reports" and "Reports on Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks," respectively, to implement amendments to titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 contained in title IV of the Garn-St Germain Depository Institutions Act of 1982, which would: (1) Require FDIC-insured State-chartered nonmember institutions to disclose, upon request, the names of their executive officers and principal shareholders who (along with their related interests) have substantial borrowings from the bank or its correspondent banks; and (2) restate the existing statutory requirement that insiders report to the board of directors of their bank any indebtedness to the correspondent banks of that bank.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Advance notice of proposed rulemaking in connection with Parts 330 and 337 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage" and "Unsafe and Unsound Banking Practices," respectively, to solicit comment on: (1) The extent to which brokered or brokered-type deposits are being placed with FDIC-insured banks without adequate analysis of the managerial practices and financial stability of the banks; (2) whether the Corporation, in order to encourage market and bank analysis in the placement of such deposits, should limit the insurance coverage of or restrict the receipt of, such funds by insured banks; and (3) whether the current "multiple" insurance coverage afforded to pension funds and other custodial-type deposits, under which each beneficial owner of such deposits is insured to $100,000, should be limited.

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 further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: October 7, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1435-83 Filed 10-7-83; 12:10 pm]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, October 17, 1983.

PLACE: 20th Street and Constitution Avenue, NW., 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.

CONTRACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 462-3204.

Dated: October 7, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1438-83 Filed 10-7-83; 3:33 pm]

BILLING CODE 6210-01-M

5

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: 8 A.M. TO 5 P.M., THURSDAY, OCTOBER 13, 1983.

PLACE: Sheraton Grand Ballroom, Second floor, Sheraton Hotel, 255 South West Temple, Salt Lake City, Utah 84101.

STATUS OF MEETING: Open.

MATTER TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes.
3. Report from President.
4. Report from Office of Government Relations:
   a. Authorization;
   b. GAO Investigation.
5. Report from Office of General Counsel:
   a. Final Review of Proposed Regulations:
   (1) Transfer of Funds (45 CFR 1627)—Proposed Regulation Published June 22, 1983.
   (2) Denial of Refunding (45 CFR 1606 and 1625)—Proposed Regulation Published August 15, 1983.
   (3) Eligibility (45 CFR 1611)—Proposed Regulation Published August 29, 1983.
   b. Discussion of Regulations to be published as Proposed Regulations:
   (1) Attorney Fees (45 CFR 1609).
   (2) Priority Setting (45 CFR 1620).
   (3) Denial of Refunding (45 CFR 1606).
6. Report from Office of Field Services:
   a. Announcement of Instructions/Guidelines:
   (1) Private Attorney Involvement;
   (2) Fund Balance.
   b. Discussion of Reginald Heber Smith Community Fellowship Program.
7. Report from Vice President of Finance:
   a. 1983 Third Quarter Budget Review;
   b. Fund Transfer for Support Centers and National Clients Council,
   c. 1984 Budget,
   d. 1985 Mark.
8. Needs Study Update.

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

Dated: October 6, 1983.

Donald P. Bogard,

President.

[S-1432-83 Filed 10-6-83; 4:48 pm]

BILLING CODE 6820-35-M

6

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-23]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 45492, October 5, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Thursday, October 6, 1983.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following open item was deleted from the agenda:

1. *Recommendation* to the Federal Aviation Administration regarding in-flight fires on transport category aircraft. The following open item was added to the agenda:

1. *Recommendation* to the States to Implement Sobriety Checkpoints and Recommendations to the International Association of Chiefs of Police and the National Highway Traffic Safety Administration to assist the States.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

October 6, 1983.

[S-1433-83 Filed 10-7-83; 9:55 am]

BILLING CODE 4910-58-M

7

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-24]

TIME AND DATE: 9 a.m., Tuesday, October 18, 1983.

PLACE: NTSB Board Room, eight floor, 800 Independence Ave. SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Oral Argument:* Sotillie v. Administrator, Dkt. SE-4910.

2. *Aircraft Accident Report:* United Airlines Flight 2885, McDonnell Douglas DC-8-54F, N80530, Detroit, Michigan, January 11, 1983.

3. *Aircraft Accident Report:* Republic Airlines, Inc., Convair 580, N8444H, Brainerd, Minnesota, January 9, 1983.

4. *Reconsideration* of Probable Cause: Aircraft Accident Report—Eastern Air Lines, Inc., Boeing 727-225, N8838E, Raleigh, North Carolina, November 12, 1975.

5. *Highway Accident Report:* Multiple Vehicle Collisions and Fires Under Limited Visibility Conditions, Interstate Route 75, Ocala, Florida, February 28, 1983.

6. *Recommendations* to the International Society of Fire Service Instructors, the International Association of Fire Chiefs, the International Association of Chiefs of Police, the Research and Special Programs Administration, and Matlack, Inc., concerning the release of di-vinyl benzene from an overturned truck on October 13, 1982, at Odessa, Delaware.

CONTACT PERSONS FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

October 7, 1983.

[S-1437-83 Filed 10-7-83; 3:10 pm]

BILLING CODE 4910-58-M

8

POSTAL SERVICE

(Board of Governors)

Vote to Close Meeting

At its meetings on October 3-4, 1983, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for October 31, 1983, in New York, New York. The meeting will involve: (1) Consideration of the August 26, 1983, Recommended Decision of the Postal Rate Commission on Third-class bulk rates for nonprofit mail in Docket No. R-80-1; and (2) a discussion of strategic planning in connection with possible future rate adjustments.

The meeting is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, McKean, Ryan, Sullivan and Voss; Postmaster General Bolger; Deputy Postmaster General Finch; Secretary of the Board Harris; General Counsel Cox; Senior Assistant Postmaster General Coughlin; and Counsel to the Governors Califano.

The Board is of the opinion that public access to the discussions would be likely to disclose information that will become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c) (3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classsification and changes in postal services), which is specifically exempted from disclosure by section 410 (c) (4) of title 39, United States Code. The Board has determined further, that pursuant to section 552b(c) (10) of title 5, United States Code, and section 7. 3(j) of title 39, Code of Federal Regulations, the discussions are exempt, because they are likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f) (1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Cousel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b(c) (3) and (10) of title 5 and section 410 (c) (4) of title 39, United States Code and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

S-1436-83 Filed 10-7-83; 2:34pm

BILLING CODE 7710-12-M

federal register

Wednesday,
October 12, 1983

Part II

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Alternative Methods for Nitrogen Oxide Emissions

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2409-7]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Alternative Methods for Nitrogen Oxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this action is to propose as alternative methods to Method 7, "Method 7C, Determination of Nitrogen Oxide Emissions from Stationary Sources—Alkaline Permanganate/Colorimetric Procedure," and "Method 7D, Determination of Nitrogen Oxide Emissions from Stationary Sources—Alkaline Permanganate/Ion Chromatography Procedure," which are to be added to Appendix A of 40 CFR Part 60. The methods provide integrated samples rather than grab samples.

These methods would, at present, apply to fossil-fuel fired steam generators (Subpart D), electric utility steam generating units (Subpart Da), and nitric acid plants (Subpart G).

DATES: *Comments.* Comments must be received on or before December 15, 1983

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 25, 1983, a public hearing will be held on November 15, 1983 beginning at 10:00 a.m. Persons interested in attending the hearing should call Mrs. Naomi Durkee at (919) 541-5578 to verify that a hearing will occur.

Request to Speak at Hearing. persons wishing to present oral testimony must contact EPA by October 25, 1983.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-82-42, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

Public Hearing. if anyone contacts EPA requesting to speak at a public hearing, it will be held at EPA's Environmental Research Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing should call Mrs. Naomi Durkee at (919) 541-5578 to verify that a hearing will occur. Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-82-42, containing supporting information relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: Methods 7C and 7D are being proposed as alternative methods to Method 7. Both methods utilize impingers to provide time integrated samples instead of evacuated flask grab samples. The alternative methods use colorimetric or ion chromatographic analysis.

Miscellaneous

This rulemaking would not impose any additional emission measurement requirements on any facilities. Rather, the rulemaking would simply add alternative test methods associated with emission measurement requirements that would apply irrespective of this rulemaking.

Under Executive Order 12291, EPA just judge whether a regulation is "major" and, therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have any economic impact on small entities since the rulemaking simply adds alternative test methods.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals.

Dated: September 27, 1983.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

It is proposed that 40 CFR Part 60 be amended as follows:

1. The authority citation for this amendment is as follows:

Authority: Sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

§§ 60.45, 60.46, 60.47a, 60.73 and 60.74 [Amended]

2. By amending §§ 60.45, 60.46, 60.47a, 60.73, and 60.74 by removing the number "7" and inserting, in its place, "7, 7C, or 7D" in the following places:

a. 40 CFR 60.45(c)(1);
b. 40 CFR 60.46(a)(2), (a)(5), (c), (e), and (f)(3)(i);
c. 40 CFR 60.47a(h)(1), (h)(3), (h)(4), and (h)(5)(i)(1);
d. 40 CFR 60.73(a);
e. 40 CFR 60.74(a)(1) and (b).

3. By amending Appendix A by adding Methods 7C and 7D as follows:

Appendix A—Reference Methods

* * * * *

Method 7C—Determination of Nitrogen Oxide Emissions From Statutory Sources

Alkaline-Permanaganate/Colorimetric Method

1. Applicability, Principle, Interferences, Precision, Bias, and Stability.

1.1 Applicability. The method is applicable to the determination of NO_x emissions from fossil-fuel fired steam generators, electric utility plants, nitric acid plants, or other sources as specified in the regulations. The lower detectable limit is 3 mg NO_x, as NO_2, (7ppm NO_x) when sampling at 500 cc/min for 1 hour. No upper limit has been established; however, when using the recommended sampling conditions, the method has been found to collect NO_x, emissions quantatively up to 1782 mg NO_x/m^3, as NO_2, (932 ppm NO_x).

1.2 Principle. An integrated gas sample is extracted from the stack and collected in alkaline-postassium permanagante solution; $NO_x(NO+NO_2)$ emissions are oxidized to NO_3- and NO_3- is reduced to NO_2- with cadmium

and the NO_2^- is analyzed colorimetrically.

1.3 Interferences. Possible interferences are SO_2 and NH_3. High concentrations of SO_2 could interfere because SO consumes MnO_4^- (as does NO_x) and, therefore, could reduce the NO_x collection efficiency. However, when sampling emissions from a coal (2.1 percent S) fired electric utility plant with no control of SO_2 emissions, collection efficiency was not reduced. In fact, calculations show that sampling 3000 ppm SO_2 will reduce the MnO_4^- concentration by only 5 percent if all the SO_2 is consumed in the first impinger.

NH_3 is oxidized to NO_3^- by absorbing solution. At 100 ppm NH_3^- in the gas stream, an interference of 6 ppm NO_x (11 mg NO_2/m^3) was observed when the sample was analyzed 10 days after collection. Therefore, the method may not be applicable to plants using NH_3 injection to control NO_x emissions.

1.4 Precision and Bias. The method does not exhibit an bias relative to Method 7. The within-laboratory relative standard deviation for a single measurement is 2.8 and 2.9 percent at 201 and 268 ppm NO_x, respectively.

1.5 Stability. Collected samples are stable for at least 4 weeks.

2. Apparatus

2.1 Sampling and Sample Recovery. The sampling train is shown in Figure 7CC–1, and component parts are discussed below.

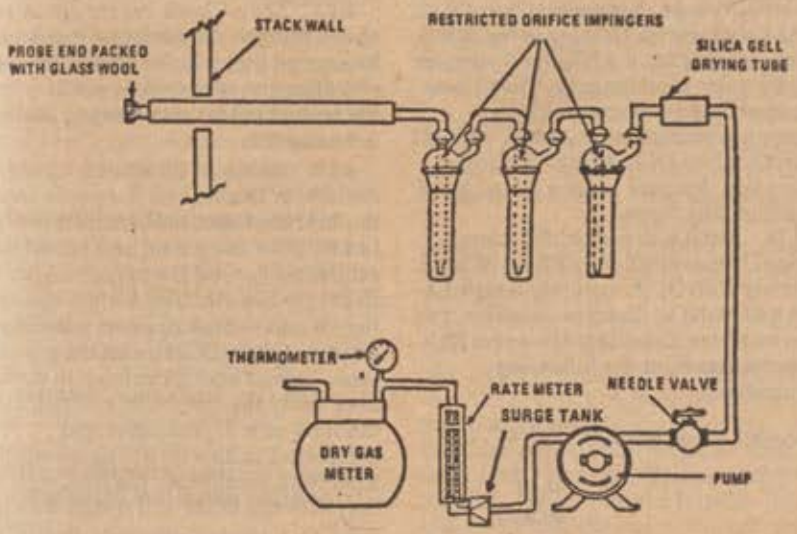


Figure 7C-1. NO_X sampling train.

2.1.1 Probe. Borosilicate glass tubing, sufficiently heated to prevent water condensation and equipped with an in-stack or out-stack filter to remove particulate matter (a plug of glass wool is satisfactory for this purpose). Stainless steel or Teflon tubing may also be used for the probe. (Note: Mention of trade names or specific products does not constitute endorsement by the U.S. Environmental Protection Agency.)

2.1.2 Impingers. Three restricted-orifice glass impingers, having the specifications given in Figure 7C–2, are required for each sampling train. The impingers must be connected in series with leak-free glass connectors. Stopcock grease may be used, if necessary, to prevent leakage. (the impingers can be fabricated by a glass blower until they become available commercially.)

2.1.3 Glass Wool, Stopcock Grease, Drying Tube, Valve, Pump, Barometer, and Vacuum Gauge and Rotameter. Same as in Method 6, Sections 2.1.3,

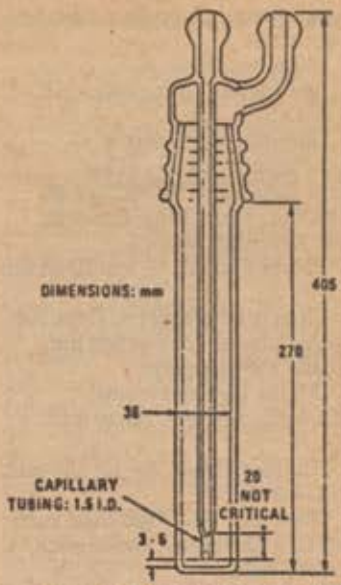


Figure 7C-2. Restricted orifice impinger.

2.1.4, 2.1.6, 2.1.7, 2.1.8, 2.1.11, and 2.1.12, respectively.

2.1.4 Rate Meter. Rotameter, or equivalent, accurate within 2 percent at the flow rate of 500 cc/min. For rotameters, a range of 0 to 1 liter/min is recommended.

2.1.5 Volume Meter. Dry gas meter capable of measuring the sample volume, under the sampling conditions of 500 cc/min for 60 minutes with an accuracy of ±2 percent.

2.1.6 Filter. A filter to remove NO_x from ambient air can be prepared by adding 20 g of a 5 angstrom molecular sieve to a cylindrical tube, e.g., a polyethylene drying tube.

2.1.7 Polyethylene Bottles. 1-liter, for sample recovery.

2.1.8 Funnel and Stirring Rods. For sample recovery.

2.2. Sample Preparation and Analysis.

2.2.1 Hot Plate. Stirring type with 50- by 10-mm Teflon-coated stirring bars.

2.2.2 Beakers. 400-, 600-, and 1000-ml capacities.

2.2.3 Filtering Flask. 500-ml capacity with sidearm.

2.2.4 Buchner Funnel. 75-mm ID.

2.2.5 Filter Paper. Whatman GF/C, 7.0-cm diameter.

2.2.6 Stirring Rods.

2.2.7 Volumetric Flasks. 100-, 200-, or 250-, 500-, and 1000-ml capacity.

2.2.8 Watch Glasses. To cover 600- and 1000-ml beakers

2.2.9 Graduated Cylinders. 50- and 250-ml capacities.

2.2.10 Pipettes. Class A.

2.2.11 pH Meter. To measure pH from 0.5 to 12.0.

2.2.12 Burette. 50 ml with a micrometer type stopcock. (The stopcock is Catalogue No. 8225–t–05, Ace Glass, Inc., Post Office Box 996, Louisville, Kentucky 50201.)

2.2.13 Glass Funnel. 75-mm ID at the top.

2.2.14 Spectrophotometer. Capable of measuring absorbance at 540 nm. One-cm cells are adequate.

2.2.15 Metal Thermometers. Bimetallic thermometers, range 0 to 150° C.

2.2.16 Culture Tubes. 20- by 150-mm. Kimax No. 45048.

2.2.17 Parafilm "M." Obtained from American Can Company, Greenwich, Connecticut 06830.

3. Reagents

Unless otherwise indicated, all reagents should conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

3.1. Sampling.

3.1.1 Water. Deionized distilled to conform to ASTM specification D 1193–74, Type 3 (incorporated by reference—see § 60.17).

3.1.2 Potassium Permanganate, 4.0% (w/w), Sodium Hydroxide, 2.0% (w/w). Dissolve 40.0 g of $KMnO_4$ and 20.0 g of NaOH in 940 ml of water.

3.2. Sample Preparation and Analysis.

3.2.1 Sulfuric Acid. Concentated H_2SO_4.

3.2.2 Oxalic Acid. $(COOH)_2 \cdot 2H_2O$.

3.2.3 Ethylenediamine Tetraacetic Acid, Disodium Salt (EDTA).

3.2.4 Sodium Hydroxide, 0.5 N. Dissolve 20 g of NaOH in water and dilute to 1 liter.

3.2.5 Sodium Hydroxide, 10 N. Dissolve 40 g of NaOH in waster and dilute to 100 ml.

3.2.6 EDTA Solution, 6.5 Percent. Dissolve 6.5 g of EDTA in water, and dilute to 100 ml. Solution is best accomplished by using a magnetic stirrer.

3.2.7 Column Rinse Solution. Add 20 ml of 6.5 percent EDTA solution to 960 ml of water, and adjust the pH to 12.0 with 0.5 N NaOH.

3.2.8 Hydrochloric Acid (HCL), 2 N. Add 86 ml of concentrated HCl to 500 ml of water, and mix. Store in a glass stoppered bottle.

3.2.9 Sulfanilamide. Melting point, 165 to 167°C.

3.2.10 N-(1-Naphthyl)-Ethylenediamine Dihydrochloride (NEDA). An aqueous solution would should have one absorption peak at 320 nm over the range of 260 to 400 nm. NEDA, showing more than one absorption peak over this range, is impure and should not be used.

3.2.11 Sodium Nitrite. Assay of 97 percent $NaNO_2$ or greater.

3.2.12 Phosphoric Acid. Concentrated, 85 percent.

3.2.13 Sulfanilamide Solution. Add 20 g of sulfanilamide to 700 ml of water. Add, with mixing, 50 ml concentrated phosphoric acid, and dilute to 1000 ml. This solution is stable for at least 1 month, if refrigerated.

3.2.14 NEDA Solution. Dissolve 0.5 g of NEDA in 500 ml of water. This solution is stable for at least 1 month if protected from light and refrigerated.

3.2.15 Cadmium. This is obtained from Matheson Coleman and Bell, 2909 Highland Avenue, Norwood, Ohio 45212, as EM Laboratories Catalogue No. 2001. Prepare by rinsing in 2 NCl for 5 minutes until the color is silver-grey. Then rinse the cadmium with water until the rinsings are neutral when tested with pH paper. Caution: H_2 is liberated during preparation. Prepare in an exhaust hood away from any flame.

3.2.16 $NaNO_2$ Standard Solution, Nominal Concentration, 1000 μg NO_2-ml. Desiccate $NaNO_2$. Accurately weigh 1.4 to 1.6 g of $NaNO_2$, dissolve in water, and dilute to 1 liter. Calculate the exact NO_2^- concentration from the following relationship:

$$\mu g\ NO_x^-/m\lambda = g\ of\ NaNO_2 \times \frac{purity, \%}{100} \times 10^3 \times \frac{46.01}{69.01}$$

This solution is stable for at least 6 months under laboratory conditions.

3.2.17 KNO_3 Standard Solution, Nominal Concentration, 6,200 μg NO_3^--ml. Dry KNO_3 at 110°C for 2 hours, and cool in a desiccator. Accurately weigh 9 to 10 g of KNO_3, dissolve in water, and dilute to 1 liter. Calculate the exact NO_3^- concentration from the following relationship:

$$\mu g\ NO_3^-/ml = g\ of\ KNO_3 \times 10^3 \times \frac{62.01}{101.10}$$

This solution is stable for 2 months without preservative under laboratory conditions.

3.2.18 Spiking Solution. Pipette 7 ml of the KNO_3 standard into a 100-ml volumetric flask, and dilute to volume.

3.2.19 Blank Solution. Dissolve 2.4 g of $KMnO_4$ and 1.2 g of NaOH in water, and dilute to 100 ml.

3.2.20 Quality Assurance Audit Samples. Nitrate samples in glass vials prepared by the Enviromental Monitoring Systems Laboratory of the Environmental Proctection Agency (EPA) at the Research Triangle Park, North Carolina. Each set will consist of two vials of samples with unknown concentrations. Only when making compliance determinations, obtain the audit samples from the Quality Assurance Management Office of the EPA regional office.

4. Procedure

4.1 Sampling.

4.1.1 Preparation of Collection Tain. Add 200 ml of $KMnO_4$/NaOH solution (3.1.2.) to each of three impinger, and assemble the train as shown in Figure 7C–1. Adjust probe heater to a temperature sufficient to prevent water condensation.

4.1.2 Leak-Check Procedure. A leak-check prior to the sampling run should be carried out; a leak-check after the sampling run is mandatory. Carry out the leak-check(s) according to Method 6, Section 4.1.2.

4.1.3 Check of Rotameter Calibration Accuracy. Disconnect the probe from the first impinger, and connect the filter (2.1.6). Start the pump, and adjust the rotameter to read 500 cc/min. After the flow rate has stabilized, start measuring the volume sampled, as recorded by the dry gas meter (DGM), and the sampling time. Collect enough volume to measure accurately the flow rate, and calculate the flow rate. If rotameter and calculated values do not agree within ± 5 percent, recalibrate the rotameter in line with the DGM and a stop watch.

4.1.4 Sample Collection. Record the initial DGM reading and barometric pressure. Determine the sampling point or points according to the appropriate regulations, e.g., Section 60.46(c) of 40 CFR Part 60. Position the tip of the probe at the sampling point, connect the probe to the first impinger, and start the pump. Adjust the sample flow to a value of 500 cc/min or lower. Caution: Higher flow rates will produce low results. Once adjusted, maintain a constant flow rate during the entire sampling run. Sample for 60 minutes. (Note: When the SO_2 concentration is greater than 1200 ppm, the sampling time may have to be reduced to 30 minutes to eliminate plugging of the impinger orifice with MnO_2.) Record the DGM temperature at least every 5 minutes. At the conclusion of each run, turn off the pump, remove probe from the stack, and record the final readings. Conduct a leak-check as in Section 4.1.2. If a leak is found, void the test run, or use procedures acceptable to the Administrator to

adjust the sample volume for the leakage.

4.1.5 CO_2 Measurement. During sampling, measure the CO_2 content of the stack gas near the sampling point using Method 3. The single-point grab sampling procedure is adequate. This measurement should be made at least three times: near the start, midway, and before the end of a run. Compute the average CO_2 concentration.

4.2 Sample Recovery. Disconnect the impingers. Pour the contents of the impingers into a 1-liter polyethylene bottle using a funnel and a stirring rod (or other means) to prevent spillage. Complete the quantitative transfer by rinsing the impingers and connecting tubes with water until the rinsings are clear to light pink, and add the rinsings to the bottle. Mix the sample, and mark the solution level. Seal and identify the sample container.

4.3 Sample Preparation for Analysis. Prepare a cadmium reduction column as follows: Place a plug of glass wool in the bottom of the burette (2.2.12). Cut off the burette at a height of 43 cm from the top of the plug, and have a glass blower attach a funnel (2.2.13) to the top of the burette such that the diameter of the burette remains essentially unchanged. Fill the burette with water. Add freshly prepared cadium slowly with tapping until no further settling occurs. The height of the cadmum column should be 39 cm. When not in use, store the column under rinse solution (3.27). (Note: The column should *not* contain any bands of cadmium fines. This may occur if regenerated cadmium is used and will greatly reduce the column lifetime.)

Note the level of liquid in the sample container, and determine whether any sample was lost during shipment. It a noticeable amount of leakage has occurred, the volume lost can be determined from the difference between initial and final solution levels, and this value can then be used to correct the analytical result. Quantitatively transfer the contents of the three impingers to a l-liter volumetric flask, and dilute to volume.

Take a 100-ml aliquot of the sample and blank solutions, and transfer to 400-ml beakers containing magnetic stirring bars. Add concentrated H_2SO_4 with stirring until a pH of 0.7 is obtained. Allow the solutions to stand for 15 minutes. Cover the beakers with watch glasses, and bring the temperature of the solutions to 50°C. Keep the temperature below 60°C. Dissolve 4.8 g of oxalic acid in a minimum volume of water, approximately 50 ml, at room temperature. Do not heat the solution. Add this solution slowly, in increments, until the $KMnO^4$ solution becomes colorless. If the color is not completely removed, prepare some more of the above oxalic acid solution and add until a colorless solution is obtained. Add an excess of oxalic acid by dissolving 1.6 g of oxalic acid in 50-ml of water, and add 6-ml of this solution to the colored solution. If a suspended precipitate is present, add concentrated H_2So_4 until a clear solution is obtained.

Allow the samples to cool to near room temperature, being sure that the samples are still clear. Adjust the pH to 12.0 with 10 N NaOH. Quantitatively transfer the mixture to a Buchner funnel containing CF/C filter paper, and filter the precipitate. The spout of the Buchner funnel should be equipped with a 13-mm ID by 90-mm long piece of Teflon tubing. (This modification minimizes the possibility of aspirating sample solution during filtration.) Filter the mixture into a 500-ml filtering flask. Wash the solid material four times with water. When filtration is complete, wash the Teflon tubing, quantitatively transfer the filtrate to a 500-ml volumetric flask, and dilute to volume. The samples are now ready for cadmium reduction. Pipette a 50-ml aliquot of the sample into a 150-ml beaker, and add a magnetic stirring bar. Pipette in 1.0-ml of 6.5 percent EDTA solution, and mix.

Determine the correct stopcock setting to establish a flow rate of 7 to 9 ml/min of column rinse solution through the cadmium reduction column. Use a 50-ml graduated cylinder to collect and measure the solution volume. After the last of the rinse solution has passed from the funnel into the burette, but before air entrapment can occur, start adding the sample and collect it in a 250-ml graduated cylinder. Complete the quantitative transfer of the sample to the column as the sample passes through the column. After the last of the sample has passed from the funnel into the burette, start adding 60-ml of column rinse solution, and collect the rinse solution until the solution just disappears from the funnel. Quantitatively transfer the sample to a 200-ml volumetric flask (250-ml may be required), and dilute to volume. The samples are now ready for NO_2^- analysis. Note: Both the sample and blank (unexposed $KMnO_4$/NaOH solution) should go through this procedure. Additionally, two spiked samples should be run with every group of samples passed through the column. To do this, prepare two additional 50-ml aliquots of the sample suspected to have the highest NO_2^-concentration, and add 1-ml of the spiking solution to this aliquot. It the spike recovery or column efficiency (see 6.2.1) is below 95 percent, prepare a new column, and repeat the cadmium reduction.

4.4 Sample Analysis. Pipette 10-ml of sample into a culture tube. (Note: Some test tubes give a high blank NO_2^-value but culture tubes do not.) Pipette in 10-ml of sulfanilamide solution and 1.4-ml on NEDA solution. Cover the culture tube with parafilm, and mix the solution. Prepare a blank in the same manner using the sample from treatment of the unexposed $KMnO_4$/NaOH solution (3.1.2). Also, prepare a calibration standard to check the slope of the calibration curve. After a 10-minute color development interval, measure the absorbance at 540-nm against water. Read ug NO_2^-/ml from the calibration curve. If the absorbance is greater than that of the highest calibration standard, pipette less than 10-ml of sample and enough water to make the total sample volume 10-ml, and repeat the analysis. Determine the NO_2 concentration using the calibration curve obtained in Section 5.4.

4.5 Audit Analysis. With each set or sets of compliance samples, analyze two unknown audit samples in the same manner as the samples to evaluate the technique of the analyst and the standards preparation. The same person, reagents, and analytical system must be used both for each set or sets of compliance samples and the EPA audit samples. If this condition is met, for compliance samples that are analyzed frequently, it is only necessary to analyze the audit samples once per quarter.

Calculate the concentration in mg/m^3using the specified gas volume in the audit instructions. (Note: Acceptability of the results of the audit samples may be obtained immediately by reporting the audit and compliance results by telephone.) Include the results of both audit samples with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency.

5. Calibration

5.1 Dry Gas Meter (DGM).

5.1.1 Initial Calibration. Same as in Method 6, Section 5.1.1. For detailed instructions on carrying out this calibration, it is suggested that Section 3.5.2 of Citation 4 be consulted.

5.1.2 Post-Test Calibration Check. Same as in Method 6, Section 5.1.2.

5.2 Rotameter. During the initial DGM calibration, record the rotameter ball position, the wet test meter volume, and run time. When the DGM calibration is complete, complete the

rotameter calibration by adjusting the flow rate to cover the range of 0 to 1 liter/min. Correct all volumes to STP. It is suggested that Section 3.5.2 of Citation 4 be consulted for examples of these volume calculations. Calculate the corrected flow rates, and plot flow rate versus ball position.

5.3 Thermometers for DGM and Barometer. Same as in Method 6, Sections 5.2 and 5.4, respectively.

5.4 calibration Curve for Spectrophotometer. Dilute 5.0 ml of the nominally 1000μg NO_2^-/ml solution to 200ml with water. This solution nominally contains 25μg NO_2^-/m Use this solution to prepare calibration standards to cover the range of 0.25 to 3.00 μg NO_2^-/ml. Use pipettes for all additions.

Run standards and water blank as instructed in Section 4.4. Plot the net absorbance vs μg NO_2^-/ml. Draw a smooth curve through the points. The curve should be linear up to an absorbance of approximately 1.2 with a slope of approximately 0.53 absorbance units/μg NO_2^-/ml. The curve should pass through the origin. The curve is slightly nonlinear from an absorbance of 1.2 to 1.6.

6. Calculations

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculation.

6.1 Sample volume, dry basis, corrected to standard conditions.

$$V_{m(std)} = V_m X Y \frac{T_{std}}{T_m} \frac{P_{bar}}{P_{std}} = K_1 X Y \frac{V_m P_{bar}}{T_m} \quad \text{(Eq. 7C-1)}$$

Where:

V_m = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm.

V_m = Dry gas volume as measured by the dry gas meter, dcm.

Y = Dry gas meter calibration factor.

X = Correction factor for CO_2 collection.

$$= \frac{100 + \%CO_2(v/v)}{100}$$

P_{bar} = Barometric pressure, mm Hg.

P_{std} = Standard absolute pressure, 760 mm Hg.

T_m = Average dry gas meter absolute temperature, °K.

T_{std} = Standard absolute temperature, 293°K.

K_1 = 0.3858°K/mm Hg.

6.2 Total μy NO_2 Per Sample.

6.2.1 Efficiency of Cadmium Reduction Column. Calculate this value as follows:

$$E = \frac{(x - y)\,200}{s \times 1.0 \times \frac{46.01}{62.01}} = \frac{269.6\,(x - y)}{s} \quad \text{(Eq.7C-2)}$$

Where:

E = Column efficiency, unitless.

x = Analysis of spiked sample, μg NO_2^-/ml.

y = Analysis of unspiked sample, μg NO_2^-/ml.

200 = Final volume of sample and blank after passing through the column, ml.

s = Concentration of spiking solution, μg NO_2^-/ml.

1.0 = Volume of spiking solution added, ml.

46.01 = μg NO_2^-/μ mole.

62.01 = μg NO_3^-/μ mole.

6.2.2 Total μg NO_2.

$$m = \frac{(S - B)}{E} \times 200 \times \frac{500}{50} \times \frac{1000}{100}$$

$$= \frac{(2 \times 10^4)\,(S - B)}{E} \quad \text{(Eq. 7C-3)}$$

Where:

m = Mass of NOχ, as NO_2, in sample, μg.

S = Analysis of sample, μg NO_2^-/ml.

B = Analysis of blank, μg NO_2^-/ml.

500 = Total volume of prepared sample, ml.

50 = Aliquot of prepared sample processed through cadmium column, ml.

100 = Aliquot of $KMnO_4$/NaOH solution, ml.

1000 = Total volume of $KMnO_4$/NaOH solution, ml.

6.3 Sample Concentration.

$$C = K_2 \frac{m}{V_{m(std)}}$$

Where:

C = Concentration of NO_x as NO_2, dry basis, mg/dscm.

$K_2 = 10^{-3}$ mg/g.

6.4 Conversion Factors.

1.0 ppm NO = 1.247 mg NO/m^3 at STP.

1.0 ppm NO_2 = 1.912 mg NO_2/m^3 at STP.

1 $ft^3 = 2.832 \times 10^{-2}$ m^3.

7. Quality Control

Quality control procedures are specified in Sections 4.1.3 (flow rate accuracy); 4.3 (cadmium column efficiency); 4.4 (calibration curve accuracy); and 4.5 (audit analysis accuracy).

8. Bibliography

1. Margeson, J.H., W.J. Mitchell, J.C. Suggs, and M.R. Midgett. Integrated Sampling and Analysis Methods for Determining NO_x Emissions at Electric Utility Plants. U.S. Environmental Protection Agency, Research Triangle Park, N.C. Journal of the Air Pollution Control Association. *32*:1210–1215. 1982.

2. Memorandum and attachment from J.H. Margeson, Source Branch, Quality Assurance Division, Environmental Monitoring Systems Laboratory, to The Record, EPA. March 30, 1983. NH_3 Interference in Methods 7C and 7D.

3. Margeson, J.H., J.C. Suggs, and M.R. Midgett. Reduction of Nitrate to Nitrite with Cadmium. Anal. Chem. *52*:1955–57. 1980.

4. Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III—Stationary Source Specific Methods. August 1977. U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA–600/4–77–027b. August 1977.

Method 7D—Determination of Nitrogen Oxide Emissions From Stationary Sources

Alkaline-Permanganate/Ion Chromatographic Method

1. Applicability, Principle, Interferences, Precision, Bias, and Stability

1.1 Applicability. The method is applicable to the determination of NO_x emissions from fossil-fuel fired steam generators, electric utility plants, nitric acid plants, or other sources as specified in the regulations. The lower detectable limit is similar to that for Method 7C. No upper limit has been established; however, when using the recommended sampling conditions, the method has been found to collect NO_x emissions quantitatively up to 1782 mg NO_x/m^3 as NO_2, (932 pm NO_x).

1.2 Principle. An integrated gas sample is extracted from the stack and collected in alkaline-potassium permanganate solution; NO_x ($NO+NO_2$) emissions are oxidized to NO_3^-. Then NO_3^- is analyzed by ion chromatography.

1.3 Interferences. possible interferences are SO_2 and NH_3. High concentrations of SO_2 could interfere because SO_2 could interfere because SO_2 consumes MnO_4^- (as does NO_x) and, therefore, could reduce the NO_x collection efficiency. However, when sampling emissions from a coal (2.1 percent S) fired electric utility plant, with no control of SO_2 emissions, collection efficiency was not reduced. In fact, calculations show that sampling 3000 ppm SO_2 will reduce the MnO_4^- concentration by only 5 percent if all the SO_2 is consumed in the first impinger.

NH_3 is oxidized to NO_3^- by the absorbing solution. At 100 ppm NH_3 in the gas stream, an interference of 6 ppm NO_x (11 mg NO_2/m^3) was observed when the sample was analyzed 10 days after collection. Therefore, the method may not be applicable to plants using NH_3 injection to control NO_x emissions.

1.4 Precision and Bias. The method does not exhibit any bias relative to Method 7. The within-laboratory relative standard deviation for a single measurement was approximately 6 percent at 200 to 270 ppm NO_x.

1.5 Stability. Collected samples are stable for at least 4 weeks.

2. Apparatus.

2.1 Sampling and Sample Recovery. The sampling train is the same as in Figure 7C–1 of Method 7C. Component parts are the same as in Method 7C, Section 2.1.

2.2 Sample Preparation and Analysis.

2.2.1 Magnetic Stirrer. With 25- by 10-mm Teflon-coated stirring bars.

2.2.2 Filtering Flask. 500-ml capacity with sidearm.

2.2.3 Buchner Funnel. 75-mm ID.

2.2.4 Filter Paper. Whatman GF/C, 7.0-cm diameter.

2.2.5 Stirring Rods.

2.2.6 Volumetric Flask. 250-ml.

2.2.7 Pipettes. Class A.

2.2.8 Erlenmeyer Flasks. 250-ml.

2.2.9 Ion Chromatograph. Equipped with an anion separator column to separate NO_3^-, a H+ suppressor, and necessary auxiliary equipment. Nonsuppressed and other forms of ion chromatography may also be used provided that adequate resolution of NO_3^- is obtained. The system must also be able to resolve and detect NO_2^-.

3. Reagents

Unless otherwise indicated, all reagents should conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

3.1 Sampling.

3.1.1 Water. Deionized distilled to conform to ASTM specification D 1193–74, Type 3 (incorporated by reference—see § 60.17).

3.1.2 Potassium Permanganate, 4.0% (w/w), Sodium Hydroxide, 2.0% (w/w). Dissolve 40.0 g of $KMnO_4$ and 20.0 g of NaOH in 940 ml of water.

3.2 Sample Preparation and Analysis.

3.2.1 Hydrogen Peroxide, 5 Percent. Dilute 30 percent H_2O_2 1:5 (v/v) with water.

3.2.2 Blank Solution. Dissolve 2.4 g of $KMnO_4$ and 1.2 g of NaOH in 96ml of water.

3.2.3 KNO_3 Standard Solution, Nominal Concentration, 6,200 μg NO_3^-/ml. Dry KNO_3 at 110°C for 2 hours, and cool in a desiccator. Accurately weigh 9 to 10 g of KNO_3, dissolve in water, and dilute to 1 liter. Calculate the exact NO_3^- concentration from the following relationship:

$$\mu g\ NO_3^-/ml = g\ of\ KNO_3 \times 10^3 \times \frac{62.01}{101.10}$$

This solution is stable for 2 months without preservation under laboratory conditions.

3.2.4 Eluent, 0.003 M $NaHCO_3$/0.0024 M Na_2CO_3. Dissolve 1.008 g $NaHCO_3$ and 1.018 g Na_2CO_3 in water and dilute to 4 liters. Other eluents capable of resolving nitrate ion from sulfate and other species present may be used.

3.2.5 Quality Assurance Audit Samples. This is the same as in Method 7C, Section 3.2.20.

4. Procedure

4.1 Sampling. This is the same as in Method 7C, Section 4.1.

4.2 Sample Recovery. This is the same as in Method 7C, Section 4.2.

4.3 Sample Preparation for Analysis. Note the level of liquid in the sample container, and determine whether any sample was lost during shipment. If a noticeable amount of leakage has occurred, the volume lost can be determined from the difference between initial and final solution levels, and this value can then be used to correct the analytical result. Quantitatively transfer the contents to a 1–liter volumetric flask, and dilute to volume.

Sample preparation can be started as soon as a chromatograph of a prepared sample shows that no NO_2^- is detectable. This step is necessary to insure that all NO_2^- is converted to No_3^-

It has been determined that 48 to 60 hours of sample standing after collection is necessary to complete this conversion. However, the minimum standing time required should be established experimentally. Once established, this time can be used for future samples.

Take a 50-ml aliquot of the sample and blank, and transfer to 250-m Erlenmeyer flasks. Add a magnetic stirring bar. Adjust the stirring rate to as fast a rate as possible without loss of solution. Add 5 percent H_2O_2 in increments of approximately 5 m using a 5-m pipette. When the $KMnO_4$ color appears to have been removed, allow the precipitate to settle, and examine the supernatant liquid. If the liquid is clear, the H_2O_2 addition is complete. If the $KMnO_4$ color persists, add more H_2O_2, with stirring, until the supernatant liquid in clear. (Note: The faster the stirring rate, the less volume of H_2O_2) that will be required to remove the $KMnO_4$.) Quantitatively transfer the mixture to a Buchner funnel containing GF/C filter paper, and filter the precipitate. The spout of the Buchner funnel should be equipped with a 13-mm ID by 90-mm long piece of Teflon tubing. This modification minimizes the possibility of aspirating sample solution during filtration. Filter the mixture into a 500-m filtering flask. Wash the solid material four times with water. When filtration is complete, wash the Teflon tubing, quantitatively transfer the filtrate to a 250-m volumetric flask, and dilute to volume. The sample and blank are now ready for NO_3^-–analysis.

4.4 Sample Analysis. The following chromatographic conditions are recommended: full scale range, 3 μMHO; sample loop, 0.5 ml; flow rate, 2.5 ml/min. These conditions should give a NO_3^- retention time of approximately 15 minutes (Figure 7D–1).

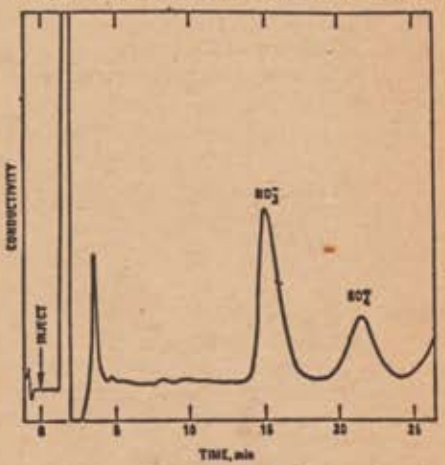


Figure 7D-1. Ion chromatograph of a prepared sample

Establish a stable baseline. Inject a sample of water, and determine if any NO_3^- appears in the chromatogram. If NO_3^- is present, repeat the water load-injection procedure approximately five

times; then re-inject a water sample, and observe the chromatogram. When no NO_3^- is present, the isntrument is ready for use. Inject calibration standards. then inject samples and a blank. Repeat the injection of the calibration standards (to compensate for any drift in response of the instrument). Measure the NO_3^- peak height or peak area, and determine the sample concentration from the calibration curve.

4.5 Audit Analysis. This is the same as in Method 7C, Section 4.5.

5. Calibration

5.1 Dry Gas Meter (DGM).

5.1 Initial Calibration. Same as in Method 6, Section 5.1.1. For detailed instructions on carrying out this calibration, it is suggested that Section 3.5.2 of Citation 3 be consulted.

5.1.2 Post-Test Calibration Check. Same as in Method 6, Section 5.1.2.

5.2 Rotameter. Same as in Method 7C, Section 5.2.

5.3 Thermometers for DGM and Barometer. Same as in Method 6, Sections 5.2 and 5.4, respectively.

5.4 Calibration Curve for Ion Chromatograph. Dilute a given volume (1.0ml or greater) of the nominally 6,200 Mg NO_3^-/ml solution to a convenient volume with water, and use this solution to prepare calibration standards. Prepare at least four standards to cover the range of the samples being analyzed. Use pipettes for all additions. Run standards as instructed in Section 4.4. Determine peak height or area, and plot the individual values versus concentration in Mg/ml. Do not force the curve through zero. Draw a smooth curve through the points. The curve should be linear. If the curve is linear, linear regression should be used to determine the calibration equation.

6. Calculations

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculation.

6.1 Sample Volume, Dry Basis, Correct to Standard Conditions. This is the same as in Method 7C, Section 6.1.

6.2 Total Mg Per Sample.

$$m = (S - B) \times 250 \times \frac{1000}{50} \times \frac{46.01}{62.01}$$

$$= 3710\,(S - B) \quad \text{(Eq. 7D–1)}$$

Where:

m = Mass of NO_x, as NO_2, in sample, μg.
S = Analysis of sample, Mg NO_3^-/ml.
B = Analysis of blank, Mg NO_3^-/ml.
= 250-Volume of prepared sample, ml.
1000 = Total volume of $KMnO_4$ solution, ml.
50 = Aliquot of $KMnO_4$ solution, ml.

6.3 Sample Concentration.

$$C = K_2 \frac{m}{V_{m(std)}}$$

Where:

C = Concentration of NO_x as NO_2, dry basis, mg/dscm.
$K_2 = 10^{-3}$ mg/ g.
6.4 Conversion Factors.
1.0 ppm NO = 1.247 mg NO/m^3 at STP.
1.0 ppm NO_2 = 1.912 mg NO_2/m^3 at STP.
1 $ft^3 = 2.832 \times 10^{-2}$ m^3.

7. Quality Control

Quality control procedures are specified in Sections 4.1.3 (flow rate accuracy) and 4.5 (audit analysis accuracy) of Method 7C.

8. Bibliography

1. Margeson, J.H., W. J. Mitchell, J. C. Suggs, and M. R. Midgett. Integrated Sampling and Analysis Methods for Determining NO_x Emissions at Electric Utility Plants. U.S. Environmental Protection Agency, Research Triangle Park, N.C. Journal of the Air Pollution Control Association. *32*:1210–1215. 1982.

2. Memorandum and attachment from J. H. Margeson, Source Branch, Quality Assurance Division, Environmental Monitoring Systems Laboratory, to The Record, EPA. March 30, 1983. NH_3 Interference in Methods 7C and 7D.

3. Quality Assurance handbook for Air Pollution Measurement Systems. Volume III—Stationary Source Specific Methods. U.S. Environmental Protection Agency, Research Triangle Park, N.C. Publication No. EPA–600/4–77–027b. August 1977.

* * * * *

[FR Doc. 83–27287 Filed 10–11–83; 8:45 am]
BILLING CODE 6560–50–M

federal register

Wednesday
October 12, 1983

Part III

Environmental Protection Agency

Control of Air Pollution From Aircraft and Aircraft Engines; Smoke Emission Standard

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS-FRL-2422-2]

Control of Air Pollution From Aircraft and Aircraft Engines; Smoke Emission Standard

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: This action stays the January 1, 1984 effective date for EPA's smoke standards, applicable to aircraft gas turbine engines rated below 26.7 kilonewtons (kN) thrust pending completion of rulemaking in response to a petition for reconsideration submitted by the General Aviation Manufacturers Association (GAMA).

DATE: This stay is effective November 14, 1983.

ADDRESS: Material relevant to this action is contained in Public Docket OMSAPC-78-1, located at the Central Docket Section, West Tower Lobby, 401 M Street SW., Washington D.C. 20460. The docket is open to the public and may be inspected between 8 am and 4 pm on week days. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Kittredge U.S. Environmental Protection Agency Office of Mobile Sources (ANR-455) 401 M Street SW., Washington D.C. 20460 telephone (202)-382-4981.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1982, EPA amended smoke and other emission standards applicable to aircraft engines (47 FR 58462). The rule included an effective date of January 1, 1984 for smoke standards applicable to aircraft gas turbine engines. On March 17, 1983, GAMA submitted a petition to EPA requesting reconsideration or revision of the amended smoke standard, alleging that EPA did not consider GAMA's comments during the rulemaking process and that the revised standard is inequitable as applied to small engines. On July 18, 1983, EPA proposed a stay in the January 1, 1984 effective date for small engines affected by the smoke standard, to allow time for careful evaluation of the GAMA petition (48 FR 32745).

Only two comments were received on the NPRM, from the Aircraft Owners and Pilots Association and the Garrett Turbine Engine Company. Both recommended that the stay be finalized as proposed and that the GAMA petition be granted. Garrett also provided comments bearing on the merits of the GAMA petition, which will be considered in a later rulemaking action.

II. Discussion of Issues

There is no significant environmental impact attributable to this rulemaking action, since only one engine model is likely to be affected. The economic impact could be favorable to the manufacturer of that particular engine model, since it would be relieved of the obligation to attempt to meet the present effective date for the standard (January 1, 1984).

As stated in the NPRM, the stay will give EPA the opportunity to coordinate the review of the arguments advanced in the GAMA petition with the International Civil Aviation Organization (ICAO), whose smoke standard was adopted by EPA in the December 31, 1982 rulemaking in the interests of international harmonization. Notwithstanding the desirability for international coordination, EPA intends to proceed expeditiously with the evaluation of the GAMA petition, with the goal of completing any amended rulemaking early in 1984.

III. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements for a regulatory analysis. This rulemaking is not major because it will not result in adverse effects on the economy greater than $100 million. There are no discernible effects on competition, productivity, investment, employment or innovation. For these reasons, EPA has not prepared a formal Regulatory Impact Analysis.

This rulemaking action has been sent to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291. Any comments from OMB and any EPA response thereto are in the Public Docket for this rulemaking.

IV. Impacts on Reporting Requirements

There are no reporting requirements directly associated with this rulemaking action.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine when a regulation will have a significant effect on a substantial number of small entities so as to require a regulatory flexibility analysis. Because of the limited classes of engines to which the proposal applies, no small entities (as defined by the Small Business Act) will be affected. Therefore, no Regulatory Flexibility Analysis has been prepared.

List of Subjects in 40 CFR Part 87

Air pollution control, Aircraft.

Dated: October 4, 1983.

Willian D. Ruckelshaus,

Administrator.

For the reasons set forth above, the January 1, 1984 effective date of the aircraft smoke regulations under 40 CFR 87.21(e) is hereby stayed for turbojet and turbofan engines rated below 26.7 kN thrust pending completion of rulemaking in response to the petition for reconsideration submitted by the General Aviation Manufacturers Association on March 17, 1983

[FR Doc. 83-27601 Filed 10-11-83; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
October 12, 1983

Part IV

Department of Justice

Attorney General's Task Force on Family Violence; Public Hearings

DEPARTMENT OF JUSTICE

Attorney General's Task Force on Family Violence; Public Hearings

Summary

Notice is hereby given that the Attorney General's Task Force on Family Violence will hold six public hearings on the issue of family violence. The Task Force, which was announced by the Attorney General on September 19, 1983, consists of nine members from the public and private sector covering a wide range of expertise in fields related to law enforcement and family violence.

The Task Force will function solely as an advisory body in full compliance with the provisions of the Federal Advisory Committee Act.

The Task Force will make recommendations to the Attorney General for addressing the national problem of violence within the family. Specifically, the Task Force will examine the issues and develop recommendations in the following areas: The nature of violence within the family and the responses to it; violence and molestation against children, spouse abuse, and mistreatment of the elderly; national, state, and local efforts, whether based in a government agency or in the private sector to address the problem of family violence; the integration of government and community resources to assist these victims; and appropriate roles for the Department of Justice, and other Federal agencies, in addressing family violence and improving the response to and the treatment of its victims.

Oral and written testimony will be solicited from the public. The testimony will be used as a basis for making recommendations to the Attorney General.

Location/Dates

Public hearings will be held at the following sites: New York, New York, December 1–2; Detroit, Michigan, December 14–15; Kansas City, Missouri, January 12–13; Seattle, Washington, January 19–20; San Antonio, Texas, February 1–2; Sacramento, California, February 15–16–17. An announcement regarding the specific time and location of the hearings will be made in a subsequent **Federal Register** announcement.

Procedure

The Task Force on Family Violence invites all interested parties to submit written testimony or program information regarding any, or all, aspects of family violence. Persons interested in submitting written testimony should forward it to: The Attorney General's Task Force on Family Violence, 633 Indiana Avenue, NW., Washington, D.C. 20531. If possible, all written testimony should be typed double spaced and submitted in duplicate. Persons interested in providing oral testimony at a hearing should notify: The Attorney General's Task Force on Family Violence, 633 Indiana Ave., NW., Washington, D.C. 20531, as soon as possible and in no event not later than 14 days prior to the date of the relevant hearing. The Task Force on Family Violence will make the final determinations as to what persons/organizations will make oral presentations.

Conduct of Hearings

Chief William Hart, Chairman of the Task Force on Family Violence, or his designee, will preside at the hearings. The other members of the Task Force will join Mr. Hart. This will not be a judicial or evidentiary-type hearing and there will not be any cross examination. However, clarifying questions or discussion may follow each presentation.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding official.

A transcript of the hearings will be made. The entire record of the hearings, including transcript, will be retained by the Task Force on Family Violence, and will be available to the public. Any person may purchase a copy of the transcript from the reporter.

For further information Contact: Attorney General's Task Force on Family Violence, 633 Indiana Avenue, NW., Washington, D.C. 20531.

Marise Rene Duff,

Executive Director, Attorney General's Task Force on Family Violence.

[FR Doc. 83-27801 Filed 10-11-83; 8:45 am]

BILLING CODE 4410-18-M

Reader Aids

Federal Register

Vol. 48, No. 198

Wednesday, October 12, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419
	523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-4534
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45093-45218.....3
45219-45370.....4
45371-45522.....5
45523-45752.....6
45753-46004.....7
46005-46258.....11
46259-46486.....12

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....45266
305.....45266

3 CFR

Executive Orders:
July 15, 1875
(Revoked in part by PLO 6479).....45559

Proclamations:
5110.....45219
5111.....45221
5112.....45371
5113.....45523
5114.....45753
5115.....46259

5 CFR

Ch. XIV.....45373
213.....46261
752.....45525
1255.....45373

7 CFR

2.....46261
301.....46262
752.....45526
906.....45374
908.....45526
910.....45374, 45755
919.....45374
929.....45374
981.....45374
991.....45374
1435.....45374
1901.....45532

Proposed Rules:
226.....45779
402.....46062
441.....45782
781.....46065
904.....45786
910.....45565
1065.....45117
1131.....46343

8 CFR

103.....45093
214.....45093
238.....45093
248.....45093

9 CFR

Proposed Rules:
92.....46355
317.....45118
319.....45118
350.....45755
362.....45755
381.....45118

10 CFR

55.....45225
71.....45381
761.....45746

Proposed Rules:
50.....45787

12 CFR

29.....45532
204.....46005, 46262
207.....45533
217.....45756, 46262
220.....45533
221.....45533
224.....45533
561.....45382
563.....45382
760.....46006

13 CFR

101.....45224
123.....45225
133.....46008

14 CFR

39.....45093, 45535, 46008, 46009
71.....45094, 45095, 45536, 45537, 46010
97.....45096
205.....46264
248.....46265
294.....46265
320.....45236
380.....46265
389.....45758

Proposed Rules:
Ch. I.....46358
21.....45214, 45565
25.....46218, 46250
29.....46250
39.....46070
61.....45214
65.....45214
71.....45118, 45566
107.....45214
109.....45214
121.....45214, 46218, 46250
135.....45214
145.....45214

16 CFR

453.....45537

Proposed Rules:
1212.....45405
1500.....45567
1513.....45567

17 CFR

145.....46010
146.....46010
147.....46010

229.....46012
230.....46012
231.....46012
239.....45386, 46012
240.....46012
241.....46012
270.....46012
274.....46012

Proposed Rules:
240.....45119

18 CFR

2.....46012
35.....46012
157.....46021
271.....45097, 46266–46268
274.....45097
282.....45758
385.....45388

Proposed Rules:
101.....46361
104.....46361
141.....46361
154.....46361
159.....46361
201.....46361
204.....46361
260.....46361
282.....45787
410.....45568
271.....46071

19 CFR

101.....45538
103.....45538
210.....45544

Proposed Rules:
101.....45409

20 CFR

404.....46142

Proposed Rules:
422.....46072

21 CFR

81.....45237, 45760, 46022
109.....45544
131.....45545
179.....46022
193.....45547
430.....46270
436.....46270
442.....46270
512.....46023
540.....45760
558.....45102, 46023, 46024

Proposed Rules:
182.....45121
184.....45121

24 CFR

570.....45760
888.....45547

Proposed Rules:
24.....46072

25 CFR

71.....45103

Proposed Rules:
140.....45789

26 CFR

1.....45761, 46272, 46296
4.....46272
31.....46296
35a.....45362

27 CFR

4.....45549
5.....45549
7.....45549
9.....45238, 45239

Proposed Rules:
9.....46387

29 CFR

1601.....46298

Proposed Rules:
1908.....45411
1910.....45956
1926.....45872

30 CFR

251.....46025
917.....46299
935.....46027, 46301
938.....45389
946.....46028

Proposed Rules:
55.....45336
56.....45336
57.....45336
58.....45336
935.....45420

32 CFR

251.....45242

Proposed Rules:
199.....45791

33 CFR

100.....45244
117.....45245
130.....46178
131.....46178
132.....46178
151.....45704
155.....45704
157.....45718

Proposed Rules:
162.....45798

34 CFR

668.....45670
690.....45670

Proposed Rules:
350.....45568
351.....45568
352.....45568
353.....45568
354.....45568
355.....45568
357.....45568

36 CFR

60.....46306

Proposed Rules:
216.....45421

37 CFR

Proposed Rules:
1.....45424
2.....45424

38 CFR

Proposed Rules:
21.....45123, 45268, 45572

39 CFR

111.....45761, 46031

Proposed Rules:
111.....45269

40 CFR

52.....45245, 45246, 46046, 46047, 46309
87.....46481
180.....46310
192.....45926
433.....45105
469.....45249
717.....45765

Proposed Rules:
51.....45269, 46152
52.....46081, 46391–46393
60.....45701, 46224, 46472
81.....46082, 46085, 46393
141.....45502
162.....46397
180.....45573, 46395, 46396
228.....45798
261.....45210
464.....45573
465.....45573

41 CFR

Ch 1.....45392, 45557
Ch. 101.....45105
9–4.....45766
9–51.....45766
101–11.....46310
105–61.....45392

42 CFR

51c.....45558
52b.....45558
55a.....45558
56.....45558
57.....45112
110.....45250
122.....45558
405.....45766

43 CFR

Subtitle A.....45664

Public Land Orders:
44 (Revoked by PLO 6478).....45401
98 (Revoked by PLO 6478).....45401
399 (Revoked in part by PLO 6477).....45395
698 (Revoked by PLO 6473).....45393
780 (Revoked by PLO 6478).....45401
3645 (Revoked by PLO 6472).....45393
5170 (Revoked in part by PLO 6477).....45395
5179 (Revoked in part by PLO 6477).....45395
5180 (Revoked in part by PLO 6477).....45395
5184 (Revoked in part by PLO 6477).....45395
6472.....45393
6473.....45393
6474.....45394
6475.....45394
6476.....45395
6477.....45395
6478.....45401
6479.....45559
6480.....46049
6481.....46049
6482.....46050

44 CFR

67.....46050, 46312

Proposed Rules:
67.....45425, 46085

45 CFR

13.....45251

46 CFR

160.....45113
162.....45727
380.....45559
542.....46175
543.....46175
544.....46175

Proposed Rules:
Ch. IV.....45269
7.....45574
24.....45425
25.....45425
26.....45425
30.....45425
31.....45425
32.....45425
35.....45425
70.....45425
71.....45425
75.....45425
77.....45425
78.....45425
90.....45425
91.....45425
94.....45425
96.....45425
97.....45425
107.....45425
108.....45425
109.....45425
163.....45425
188.....45425
189.....45425
192.....45425
195.....45425
196.....45425
508.....45800
524.....45270
531.....45270
536.....45270
538.....45272

47 CFR

0.....45652
1.....45652
2.....45560
73.....45401–45403
81.....45114, 45560
83.....45114, 45560
87.....45114
97.....45652

Proposed Rules:
73.....45428–45438
83.....45439

49 CFR

571.....46053
1033.....45257
1043.....45775

Proposed Rules:

Ch. X.....46399
27.....46399
218.....45272
1039.....45137
1155.....45440

50 CFR

17.....46053, 46328–46337
23.....45259, 45775
611.....45403
646.....45404
654.....46057
655.....45403, 45404
656.....45403
657.....45403
658.....46057
661.....45263
681.....46342

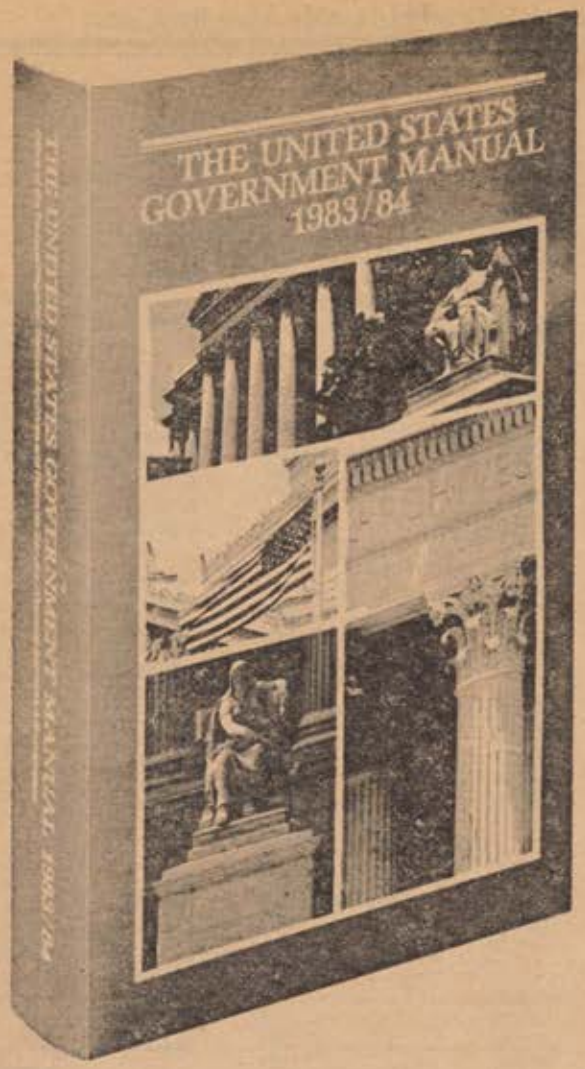
Proposed Rules:

17.....45574, 46086
23.....45575
611.....45804, 45806
663.....45274

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing October 11, 1983



Order Now!

The United States Government Manual 1983/84

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name, and subject/agency indexes.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

$9.00 per copy

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only

Total charges $_____

Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone No.'s

Area Code ☐☐☐ Home ☐☐☐–☐☐☐☐ Area Code ☐☐☐ Office ☐☐☐–☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me _____ copies of The United States Government Manual, 1983/84, at $9.00 per copy. Stock No. 022-003-01099-8

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity Charges

_____ Publications _____

_____ Subscription _____

Special Shipping Charges _____

International Handling _____

Special Charges _____

OPNR _____

_____ UPNS

_____ Balance Due

_____ Discount

_____ Refund

882