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Federal Register

Tuesday
August 28, 1984

Selected Subjects

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Federal Communications Commission

Agricultural Commodities

Agricultural Marketing Service

Air Carriers

Civil Aeronautics Board

Air Pollution Control

Environmental Protection Agency

Animal Drugs

Food and Drug Administration

Endangered and Threatened Species

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Handicapped

Nondiscrimination in federally conducted programs (21 agencies)—Part II

Hazardous Materials Transportation

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

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Agricultural Marketing Service

Milk Marketing Orders

Agricultural Marketing Service

Motor Vehicle Safety

National Highway Traffic Safety Administration

Quarantine

Animal and Plant Health Inspection Service

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Executive Order 12486 of August 24, 1984

The President

Establishing an Emergency Board To Investigate a Dispute Between Port Authority Trans-Hudson Corporation and the Brotherhood of Railroad Signalmen

A dispute exists between the Port Authority Trans-Hudson Corporation and the Brotherhood of Railroad Signalmen representing employees of the Port Authority Trans-Hudson Corporation.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act.

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

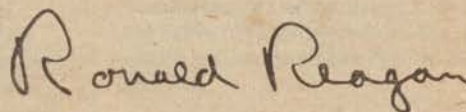
NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, as amended (45 U.S.C. section 159a), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective August 25, 1984, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, as amended, from the date of the creation of the board, and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees, in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.



THE WHITE HOUSE,
August 24, 1984.

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Rules and Regulations

Federal Register

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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 week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-336]

Mexican Fruit Fly; Deletion of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Mexican Fruit Fly" Quarantine and Regulations by removing the previously regulated area in Los Angeles County, California from the list of regulated areas and by removing California from the list of States quarantined because of Mexican fruit fly, *Anastrepha ludens* (Loew). This action is taken because it has been determined that Mexican fruit fly no longer occurs in California. This action is necessary in order to remove unnecessary restrictions on articles moving interstate from this area.

DATES: Effective date of amendment August 22, 1984. Written comments concerning this final rule must be received on or before October 29, 1984.

ADDRESSES: Written comments concerning this rulemaking should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 663, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

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

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

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is an extremely destructive pest of certain fruits and vegetables. The Mexican fruit fly can cause serious economic loss and it has a short life cycle that allows rapid development of serious outbreaks.

Prior to the effective date of this amendment, the Mexican fruit fly Quarantine and Regulations (7 CFR 301.64 *et seq.*) quarantined the States of California and Texas because of the Mexican fruit fly. The quarantine and regulations restrict the interstate movement of regulated articles from regulated areas in quarantined States in order to prevent the artificial spread of the Mexican fruit fly.

Under the Mexican fruit fly quarantine and regulations, an area must be designated as a regulated area if it is an area where the Mexican fruit fly has been found or an area in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or each portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its

proximity to the Mexican fruit fly, or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly exists. Less than an entire quarantined State is designated as a regulated area if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine and regulations which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those imposed with respect to the interstate movement of such articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Surveys conducted by inspectors of the U.S. Department of Agriculture and officials of State agencies of California have established that the Mexican fruit fly no longer occurs in any of the previously regulated areas of Los Angeles County, California. As such, there is no basis to continue listing this area in Los Angeles County in California. Therefore, it is necessary as an emergency measure to remove this previously regulated area of Los Angeles County, California from the list of regulated areas in section 301.64-3(c) in order to remove unnecessary restrictions on the interstate movement of regulated articles from this area.

With this amendment there are no longer any areas remaining in California which are designated as regulated areas since it appears that the Mexican fruit fly no longer occurs in California. Therefore, this amendment also deletes the State of California from the list of States quarantined because of Mexican fruit fly.

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will not have a significant effect on the economy; 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 have a significant adverse effect on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, the review provisions required by sections three, four and seven of Executive Order 12291 have been waived by OMB for purposes of this interim rule.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant impact on a substantial number of small entities. This amendment removes restrictions on the interstate movement of certain articles from a portion of Los Angeles County, California, approximately 33 square miles in size. There are approximately 30 out of 200 dealers at a local produce market which sell regulated articles interstate from this previously designated regulated area. This compares with hundreds of small entities that move such articles interstate from nonaffected areas in the United States. Further, because of certain routine procedures followed at the local produce market in the previously regulated area in Los Angeles County, California in handling regulated articles little or no treatment of regulated articles was required prior to their movement interstate. For these reasons, this document is not expected to have a significant effect on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mexican fruit fly, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances referred to above, the Mexican Fruit Fly Regulations (7 CFR 301.64 through 301.64-10) are amended as follows:

§ 301.64 [Amended]

1. In § 301.64(a) the reference to "California" is removed.

§ 301.64-3 [Amended]

2. In § 301.64-3(c) the reference to California and all of the material for California thereunder are removed.

Authority: Secs. 105 and 106, 71 Stat. 32, and 33 (7 U.S.C. 150dd, 150ee); 7 CFR 2.17, 2.51, 371.2(c).

Done at Washington, D.C., this 22nd day of August 1984.

William F. Helms,

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

[FR Doc. 84-22650 Filed 8-27-84; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Changes in Weight Dockage System, Incoming and Outgoing Grade Standards, and Reserve Pool Setaside Procedures for Certain Reconditioned Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule modifies the weight dockage system for substandard seedless raisins delivered by producers to raisin packers, changes the grade standards for seedless raisins delivered by producers to packers, changes the grade standards for packed seedless raisins, and changes the reserve pool setaside procedures for certain reconditioned raisins. The changes in the dockage system and raisin standards apply to Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins. They are designed to help the California raisin industry become more competitive with other world producers in terms of maturity levels, promote handler efficiencies of operation, and encourage producers to improve the quality of raisins they deliver to packers. The change permitting setaside of certain reconditioned raisins recognizes that the change in the dockage system could increase the quantity of raisins needing reconditioning and that there may not be enough unreconditioned raisins to meet reserve obligations. In order to provide equity among growers of all raisins covered under the program, this change will apply to all raisins covered under the raisin order. All of these changes were recommended by the Raisin Administrative Committee, which works with the USDA in implementing the order.

EFFECTIVE DATE: The change in the weight dockage system in § 989.210 shall become effective August 28, 1984. The change in § 989.158(c)(4)(i) shall become effective September 27, 1984. The changes in § 989.702 shall become effective November 15, 1984. The

changes in § 989.701 shall become effective August 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

It is found that good cause exists for not postponing the effective time of the change in the weight dockage system in § 989.210 for 30 days after publication in the *Federal Register* (5 U.S.C. 553) because the 1984-85 crop year began August 1, 1984, and the maturity of California's 1984 grape crop is ahead of normal. Producers will begin harvesting grapes and drying them into raisins soon. Also, dehydrators will begin dehydrating grapes into raisins and delivering them to packers shortly. That change is applicable to raisins delivered by producers and dehydrators to packers and, therefore, it is necessary that it be effective promptly upon publication before producers and dehydrators delivery 1984 crop raisins to packers.

Notice of the following proposals was published in the *Federal Register* on June 22, 1984 (49 FR 25635): Make changes in (1) the weight dockage system in § 989.210 of Subpart—Supplementary Regulations (7 CFR 989.210-989.221; 49 FR 10082); (2) the incoming grade standards for certain varietal types delivered by producers to packers in § 989.701 of Subpart—Quality Control (7 CFR 989.701-989.702; 49 FR 10082); (3) the outgoing grade standards for packed raisins in § 989.702 of that subpart; and (4) the provisions of § 989.158(c)(4)(i) of Subpart—Administrative Rules and Regulations (7 CFR 989.102-989.176; 49 FR 18727) to allow certain reconditioned raisins to be held in satisfaction of reserve pool setaside obligations. These subparts are operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order". The order is effective under the Agricultural

Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The notice afforded interested persons opportunity to submit written comments. Several comments were received in response to the notice—one supported the proposals and three recommended modifications or changes in the proposals.

While agreeing with the goal of quality improvement, one of the commenters stated that the proposals: (1) Providing that lots containing more than 10 percent substandard raisins be off-grade and require reconditioning before they could be acquired by handlers as standard raisins, (2) requiring lots of certain raisins delivered by producers to packers beginning August 1, 1985, to contain a minimum of 50 percent B or better maturity raisins,¹ and (3) changing the requirements for packed raisins, will not effectively increase quality and may cause considerable damage to producers. In the alternative, it was suggested that, for incoming raisins, a sliding price scale based on a B or better percentage on delivery by producers would be a better incentive to produce quality raisins. While this suggestion may provide an incentive for quality improvement, there is not authority in the act to establish producer prices. Therefore, this suggestion cannot be adopted. With respect to the proposed changes in the grade standards for packed raisins, the commenter indicated that the changes are not sufficient to significantly increase the quality of such raisins. The commenter recommended a further tightening of the standards, particularly with regard to stem content, substandard raisins, and raisin maturity, and that the raisin industry should conduct further studies in order to achieve the improvement in quality desired.

Another commenter stated the belief that the 50 percent B or better proposal for incoming raisins would not achieve the industry's goal of providing customers with a better tasting, plumper raisin. In the alternative, the commenter proposed that this requirement be increased to 55 percent B or better.

It is too early to assess the full impact of the RAC's proposals contained in the June 22 notice. However, implementation of all those proposals now will allow the raisin industry to tighten its standards gradually and, at the same time give the Committee an opportunity to study the capability of producers and packers to respond to

stricter standards. This is especially true for the change in the incoming standards requiring lots delivered by producers to contain 50 percent B or better maturity raisins. Adoption of that requirement now, even though it is not to be effective until August 1, 1985, will give the Committee and the industry ample time to study the effects of this change on a trial basis this fall as deliveries are made by producers to packers of 1984-85 crop year raisins, and develop such procedures as may be necessary to most effectively implement that change. Accordingly, the suggestions in the comments are not adopted.

In connection with the proposal to revise the second sentence of § 989.158(c)(4)(i) so that dry reconditioned raisins can be considered natural condition raisins and thus eligible for use in meeting a handler's reserve pool setaside obligation, two commenters stated that usage of "Cone Type Dry Cappers" should be prohibited during the reconditioning process. They contended that this equipment can damage raisin skins by "chipping", which could accelerate sugaring of reserve raisins during storage. A Cone Type Dry Capper is used by packers and some reconditioners to remove raisins from the main stem so that vacuums and blowers can easily and effectively remove substandard, immature and underdeveloped raisins. Pursuant to § 989.66, packers are required to set aside standard raisins as reserve tonnage. Also, packers are required to store reserve tonnage raisins in natural condition in a manner that will maintain the raisins in the same condition as when the packer acquired them, except for normal and natural deterioration and shrinkage. Thus, it is the responsibility of packers to adjust their reconditioning equipment to assure the quality of raisins for reserve pool use and to be sure that such raisins can withstand storage conditions. For these reasons, the changes in these comments are not adopted.

Section 989.158(c)(4)(i) provides that, for purposes of inspection, natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins after such reconditioning if no water or moisture was added in the reconditioning process. This action will broaden the provision so that dry reconditioned raisins can be considered as natural condition raisins and thus be eligible for use in meeting a handler's reserve pool setaside obligation. To accomplish this, the second sentence of § 989.158(c)(4)(i) is revised to provide that natural condition raisins which

have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)), or setaside by handler to satisfy the handler's reserve pool obligation, after such reconditioning has been completed if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins.

Section 989.210 prescribes a weight dockage system which permits handlers to acquire as standard raisins any lot of Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins, although the lots have been determined to be off-grade due to an excess of substandard raisins. The tolerance for substandard seedless raisins is 5 percent, beginning with the 1984-85 crop year (49 FR 10082).

This action modifies the dockage system in § 989.210 for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins to provide for dockage on lots containing substandard raisins in the range from 5.1 to 10 percent. Lots containing more than 10 percent substandard raisins will be off-grade and require reconditioning before they can be acquired by handlers as standard raisins. In the absence of reconditioning, the raisins will be returned to the producer who delivered them, or disposed of by the handlers in non-traditional outlets.

To make California raisins more competitive with foreign produced raisins, changes are made in the incoming grade standards in § 989.701 for raisins delivered by producers to packers, and in the grade standards for packed raisins in § 989.702. The incoming and outgoing grade changes apply to Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins. Beginning August 1, 1985, raisin lots of these varietal types delivered by producers to packers would have to contain a minimum of 50 percent B or better maturity raisins. Raisin lots containing less than 50 percent B or better raisins would be off-grade and have to be reconditioned before they could be acquired by the packer as standard quality raisins.

With respect to packed raisins of these varietal types, the requirements for maturity and pieces of stem are tightened effective November 15, 1984. The minimum grade requirement is specified in U.S. Grade C., except that the minimum percent B or better is raised from 55 percent to 62.5 percent. The tolerances for pieces of stem and

¹ For the purposes of this document, reference to B or better maturity raisins means raisins which are well-matured or reasonably well-matured as defined in the United States Standards for Grades of Processed Raisins (7 CFR 52.1841-52.1858).

substandard and undeveloped raisins contained in U.S. Grade B will apply to select and mixed-sized packed raisins. The 62.5 percent B or better requirement will increase to 70 percent B or better November 15, 1985.

The foregoing changes will not be applicable to raisins with seeds, such as Zante, Currant, Sultana, and Muscat (including other raisins with seeds) raisins. The California raisin industry has indicated that the current quality requirements for such raisins are in line with packer and user preferences, and that quality improvements for those raisins are not needed at this time.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the RAC, the comments and other information, it is determined that the changes hereinafter set forth will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 989

Marketing agreements, Grapes, Raisins, California.

PART 989—[AMENDED]

The rule is as follows:

1. Section 989.158(c)(4)(i) of Subpart—Administrative Rules Regulations (7 CFR 989.102–989.176; 49 FR 18727) is amended by revising the second sentence to read as follows:

§ 989.158 Natural condition raisins.

(c) * * *

(4) Reconditioning off-grade raisins—reconditioning requirements.

(i) * * * Natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) or setaside by a handler to satisfy the handler's reserve pool obligation, after such reconditioning has been completed, if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins.

2. Section 989.210 (a) and (g) of Subpart—Supplementary Regulations (7 CFR 989.210–989.221; 49 FR 10082) are revised to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(a) General. Subject to prior agreement between handler and tenderer, a handler may acquire as standard raisins any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless and Monukka raisins

containing more than 6 percent beginning with the 1983–84 crop year, and between 5.1 percent and 10 percent beginning with the 1984–85 crop year, by weight, of substandard raisins under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing more than 12 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable dockage factor from the appropriate dockage table prescribed in paragraphs (g) or (h) of this section.

(g) Dockage tables applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka Raisins.

Percent substandard	Dockage factor
Crop Year—1983–84:	
6.0	(1)
6.1	.999
6.2	.998
6.3	.997
6.4	.996
6.5	.995
Crop Year—1984–85 and thereafter:	
5.0	(1)
5.1	.999
5.2	.998
5.3	.997
5.4	.996
5.5	.995
No dockage for deliveries in excess of 10 percent substandard.	

¹ No dockage.

Note: Percentage in excess of the last percentage shown in each table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

3. Section 989.701 (a)(3), (b)(3), and (c)(3) of Subpart—Quality Control (7 CFR 989.701–989.702; 49 FR 10082) are revised to read as follows:

§ 989.701 Minimum grade and condition standards for natural condition raisins.

(a) * * *

(3) Shall contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and for the 1985–86 and subsequent crop years also contain at least 50 percent well-matured or reasonably well-matured raisins;

(b) * * *

(3) Shall contain not more than 5 percent, by weight, of substandard raisins (raisins that show development

less than that characteristic of raisins prepared from fairly well-matured grapes), and for the 1985–86 and subsequent crop years also contain at least 50 percent well-matured or reasonably well-matured raisins;

(c) * * *

(3) Shall contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and for the 1985–86 and subsequent crop years also contain at least 50 percent well-matured or reasonably well-matured raisins;

4. Section 989.702 of Subpart—Quality Control (7 CFR 989.701–989.702; 49 FR 10082) are revised to read as follows:

§ 989.702 Minimum grade standards for packed raisins.

Effective pursuant to § 989.59, the minimum grade standards for packed raisins shall be as follows:

(a) *Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless Raisins.* Packed Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins shall meet the requirements of U.S. Grade C as defined in the effective United States Standards for Grades of Processed Raisins (§§ 52.1841–52.1858 of this title): *Provided*, that at least 62.5 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized raisin lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem, and underdeveloped and substandard raisins, and small (midget) sized raisins shall meet the U.S. Grade C tolerances for those factors. These requirements shall be effective November 15, 1984: *Provided*, that the tolerance for well-matured or reasonably well-matured raisins shall increase from 62.5 percent to 70 percent on November 15, 1985.

(b) *Golden Seedless Raisins.* Packed Golden Seedless raisins shall at least meet the requirements prescribed in paragraph (a) of this section, and the color requirements for "colored" as defined in said standards.

(c) *Monukka Raisins.* Packed Monukka raisins shall at least meet the requirements prescribed in paragraph (a) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent.

(d) *Muscat (including other raisins with seeds) Raisins.* Packed Muscat (including other raisins with seeds)

raisins shall at least meet the requirements of U.S. Grade C of the said standards. Layer Muscat (including other raisins with seeds) raisins shall at least meet U.S. Grade B as defined for "Layer or Cluster Raisins With Seeds" in said standards, except for the provisions therein relating to moisture content.

(e) *Sultana Raisins*. Packed Sultana raisins shall at least meet the requirements of U.S. Grade C as defined in said standards.

(f) *Zante Currant Raisins*. Packed Zante Currant raisins shall at least meet the requirements of U.S. Grade B as defined in said standards.

(g) A handler may grind raisins which do not meet the minimum grade standards prescribed in paragraphs (a) through (f) of this section because of mechanical damage or sugaring, into a raisin paste.

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

Dated: August 23, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-22845 Filed 8-27-84; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

Display of Office of Management and Budget; OMB Control Numbers for Reporting and Recordkeeping Requirements

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is amending its regulations to indicate Office of Management and Budget (OMB) approval of new and revised information collection requirements contained in or authorized by the regulations. This action is required by the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 94 Stat. 2812, Chapter 35 of Title 44).

EFFECTIVE DATE: August 28, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Zaic, Information Resources Management Branch, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416. Telephone No. 653-8538.

SUPPLEMENTARY INFORMATION: This amendment is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1980 as implemented

by 5 CFR Part 1320 that agencies display a current OMB control number assigned by the Director, OMB on each agency information collection requirement. This subpart collects and displays current OMB control numbers and expiration dates. Where the information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number on the document.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) requiring advance notice and comment.

List of Subjects in 13 CFR Part 133

OMB Control numbers assigned, Reporting and recordkeeping requirements.

PART 133—[AMENDED]

Therefore, 13 CFR Part 133 is amended by revising the table in paragraph (c) of § 133.1 to read as follows:

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

* * * * *

(c) * * *

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0003	SBA 745 (2-83 ed.)	13 CFR 125-9	4-30-85
	SBA 745A (2-83 ed.)	13 CFR 125-9	4-30-85
3245-0007	SBA 990	13 CFR 115.5	5-31-85
	SBA 994	13 CFR 115.5	5-31-85
	SBA 994B	13 CFR 115.5	5-31-85
	SBA 994F	13 CFR 115.5	5-31-85
	SBA 994H	13 CFR 115.5	5-31-85
	SBA 994J	13 CFR 115.5	5-31-85
3245-0012	SBA 770	13 CFR 123.9	7-31-84
3245-0013	SBA 74	13 CFR 125.5	3-31-86
	SBA 74A	13 CFR 125.5	3-31-86
	SBA 74B	13 CFR 125.5	3-31-86
	SBA 183	13 CFR 125.5	3-31-86
3245-0015	SBA 1010A	13 CFR 124	11-30-84
	SBA 1010B	13 CFR 124	11-30-84
	SBA 1010C	13 CFR 124	11-30-84
	SBA 1010D	13 CFR 124	11-30-84
	SBA 1010E	13 CFR 124	11-30-84
	SBA 1010F	13 CFR 124	11-30-84
3245-0016	SBA 4	13 CFR 122.309	12-31-86
	SBA 4I	13 CFR 122.309	12-31-86
	SBA 4 Sched. A	13 CFR 122.309	12-31-86
3245-0017	SBA 5	13 CFR 123	12-31-86
	SBA 739A	13 CFR 123	12-31-86
	SBA 136	13 CFR 123	12-31-86
3245-0018	SBA 5C	13 CFR 123.1	8-31-85
	SBA 739	13 CFR 123.9	8-31-85
3245-0019	SBA 1099	13 CFR 101.2-7	11-30-84
	SBA 933	13 CFR 101.2-7	11-30-84
	SBA 1107	13 CFR 101.2-7	11-30-84
	SBA 1100	13 CFR 101.2-7	11-30-84
3245-0020	SBA 1136	13 CFR 111.5	6-30-85
	SBA 1136A	13 CFR 111.5	6-30-85
3245-0023	SBA 2006	13 CFR 101.2-6	9-30-85
3245-0024	SBA 1167	13 CFR 125.10	3-31-87
	SBA 1167A	13 CFR 125.10	3-31-87
	SBA 1395	13 CFR 125.10	3-31-87
3245-0046	SBA 1174	13 CFR 101.2-7	9-30-86
3245-0053	SBA 24	13 CFR 101.2-7	2-28-85
	SBA 1351	13 CFR 101.2-7	2-28-85

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0062	SBA 415	13 CFR 107.102	3-31-85
	SBA 415A	13 CFR 107.102	3-31-85
	SBA 415B	13 CFR 107.102	3-31-85
3245-0063	SBA 468	13 CFR 107.1102	3-31-85
	SBA 468, parts 1, 2, 3	13 CFR 107.1102	3-31-85
3245-0070	SBA 18	13 CFR 101.2-7	9-30-86
3245-0071	SBA 1244	13 CFR 108.503	2-28-87
3245-0072	SBA 22	13 CFR 101.2-7	9-30-86
3245-0073	SBA 1246	13 CFR 108.503	4-30-87
3245-0074	SBA 1253	13 CFR 108.503	1-31-87
	SBA 1253A	13 CFR 108.503	1-31-87
	SBA 1253B	13 CFR 108.503	1-31-87
3245-0075	SBA 20	13 CFR 101.2-7	3-31-87
3245-0076	Non discriminatory requirements	13 CFR 112.113	4-30-85
	SBA 793	13 CFR 112.113	4-30-85
3245-0078	Small business investment company records and reports	13 CFR 107.1102	4-30-87
	SBA 684	13 CFR 107.1102	4-30-87
	SBA 1031	13 CFR 107.1102	4-30-87
3245-0080	SBA 1081	13 CFR 120.4	4-30-87
3245-0081	Funds to Licensee	13 CFR 107.201	4-30-87
	SBA 25-28, 33 34	13 CFR 107.201	4-30-87
	SBA 1022A, 1022B	13 CFR 107.201	4-30-87
	C.O. 158	13 CFR 107.201	4-30-87
	C.O. 159	13 CFR 107.201	4-30-87
3245-0083	Amendments to License	13 CFR 107.1105	7-31-84
	SBA 415C	13 CFR 107.1105	7-31-84
3245-0084	SBA 700	13 CFR 123	8-31-84
3245-0090	SBA 59	13 CFR 101.2-7	9-30-84
3245-0091	SBA 641	13 CFR 101.2-7	11-30-84
3245-0095	SBA 1175	13 CFR 101.2-7	11-30-84
3245-0096	SBA 883	Presidential proclamation designating small business week	12-31-86
3245-0097	SBA 1335		1-31-85
3245-0101	SBA 335, 1340	13 CFR 121	3-31-85
3245-0104	SBA 1356	13 CFR 101.2-7	5-31-86
3245-0108	SBA 1062	13 CFR 101.2-7	8-31-85
3245-0109	SBA 857	13 CFR 107.110.1	7-31-86
	SBA 858		
3245-0110	SBA 1368	13 CFR 123.17	3-31-87
	SBA 1391	13 CFR 123.42	3-31-87
3245-0112	SBA 1301	13 CFR 108.503	7-31-86
3245-0114	SBA 1302	13 CFR 108.503	7-31-86
3245-0116	SBA 860	13 CFR 107.1101	7-31-86
3245-0117	CO 266		6-30-86
3245-0118	SBA 856	13 CFR 107.1101	6-30-86
3245-0121	Governor's request for disaster declaration	13 CFR 123.24	6-30-86
3245-0122	Reconsideration request	13 CFR 123.11	7-31-86
3245-0123	SBA 888	13 CFR 101.2-7	9-30-85
3245-0124	Notice of duplication of benefits	13 CFR 123.22	6-30-86
3245-0125	SBA 898	P.L. 92-463	7-31-86
3245-0128	SBA 1160	13 CFR 123	8-31-86
3245-0129	SBA 1238A		8-31-86
3245-0130	SBA 1238		8-31-86
3245-0131	SBA 172	Agency's participant handbook	8-31-86
3245-0132	SBA 1149		8-31-84
3245-0133	SBA 2014A	P.L. 95-454	8-31-86
3245-0134	SBA 1369	13 CFR 101.2-7	9-30-86
3245-0135	SBA 1202	13 CFR 101.2-7	9-30-86
3245-0136	SBA 987	13 CFR 123.1	9-30-86
3245-0137	SBA contract requirements	OMB circulars A-110; A-21; A-102; A-122	8-31-86
3245-0140	SBA grants management program applications (SBA 1222, 1223, 1224)	OMB circulars A-110; A-21; A-102; A-122	8-31-86
3245-0141	SBA 843	SBA SOP 60 02	8-31-86
3245-0143	Request for eligibility reconsideration	13 CFR 124	11-30-85
3245-0144	SBA 1017	13 CFR 124	11-30-86
3245-0145	Notice of change in ownership	13 CFR 124	11-30-86
3245-0146	Request for approval of joint venture agreement	13 CFR 124	11-30-86
3245-0147	Request for fixed program participation term (FPPT)	13 CFR 124	11-30-86
3245-0148	Request for advance payment and schedule of advance payment requirements	13 CFR 124	11-30-86
3245-0149	Request for business development expense	13 CFR 124	11-30-86
3245-0151	Submission of business financial statement	13 CFR 124	11-30-86
3245-0152	SBA 1374	13 CFR 121	9-30-84
3245-0153	SBA 1375	Presidential proclamation designating small business week	12-31-86
3245-0155	Survey of Government contractors to assess level of subcontracting to small business	P.L. 95-507/94-305	2-28-85
3245-0156	SBA 1394	13 CFR 101.2-7	9-30-84
3245-0157	SBA 1388	P.L. 97-219	2-28-87
3245-0158	SBA 1183	SOP 50 50	3-31-87
3245-0159	SBA 712	15 USC 639	3-31-87
3245-0160	SBA 149	13 CFR 122.15	3-31-87
3245-0164	Liquidation activities	43 CFR 5	3-31-87
3245-0167	SBA 1104	13 CFR 101.2-7	2-28-87
3245-0168	Small Business Institute counseling case report	13 CFR 101.2-7	3-31-87
3245-0169	SBDC quarterly and financial reports	13 CFR 101.2-7	2-28-87
3245-0170	SBA 1385	E.O. 12138	2-28-85
3245-0171	Nominate a small business person or advocate of the year	P.L. 94-309	2-28-87
3245-0172	SBA 1405	13 CFR 107.1101	2-28-87
3245-0173	SBA 1396	13 CFR 101.2-7	9-30-84
3245-0175	Measuring the flow of capital and credit to small firms survey	15 CFR 634	12-31-84
3245-0176	Compliance review report	13 CFR 112, 113, 117	4-30-87
3245-0177	Survey of DOD contractors to determine whether veteran-owned small businesses are successful or not in obtaining DOD awards	P.L. 93-237/94-305	5-31-85
3245-0178	SBA 912	15 USC 6349(b)	3-31-87

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0179	Survey of research capabilities for historically black colleges and universities (HBCU-s).	E.O. 12320	9-30-84
3245-0180	The Vietnam-era veteran and entrepreneurship questionnaire	P.L. 93-237	10-31-84
3245-0181	Innovations embodied in BLS technological studies	15 CFR 634(b)	12-31-84
3245-0182	Survey of business school alumni to assess entrepreneurship and effect of veterans status.	P.L. 93-237	12-31-84
3245-0183	SBA 1419	13 CFR 101.2-7	6-30-87

(44 U.S.C. 3512)

Dated: August 17, 1984.

James C. Sanders,
Administrator.

[FR Doc. 84-22625 Filed 8-27-84; 8:45 am]

BILLING CODE 8025-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 320

Procedures for Awarding Japanese Charter Authorizations

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Approval of Application, Reporting and Recordkeeping Requirements by the Office of Management and Budget.

SUMMARY: The Civil Aeronautics Board has extended the application, reporting, and recordkeeping requirements in Part 320 of the Board's Procedural Regulations governing the award of Japanese charter authorizations. The Office of Management and Budget approved the extension of these requirements through July 31, 1987, under OMB No. 3024-0055. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES: Effective: August 9, 1984. Dated: August 21, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus, 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 320

Air carriers, Rules.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-22848 Filed 8-27-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Diethylcarbamazine Citrate Syrup; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) for diethylcarbamazine citrate syrup from AMI, Inc., to Medico Industries, Inc. Medico submitted a supplemental NADA providing for the change.

EFFECTIVE DATE: August 28, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-62443.

SUPPLEMENTARY INFORMATION: Medico Industries, Inc., P.O. Box 338, Elwood, KS 66024, submitted supplemental NADA 92-837 (D.E.C. Sol™, diethylcarbamazine citric syrup) to provide for a change of sponsor from AMI, Inc. AMI informed the agency of the change. Both firms are subsidiaries of TechAmerica Group, Inc. Medico had previously been approved as an alternate manufacturer under the NADA.

This intracorporate transfer of sponsorship does not involve any changes in approved manufacturing facilities, equipment, procedures, or production personnel. The regulations are amended to reflect the change of sponsor.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.622b [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 [21 U.S.C. 360b(i)]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 520.622b *Diethylcarbamazine citrate syrup* is amended in paragraph (c)(2) by removing the number "015563" and inserting in its place "013983".

Effective date: August 28, 1984.

(Sec. 512(i), 82 Stat. 347 [21 U.S.C. 360b(i)])

Dated: August 22, 1984.

Marvin A. Norcross,
Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-22755 Filed 8-27-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

28 CFR Part 56

International Energy Program

AGENCY: Antitrust Division, Justice.

ACTION: Final rule.

SUMMARY: Section 252(e)(2) of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 871 (1975), requires the Attorney General, in consultation with the Federal Trade Commission and the Secretary of Energy, to promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action pursuant to the Agreement of an International Energy Program (IEP), T.I.A.S. 8278 (1974). The Department of Justice is hereby issuing as its own, rules previously promulgated by the Department of Energy ("DOE") in consultation with the Attorney General, the Federal Trade Commission and the Department of State. See 10 CFR 209.24, 209.34.

EFFECTIVE DATE: August 28, 1984.

FOR FURTHER INFORMATION CONTACT:

Melanie Stewart Cutler, Chief, Energy Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, telephone (202) 724-6410.

SUPPLEMENTARY INFORMATION: Section 252 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6272 (1983) delegates to the Attorney General and other concerned agencies certain responsibilities for approving, reviewing, and monitoring voluntary agreements and plans of action developed and executed by individuals and business entities in order to assist in the implementation of the IEP. The IEP was entered into, *inter alia*, in order to create a vehicle to allocate equitably petroleum and petroleum products among signatory countries in the event of specified shortages of such materials in world markets and to develop information systems concerning international supplies of petroleum and petroleum products.

To encourage oil companies to participate in implementing the IEP, Section 252(f) of EPCA, 42 U.S.C. 6272(f), makes available to any person engaged in the petroleum business a defense "to any civil or criminal action brought under the antitrust laws * * *" for actions taken to develop or carry out a voluntary agreement or plan of action to implement the IEP. The availability of that defense is dependent on compliance with requirements of Section 252 and rules promulgated under it. Section 252(b) of EPCA, 42 U.S.C. 6272(b), requires the Secretary of Energy, with the approval of the Attorney General, after each of them has consulted with the Federal Trade Commission and the Secretary of State, to prescribe procedures and standards under which oil companies may develop and carry out voluntary agreements and plans of action required to implement the allocation and information provisions of the IEP. DOE, in consultation with the Attorney General, the Federal Trade Commission and the Department of State, has already promulgated the procedures and standards required by Section 252 including regulations for keeping records. See 10 CFR Part 209.

Because of the separate statutory requirement in Section 252(e)(2) of EPCA, however, the Department of Justice must promulgate its own rules regarding the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action. The DOE recordkeeping regulations fully meet the needs of the Department of Justice to maintain the

necessary and appropriate records required under Section 252(e)(2) of EPCA. Accordingly, the Department of Justice is formally issuing as its own, previously promulgated DOE regulations on recordkeeping to satisfy its own statutory obligation. The Attorney General delegated his authority under Sections 252 and 254 of EPCA to the Assistant Attorney General in charge of the Antitrust Division. See 28 CFR 0.41(g). Thus, this rule is being issued by the Assistant Attorney General in charge of the Antitrust Division. This action imposes no new reporting or recordkeeping obligations.

It is the policy of the Department of Justice to allow time for interested parties to participate in the rulemaking process. These regulations, which the Department of Justice is issuing as its own, have already been promulgated by notice and comment rulemaking conducted by the DOE (see 41 FR 6752 and 41 FR 13998) and will have no effect other than to satisfy a Department of Justice statutory obligation. Because of these factors, the Department of Justice finds that notice and a public hearing on these rules are unnecessary and, therefore, these regulations are being promulgated as a final rule pursuant to the provisions of 5 U.S.C. 553(b)(3). Neither is this a rule within the meaning of Executive Order 12291, Section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601-612 (1982).

By the authority vested in me by 42 U.S.C. 6272(e)(2) and 28 CFR 0.41(g) and for the reasons set out in the preamble, Part 56 is added to Title 28 of the Code of Federal Regulations, Chapter 1.

List of Subjects in 28 CFR Part 56

Energy, International organizations, Oil imports, Petroleum, Reporting and recordkeeping requirements, Trade agreements, Treaties.

Part 56 is added to read as follows:

PART 56—INTERNATIONAL ENERGY PROGRAM

Sec.

- 56.1 Purpose and scope.
- 56.2 Maintenance of records with respect to meetings held to develop voluntary agreements or plans of action pursuant to the Agreement on an International Energy Program.
- 56.3 Maintenance of records with respect to meetings held to develop and carry out voluntary agreements or plans of action pursuant to the Agreement on an International Energy Program.

Authority: Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871 (42 U.S.C. 6201), unless otherwise noted.

§ 56.1 Purpose and scope.

These regulations are promulgated pursuant to section 252(e)(2) of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6272(e)(2). They are being issued by the Assistant Attorney General in charge of the Antitrust Division to whom the Attorney General has delegated his authority under this section of EPCA. The requirements of this part do not apply to activities other than those for which Section 252 of EPCA makes available a defense to actions brought under the federal antitrust laws.

§ 56.2 Maintenance of records with respect to meetings held to develop voluntary agreements or plans of action pursuant to the Agreement on an International Energy Program.

(a) The Administrator of the Department of Energy shall keep a verbatim transcript of any meeting held pursuant to this subpart.

(b)(1) Except as provided in paragraphs (b) (2) through (4) of this section, potential participants shall keep a full and complete record of any communications (other than in a meeting held pursuant to this subpart) between or among themselves for the purpose of developing a voluntary agreement under this part. When two or more potential participants are involved in such a communication, they may agree among themselves who shall keep such record. Such record shall include the names of the parties to the communication and the organizations, if any, which they represent; the date of the communication; the means of communication; and a description of the communication in sufficient detail to convey adequately its substance.

(2) Where any communication is written (including, but not limited to, telex, telegraphic, telecopied, microfilmed and computer printout material), and where such communication demonstrates on its face that the originator or some other source furnished a copy of the communication to the Office of International Affairs, Department of Energy with the notation "Voluntary Agreement" marked on the first page of the document, no participant need record such a communication or send a further copy to the Department of Energy. The Department of Energy may, upon written notice to potential participants, from time to time, or with reference to particular types of documents, require deposit with other offices or officials of the Department of Energy. Where such communication demonstrates that it was sent to the Office of International

Affairs, Department of Energy with the notation "Voluntary Agreement" marked on the first page of the document, or such other offices or officials in the Department of Energy has designated pursuant to this section it shall satisfy paragraph (c) of this section, for the purpose of deposit with the Department of Energy.

(3) To the extent that any communication is procedural, administrative or ministerial (for example, if it involves the location of a record, the place of a meeting, travel arrangements, or similar matters,) only a brief notation of the date, time, persons involved and description of the communication need be recorded.

(4) To the extent that any communication involves matters which recapitulate matters already contained in a full and complete record, the substance of such matters shall be identified, but need not be recorded in detail, provided that reference is made to the record and the portion thereof in which the substance is fully set out.

(c) Except where the Department of Energy otherwise provides, all records and transcripts prepared pursuant to paragraphs (a) and (b) of this section, shall be deposited within fifteen (15) days after the close of the month of their preparation together with any agreement resulting therefrom, with the Department of Energy, and shall be available to the Department of Justice, the Federal Trade Commission, and the Department of State. Such records and transcripts shall be available for public inspection and copying at the Department of Energy. Any person depositing material with the Department of Energy pursuant to this section shall indicate with particularity what portions, if any, the person believes are subject to disclosure to the public pursuant to 5 U.S.C. 552 and the reasons for such belief.

(OMB Control No. 1105-0029)

§ 56.3 Maintenance of records with respect to meetings held to develop and carry out voluntary agreements or plans of action pursuant to the Agreement on an International Energy Program.

(a) The Administrator of the Department of Energy or his delegate shall keep a verbatim transcript of any meeting held pursuant to this subpart except where: (1) Due to considerations of time or other overriding circumstances, the keeping of a verbatim transcript is not practicable, or (2) principal participants in the meeting are representatives of foreign governments. If any such record other than a verbatim transcript, is kept by a designee who is not a full-time Federal

employee, that record shall be submitted to the full-time Federal employee in attendance at the meeting who shall review the record, promptly make any changes he deems necessary to make the record full and complete, and shall notify the designee of such changes.

(b)(1) Except as provided in paragraphs (b) (2) through (4) of this section, participants shall keep a full and complete record of any communication (other than in a meeting held pursuant to this subpart) between or among themselves or with any other member of a petroleum industry group created by the International Energy Agency (IEA), or subgroup thereof for the purpose of carrying out a voluntary agreement or developing or carrying out a plan of action under this subpart, except that where there are several communications within the same day involving the same participants, they may keep a cumulative record for the day. The parties to a communication may agree among themselves who shall keep such record. Such record shall include the names of the parties to the communication and the organizations, if any, which they represent; the date of communication; the means of communication, and a description of the communication in sufficient detail to convey adequately its substance.

(2) Where any communication is written (including, but not limited to, telex, telegraphic, telecopied, microfilmed and computer printout material), and where such communication demonstrates on its face that the originator or some other source furnished a copy of the communication to the Office of International Affairs, Department of Energy with the notation "Voluntary Agreement" on the first page of the document, no participants need record such a communication or send a further copy to the Department of Energy. The Department of Energy may, upon written notice to participants, from time to time, or with reference to particular types of documents, require deposit with other offices or officials of the Department of Energy. Where such communication demonstrates that it was sent to the Office of International Affairs, Department of Energy with the notation "Voluntary Agreement" on the first page of the document, or such other offices or officials as the Department of Energy has designated pursuant to this section, it shall satisfy paragraph (c) of this section, for the purpose of deposit with the Department of Energy.

(3) To the extent that any communication is procedural, administrative or ministerial (for example, if it involves the location of a record, the place of a meeting, travel

arrangements, or similar matters) only a brief notation of the date, time, persons involved and description of the communication need be recorded; except that during an IEA emergency allocation exercise or an allocation systems test such a non-substantive communication between members of the Industry Supply Advisory Group which occur within IEA headquarters need not be recorded.

(4) To the extent that any communication involves matters which recapitulate matters already contained in a full and complete record, the substance of such matters shall be identified, but need not be recorded in detail, provided that reference is made to the record and the portion thereof in which the substance is fully set out.

(c) Except where the Department of Energy otherwise provides, all records and transcripts prepared pursuant to paragraphs (a) and (b) of this section, shall be deposited within seven (7) days after the close of the week (ending Saturday) of their preparation during an international energy supply emergency or a test of the IEA emergency allocation system, and within fifteen (15) days after the close of the month of their preparation during periods of non-emergency, together with any agreement resulting therefrom, with the Department of Energy and shall be available to the Department of Justice, the Federal Trade Commission, and the Department of State. Such records and transcripts shall be available for public inspection and copying to the extent set forth in 5 U.S.C. 552. Any person depositing materials pursuant to this section shall indicate with particularity what portions, if any, the person believes are not subject to disclosure to the public pursuant to 5 U.S.C. 552 and the reasons for such belief.

(d) During international oil allocation under Chapter III and IV of the IEP or during an IEA allocation systems test, the Department of Justice may issue such additional guidelines amplifying the requirements of these regulations as the Department of Justice determines to be necessary and appropriate.

(OMB Control No.: 1105-0029)

J. Paul McGrath,
Assistant Attorney General, Antitrust
Division.

[FR Doc. 84-22804 Filed 8-27-84; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Approval of Amendment to the Oklahoma Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 936 by (1) removing certain conditions of the Secretary of the Interior's approval of the Oklahoma permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and (2) approving certain additional amendments to the Oklahoma program. The conditions being removed by the Secretary pertain to citizens' access to courts; the public participation aspects of Oklahoma's rules of practice and procedure and the award of costs and expenses. The three additional amendments being approved by the Secretary pertain to transfer or sale of rights under a permit; inspection frequency and public notification of blasting schedule.

After providing opportunity for public comment and conducting a thorough review of the program amendments and related material, the Secretary has decided to approve certain of the modifications and remove some of the conditions of approval.

EFFECTIVE DATE: The removal of these conditions and the approval of these program amendments are effective on August 28, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Director, Tulsa Field Office, Office of Surface Mining, 333 West Fourth Street, Room 342, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

ADDRESSES: Copies of the amendments to the Oklahoma program and all written comments received on the proposed amendments are available for public review at the OSM Headquarters Office, the OSM Tulsa Field Office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 333 West Fourth Street, Room 3422, Tulsa, Oklahoma 74103.

Office of Surface Mining Reclamation and Enforcement 1100 "L" Street, NW.,

Room 5124, Washington, D.C. 20240, Telephone (202) 343-7896.

Oklahoma Department of Mines, Suite 107, 4040 N. Lincoln, Oklahoma City, Oklahoma 73105.

SUPPLEMENTARY INFORMATION: On January 19, 1981 following a review of the proposal program as outlined in 30 CFR Part 732, the Secretary of the Interior conditionally approved Oklahoma's program to administer and enforce the permanent regulatory program under SMCRA.

The approval was effective upon publication of the notice of conditional approval in the January 19, 1981, *Federal Register* (46 FR 4910).

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 Oklahoma program can be found in the January 19, 1981 *Federal Register* (46 FR 4910), in the April 2, 1982 *Federal Register* (47 FR 14152) and in the May 4, 1983 *Federal Register* (48 FR 20050).

Additional information pertinent to the action taken by the Director, OSM, under the authority of 30 CFR Part 733 with regard to the status of Oklahoma's permanent regulatory program was published in the April 12, 1984 *Federal Register* (49 FR 14674).

Background

On May 13, 1983, OSM received from the State of Oklahoma material intended to satisfy four program conditions concerning citizens' access to courts, award of costs and attorney fees, authority to administer a small operator assistance program and the Oklahoma Rules of Practice and Procedure. The State also submitted certain revisions to the State regulations unrelated to the program conditions concerning transfer, sale or assignment of rights under permits, public notification of blasting schedules and inspection and enforcement requirements.

OSM published a notice in the June 3, 1983 *Federal Register* announcing receipt of the provisions and inviting public comment on whether the proposed program amendment corrected the deficiencies, and whether the Secretary should approve the additional amendments to the State program (48 FR 24928).

A public hearing scheduled June 28, 1983 was not held because no one expressed a desire to present testimony. The public comment period closed July 5, 1983.

The Director, pending his decision on the status of the Oklahoma program pursuant to 30 CFR Part 733, delayed action on the entire program amendment package submitted by Oklahoma. The Director announced in the April 12, 1984 *Federal Register* that OSM would substitute direct Federal enforcement for portions of Oklahoma's permanent program, specifically the inspection and enforcement functions. (49 FR 14674-14689). The Director also stated that OSM would continue processing the May 13, 1983 amendment package.

Background on the Secretary's Conditional Approval

The Secretary of the Interior determined the Oklahoma permanent regulatory program, as submitted for his approval, contained four deficiencies. The deficiencies are as follows.

1. The Oklahoma program did not provide citizens with the same access to courts for citizen suits as provided under section 520 of SMCRA.

2. The Oklahoma Department of Mines (ODOM) did not have statutory authority to award appropriate costs and expenses including attorneys' fees to (a) any person other than a permittee or his representative and (b) a permittee in administrative proceedings consistent with 43 CFR 4.1294 (b) and (c).

3. The Oklahoma Department of Mines did not have authority to administer the Small Operator Assistance Program (SOAP) consistent with section 507(c) of SMCRA and 30 CFR Part 795.

4. The Oklahoma Rules of Practice and Procedure were not consistent with the public participation aspects of SMCRA, 30 CFR Chapter VII and 43 CFR Part 4.

Secretary's Findings

Set forth below pursuant to 30 CFR 732.15 and 732.17, are the Secretary's findings concerning the program modifications submitted by Oklahoma which satisfy existing program conditions.

1. As addressed in Finding 4(K)(1) of the January 19, 1981 *Federal Register*, the Secretary found that the Oklahoma program did not provide citizens with the same access to courts as does the Federal Act. Therefore, the Secretary conditioned his approval upon Oklahoma amending section 41.C of the Oklahoma Coal Reclamation Act (OCRA) so that citizens, under OCRA, have the same access to courts as provided under section 520 of SMCRA. Oklahoma amended its statute at 45 O.S. 1981, section 774 with the passage of section 2 of Senate Bill No. 205. The

amended statute removes the restriction that actions concerning a violation of the Act be brought only pursuant to the Administrative Procedures Act. The revised Oklahoma Statute therefore provides any person having an interest which is or may be adversely affected access to State courts. The Secretary finds that in its amended form, 45 O.S. 1981 section 774 is consistent with section 520 of SMCRA and satisfies condition (a) of his approval of the State's program.

2. As addressed in Finding 4(K)(2) of the January 19, 1981 *Federal Register*, the Secretary found that the Oklahoma program did not contain provisions that would provide for the award of appropriate costs and expenses from the ODOM (1) to any person other than a permittee or his representative and (2) to a permittee after making necessary demonstrations and findings. In an opinion dated December 12, 1980, the Attorney General of Oklahoma rules that the ODOM lacked statutory authority to promulgate regulations requiring such award from ODOM (see Administrative Record Document OK-273). The Secretary, for the above reasons, conditioned his approval upon Oklahoma enacting a statute that authorized the award of costs and expenses against the ODOM in appropriate cases, and upon the promulgation of regulations consistent with 43 CFR 4.1294 (b) and (c). Oklahoma amended its statute at 45 O.S. 1981, section 786(E) with the passage of section 3 of Oklahoma Senate Bill No. 205. The amended section provides that assessments of costs and expenses, including attorney fees, may be made against any party or ODOM. The Secretary finds that in its amended form, 45 O.S. 1981 section 786 is consistent with 43 CFR 4.1294 and section 525(e) of SMCRA and satisfies condition (c) of his approval of the Oklahoma program.

3. As discussed in Finding 4(K)(3) of the January 19, 1981 *Federal Register*, the Secretary found that the Oklahoma program did not provide for meaningful participation by operators and the public in the enforcement of the Oklahoma program because it did not establish procedures with sufficient specificity to enable operators or others to prepare their arguments and participate in proceedings with an understanding of what is expected in such proceedings. Because of the lack of detail and clarity of the Oklahoma Rules and because of the inconsistencies between OCRA and 43 CFR Part 4, the Secretary found that the "Rules of Practice for Hearings" did not allow

citizens, operators, and attorneys practicing before the Chief Mine Inspector of ODOM to exercise fully the rights to administrative hearings granted by SMCRA and OCRA, and found that they were inconsistent with the public participation provisions of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4. The Secretary conditioned his approval upon Oklahoma amending the Rules of Practice for Hearings to make the public participation aspects of those rules consistent with the public participation provisions of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4. The Oklahoma Department of Mines revised completely the Rules of Practice and Procedure by adopting language at sections 4.1000 through 4.1400 that, among other things, provides for meaningful public participation in the enforcement of Oklahoma's program. The Secretary finds that Oklahoma has amended its Rules of Practice and Procedure at sections 4.1000 through 4.1400 and that they are now consistent with the public participation provisions of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4, and thus removes condition (b).

Set forth below are the Secretary's findings concerning the program modification submitted by Oklahoma which partially satisfies an existing program condition.

1. As discussed in Finding 4(n) of the January 19, 1981 *Federal Register* notice the Secretary found that ODOM had no authority under State law and regulations to operate a Small Operator Assistance Program (SOAP). According to the May 27, 1980, opinion of the Oklahoma Attorney General (see Administrative Record Document No. OK-85), the payment of State tax dollars to mine operators pursuant to 45 O.S. Supp. 1979, § 745.16 violates Article X Section 15 of the Oklahoma Constitution and is therefore invalid because it constitutes a "gift". Therefore, the Secretary found the absence of valid SOAP provisions to be inconsistent with section 507(c) of SMCRA and less effective than 30 CFR Part 795 and conditioned his approval by requiring Oklahoma to obtain authority to promulgate regulations consistent with 30 CFR Part 795. Oklahoma amended its statute at 45 O.S. 1981 § 745.16 by passage of Oklahoma Senate Bill No. 205.

Section 6 of this Bill repeals Oklahoma's existing SOAP statute. Section 5 of the Bill then provides authority to ODOM to operate SOAP to the extent required by Federal law and to provide such services as are necessary to comply with the permanent regulatory program. Oklahoma adopted

regulations at section 795 to implement the Small Operators Assistance Program. The Oklahoma rule at section 795 provides for Oklahoma to perform all functions required under SOAP except for contracting and funding. Section 795.9(e) of the Oklahoma rules provides that a cooperative agreement be entered into between ODOM and the Department of the Interior for disbursement of funds to qualified laboratories providing the determination and statement required under the SOAP program.

Therefore, the Secretary finds that the Oklahoma Department of Mines has authority under the Oklahoma Coal Reclamation Act at 45 O.S. 1981 § 745.16 and section 795 of its regulations to operate a Small Operators Assistance Program consistent with section 507(c) of SMCRA and no less effective than 30 CFR Part 795 with the following exception.

The funding provisions at § 795.9(e) of the Oklahoma rules are not as effective as the provisions at 30 CFR Part 795 in that they do not provide the ODOM with authority to enter into contracts with qualified laboratories for the provision of SOAP services but rather calls for a cooperative agreement between ODOM and the Department of the Interior. Under such an agreement contracting and funding of SOAP services would be undertaken by OSM.

In that the statutory and regulation changes adopted by the State of Oklahoma provide authority to the ODOM to operate a SOAP program with the exception noted above the Secretary has approved the changes made by ODOM to the Statute and rules regarding SOAP.

The condition of approval placed on the Oklahoma program is being modified to reflect the changes made by Oklahoma to satisfy condition (d).

Further, the Secretary finds that the State has acted in good faith to satisfy condition (d) by amending its statute and rules. Accordingly, the Secretary has decided to extend the deadline for Oklahoma to satisfy the modified condition (d) until August 28, 1985. The Office of Surface Mining will work with the ODOM to develop a cooperative agreement as provided in § 795.9(e) of the Oklahoma rules for the provision of SOAP assistance during the period necessary for Oklahoma to complete program changes necessary to satisfy the modified condition (d).

The May 13, 1983 amendment from ODOM contained revisions unrelated to conditions placed upon the program. Set forth below pursuant to 30 CFR 732.15 and 732.17 are the Secretary's findings

concerning these additional State program modifications.

1. Oklahoma proposes to amend the statute at 45 O.S. 1981 § 745.2 and the rules at §§ 788.17 through 788.19 as they pertain to the transfer, sale or assignment of rights under permits. Section 745.2 previously provided that permits were not transferable. The Secretary finds that the proposed amendment to § 745.2 allows for the transfer, sale or assignment of rights under permits on the same terms as section 506(b) of SMCRA and 30 CFR Part 774 and as such finds 45 O.S. 1981 § 745.2 to be no less effective than 30 CFR Part 774.

2. Oklahoma proposes to amend § 816.64(a)(1) of the State's rules to clarify an ambiguous statement concerning blasting notices. Previous State rule 816.64(a)(1) required the publication of a blasting notice for at least ten days prior to blasting. This statement could have been misinterpreted to require publication of a notice only *once* ten days prior to blasting. Oklahoma has received its regulations to require one notice to be published for each of at least ten consecutive days prior to blasting. The Secretary finds that the amendment to § 816.64(a)(1) of the State rules is no less effective than the Federal regulations at 30 CFR 816.64(a)(1).

3. Oklahoma proposes to amend Parts 842, 843 and 845 of the State's rules. Part 842 sets forth general provisions governing State inspections. This part specifically addresses State inspection frequency and monitoring, procedures for requesting a State inspection, right of entry provisions and requirements for managing records. Part 843 sets forth general rules regarding enforcement by ODOM of the State Act and regulations. This part specifically addresses information collection, notices of violation, cessation orders, suspension or revocation of permits and hearing and conference procedures. Part 845 sets forth procedures for the assessment of civil penalties. This part specifically covers how and when assessments are made, amount of penalties, point systems to be used, procedures for assessments conferences and hearings and procedures for payment of penalties. The State amended Parts 842, 843 and 845 of its rules to reflect the changes made to the comparable Federal rules at 30 CFR Parts 842, 843 and 845 which became effective September 15, 1982. The Secretary finds that the proposed amendments are consistent with the Federal regulations at 30 CFR Parts 842, 843 and 845.

Public Comments

Of those Federal agencies invited to comment on the proposed amendments, responses were received from the Bureau of Land Management, the Bureau of Reclamation, the Mine Safety and Health Administration, the Fish and Wildlife Service, the Department of the Army and the Department of Agriculture.

The Bureau of Land Management recommended that § 4.1390 of the Oklahoma Rules of Practice and Procedure be revised as follows: insert "12" between "within" and "months". The Secretary finds that the time frames in Oklahoma's Rules of Practice and Procedure at § 4.1390 are identical to the time frames in 43 CFR Part 4. Therefore, no additional changes are necessary.

The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

No other comments were received.

Summary of the Secretary's Decision

Based on his findings, the Secretary is removing conditions (a), (b) and (c) of his approval of the Oklahoma program. The Secretary is also approving the statutory and rule changes relating to SOAP and modifying the wording and extending the deadline for satisfying condition (d). In addition, the Secretary is approving the three amendments submitted by Oklahoma which are unrelated to the conditions of approval. These amendments are the revision to § 745.2 of 45 O.S. 1981 and the accompanying rules at §§ 788.17 through 788.19, revision to § 816.64(a)(1) of the rules, and revisions to Parts 842, 843 and 845 of the State rules.

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, 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 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 936

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

Dated: August 22, 1984.

Garrey E. Carruthers,
Assistant Secretary, Land and Minerals
Management.

PART 936—OKLAHOMA

Part 936 of Title 30 is amended as follows:

1. 30 CFR 936.11 is amended by removing and reserving paragraphs (a), (b) and (c), and paragraph (d) is revised to read as follows.

§ 936.11 Conditions of State regulatory program approval.

(a)-(c) [Reserved]

(d) Steps will be taken to terminate the approval found in § 935.10 unless Oklahoma submits to the Secretary by August 28, 1985, copies of promulgated regulations or other program changes which remove the limitation on the authority of ODOM regarding funding to qualified laboratories that provide services to eligible small operators.

2. 30 CFR Part 936.15 is amended by adding a new paragraph (c) as follows.

§ 936.15 Approval of amendments to State regulatory program.

(c) The following amendments to the Oklahoma permanent regulatory program submitted to OSM on May 13, 1983 are approved effective August 28, 1984:

(1) Revision to Oklahoma statute at 45 O.S. 1981, section 774(c) governing citizen access to State courts;

(2) Revision to Oklahoma statute at 45 O.S. 1981, section 786(E) concerning award of costs and expenses;

(3) Adoption by Oklahoma of new rules of practice and procedure at § 4.1000 through 4.1400;

(4) Revision to Oklahoma statute at 45 O.S. 1981, § 746.16 concerning authority to administer Small Operator Assistance

Program and the implementing State rules at section 795 with the exception of § 795.9(e).

(5) Revision to Oklahoma statute at 45 O.S. 1981, § 745.2 governing transfer of permits;

(6) Adoption by Oklahoma of new rules at § 788.17 through 788.19 governing the transfer, sale or assignment of rights under permits;

(7) Revision to Oklahoma rule at § 816.64 concerning public notification of proposed blasting schedules; and

(8) Revision to Oklahoma rules at Parts 842, 843 and 845 concerning inspection and enforcement provisions.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

[FR Doc. 84-22823 Filed 8-27-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 770

National Defense; Rules Limiting Public Access to Particular Installations; Entry Regulations for Portsmouth Naval Shipyard, Portsmouth, NH

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is adding Subpart G to 32 CFR Part 770 to set forth regulations governing entry upon Portsmouth Naval Shipyard, Portsmouth, New Hampshire. It is intended that these regulations will apprise members of the public of the rules governing access to Portsmouth Naval Shipyard, Portsmouth, New Hampshire.

EFFECTIVE DATE: January 17, 1984.

FOR FURTHER INFORMATION CONTACT: Commander John D. Hutson, JAGC, U.S. Navy (Code 107), Portsmouth Naval Shipyard, Portsmouth, New Hampshire 03801, Telephone (207) 439-1000 (ext. 2703).

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Commander, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, on January 6, 1984, adopted entry regulations entitled "Entry Regulations for Portsmouth Naval Shipyard" [NAVSHIPYD PTSMHINST 5510.25A (107)]. Portsmouth Naval Shipyard is a major naval ship-repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear-powered naval vessels. It is vital to national defense that the operation and use of the

shipyard be continued without undue or unnecessary interruptions. Additionally, most of Portsmouth Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist. Accordingly, these regulations limit entry upon Portsmouth Naval Shipyard to authorized personnel and those persons who have obtained advance consent pursuant to these regulations. It has been determined in accordance with the public rulemaking provisions of 32 CFR Parts 296 and 701, that publication of these regulations prior to adoption would be impracticable, unnecessary, and contrary to the public interest since the nature and national importance of Portsmouth Naval Shipyard mandate the immediate and uninterrupted effectiveness of these regulations.

List of Subjects in 32 CFR Part 770

Federal buildings and facilities, National defense, Restricted access areas, Security measures.

Accordingly, 32 CFR Part 770 is amended by adding a new Subpart G as follows:

PART 770—[AMENDED]

* * * * *

Subpart G—Entry Regulations for Portsmouth Naval Shipyard, Portsmouth, New Hampshire

Sec.	Purpose.
770.53	Purpose.
770.54	Background.
770.55	Responsibility.
770.56	Entry restrictions.
770.57	Entry procedures.
770.58	Violations.

Authority: 5 U.S.C. 301; 10 U.S.C. 6011, 18 U.S.C. 1382; 50 U.S.C. 797; DOD Directive 5200.8 of July 29, 1980; 32 CFR 700.702; 32 CFR 700.714; SECNAVINST 5511.36 of December 20, 1980; OPNAVINST 5530.14 of June 10, 1983; COMNAVSEASYS COMINST 5510.2A of June 19, 1981.

Subpart G—Entry Regulations for Portsmouth Naval Shipyard, Portsmouth, New Hampshire

§ 770.53 Purpose.

To promulgate regulations and procedures governing entry upon Portsmouth Naval Shipyard, and to prevent the interruption of the functions and operations of Portsmouth Naval Shipyard by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard.

§ 770.54 Background.

(a) Portsmouth Naval Shipyard maintains and operates facilities "to provide logistic support for assigned

ships and service craft; to perform authorized work in connection with construction, conversion, overhaul, repair, alteration, drydocking, and outfitting of ships and craft, as assigned; to perform manufacturing, research, development, and test work, as assigned; and to provide services and material to other activities and units, as directed by competent authority."

(b) Portsmouth Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear-powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without undue or unnecessary interruptions. Additionally, most of Portsmouth Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(c) For prevention of interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard, and prevention of injury to any such unsupervised person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon Portsmouth Naval Shipyard to authorized persons only.

§ 770.55 Responsibility.

The responsibility for proper identification and control of personnel and vehicle movement on the Portsmouth Naval Shipyard is vested with the Shipyard Security Manager (Code 830).

§ 770.56 Entry Restrictions.

Except for military personnel, their authorized dependents, or guests, and civilian employees of the United States in the performance of their official duties, entry upon Portsmouth Naval Shipyard, or remaining thereon by any person for any purpose without the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, is prohibited. In many instances, Commander, Naval Sea Systems Command, approval is required.

§ 770.57 Entry procedures.

(a) Any person or group desiring the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Portsmouth Naval Shipyard, at the following address: Commander, Portsmouth Naval Shipyard, Portsmouth, New Hampshire

03801, Attention: Security Manager (Code 830). For groups, foreign citizens, and news media, the request must be forwarded to the Commander, Naval Sea Systems Command, for approval.

(b) Each request for entry will be considered on an individual basis, weighing the operational, security, and safety requirements of Portsmouth Naval Shipyard, with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.58 Violations.

(a) Any person entering or remaining on Portsmouth Naval Shipyard without the consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall be subject to the penalties prescribed in 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval . . . reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation . . . Shall be fined not more than \$500 or imprisoned not more than six months, or both."

(b) Moreover, any person who willfully violates this instruction is subject to a fine not to exceed \$5000 or imprisonment for not more than one (1) year, or both, as provided by 50 U.S.C. 797.

Dated: August 22, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve,
Federal Register Liaison Officer.

[FR Doc. 84-22822 Filed 8-27-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2 and 160

[CGD 84-064]

References to the Department of Health, Education and Welfare

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document changes references to the Department of Health, Education and Welfare (HEW) contained in title 46 of the Code of Federal Regulations (CFR). The references to the HEW are primarily in conjunction with the responsibilities of the Public Health Service (PHS). The HEW was recently reorganized and the PHS is now under the cognizance of the

newly created Department of Health and Human Services (HHS). Therefore the references to the HEW in title 46 CFR are changed to reflect the new designation and responsibilities of the HHS.

EFFECTIVE DATE: August 28, 1984.

FOR FURTHER INFORMATION CONTACT: LT David Shippert, Regulations and Administrative Law Division, (202) 426-1534.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 160

Marine safety.

Accordingly, the Coast Guard is amending 46 CFR as follows:

PART 2—[AMENDED]

§ 2.75-17 [Amended]

1. By amending § 2.75-17(d)(6) to substitute "Health and Human Services" for "Health Education and Welfare".

PART 160—[AMENDED]

§ 160.026-1 [Amended]

2. By amending § 160.026-1(b) to substitute "Health and Human Services" for "Health Education and Welfare".

(Pub. L. 96-88, sec. 508)

Dated: August 22, 1984.

A.F. Bridgman, Jr.,

Chief, Regulations and Administrative Law Division.

[FR Doc. 84-22870 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 84-1; FCC 84-384]

Compensation for Expenses Incurred in Mitigating the Effects of Cuban Interference to Services Rendered by Radio Stations in the United States

AGENCY: Federal Communications Commission.

ACTION: Final rule amendment.

SUMMARY: The rule amendments modify restrictions on compensation allowable under the Radio Broadcasting to Cuba Act for expenses incurred to mitigate interference from Cuba to AM radio stations in the United States.

Statements of Congressional intent support this action.

The effect will be to remove the previous \$250,000 ceiling on such compensation in individual cases, and to include among allowable costs the expenses of acquiring, installing, or constructing equipment necessary and specially authorized by the FCC to mitigate such interference, less depreciation taken for income tax purposes on the equipment replaced by such new equipment.

DATE: August 1, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis C. Stephens, FCC Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Radio.

Memorandum Opinion and Order

In the matter of compensation for expenses incurred in mitigating the effects of Cuban interference to services rendered by radio stations in the United States. MM Docket No. 84-1.

Adopted: August 1, 1984.

Released: August 7, 1984.

By the Commission.

1. Before us is the Petition for Reconsideration filed jointly in this proceeding, on April 30, 1984, by the Florida Association of Broadcasters and the South Florida Broadcasters Association. It seeks to eliminate two limitations found in §§ 1.1708 and 1.1709, Subpart M, Part I of the Commission's rules, promulgated in our **REPORT AND ORDER** adopted March 15, 1984 and relating to compensation payable to radio broadcasters for expenses incurred in mitigating the effects of interference from Cuban stations. Subpart M implements the compensation program provided for in Section 7 of the Radio Broadcasting to Cuba Act.¹

2. In particular, the Petition asks that the Commission revise § 1.1708 so as to:

- Allow compensation for so much of the cost of FCC-authorized new equipment as remains after subtracting the amount of depreciation taken on the equipment it replaces.
- Remove the \$250,000 ceiling on allowable compensation.

3. The Petition appends supporting statements by Senator Paula Hawkins and Representative Dante Fascell, sponsors and authors of the Act, declaring that both objectives accord with the legislative intent, and seeking conforming rule changes. The United

States Information Agency has now changed its position on the matter, and states on the record that it would not object to such changes. The National Radio Broadcasters Association supported the subject Petition. No opposition to it has been filed.

4. The question of legislative intent concerning the kinds of equipment costs that would be compensable arises out of an express limitation in section 7(b) of the Act:

Such expenses shall be limited to the costs of equipment (replaced, less depreciation) and associated technical and engineering costs.

Section 1.1708 of the Commission's Rules treated this in accordance with its literal meaning: limitation of compensable expenses to the original cost of the equipment that is "replaced, less depreciation" taken on it, plus "associated technical and engineering costs." The rule construed the latter as embracing costs incurred in planning, designing, engineering and testing the new facilities, and in performing certain monitoring of Cuban interference.

5. The legislative history of the Act contains no discussion of the reason for deducting depreciation, and no explanation of the choice of language used to provide for that deduction. There could be no question, however, that the depreciation to be deducted could only be depreciation taken for tax purposes on the old equipment that is "replaced" by new equipment (such as a higher power transmitter) needed to mitigate the effects of Cuban interference. Thus, in order to give effect to the clear mandate to deduct, from otherwise allowable equipment costs, the depreciation taken on the old "replaced" equipment, it is necessary to construe the words "equipment (replaced, less depreciation)" as referring to that old equipment.

6. We did not, when adopting Subpart M, treat the single, above-quoted reference in section 7 to equipment as intended to embrace both the old "replaced" equipment and the new equipment that replaces it. Rather, we treated the statutory language as referring only to the "replaced" equipment, in keeping with the ordinary meaning of that term and the unmistakably intended exclusion from compensation of depreciation already taken on such old, "replaced" equipment that is taken out of service and idled before the end of its useful life. In doing so we gave considerable weight to the original comments of the USIA.

7. We now have the benefit of the above-mentioned statements by the authors and sponsors of the legislation

¹ Pub. L. 98-111, 97 Stat. 749 (approved Oct. 4, 1983). It will be referred to as "the Act."

and clarifying declarations found in Senate Report No. 98-514, 98th Congress, 2d Session. On page 78 of that Report, the Senate Committee on Appropriations, when referring to its recommendation of an appropriation to fund \$3.5 million of the \$5 million authorized in the Act for the compensation program, stated that:

These funds shall be available only for the cost of the new or replacement equipment needed to overcome the effects of Cuban interference, less depreciation on the old equipment, and associated technical and engineering costs.

The Report also contains, on page 88, the following additional reference to compensable equipment costs:

Radio Marti Technical Amendment

The Committee has inserted a technical amendment to the Radio Marti authorizing bill [the above-quoted Radio Broadcasting to Cuba Act cited in footnote 1, hereto] on the provisions regarding facility compensation. This amendment (section 511) [of the appropriations measure reported out by the Committee] will bring the law into conformity with congressional intent. The current law provides compensation for the "costs of equipment (replaced, less depreciation) * * *." The amendment would change that to read, "costs of equipment replaced (less depreciation) * * *."

Because of the current law, the FCC, in its proposed regulations, ruled that the facility compensation would cover the cost of the equipment being replaced rather than the cost of the replacement equipment.

Congress intended otherwise. Since the stations affected by Cuban interference would not have needed any new equipment without the interference, it was the intent of Congress to insure that they did not have to bear the costs of purchasing new equipment to mitigate the effects of the interference.

Subsequently, on June 28, 1984, the Senate passed the House-originated appropriations bill H.R. 5712 with amendments providing for an appropriation of \$3.5 million for the compensation program, and containing the technical amendment to the Radio Broadcasting to Cuba Act referred to in the above-excerpted portion of Senate Report No. 98-514.

8. The unequivocal statements of Congressional intent set out in the preceding paragraph, and in the declarations by Senator Hawkins and Representative Fascell that seek conforming amendment of the rules adopted in the *Report and Order* under reconsideration in this proceeding leave no question that the Commission is called upon to treat the portion of section 7 of the Act quoted in paragraph 4, above, as if it read: "Such expenses shall be limited to the costs of new

equipment less depreciation taken on the equipment it replaces."²

9. Senate Report No. 98-514 also addresses the question of a ceiling on the amount of cost compensable in individual cases. Petitioner asks that we remove the \$250,000 ceiling imposed by section 1.1708 of the Rules. Both Senator Hawkins and Representative have declared, in statements that are part of the record of this proceeding, that Congress intended that the allowable costs of Commission-approved facilities changes to mitigate the effects of Cuban interference be fully compensated. Concerning this, the new Senate Report states, on page 78:

Also, because the impact of interference on AM broadcast stations varies with factors such as location, frequency, and power of both the station interfered with and the station committing the interference, no ceiling should be established to limit the amount of compensation an individual AM station can apply for or receive, provided that the total claims do not exceed the authorized amount.

10. In view of the statements of Congressional intent that have been made part of the record of this proceeding, and the Congressional policy expressed in the above-quoted portion of the Report submitting the Senate Appropriations Committee's recommendation of an appropriation to fund the subject compensation payments, we find it appropriate to remove the ceiling on compensation provided for in the rules adopted in the *Report and Order* under reconsideration.

11. Subpart M of our Rules, which provides the requirements and procedures for filing and processing applications for compensation under the Radio Broadcasting to Cuba Act, enters into effect on August 1, 1984. It would cause needless burdens and complications for both the Commission and applicants if the amendments we adopt today are not effective by that date. This arises in part out of the system of priorities established in section 1.1710. That system is governed in part by filing dates, the first of which is the period between August 1 and October 1, 1984. In order to validate applications filed within that period that conform with the rules as we are now amending them (rather than with the original provisions that the amendments remove), it is necessary that the amendments enter into effect no later than August 1, 1984.

² Congress did not provide for any adjustment to compensation to reflect the scrap or resale value of the replaced equipment. We note that licensees may wish to retain the replaced equipment for use at such time as the Cuban interference may cease.

12. This necessitates invoking applicable exceptions in section 553(a) (1) and (3) of the Administrative Procedure Act to the general requirement that substantive rules not enter into effect less than thirty days after the date of their publication. In the circumstances already noted, the rule amendments we are adopting today come within the exceptions applicable when the rule relieves a restriction and when the agency finds good cause for dispensing with 30-day advance publication. The amendments relieve the restriction in the previous rule against the allowance of compensation for any part of the cost of new equipment, and lift the former \$250,000 ceiling. Also, we find that the above-stated circumstances constitute good cause for excepting the appended rule amendments from the generally applicable requirement of publication no less than 30 days before entry into effect.

13. Accordingly, pursuant to authority found in section 7(c) of the Radio Broadcasting to Cuba Act, Pub. L. 98-111, 97 Stat. 749, section 405 of the Communications Act of 1934, as amended 47 U.S.C. 405, and section 553(d) (1) and (3) of the Administrative Procedure Act, 5 U.S.C. 553(d) (1) and (3), it is ordered That, the subject Petition for Reconsideration is granted.

14. Is further ordered, That, pursuant to the authority cited in paragraph 13 hereof, §§ 1.1708 and 1.1709 of the Commission's Rules are amended, effective August 1, 1984, to read as provided in Appendix A hereto.

15. It is further ordered, That this proceeding is terminated.

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

William J. Tricarico,
Secretary.

Appendix A

PART 1—[AMENDED]

Subpart M, Part 1 of the Rules and Regulations of the Federal Communications Commission, 47 CFR Chapter I, are amended as follows:

1. In § 1.1708, the introductory language and paragraph (a)(1) is revised to read as follows:

§ 1.1708 Compensable costs.

(a) The following costs are compensable under section 7 of the Radio Broadcasting to Cuba Act:

(1) The prudently incurred cost of acquiring, installing, or constructing facilities specially authorized by the Federal Communications Commission for the purpose of mitigating the effects of interference from Cuba, less the amount of depreciation on equipment

replaced by such specially authorized facilities that was reported in previously filed Federal income tax returns.

2. In § 1.1708, paragraph (b)(1) is removed, and paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) are redesignated as (b)(1), (b)(2), (b)(3), and (b)(4), respectively.

3. In § 1.1709, paragraph (d) and the first sentence of paragraph (f) are revised to read as follows:

§ 1.1709 Requirements for filing applications for compensation.

(d) Applications for compensation, when initially filed, shall be accompanied by a statement, with supporting breakdown, of:

(1) The costs incurred, or the estimated costs expected to be incurred, for equipment and services that are compensable under § 1.1708(a); and

(2) The amount of depreciation on replaced equipment that is deductible from compensation under § 1.1708(a).

(f) Upon the completion of facilities changes authorized to mitigate the effects of Cuban interference, applicants for compensation shall submit to the Federal Communications Commission a detailed financial statement of the out-of-pocket expenditures made for the equipment and services whose costs are compensable under § 1.1708. * * *

[FR Doc. 84-22749 Filed 8-27-84; 8:45 am]

BILLING CODE 9712-01-M

47 CFR Part 1

[MM Docket No. 83-1148; FCC 84-358]

Modification of FM and TV Station Licenses

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules by providing authority, in the course of rule making proceedings to allot FM and television channels, to modify the licenses of FM and television stations seeking to improve their facilities. In particular, where other parties have expressed interest in applying for proposed channels and where additional equivalent channels are made available for applications, we will grant modification of the licenses of stations requesting allotment of new channels to their communities. This action is taken to encourage licensees to upgrade their facilities and to reduce burdens on Commission resources.

DATE: September 24, 1984.

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

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Report and Order (Proceeding Terminated)

In the matter of amendment of the Commission's Rules regarding the modification of FM and Television station licenses; MM Docket No. 83-1148.

Adopted: July 26, 1984.

Released: August 16, 1984.

By the Commission.

Introduction

1. The Commission's *Notice of Proposed Rule Making* in this proceeding¹ proposed to amend the procedures whereby the Commission amends the FM and Television Tables of Assignments, §§ 73.202(b), 73.504(a), and 73.606(b), of the Commission's Rules. Specifically, the *Notice* concerned rule making proceedings in which an existing licensee² seeks to amend a table in order to obtain a different channel in its community while also seeking modification of its license to specify operation on the new channel. In the FM context, the requested channel is generally one of a higher class, permitting additional coverage. In the TV context, the request is generally for a lower UHF channel. In both contexts, the licensee may also seek the amendment for other reasons, such as obtaining a more advantageous transmitter site.

Background

2. Prior to 1976, the Commission had no stated policy concerning when it was appropriate to modify an existing license in the course of a rule making proceeding. Generally, the Commission granted modifications without discussion. In that year, however, the Commission ruled that it would modify the license of a petitioner requesting allotment of a higher class channel to its community to specify operation on that superior channel, provided no other interest in the proposed new channel was expressed in the course of the rule making proceedings.³ In establishing

¹ 48 FR 55585, published December 14, 1983.

² The terms "licensee" and "license" herein may also refer to a permittee or permit.

³ *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

this "Cheyenne doctrine," the Commission cited the decision of the Supreme Court in the *Ashbacker*⁴ case, noting that were it to grant modification in the face of other expressions of interest, it would "effectively foreclose" the filing of other applications by interested parties for the newly assigned channel. * * *

3. Commission action since *Cheyenne* has been consistent with the doctrine announced in that case. License modifications have been routinely granted absent other interests expressed in the course of rule making proceedings and denied in the face of such expressions. However, by delegated authority, the Commission has granted modification in the face of other interests where additional channels equivalent to proposed channels were made available. This course of action was followed recently in *Helena, Montana*,⁶ where the Commission proposed to allot two Class C channels at that community and to modify the existing Class A licenses to specify operation on the Class C channels. Because there were two other interests in Class C channels filed in response to the *Notice* in that proceeding, the *Report and Order* allotted a total of four Class C channels and modified the licenses of the two existing Class A stations. The remaining two Class C channels were made available for application by other interested parties. The request of one of those other parties that all four Class C channels be made generally available for application was rejected. However, upon review of this action, the Commission concluded that it would be more appropriate to establish a rule providing for such action through a general rule making proceeding affording the opportunity for comment on the merits of the policy.

4. In the *Notice*, the Commission indicated that it wished to continue its policy of encouraging broadcast licensees to upgrade their facilities. In light of this, the Commission suggested that, in situations such as in *Helena*, it might be proper and in accord with *Ashbacker* to amend its Rules to provide for grants of license modification. Accordingly, the *Notice* in this proceeding proposed to amend Part I of the Commission's Rules by adding a new subparagraph (g) to § 1.420. This amendment would permit the

Commission, in the course of rule making proceedings to amend the FM and Television Tables of Assignments, to modify licenses of stations, provided additional channels were made available for application by other parties expressing interests. The *Notice* also invited comments on whether it was necessary to make sufficient additional channels available for application by all parties expressing an interest or whether a lesser number of additional channels is permissible. Commenters were also asked about the implications of the proposed rule on changes evolving from Commission action in BC Docket No. 80-90.⁷ Specifically, the Commission was concerned that the rule changes would create opportunities for many more upgrading possibilities than previously existed.⁸

5. Eighteen parties submitted comments in response to the *Notice*, and one party submitted reply comments. A list of the commenting parties is attached hereto as Appendix A. All commenters express support for the concept of modification of licenses of stations seeking to upgrade in the course of rule making proceedings. Among the benefits noted are (1) elimination of risks to existing stations, particularly where existing and proposed channels are incompatible, (2) speedier provision of enhanced service, and (3) more efficient use of the spectrum. Some commenters also assert that existing licensees are generally the most qualified to provide enhanced service to their communities. Several commenters, including Dempsey and Koplovitz, Fuller-Jeffrey, KAGE et al., and NRBA, argue that *Ashbacker* is no obstacle to implementation of the proposed amendment. Further, United asserts that the Commission has inherent power to modify licenses when to do so serves the public interest and may do so without providing the opportunity for a comparative hearing or without providing additional channels to accommodate other interested parties. Southland's comments support this view. Others, such as Bahakel, NAB, Southland, and Peoria Valley, argue that

a least one alternative channel should be made available to accommodate other interests. Still other comments, such as those of Fuller-Jeffrey, KAGE et al., and Davis, support the concept of modification at the rule making stage even where no other additional channels are available. Finally, various commenters suggest alternatives or variations to the proposed amendment to the Rules as set forth in the *Notice*.

Discussion

6. The Commission has reviewed its prior decisions leading up to the *Helena* case and has examined the comments submitted in response to the instant *Notice*. We continue to believe that FM and television station licensees should be encouraged to upgrade their facilities in order to improve service to their audiences. As noted, all commenters concur in this view. We believe that adoption of the proposed amendment to our Rules comports with the mandate of *Ashbacker* and reflects sound administrative policy.

7. In *Ashbacker*, the Supreme Court interpreted section 309(a)⁹ of the Communications Act of 1934, as amended, to require that an applicant for broadcast license be granted a hearing before its application is denied.¹⁰ In so ruling, the Court concluded that mutually exclusive applications for broadcast licenses are entitled by statute to comparative hearings before one of the applications may be granted. As noted, although the Commission recognized in *Cheyenne* that the *Ashbacker* holding applies to upgrading situations, it also recognized that its policy of granting modification to stations seeking to upgrade their facilities is not violative of the *Ashbacker* mandate in situations where no other interest in the proposed superior class of channel is expressed in comments. In deciding to grant modifications under such circumstances, the Commission determined that the public could benefit by not subjecting the licensee to needless delay and expense where no other party does, in fact, have an interest in a proposed superior channel.¹¹ Implicit in the rationale underlying the *Cheyenne* doctrine is the presumption that other interested parties have been given the opportunity to make known their interests by the filing of formal comments in the course of rule making proceedings. We have not been made

⁴ *Modification of FM Broadcast Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 94 F.C.C. 2d 152 (1983), recon. denied, 55 R.R. 2d 903 (1984).

⁵ In the *Notice of Proposed Rule Making* in MM Docket No. 84-231 (the amendment of the table of FM allotments to add new channels made possible by BC Docket 80-90), the Commission tentatively concluded it would not accept any counterproposal for the upgrading of an existing station to a higher class of channel on the allotments under consideration in MM Docket 84-231. At the conclusion of the omnibus proceeding, however, the Commission will begin accepting upgrade proposals.

⁶ *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945). The holding of that case was that a grant of one mutually exclusive application for a broadcast license without affording a hearing on the other deprives the loser of the opportunity for a hearing provided by the Communications Act.

⁷ 62 F.C.C. 2d at 67.

⁸ *Helena, Montana*, 50 R.R. 2d 70 (1982).

⁹ The referenced language is now found in section 309 (a) and (c) of the Act.

¹⁰ 326 U.S. at 330.

¹¹ 62 F.C.C. 2d at 68.

aware of any legal impediments to a modification of license under appropriate circumstances.¹²

8. Thus, we address the issue of whether it is appropriate to modify only where sufficient other channels of the same class are available or where the number of additional channels is less than the number of other interested parties. The Commission may, by general rule, establish eligibility standards that obviate the need for individual section 309(a) hearings before denial of a license. *U.S. v. Storer*, 351 U.S. 192 (1956). Establishment of such a rule here would effectively prevent applicants other than the upgrading licensee from applying for the new channel. As indicated, several commenters asserted that modification of an upgrading licensee in the course of a rule making proceeding is appropriate where as few as one additional channel is made available to accommodate other expressions of interest. NAB and Columbia further assert that the available channel can be the one being vacated. While we believe that at least one additional channel should be available to accommodate other interests, that channel must be of a class at least equivalent to the proposed channel sought by a licensee seeking to upgrade. Assuming the alternate channel provided by Commission action is equivalent to that sought by an upgrading licensee, the position of other interested parties is as favorable as if they had to compete with each other and with the upgrading licensee for the single channel initially proposed and nearly as favorable as if all applicants competed for two new channels. Moreover, the public thereby gains the benefits of a choice among alternative providers of the upgraded service. Nevertheless, as a matter of policy, where more than one additional interest is timely filed, the Commission will attempt to allot as many additional equivalent channels as there are interested parties.

9. Amendment of the Rules to encourage upgrading and improved service by broadcast licensees is also consistent with our previous practice as well as with our recent action in BC Docket No. 80-90.¹³ Commission policy favors enhanced service from existing licensees. This was manifest in our *Cheyenne* decision and in our actions since *Cheyenne*. We have consistently sought to provide additional channels to

accommodate other expressions of interest, thereby permitting modifications without the costs and risks associated with the application process. However, where additional channels could not be provided, we permit petitioning licensees to withdraw their rule making proposals where the existing and proposed allotments were incompatible.¹⁴ In Docket No. 80-90, we amended the Rules to provide additional service to satisfy a "substantial demand" for new FM service by establishing three new classes of station.¹⁵ We also reiterated in that proceeding our determination to encourage improvement of facilities by existing FM stations. In that regard, we specifically noted that creating intermediate classes of stations serving larger areas than Class A stations represented "major benefits" in terms of spectrum efficiency.¹⁶ Conversely, we also recognized that to continue to allow existing stations to operate at less than authorized facilities would preclude additional service to the public.¹⁷ Other actions in that proceeding were consistent with and reflective of our policy of encouraging upgrades. For instance, aside from creating new classes of station, we established "buffer zones" for three years during which time licensees of existing Class C stations are protected from new allotments which would otherwise limit their ability to increase their power to authorized levels. We also gave existing stations up to three years in which to improve their facilities to the minima for their classes, allowed them to protect their classifications simply by filing applications to upgrade their facilities, and designated such changes as minor.

10. The considerations underlying our policy of encouraging existing FM licensees to upgrade is also applicable regarding television licensees. Accordingly, in situations where UHF licensees request allotments of VHF channels to their communities, we will attempt to provide additional VHF channels to accommodate other expressions of interest in such channels and thereby permit modification of petitioners' licenses during rule making proceedings. However, we are aware that this procedure will rarely be applied since there are few locations where an additional VHF channel can be allotted. More common is the

situation where a lower UHF channel is requested. We do not consider the differences between higher and lower numbered UHF channels significant¹⁸ and therefore will not treat requests for modification to lower numbered UHF channels as upgrading situations. Rather should the requested UHF be allotted, it would be available for application by all interested parties. Similarly, we are aware of no public interest benefits which would impel us to treat requests for modification from one VHF channel in a community to another as upgrading requests to which the instant proposed amendment to the Rules would apply. Finally, this rule would not apply to AM stations since there is no table of allotments for the AM service.

11. We turn now to comments suggesting alternatives to the proposal as set forth in the *Notice*, some of which lie outside the scope of the *Notice*. Awarding a preference to licensees seeking to upgrade in the comparative hearing context as proposed by Jones and NRBA is a matter exceeding the scope of the proposed amendment to the Rules. Nor is the proposed amendment intended to correct our "erroneous" approach of not allowing for modifications where television or FM licensees seek to relocate within a market while retaining their existing channels as suggested by Corinthian/Belo and supported by Southland. Scripps-Howard's suggestion to prohibit competing applications where channels are exchanged within a market is likewise outside the scope of the *Notice*.

12. Certain other proposals submitted in response to the *Notice* are also outside its scope. The proposed amendment was not meant to encompass situations where non-licensee petitioners seek to operate new facilities on requested new channel allotments as proposed by Bahakel. Similarly, we did not intend in this proceeding to modify any licensee seeking to change facilities consistent with technical requirements as suggested by Southland. The matter of intermixture is clearly outside the scope of this proceeding, and we will not grant Paradise's request to reexamine that issue at this time. The suggestion by Fuller-Jeffrey, KAGE et al., and Southland to delay issuance of the omnibus *Notice* in Docket No. 84-231 pending a determination in this proceeding has been rendered moot by the previous release of that omnibus *Notice* on March 14, 1984. Additionally, amendment of our Rules pertaining to terrain shielding and directional

¹² Any parties who object to the modification for other reasons could also file comments during this period. See 47 U.S.C. 309 (b), (c), (d).

¹³ *Report and Order*, 94 F.C.C. 2d 152 (1983).
Memorandum Opinion and Order, 49 FR 10260, published March 20, 1984.

¹⁴ See *Statesboro, Georgia*, 40 R.R. 2d 1021 (1977); *Morgan City, Louisiana*, 48 FR 4845, published February 2, 1983 and *Pt. Smith, Arkansas*, and *Poteau, Oklahoma*, 47 FR 23189, published May 27, 1982.

¹⁵ 94 F.C.C. 2d at 170.

¹⁶ *Id.* at 173.

¹⁷ *Id.* at 176.

¹⁸ See *Houston, Texas*, 50 R.R. 2d 1420 (1982).

antennas as well as allowing Class A stations to operate at greater heights above average terrain and at greater power limitations where separation requirements exceed Class A minima as proposed by Paradise lies beyond the scope of this proceeding. The suggestion of Dempsey and Koplovitz concerning a switch of a reserved noncommercial educational channel with a commercial channel in the same community is, again, a matter which is outside the scope of this proceeding. Finally, alleged inequities in the FM Table of Assignments which, according to Columbia, can be remedied by Commission action in Docket No. 80-90 are not subject to action in this proceeding.

Conclusion

13. Commission policy encourages FM and television licensees to upgrade their facilities. Upgrading enables these licensees to provide better service to their audiences without the cost and delay of a comparative hearing. We believe that, by amending the Commission's Rules to provide a procedure whereby licensees of stations seeking to upgrade can do so within the context of the rule making proceeding to amend the FM and television tables of assignments, we will encourage upgrading. This is so, because modification at that time will reduce costs and risks associated with comparative consideration of competing applications. We further believe that this procedure will reduce burdens on Commission resources. Because the new procedure would allow additional equivalent channels to be made available to accommodate other parties expressing interest, separate rule making proceedings to assign the channels are unnecessary. Also unnecessary would be the administrative burden of processing applications and conducting comparative hearings in these situations. In summary, as expressed in the attached Appendix B, the new rule would permit the modification of an existing licensee seeking to upgrade so long as at least one additional equivalent channel is allotted for other interested parties.

14. Pursuant to the requirements of section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared and is attached hereto as Appendix C.

15. Accordingly, it is ordered, That, Part 1 of the Commission's Rules and Regulations is amended, effective September 24, 1984, as set forth in Appendix B.

16. It is further ordered, That this proceeding is terminated.

17. Authority for the actions taken herein is contained in sections 4(i) and 303 (g) and (r) of the Communications Act of 1934, as amended.

18. For further information concerning this proceeding, contact Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments in response to the Notice were submitted by the following:

Bahakel Communications, Ltd.

("Bahakel");

Columbia FM, Inc. ("Columbia");

Corinthian Broadcasting Corporation

and Belo Broadcasting Corporation

("Corinthian/Belo");

Don Davis ("Davis");

Dempsey and Koplovitz;

The Fuller-Jeffrey Group ("Fuller-

Jeffrey");

Robert A. Jones ("Jones");

KAGE, Inc., Phillips Radio, Inc., Radio

South, Inc., and WGWD STEREO INC.

("KAGE et al.");

The National Association of

Broadcasters ("NAB");

The National Radio Broadcasters

Association ("NRBA");

Paradise Broadcasting, Inc. ("Paradise");

Peoria Valley Broadcasting, Inc. ("Peoria

Valley");

Rappahannock Broadcasting

Corporation ("RBC");

Scripps-Howard Broadcasting Company

("Scripps-Howard");

Southland Communications, Inc.

("Southland");

Stone Communications, Inc.;

Telegraph III Inc. ("Telegraph"); and

United Television, Inc. ("United").

Reply comments were submitted by

Southland.

Appendix B

PART 1—[AMENDED]

47 CFR 1.420 is amended by adding new paragraph (g) to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM, television or air-ground table of assignments.

* * * * *

(g) In response to a petition for rule making to amend § 73.202(b), § 73.504(a), or § 73.606(b) filed by a licensee (or permittee) of an FM station to allot another class of FM channel to its community of license or by a licensee

(or permittee) of a UHF television broadcast station to allot a VHF television channel to its community of license and upon a determination that the public interest would be served thereby, the Commission may modify the license (or permit) of the petitioner to specify operation on the newly allotted channel. Provided, that the Commission shall not modify the license (or permit) of the existing station where, in the course of the rule making proceeding, another party or parties has expressed an interest in the proposed channel and where there is not at least one additional equivalent or superior channel available for allotment.

Appendix C

Final Regulatory Flexibility Analysis

I. Need for and Purpose of the Rule

This action was prompted by the Commission's desire to encourage its FM and television licensees to upgrade their facilities and thereby improve service to the public. Application of current Commission policy providing for modification, in the course of rule making proceedings amending the FM and television tables of assignment, of the licenses of stations seeking to upgrade is limited to situations where no other interests in the proposed channels are expressed in the course of those proceedings. The rule adopted herein, by providing for modification where additional channels of a class at least equivalent to the proposed channels are made available to accommodate those other expressions of interest, will encourage licensees to initiate rule making proceedings to allot superior channels to their communities. This is so, because the instances where comparative hearings to resolve competing applications are mandated will be decreased. Other important benefits will be realized as a result of this new procedure. First, licensees will be able to institute service on new superior channels much more quickly and with less expense than if they were required to submit applications for authorization to operate on the new channels. Second, the administrative burden of processing unnecessary applications and of further rule making proceedings for additional channel allotments would be eliminated. Further, litigation expenses associated with license applications and with further rule making proceedings would be avoided.

II. Flexibility Issues Raised in the Comments

No issues were raised specifically in response to the initial regulatory flexibility analysis. In general, the commenters asserted that existing Commission policy restricting modification of licenses of stations seeking to upgrade to superior classes of channels to situations where no other interests in the proposed channels are expressed in the course of rule making proceedings does not provide sufficient incentive to seek upgrade. The Commission agrees with these assertions and, accordingly, adopts a rule providing for modification in such situations, provided at least one additional channel at least equivalent in class to the proposed channel is available to accommodate other expressions of interest. Some commenters suggested that the Commission's Rules be amended to provide for modification in circumstances involving license changes other than upgrading or where no additional channels need be available. The Commission disagrees, because these suggestions are either outside the scope of the instant proceeding or are legally insufficient, respectively.

III. Significant Alternatives Considered and Rejected

Some commenters suggested that the Commission's Rules be amended to provide for modification in circumstances involving license changes other than upgrading proposals. These alternatives were not considered because they concerned situations which were outside the scope of this proceeding. No significant alternatives were rejected.

[FR Doc. 84-22748 Filed 8-27-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2 and 73

[MM Docket No. 83-1322; RM-4367; FCC 84-301]

Use of the AM Carrier

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has eliminated restrictions on AM carrier usage. AM licensees will now be able to use their carrier signals for any purpose providing such usage does not create interference to originating or other stations. This action is patterned after recent Commission action regarding FM and TV subcarrier usage.

EFFECTIVE DATE: September 20, 1984.

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

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202)632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations, Radio.

47 CFR Part 73

Radio broadcasting.

Report and Order

In the matter of amendment of Parts 2 and 73 of the Commission's AM Broadcast Rules concerning the use of the AM carrier (MM Docket No. 83-1322, RM-4367).

Adopted: June 27, 1984.

Released: August 14, 1984.

By the Commission: Commissioner Rivera dissenting in part and issuing a statement at a later date.

Introduction

1. By this *Report and Order*, we are expanding the uses permitted for the carrier signal of AM radio stations. AM licensees will now be able to use their carrier signals for any broadcast or non-broadcast use that does not interfere with their main broadcast channel operation or the signals of other broadcast stations. Prior to this action, the only permitted non-broadcast uses of the AM carrier were remote control telemetry and utility load management.

Background

2. On December 1, 1983, the Commission adopted a *Notice of Proposed Rule Making (Notice)* proposing to extend the uses of the AM carrier signal.¹ To date, the only permitted non-broadcast uses of these signals were remote control telemetry and utility load management. In the *Notice*, the Commission suggested that no useful purpose is served by retaining restrictions on AM carrier use. The Commission further noted that because no additional spectrum is required to provide these new services, permitting such additional uses of AM carrier signals may result in more efficient use of the spectrum. The Commission also indicated that permitting AM broadcasters to utilize their carrier signals in this manner is consistent with the actions taken with regard to FM and TV aural subchannels.²

¹ See *Notice of Proposed Rule Making*, MM Docket No. 83-1322 (48 FR 56607) December 22, 1983.

² FM radio and TV broadcast licensees are currently permitted to use their subcarriers for

3. In the *Notice*, the Commission proposed that any method used for the provision of AM carrier services must not disrupt or degrade the main broadcast signal of the station or the signals of any other radio service. The Commission also indicated that specific technical standards were not required for the secondary use of AM carrier signals. Finally, the Commission requested comments on the regulatory approach to be taken with regard to AM carrier services. A total of nine comments and three reply comments were filed in response to the *Notice*. A list of the commenting parties appears as Appendix A.

Discussion

4. After reviewing the record in this proceeding, we believe that the Commission's goal of full and efficient use of the spectrum is furthered by permitting additional uses for AM carrier signals. We now believe that no useful purpose is served by the retention of the existing restrictions of utility load management and remote control telemetry. As the Altran Electronics Division of McGraw-Edison Co., Inc. (Altran) points out in its comments, limiting AM carrier use to utility load management leaves many potential carrier signals idle.³ Further, by permitting additional secondary uses of the AM carrier, new and innovative services may be provided to the public without diminution of existing broadcast service.

5. We also believe that permitting AM stations to compete with FM and TV stations for business opportunities arising from multiplexing is beneficial. While there are significant technical differences between AM carrier signals and FM and TV aural subchannels that can preclude one service from performing in the manner of the other, we believe that AM stations should have the opportunity to compete for those functions that can be provided by AM carrier signals. Giving AM broadcasters the opportunity to participate in this market should serve to reduce the costs of these services to the consumer and contribute to an overall healthy and competitive radio service environment. For the aforementioned reasons, we are amending our rules to permit AM

broadcast and non-broadcast purposes. See *First Report and Order*, BC Docket No. 82-538 (48 FR 28445), June 22, 1983 and *Second Report and Order*, Docket No. 21323 (49 FR 18100), April 27, 1984.

³ This is due to the fact there is generally only one utility company in any given area and therefore only one or two AM stations are likely to be involved in utility load management at any one time.

stations to provide broadcast and non-broadcast services using AM carrier signals. By permitting any broadcast or non-broadcast use for AM carrier signals, we believe that AM licensees will be able to realize the most efficient and effective use of AM carrier services and that this will inure to the public's benefit.

6. *Technical matters.* In the *Notice*, we stated that any method used for the provision of AM carrier services must not disrupt or degrade the signal of the station or the signals of any other radio station. Specifically, we requested comments regarding what should be considered degradation or disruption of the main broadcast signal and to what extent should the Commission remain concerned about such degradation. In addition, we noted that while compatibility and interference concerns have been raised in the past, particularly with regard to AM stereophonic operations, AM broadcasters have strong market incentives to protect their own transmissions and install systems compatible with their primary broadcast operations.⁴ No specific technical standards for AM carrier signals were proposed in the *Notice*.

7. NBC, Inc. (NBC), in its comments, supports the Commission's proposal that AM carrier signals should not be permitted to disrupt or degrade main channel programming or the signals of any other AM station. NBC believes that main channel integrity must be maintained and should not be compromised in any way. NBC states that the Commission should not permit the use of any AM carrier that results in any unrelated audible sound or tone during any main channel programming.⁵ For example, audible AM carrier tones during main channel programming to activate non-broadcast services should not be permitted according to NBC.⁶

⁴ In the AM Utility Load Management Report and Order in BC Docket No. 81-896 (47 FR 25342), June 11, 1982, the Commission alerted potential manufacturers and users of AM carrier systems of possible interference problems with AM stereo systems (see para. 15).

⁵ In this regard, NBC proposes that the language suggested in the *Notice* be modified to indicate that AM broadcasters may transmit non-broadcast carrier signals not audible on "all receivers" rather than "ordinary consumer receivers."

⁶ In the *Notice*, the Commission indicated that it had received a request from an AM station to permit the transmission of low-volume audible tones to activate teleprinters to disseminate information to the hearing impaired. A copy of this request had been placed in the docket file of this proceeding.

Altran and the NAP Consumer Electronics Corporation (NAPCEC) suggest that AM licensees be allowed to determine the acceptability of their signals. These commenters state that if consumers are not satisfied with the signal of a radio station they will merely turn to another station that provides the level of service they desire. Altran also requests clarification regarding off-hour use of the carrier signal. Altran suggests that there is no reason why an AM station should not be able to transmit carrier signals during hours when they do not provide an audio service. CBS, Inc. (CBS) opposes carrier use during non-authorized hours of operation due to interference considerations. CBS states that restrictive power and hours of main channel operation for AM stations are there to protect other AM stations' main channel from possible interference.

8. Comments filed by Motorola, Inc. (Motorola) express concern over the effect of AM carrier signals on AM stereo operation. Motorola believes that the Commission should wait for the marketplace to decide on one of the competing AM stereo systems before it takes action on additional AM carrier use. At the very least, Motorola states that the Commission should draft rules that would protect stereo pilot tones from "falsing" on AM carrier signals.⁷ The National Association of Broadcasters (NAB) and Altran suggest that marketplace incentives will overcome any signal integrity problems created by additional carrier use. These commenters state that AM broadcasters have strong motivations to protect their main channel operations and the AM band, in general, whether or not they choose to operate in stereo.

9. After reviewing the record, we conclude that our original proposal with regard to the provision of AM carrier services is appropriate. We will therefore amend our rules, as contained in the attached Appendix B, to allow any technical method for the provision of AM carrier services provided that such method does not disrupt or degrade the main broadcast signal of the station or signals of any other radio service. AM carrier services will be limited to the hours authorized for main channel operation. (It should be noted that carrier services may be provided during hours when the station is not providing an audio service but is authorized to

⁷ Motorola is concerned that AM stereo receivers will "falsely" go into the stereo mode of operation when the station is not broadcasting in stereo due to the transmission of certain AM carrier signals. The current four AM stereo systems use subaudible pilot tones at 5, 15, 25 and 55 Hz.

operate.)⁸ These constraints have worked well in the provision of remote control telemetry and utility load management services and we see nothing in the record of this proceeding to indicate that they will not do so under our expanded AM carrier authority. We believe that such an approach will provide broadcasters with wide latitude in the types of services that they may provide and significant technical flexibility in the manner in which they can provide them. At the same time, AM broadcast service to the public will not be diminished.

10. With regard to AM stereo operations, we are aware that there may be certain compatibility problems associated with the use of AM carrier signals and AM stereo. As stated in the *Notice*, however, designers of AM carrier systems have marketplace incentives to build equipment that meets the needs of AM broadcasters (both stereophonic and monophonic). Likewise, AM broadcasters have strong incentives to protect their transmissions (as well as AM transmissions in general) and install systems compatible with their primary broadcast operations. We recognize the possibility that a station transmitting carrier signals may cause certain stereo receivers to switch into the stereo mode of operation when there is no stereo signal actually present (or for stereo receivers incompatible with the stereo system used by the station to switch into this incompatible stereo mode). Nevertheless, we do not find this situation so severe as to warrant either a delay in our authorization of additional uses for AM carrier signals or a requirement to protect the pilot tones of all AM stereo systems. We believe that the public benefits of additional carrier services outweigh any compatibility concerns that may arise. In this regard, we note that protection of AM pilot tones would severely inhibit AM carrier operations to the extent that it is doubtful that AM broadcasters could offer such services.⁹ Furthermore, we note that certain compatibility problems already exist among AM stereo systems and that reception of one AM stereo system with a receiver designed for another type of AM stereo

⁸ We believe that carrier operation outside authorized hours would have the same potential for creating interference as unauthorized main channel operation.

⁹ AM carrier services, in general, would utilize subaudible signals for transmission. As noted previously, however, the four current AM stereo systems also make extensive use of subaudible pilot tones (at 5, 15, 25 and 55 Hz). Protection of these pilot tones would therefore eliminate a significant (if not all) portion of the subaudio band.

system may provide less than optimal performance.

11. In addition, to the degree that AM carrier signals may cause problems for AM stereo receivers, these problems already exist with the provision of utility load management and remote control telemetry operations. Our experience to date does not convince us that specific rules are required to resolve these problems. Further, we note that a number of AM stereo receivers are equipped with a switch to select monophonic or stereophonic operation. Selection of monophonic reception will eliminate any problems associated with reception of a station engaging in AM carrier service and not providing AM stereo. Finally, we agree with those who indicate that the AM licensee has strong marketplace incentives to provide adequate service and that if consumers are not satisfied with the signal of the radio station they will merely turn to another station that provides the level of service they desire. In implementing this decision, it should be noted that complaints of interference to other services and with AM stereo receiver operation received by the Commission's Field Operations Bureau will be referred to the station licensee for resolution. The licensee will have the responsibility for resolving the problem to the complainant's satisfaction.

12. *Regulatory matters.* In the *Notice*, we proposed to follow the regulatory model set out in our *Report and Order* concerning the use of FM subchannels.¹⁰ Briefly, we proposed to require that broadcast-related services such as subscription services using AM carrier signals remain subject to the control of the licensee. However, they would not be subject to the statutory requirements imposed on the licensee's main broadcast operations.¹¹ With regard to non-broadcast related uses of AM carrier signals, we proposed that it would be necessary to determine whether the service offered constitutes private or common carrier use under applicable statutes and case law.¹² Once

a licensee has determined that the service is common carriage, authorization would be sought to provide that service from the Common Carrier Bureau and state commissions, as appropriate. For AM licensees seeking to provide private services, we proposed that they notify the Commission's Private Radio Bureau and certify compliance with pertinent private radio regulations.

13. In general, the commenters support this approach. Several commenters suggest, however, that the Commission should forebear from applying common carrier regulation to AM carrier use. NBC, for example, states that AM carrier services should be classified as "hybrid" and therefore subject to minimal regulation. NBC claims this action would be consistent with the Commission's *SBS* holding and would generally fall under a "point-to-point" service category.¹³ The NAB states that AM carrier operation should not be subject to separate application or licensing procedure, logging requirements, political broadcast rule, fairness doctrine or other programming regulation applied to conventional broadcasting. NAB also does not want the determination of the regulatory class of the carrier left to the licensee. Bonneville International Corp. (Bonneville), and the National Radio Broadcasters Association (NRBA) join NAB and NBC in stating that the Commission can and should forebear from applying common carrier regulation on carrier use. NAB, NBC and Bonneville also request that the Commission preempt state and local entry regulation. They claim that AM carrier services classified as common carrier services would be subject to varying state and local regulations which would act to discourage entry into this area by AM licensees. On the other hand, the Joint Telephone Companies, in their comments, support having common carrier regulation apply to AM carrier use. They claim that this action would be consistent with other subcarrier uses and that if broadcasters are exempt from such regulation, telephone companies offering similar services would be put at a competitive disadvantage.

14. After review of the record, the Commission believes that the regulatory

approach set forth in the *Notice* is the appropriate one to follow. We disagree with NAB that the determination of whether the service provided by AM carrier signals is common carrier or private is an unreasonable burden to place on the licensee. Further, the Commission is unpersuaded by those who contend that services provided by AM carrier signals should be exempt from all regulations. We believe that the minimal requirements we are adopting herein are necessary to carry out our responsibilities under the Communications Act, and will not place an unreasonable burden on those wishing to implement AM carrier services.

15. AM carrier services will be regulated in the same manner as TV aural subchannel and FM subcarrier uses.¹⁴ Subscription programming services will not be considered broadcasting but will remain under the licensee's control unless offered on a common carrier basis. For non-broadcasting services, the AM licensee determines whether the service offered constitutes private or common carrier use under applicable statutes and case law.¹⁵ The licensee then either seeks appropriate authorization if the service is common carriage or complies with the simple notification and certification requirements for private services.¹⁶ It should be noted that applicants for use of AM carrier signals will not be seeking approval for the technical facilities of the AM station. The technical facilities are appropriately considered in the context of the station's primary purpose of broadcasting and these facilities

¹⁰ Thus, for example, the fairness doctrine and equal time requirements will not be applicable to AM subcarrier services. See e.g., *Second Report and Order*, Docket No. 21323, *supra* at para. 26.

¹¹ An AM licensee may also choose to lease the use of its AM carrier to an entity that will provide a private or common carrier service. In such cases, the lessee or the lessor may seek appropriate service authorization. However, the primary licensee remains responsible for the technical operation of the transmitting facilities, including the use of the AM carrier signals.

¹² AM broadcast licensees seeking to provide private carrier services must simply notify the Licensing Division of the Private Radio Bureau in Gettysburg, Pennsylvania, by letter certifying that their facilities will be used only for permissible purposes under 47 CFR Parts 90 and 94 of the rules. They must also certify that any interconnection of the station with a telephone exchange or interexchange service will be obtained in accordance with Section 331 of the Communications Act. The letter of notification is all that is required to be sent to the Commission. There are no application forms, and separate licenses will not be issued. In addition, the letters of notification do not give rise to any comment period or petitions to deny. Private systems operating on AM carrier signals are exempt from state and local regulation in accordance with section 331(c)(3) of the Communications Act.

Commissioners v. FCC, 525 F.2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976) ("NARUCI") and *Report and Order*, in BC Docket No. 82-536, *supra* at paras. 21-22. For mobile radio services, Section 331(c) of the Act shall apply. See *Report and Order*, BC Docket No. 82-536, *supra* at para. 23.

¹³ See *Satellite Business Systems*, File No. 1091-DSS-MP/ML-83, FCC 83-403 (Released November 2, 1983).

¹⁰ See *First Report and Order*, BC Docket No. 82-536 (48 FR 28445), June 22, 1983, at para. 20-27 and *Memorandum Opinion and Order*, BC Docket No. 82-536, released May 2, 1984.

¹¹ See *Report and Order*, BC Docket 81-741 (48 FR 27054), June 13, 1983.

¹² The determination as to the appropriate regulatory classification of AM carrier service would rest, in the first instance, with the licensee, guided by the standards articulated in applicable judicial decisions and statutory provisions. Specifically, assuming there is no legal compulsion requiring operation as a common carrier, a finding of common carrier status would generally turn on whether a particular entity actually operates as a common carrier, that is, whether the carrier "undertakes to carry for all people indifferently." See *National Associations of Regulatory Utility*

would not be subject to challenge or modification on the basis of proposed, secondary carrier activities. AM carrier use will be considered as a secondary privilege that runs with the primary broadcast station license.

16. We indicated in the *Notice* and are adopting herein the regulatory model used for FM subchannel services. On April 26, 1984, the Commission adopted a *Memorandum Opinion and Order (MO&O)* in BC Docket No. 82-536 that *inter alia* preempted state regulation that has the effect of prohibiting or impeding entry of radio common carrier services offered on FM subcarriers.¹⁷ In the *MO&O*, the Commission noted that comparable kinds of communications, with some technical variations, may also be distributed using the ancillary communications capability of other broadcast media. In particular, the *MO&O* stated that the resolution of the preemption issue with respect to FM subchannels would cover TV subchannels as well. In this proceeding, similar issues have been raised concerning certain state and local entry requirements. We believe that these entry restrictions will frustrate our legitimate efforts to foster efficient utilization of the spectrum and conflict with our procompetitive spectrum allocation policies.¹⁸ Accordingly, as with FM subchannel use, we are preempting state regulations that have the effect of prohibiting or impeding entry of radio common carrier services provided by AM carrier signals.

17. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need for and purpose of the rules.* The Commission believes that limiting AM carrier use to remote control telemetry and utility load management does not comport with the goal of maximizing efficient utilization of the spectrum. The restrictions also artificially restrict competition in business opportunities arising from carrier use. Therefore, the Commission is allowing additional uses for the AM carrier as long as such uses do not create interference to main channel operation of either the originating station or other stations.

II. *Summary of issues raised by public comments in response to the initial regulatory flexibility analysis, Commission assessment and changes made as a result.*

¹⁷ See *Memorandum Opinion and Order*, BC Docket 82-536 (49 FR 19659), released, May 2, 1984.

¹⁸ For a more complete treatment of our preemption of state and local entry regulation see *Memorandum Opinion and Order*, *supra*.

A. *Issues raised.* No issues or concerns were raised specifically in response to the initial regulatory flexibility analysis. All commenters supported relaxation of the restrictions on AM carrier use to some degree. Most supported unrestricted use of carrier signals. One commenter, however, was concerned about additional carrier use creating problems for the fledgling AM stereo industry.

B. *Assessment.* The Commission believes that market forces will mitigate any problems with AM stereo operation. Further, to the degree that this remains a problem, the Commission believes that the benefits of additional AM carrier use outweigh these concerns.

C. *Changes made as a result of such comments.* None.

III. *Significant alternative considered and rejected.* The Commission considered the following alternatives: (1) To not allow other uses for AM carrier signals; and, (2) to allow other uses but fashion rules to protect AM stereo pilot tones. The Commission feels that the first alternative would not allow the full potential benefits of unrestricted carrier use to accrue to AM licensees and those who use carrier/subchannel services. The Commission also believes marketplace incentives will protect AM stereo pilot tones without Commission mandates. Therefore both options were rejected.

18. Authority for amending the rules is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

19. Accordingly, it is ordered, that Parts 2 and 73 of the Commission's Rules are amended as set forth in Appendix B, effective September 20, 1984.

20. It is further ordered, that the Secretary shall cause a copy of the *Report and Order*, including the regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*) (1982).

21. It is further ordered, that this proceeding is terminated.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 203)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—List of Commenters

Altran Division of McGraw-Edison Company¹

¹ Also submitted reply comments.

Bonneville International Corporation
CBS, Inc.¹
Joint Telephone Companies^{1, 2}
Motorola, Inc.
NAP Consumer Electronics Corp.
NBC, Inc.
National Association of Broadcasters
National Radio Broadcasters Association

Appendix B

Parts 2 and 73 of the Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. Section 2.106, the National Table of Frequency Allocations, is amended by revising footnote NG128, in the list of footnotes following the Table to read as follows:

§ 2.106 Table of Frequency Allocations.

NG 128 In the band 535-1605 kHz, AM broadcast licensees or permittees may use their AM carrier on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the band 88-108 MHz, FM broadcast licensees or permittees are permitted to use subcarriers on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the bands 54-72, 76-88, 174-216 and 740-890 MHz, TV broadcast licensees or permittees are permitted to use subcarriers on a secondary basis for both broadcast and non-broadcast purposes.

2. In § 2.1001, paragraph (h) is revised to read as follows:

§ 2.1001 Changes in type accepted equipment.

(h) The interconnection of a multiplexing exciter with a type accepted AM broadcast transmitter in accordance with the manufacturer's instructions without electrical or mechanical modification of the transmitter circuits and completion of equipment performance measurements showing the transmitter meets the

¹ These comments were filed on behalf of nineteen operating telephone companies, as follows: The Bell Telephone Company of Pennsylvania; The Chesapeake and Potomac Telephone Companies; Diamond State Telephone Company; Illinois Bell Telephone Company; Indiana Bell Telephone Company; Michigan Bell Telephone Company; the Mountain States Bell Telephone and Telegraph Company; Nevada Bell; New England Telephone and Telegraph Company; New Jersey Bell Telephone Company; New York Telephone Company; Northwestern Bell Telephone Company; The Ohio Bell Telephone Company; Pacific Northwest Bell Telephone Company; Pacific Bell; South Central Bell Telephone Company; Southern Bell Telephone and Telegraph Company; Southwestern Bell Telephone Company; Wisconsin Bell.

minimum performance requirements applicable thereto is defined as a Class I permissive change for compliance with this section.

PART 73—RADIO BROADCAST SERVICES

3. Section 73.127 is amended by revising the introductory paragraph, paragraphs (b) and (c) and by adding paragraphs (d), (e) and (f) to read as follows:

§ 73.127 Use of multiplex transmissions.

The licensee of an AM broadcast station may use its AM carrier to transmit signals not audible on ordinary consumer receivers, for both broadcast and non-broadcast purposes subject to the following requirements:

(b) AM carrier services that are common carrier in nature are subject to common carrier regulation. Licensees operating such services are required to apply to the FCC for the appropriate authorization and to comply with all policies and rules applicable to the service. Responsibility for making the initial determinations of whether a particular activity is common carriage rests with the AM station licensee. Initial determinations by licensees are subject to FCC examination and may be reviewed at the FCC's discretion. AM carrier services that are private carrier in nature must notify the Licensing Division of the Private Radio Bureau at Gettysburg, Pennsylvania 17325, by letter, prior to initiating service certifying compliance with 47 CFR Parts 90 and 94.

(c) AM carrier services are of a secondary nature under the authority of the AM station authorization, and the authority to provide such communications services may not be retained or transferred in any manner separate from the station's authorization. The grant or renewal of an AM station permit or license is not furthered or promoted by proposed or past service. The permittee or licensee must establish that the broadcast operation is in the public interest wholly apart from the subsidiary communications services provided.

(d) The station identification, delayed recording, and sponsor identification announcements required by §§ 73.1201, 73.1208, and 73.1212 are not applicable to leased communications services transmitted via services that are not of a general broadcast program nature.

(e) The licensee or permittee must

retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems inappropriate or undesirable.

(f) Installation of the multiplex transmitting equipment must conform with the requirements of § 73.1690(e)(6).

2. In § 73.1690, subparagraph (e)(6) is revised to read as follows:

§ 73.1690 Modification of transmission systems.

(6) Modification of the transmitter for multiplexing of the carrier with an exciter unit that has been designed for interfacing with the type accepted transmitter with which it is to be used in accordance with the following:

(i) The combination of the multiplexing exciter and transmitter meets the minimum specifications given in §§ 73.40 and 73.44.

(ii) The frequency stability requirements of § 73.1545(a) must be maintained.

(iii) No electrical or mechanical changes in the transmitter circuits are allowed.

[FR Doc. 84-22746 Filed 8-27-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1063; RM-4490]

FM Broadcast Station, Greenfield, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class B Channel 300 to Greenfield, California, as that community's second FM broadcast service, in response to a petition filed by Eric R. Hilding.

EFFECTIVE DATE: October 12, 1984.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Greenfield, California); MM Docket No. 83-1063, RM-4490.

Adopted: August 7, 1984.

Released: August 13, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 47024, published October 17, 1983, issued in response to a petition filed by Eric R. Hilding ("petitioner"), proposing the assignment of Class B Channel 300 to Greenfield, California, as that community's second FM broadcast service. Supporting comments were filed by petitioner reaffirming his intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. We believe that the public interest would benefit from the assignment of Channel 300 to Greenfield, California, since it could provide a first competitive service in the community and an additional nighttime voice for the expression of diversified viewpoints.

3. As explained in the *Notice*, a staff engineering study reveals that Channel 300 can be assigned to Greenfield consistent with the minimum distance separation requirements of Section 73.207 of the Commission's Rules, based on the construction permit issued to Station KSOL (Channel 299) San Mateo, California.

4. Accordingly, pursuant to the authority contained in sections 4(i) 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective October 12, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Greenfield, CA	258, 300

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 305)

Federal Communications Commission.

Charles Schott,

Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-22752 Filed 8-27-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-949; RM-4496]

FM Broadcast Station in Crystal Falls, MI**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.**SUMMARY:** Action taken herein, at the request of David C. Schaberg, assigns Class C FM Channel 264 to Crystal Falls, Michigan, as that community's first FM assignment.**EFFECTIVE DATE:** October 12, 1984.**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, Mass Media Bureau, (202) 634-6530.**SUPPLEMENTARY INFORMATION:****List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Crystal Falls, Michigan); MM Docket No. 83-949, RM-4496.

Adopted: August 7, 1984.

Released: August 13, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 21611, published September 16, 1983, proposing the assignment of Class C FM Channel 264 to Crystal Falls, Michigan, as that community's first FM assignment, at the request of David C. Schaberg ("petitioner"). Petitioner filed supporting comments reaffirming his intention to apply for the channel, if assigned. Petitioner also filed a counterproposal, which he subsequently requested be withdrawn. No comments in opposition to the proposal were received.

2. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, with a site restriction of 22.7 kilometers (14.1 miles) southeast of the city. The site restriction is necessary, in order to avoid short-spacing to WBIZ (Channel 264) at Eau Claire, Wisconsin; unused Channel 262 at Rhinelander, Wisconsin; and WNMU (Channel 211) at Marquette, Michigan. The assignment was also contingent upon the deletion of Channel 261A at Marquette, Michigan, MM Docket Nos. 83-468 or 83-480.¹

¹ In Docket No. 83-468 the Commission substituted Channel 277 for Channel 261A at

3. Since the assignment of Channel 264 to Crystal Falls is within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained.

4. In view of the fact the assignment could provide a first local FM broadcast service to Crystal Falls, Michigan, the Commission believes the public interest would be served by the assignment of FM Channel 264 to Crystal Falls, Michigan.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective October 12, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Crystal Falls, MI	264

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1083; 47 U.S.C. 104, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-22751 Filed 8-27-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1126; RM-4516]

FM Broadcast Station in Truro, MA**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.**SUMMARY:** Action taken herein, at the request of John T. Galanes, assigns FM Channel 272A to Truro, Massachusetts, as that community's first FM service.**EFFECTIVE DATE:** October 22, 1984.**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

Marquette, Michigan, 49 FR 29385, published July 20, 1984. In MM Docket No. 83-480, *Report and Order* 49 FR 4753, published February 8, 1984, Channel 282 was substituted for Channel 278 at Baraga, Michigan eliminating a conflict with the Marquette proposal in MM Docket No. 83-468.

FOR FURTHER INFORMATION CONTACT:

Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Reporting and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Truro, Massachusetts); MM Docket No. 83-1126, RM-4516.

Adopted: August 7, 1984.

Released: August 14, 1984.

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 50577, published November 2, 1983, proposing the assignment of FM Channel 272A to Truro, Massachusetts, as that community's first FM service. The *Notice* was adopted in response to a petition filed by John T. Galanes ("petitioner"). Petitioner filed comments reaffirming his intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 272A to Truro, Massachusetts, in order to provide a first FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.¹

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective October 22, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Truro, MA	272A

¹ Due to the change in distance separations for 2nd and 3rd adjacent made effective March 1, 1984 (See *Report and Order*, BC Docket No. 80-90, 94 F.C.C. 2d 152 (1983); *Memorandum Opinion and Order*, 49 FR 10200, published March 20, 1984), there is a three kilometer short-spacing to Station WCIB, Channel 270 at Falmouth, Massachusetts. However, this petition was accepted under the rules in effect prior to that established for Docket 80-90 (See MM Docket No. 84-231, 49 FR 11214, published March 26, 1984). Thus, as in all other cases pending before March 1, 1984, the earlier established spacing requirements have been used.

transmitters having a peak output power not greater than 250 mW from type acceptance or notification.¹⁰ This exemption is also allowed under § 78.107 of the Rules for transmitters which have an output power not greater than 250 mW and which are used in a CARS pickup station operating in the 12.7-13.2 GHz band.¹¹ We conclude a similar approach should be extended to portable transmitters used under Part 94. We also agree it is appropriate to amend Section 94.81 of the Rules for the authorization of microwave equipment to allow low power portable transmitters to be exempt from the type acceptance and notification requirements.

6. Several of the commenters stated that the 13.2-13.25 GHz band should be reallocated for the use of the displaced 12 GHz licensees. This band was not proposed exclusively for reaccommodation and this was not an objective of this rule making and is beyond its scope. This band of course continues to be available to accommodate private systems including those which otherwise might have gone into the 12.2-12.7 GHz band.

7. IMC's comment on dividing the bandwidth into smaller channels and BOC's suggestion on narrow allocations exclusively for mobile services similarly are both outside the scope of this proceeding.

8. In summation we have considered carefully the comments and reply comments filed in this proceeding. Based on the Hughes petition and the comments received to the Notice, there appears to be substantial agreement on the need to eliminate the developmental classification of the 13.2-13.25 GHz band for private licensees. The developmental status was originally intended to encourage both equipment development and more extensive use of the frequency band. The present state of microwave radio technology and the regular authorizations in other services in this band have made the developmental restriction on private use inappropriate. There is no reason to deny private licensees the business benefits and stability of long term planning incident to a 5 year regular license as opposed to a 1 year developmental license. We are, therefore, adopting the proposal to eliminate the developmental classification of the 13.2-13.25 GHz band for private OFS users.

9. As stated in the Notice, the Commission certifies that section 604 of the Regulatory Flexibility Act of 1980 does not apply to the rule changes in

this Report and Order because they will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Report and Order, including the above certification, to be published in the Federal Register, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

10. Accordingly, it is ordered, that pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 94 of the Commission's Rules is amended, effective September 21, 1984, as set forth in Appendix B. It is further ordered that this proceeding is terminated.

11. Further information on this matter may be obtained by contacting Sandra Donnell, (202) 634-2443, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

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

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix A

Comments were filed on behalf of the following Bell telephone companies:

The Bell Telephone Company of
Pennsylvania
The Chesapeake and Potomac Telephone
Companies
Diamond State Telephone Company
Illinois Bell Telephone Company
Indiana Bell Telephone Company
Michigan Bell Telephone Company
The Mountain States Bell Telephone and
Telegraph Company
Nevada Bell
New England Telephone and Telegraph
Company
New Jersey Bell Telephone Company
New York Telephone Company
Northwestern Bell Telephone Company
The Ohio Bell Telephone Company
Pacific Northwest Bell Telephone Company
Pacific Bell
South Central Bell Telephone Company
Southern Bell Telephone and Telegraph
Company
Southwestern Bell Telephone Company
Wisconsin Bell

Appendix B

Title 47 of the Code of Federal Regulations, Part 94, is amended as follows:

1. Section 94.61(b) is amended by removing footnote 16 in the 13,200-13,250 MHz frequency band.

§ 94.61 Applicability.

* * *

(b) Frequencies in the following bands are available for assignment to stations in the Private Operational-Fixed, Microwave Service:

Frequency Band (MHz)

* * * * *

13,200-13,250..... (9), (14), (21)

* * * * *

2. Section 94.81 is revised to read as follows:

§ 94.81 Authorization of microwave equipment.

(a) Except as provided in paragraph (b) and for equipment used under a developmental authorization, all transmitters employed in this service must be either type accepted or notified pursuant to the requirements contained in Subpart J of Part 2 of this Chapter. As of March 5, 1984, all equipment designed exclusively for fixed operation shall be approved under the notification procedure (see § 2.904(d) of this Chapter).

(b) Type acceptance or notification is not required for portable transmitters operating with a peak output power not greater than 250 mW. If operation of such equipment causes harmful interference the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

[FR Doc. 84-22747 Filed 8-27-84; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[APD 2800.12 CHGE 2]

Recovering of Administrative Costs, Termination of Contracts; Bonds and Insurance; and Disputes and Appeals

AGENCY: Office of Acquisition Policy,
GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to implement the FAR by specifying the requirements to be followed when asserting claims for administrative costs incurred by the Government as a result of a contractors default; to implement Pub. L. 98-269, which amended the Miller Act by transferring the responsibility for furnishing certified copies of Miller Act payment bonds from the Comptroller General to the Federal agency that awarded the bonded contract; and to revise the requirements regarding documents to be

¹⁰ 47 CFR 74.655(a).

¹¹ 47 CFR 78.107(b)(2)(i).

included in appeal files. The intended effect is to provide policy and procedural guidance to contracting activities.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Ed Loeb, Office of GSA Acquisition Policy and Regulations, (202) 535-7791.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies that this document 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.) therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 528, 533, and 549

Government procurement.

PART 528—BONDS AND INSURANCE

1. The authority citation for 48 CFR Ch. 5 reads as follows:

Authority: 40 U.S.C. 486(c)

2. The Table of Contents for Part 528 is amended by adding one entry as follows:

Sec.
528.106-6 Furnishing information.

Subpart 528.1—Bonds

3. Section 528.106-6 is added to read as follows:

528.106-6 Furnishing information.

If a payment bond is provided for a contract, the head of the contracting activity must furnish a certified copy of the bond and the contract for which it was given to any person who requests it and furnishes an affidavit that either he/she has supplied labor or materials for the work and payment therefore has not been made or that he/she is being sued on such bond. The person who requests it must pay such costs of preparation as determined by the head of the contracting activity to be reasonable and appropriate.

Subpart 533.71—Processing Contract Appeals

4. Section 533.7103-1 is amended by revising paragraphs (c)(1), (c)(2)(vii), and (c)(2)(xiii) to read as follows:

533.7103-1 Preparation of the appeal file.

(c) Arrangement of documents.

(1) The first (top) document in the appeal file shall be the "Index of Exhibits." The index shall list, opposite each exhibit number the date and a brief description of the document and shall indicate which exhibits, if any, have been filed with the Board but not served on the other party because of their length or bulk. Documents in the appeal file shall be arranged in chronological order and separated by tabs for identification. For example:

	Exhibit	Date
Board of Contract Appeals acknowledgment of contractor's notice of appeal.....	1	7/20/84
Notice of appeal with attachments, if any.....	2	7/10/84
Facsimile of Post Office receipt of the final decision letter.....	3	5/25/84
Contracting officer's final decision letter applicable to the dispute.....	4	5/20/84
Contractor's request for final decision or other documents of claim in response to which the decision was issued.....	5	4/20/84

(c)(2) ***

(vii) Copy of letter of assessment, including worksheet showing calculation of excess costs and/or other damages including administrative costs.

(xiii) All documents and other physical evidence on which the contracting officer relied in making a decision.

PART 549—TERMINATION OF CONTRACTS

5. The Table of Contents for Part 549 is amended by adding two new entries to read as follows:

Sec.
549.001 Definitions.
549.402-7 Other damages.

6. Section 549.001 is added to read as follows:

549.001 Definitions.

(a) "Administrative costs", for the purpose of this part, means those costs, other than excess costs, incurred by the Government as a result of the contractor's default. Administrative costs include but are not limited to:

(1) Salaries and fringe benefits paid to Government employees which are assigned to a work activity (e.g., procurement activities) as a result of the default.

(2) Preaward survey expenses incurred in qualifying repurchase contractors;

(3) Costs incurred in printing and distributing the repurchase solicitation.

(b) "Excess costs", for the purposes of this part, means any costs, other than administrative costs, incurred by the Government as a consequence of the contractor's default in the repurchase of similar supplies or services or in the resulting performance of such services by the Government.

Subpart 549.4—Termination for Default

7. Section 549.402-7 is added to read as follows:

549.402-7 Other damages.

(a) Under the default clause, the contracting officer may recover administrative costs when deemed in the best interest of the Government.

(b) A decision to recover administrative costs must give consideration to the following:

(1) The expected cost to the Government of documenting and supporting the assessment.

(2) The amount the Government expects to recover.

(c) Documents used to support an assessment of administrative costs must be detailed and must demonstrate that the added costs incurred by the Government were a direct result of the default.

(1) To support administrative labor costs, the contracting officer should keep a log or other record of:

(i) Name, position, and organization of each employee performing work activities as a consequence of the default.

(ii) Date(s) of work and time(s) spent by each employee on the repurchase.

(iii) Description of specific tasks performed (i.e., solicitation preparation, clerical).

(iv) Hourly rate of pay (straight time or overtime).

(v) Applicable fringe benefits.

(vi) Explanation of how the time spent by the employees during the repurchase would have been used on other projects but for the default.

(2) Documents supporting other administrative costs (i.e., travel, per diem, printing and distribution of the repurchase contract) documentation of the costs incurred may be demonstrated by travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

(d) After deciding that the assessment of administrative costs is appropriate, and obtaining legal assistance under 501.670-5, the contracting officer must make a written demand on the

contractor for the administrative costs incurred by the Government. The basis of calculating the costs being assessed shall be furnished to the contractor. A single demand letter may be used to recover excess costs and administrative costs. If the contractor fails to make payment, the contracting officer shall follow the procedures in FAR Subpart 32.6 to collect the debt owed the Government.

(e) The recovery of excess and/or administrative costs does not preclude the Government from exercising other rights or remedies which it may have under the terminated contract, by statute, or at common law.

Dated: August 15, 1984.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 84-22800 Filed 8-27-84; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Final Findings for Export of American Ginseng Harvested in 1984 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty regulating the international trade in certain animal and plant species. Export of animals and plants listed in Appendix II of CITES may occur only if a Scientific Authority (SA) has advised a permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the wildlife or plants were not obtained in violation of laws for their protection. American ginseng (*Panax quinquefolius*) is listed on CITES Appendix II.

This notice announces final findings by the SA and MA for the United States concerning the export of American ginseng. These are final determinations for the States that have satisfied the Service's requirements on the export of specimens taken in the 1984 harvest season. Such findings are made on a State-by-State basis.

EFFECTIVE DATE: August 28, 1984.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C.

20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, Room 536, 1717 H Street, NW., Washington, D.C., or at the Federal Wildlife Permit Office, Room 621, 1000 N. Glebe Road, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

SA: Dr. Richard L. Jackowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Telephone (202) 653-5948.

MA: Mr. Thomas J. Parisot, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203, telephone (703) 235-1937.

Ginseng Export Program: Mr. S. Ronald Singer, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203, telephone (703) 235-2418.

SUPPLEMENTARY INFORMATION: This is the second of two notices concerning the Service's findings on the export of American ginseng (*Panax quinquefolius*) taken in the 1984 season.

The first notice on July 23, 1984 (49 FR 29635) announced the proposed 1984 export findings for ginseng on a State-by-State basis. The present notice establishes final export findings for States that have satisfied the Service's SA criteria and MA guidelines.

Information Considered

For American ginseng, the Service evaluated the following information in developing multi-year (1982-84) export findings regarding each affected State (See 47 FR 43701; October 4, 1982):

1. Historic, present, and potential distribution of ginseng on a county basis, using county outline maps, and indicating the source(s) and accuracy of this information. Also considered is the distribution of preferred habitat on a regional or Statewide basis, indicating recent trends in loss or protection of habitat;

2. Approximate number or density of ginseng populations per county or region, and the approximate number of all known ginseng localities in the State, including also the source of this information;

3. Average number of plants per population or patch or local abundance of wild ginseng on a county or regional basis in the State, indicating the source(s), general reliability, and accuracy of the information. Include also any changes from previous years or differences from historical population sizes;

4. An assessment of population trends on a county or regional basis and an indication if populations of ginseng are believed to be increasing, decreasing, stable, extirpated or unknown. Included in this assessment is the source(s) and general reliability and accuracy of this information;

5. An assessment of harvest intensity on a county or regional basis indicating if the relative collecting intensity is heavy, moderate, light, none or unknown, and any changes from previous years. Also to be considered should be the known or estimated number of ginseng collectors in the State;

6. A county map showing those counties in which ginseng is reported to be commercially cultivated, including Statewide amount of cultivated ginseng reported to be harvested annually and certified for export;

7. Number of roots per pound harvested on a county or regional basis or, if these are not available, on a Statewide basis. Also to be considered is an assessment of any trend in root sizes or number of roots per pound over previous years;

8. The State's current research program on ginseng and its progress, including a summary of results so far obtained;

9. A description of the State's harvest practices and controls, including regulations on length of harvest season, any harvest restrictions such as size and age of collected plants, and any seed planting requirements;

10. Information concerning, or a copy of State law or regulation on: (a) State registration of dealers, cost of registration, season of operation for dealers, (b) dealer maintenance of records, (c) dealer reporting system of ginseng commerce, (d) State certification of legal ginseng take, (e) samples of current-year dealer license, and (f) samples of diggers license, if any, giving cost of license and dates of harvest season;

11. State certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State. A sample of current year export certificate must be on file in the Federal Wildlife Permit Office.

Scientific Authority Advice

Because American ginseng is listed on CITES Appendix II, international trade is regulated through a system of permits issued by designated MA's in each Party Nation. Export permits for Appendix II species may not be issued unless an MA

receives advice from an SA that such export will not be detrimental to the survival of the species.

SA advice on the export of ginseng is given in a general way, applicable to any specimens harvested in a particular State in a given season, rather than on a permit-by-permit basis. The reasons for this practice are that: (1) The individual exporters who apply for permits are unable to supply much information about the sources of specimens or the effect of their harvest on the populations of the species, (2) the species in question are subject to commercial exploitation, and it would be burdensome to both the industry and the Service to make separate SA decisions on each of the many permits, and (3) the development of general advice on a State-by-State basis enables the Service to conduct a comprehensive review of the status of the species in question and the effect of international trade on its survival.

Advice based on such a review is more meaningful than it would be if it were based only on information supplied in connection with individual permit requests.

General criteria used by the Service in determining if export will not be detrimental to the survival of a wild animal or plant species are as follows:

1. Whether similar export has occurred in the past and has not reduced the numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystem;

2. Whether life history parameters of the species and the structure and function of its ecosystem indicate that the present frequency of export will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystem;

3. Whether such export is expected to increase, decrease, or remain constant in frequency.

The Service used these criteria in evaluating the best available biological information on the status of ginseng in each State. As described in the notice of October 4, 1982 (47 FR 43701), the Service is using information compiled beginning in 1977 to justify multi-year SA findings under CITES. Even though such findings were made for the years 1982 through 1984, the Service continues to monitor the status of ginseng each year, and will retain the option of revising the findings at any time if new information shows compelling reason for change.

The SA has reaffirmed that the export of ginseng harvested in the following

States during the 1982-84 seasons will not be detrimental to the survival of the species: Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Virginia, West Virginia, and Wisconsin. Based on information supplied by Vermont, and a June 1984 field examination by SA staff, the SA has determined that the export of 1984 harvested ginseng will not be detrimental to the survival of the species. While most of these States already had SA approval, Vermont is now being added to the list.

Management Authority Findings

Exports of Appendix II species are to be allowed under CITES only if an SA has advised that they will not be detrimental to the survival of the species, and if an MA is satisfied that the animals or plants were not obtained in contravention of law for their protection.

MA criteria, as developed by the Service for approval of ginseng exports, on a State-by-State basis, are that the State has adopted the following regulatory measures: (1) State registration of dealers purchasing ginseng in the State, (2) Requirements that such dealers maintain records of their commerce in ginseng and report their ginseng commerce to the State at specified intervals, and (3) Certification by State officials of ginseng shipped from the State to authenticate that the ginseng was lawfully taken from wild or cultivated sources within the State.

In 1980, the Service announced that the MA would approve export of artificially propagated ginseng only from the States approved for export of wild-collected ginseng because they had the programs necessary to document the source of the plants (45 FR 80444; December 4, 1980). The Service will continue this practice, but it will also approve the export of artificially propagated ginseng from other States if they can provide similar documentation to minimize the risk that wild-collected plants are exported as cultivated.

Furthermore, in the notice of August 31, 1982 (47 FR 38369-38373), the Service explained that it was strengthening the "Certification of Legal Take" requirement for ginseng moved from the State of origin. This was done because experience has shown the value of a State official personally inspecting and certifying ginseng leaving the State of origin. It is by such an inspection of ginseng roots and records of ginseng commerce that the State official can document that the roots in question were legally taken from the wild or were artificially propagated in that State.

Recognizing that certain States might not be able to implement such a certification program in time for the 1982 season, the Service announced in its notice of October 4, 1982 (47 FR 43701) that other forms of State certification that had been approved for the 1981 harvest season would be accepted only for the 1982 harvest season.

Beginning with the 1983 harvest season, all States seeking export approval for their wild or cultivated American ginseng were required to have a legally mandated ginseng program that includes, among items discussed in "Information Considered," provisions for a State official to examine and certify all ginseng moved from the State of origin. This certification must include State of origin, legal taking, year of take, weight of shipment, whether wild or artificially propagated, date of certification, shipment number, dealer's State registration number, and signatures of both the dealer and State official certifying the ginseng.

The Service decided, in 1982, to grant multi-year export approval (1982-84) only to those States having a current ginseng program that included a State inspection and certification system and otherwise satisfied the criteria of both the SA and MA. States satisfying all criteria of both the SA and MA, except for the State inspection and certification system, were granted export approval only for the 1982 season, and were not granted further approval until they developed a legally mandated ginseng program.

Export Approval

The Service had previously approved export of ginseng lawfully taken during the 1982-84 seasons in the following States, on the grounds that both SA and MA criteria were met (47 FR 43701; October 4, 1982): Arkansas, Georgia, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Vermont (artificially propagated only), Virginia, West Virginia, and Wisconsin (wild only).

The Service also had previously approved export of ginseng lawfully taken during the 1982 Illinois ginseng season. The export of 1983 and 1984 Illinois ginseng was approved on March 19, 1984 (49 FR 10123) after the State authorized its legal ginseng export program.

On October 7, 1983 (48 FR 45775), the Service approved export of ginseng lawfully taken during the 1982 and 1983 seasons in the following States: Indiana, Tennessee, and Wisconsin (artificially propagated only).

The Service has not previously granted general approval for exports of ginseng taken from any other State during the 1982-84 harvest seasons. For all other States not named above, either the taking of ginseng was not allowed by the State during the 1982-83 seasons, the species did not occur in the State, or the State did not provide the Service with information on which to base SA and MA findings. The Service did not grant general approval for international export of ginseng from such States.

Information from States and records of the Service's evaluation of this information are available for public inspection at the Office of the Scientific Authority (for SA advice) or at the Federal Wildlife Permit Office (for MA findings).

On July 23, 1984, the Service published proposed 1984 findings (49 FR 29635) for this species. These proposed findings discussed both the confirmation of previous findings for certain States and the newly presented State ginseng programs that had been accepted by the Service since the 1983 harvest season. The notice proposed the addition of Vermont (wild), Wisconsin (cultivated), and Indiana to the list of previously approved ginseng export States. Indiana has recently implemented an acceptable State ginseng export program. Wisconsin has proposed an experimental export program that it claims will offer the same legal assurance as the standard State certification program required by the Service. This program includes the annual measurement of cultivated ginseng gardens by a county tax assessor, and certification to the State of all ginseng commerce by growers and dealers. The appropriate State officials are to spot check these procedures and examine collected records of ginseng commerce from all State dealers and growers. These compiled records of ginseng commerce are then to be sent to the Federal Wildlife Permit Office for review and analysis. A Service decision will be made prior to the 1985 harvest season whether to continue the approval of this Wisconsin export program. The Service grants 1984 United States export approval for these two States.

The Vermont report to the SA also explains the State's export control program to assure the MA of the legality of the Vermont-harvested, State-certified ginseng. The SA participated in a resurvey of wild ginseng populations in June 1984. Results of the resurvey led to the conclusion that export would not be detrimental to the survival of wild

ginseng in Vermont. This was endorsed by Mr. William Countryman, Vermont endangered plant specialist, who commented that he would not object to export approval for wild ginseng harvested in Vermont in 1984 provided that: (1) An effective field monitoring program be established, and (2) the State develop a plan to interpret field and harvest data and to respond appropriately to ensure nondetriment to wild populations. Vermont has given the Service assurance it would undertake such work. The Service is granting export approval for 1984 harvested Vermont wild ginseng. The Service's ginseng export findings for all States will be re-evaluated in 1985.

Tennessee has recently reported to the MA that it has not completed its regulatory program for the export of wild ginseng and concurs with the Service proposal not to grant approval for the export of 1984 wild ginseng. The ginseng program manager reports the State has implemented such a program for cultivated ginseng. The ginseng program manager has been authorized by the State to personally inspect and certify cultivated ginseng export shipments at the grower's gardens prior to transport from the State. The Service received five comments from persons dealing with ginseng in Tennessee. Four favored approval for export of cultivated ginseng. One of these persons stated that there should be a harvest season for wild ginseng beginning on September 1 of each year and two promised to work with State officials toward gaining a specified harvest season for wild ginseng starting in 1985. (Tennessee is the only State addressed in this notice that does not set a limited harvest season for wild ginseng.) Two persons cited a lack of enforcement of State regulations on ginseng by Tennessee as a source of problems. One of these individuals favored export approval for cultivated ginseng; the other favored export approval for wild ginseng as well, while commenting on reasons for its scarcity. Because of the State certification program, the Service grants export approval for only cultivated Tennessee ginseng harvested in 1984.

No other comments were received by the Service during the public comment period following the publication of the Notice of Proposed findings for 1984 ginseng export. Those proposed findings are now issued in final form and are effective immediately upon publication.

The Service intends to continue multi-year approval (through the 1982-84

season) of exports of ginseng from the following States on the grounds that the SA criteria are satisfied and that these States will continue to meet MA guidelines:

Arkansas, Georgia, Illinois, Iowa, Kentucky, Maryland, Missouri, North Carolina, Ohio, Vermont (cultivated), Virginia, Wisconsin (wild), West Virginia, and Minnesota. The Service also adds Indiana, Tennessee (cultivated), Wisconsin (cultivated), and Vermont (wild) to the list of export approved States for the 1984 harvest season.

Based on a review and evaluation of information contained in the attached Environmental Impact Assessment, the final findings on the export of American ginseng taken in the 1984 season are 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.

Accordingly, the preparation of an Environmental Impact Statement on these findings is not required.

The findings announced in this notice are effective immediately. It is the Service's opinion that a delay in the effective date of these regulations after this amendment is published could affect the harvest season already complete in many States and adversely impact State conservation programs for this species by, for example, reducing compliance with State certification and documentation requirements. The Service, therefore, finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedures Act, for these regulations to take effect immediately. Further, because this rule relieves a restriction on export, it may take effect immediately under 5 U.S.C. 553(d)(1).

This rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884 as amended), and was prepared by S. Ronald Singer, Federal Wildlife Permit Office, telephone (703) 235-2418.

Note.—The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This rulemaking does not contain information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Ginseng exporters usually derive their product from the ginseng harvest in a number of States. Normally, therefore, the approval or disapproval of export from any one State would not significantly affect the industry.

However, the ginseng industry within a non-approved State would find its product exposed to a lower-priced domestic market rather than the international marketplace. Furthermore, without this finding and rule, export of American ginseng would be totally disallowed from the 1984 listed States.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife,
Exports, Fish, Imports, Plants
(agriculture), Treaties.

Accordingly, Part 23 of Title 50, Code of Federal Regulations, is amended as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

Subpart F—Export of Certain Species

1. In § 23.51 revise paragraph (e) to read as follows:

§ 23.51 American ginseng (*Panax quinquefolius*)

(e) 1982 through 1984 harvests:
Arkansas, Georgia, Illinois, Indiana,
Iowa, Kentucky, Maryland, Minnesota,
Missouri, North Carolina, Ohio,
Tennessee (cultivated), Vermont,
Virginia, West Virginia, and Wisconsin.

1982 and 1983 harvest only: Tennessee (wild).

Conditions on findings: Roots must be documented as to State of origin and season of collection. Wild and artificially propagated roots must be certified by the State as legally collected and such certification must be presented upon export.

Dated: August 15, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-22739 Filed 8-27-84; 8:45 am]

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Proposed Rules

Federal Register

Vol. 49, No. 168

Tuesday, August 28, 1984

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 46

Regulations Under the Perishable Agricultural Commodities Act; Addition of Provisions To Effect a Statutory Trust

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This Docket proposes amendments to Part 46, Regulations (other than Rules of Practice) under the Perishable Agricultural Commodities Act (PACA). The purpose of the amendments is to implement the amendments contained in Pub. L. 98-273, approved May 7, 1984, by which Congress impressed a statutory trust on perishable agricultural commodities received by commission merchants, dealers, and brokers for the benefit of suppliers, sellers, or agents who have not been paid. Such commodities and proceeds from their sale are to be held in a floating trust by the receiver so as to be available as a source of payment to any unpaid supplier, seller, or agent until payment of money owed in connection with fruit and vegetable transactions has been made. The proposed regulations describe the transactions to which the trust applies, how the trust will be effectuated and how rights to trust assets are to be perfected and preserved. In addition, current regulations are proposed to be amended where necessary so as to carry out the purposes of the statutory trust.

DATE: Written comments must be received on or before September 27, 1984.

ADDRESS: Written comments should be sent to John D. Flanagan, P.A.C.A. Branch, Fruit and Vegetable Division, AMS, Room 2095, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John D. Flanagan, (202) 447-3212.

SUPPLEMENTARY INFORMATION: These proposed actions have been reviewed under Secretary's Memorandum 1512-1 and E.O. 12291 and have been classified as "nonmajor" because they do not meet any of the criteria identified under the Executive Order. These proposed actions will not have an annual effect on the economy of \$100 million or more, nor will they result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. These proposed actions 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. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these proposed rules do not have a significant economic impact on a substantial number of small entities. Although there are numerous small entities doing business subject to the Perishable Agricultural Commodities Act, these proposed regulations merely assure suppliers, sellers, or agents that assets will be available from which they will be paid in the event of nonpayment by the buyer or receiver. The proposed regulations do not change a buyer or receiver's liability to a supplier, seller, or agent on its underlying sales contract.

Trust Provision

The purpose of the Perishable Agricultural Commodities Act ("PACA" or "the Act"), 7 U.S.C. 499a-499s, is to suppress unfair and fraudulent practices in the marketing of fruits and vegetables in interstate and foreign commerce. The Act provides a code of fair play in the marketplace, and provides aid to traders in enforcing their contracts. In the past few years, three problem areas have become apparent. They reflect changes in the industry's financial picture, and have added an abnormal marketing risk burden against which sellers are unable to protect themselves. Climbing overhead costs, including the cost of debt servicing, are reflected by a marked increase in delayed payments for produce. Also, an increase in hidden security agreements which encumber buyers' assets results in the diversion of money owed for produce away from suppliers. Finally, business failures and

bankruptcy losses with no possibility of meaningful recovery have shown a steady increase. These factors combine to prejudice sellers' ability to obtain prompt payment for produce. It is these problem areas that the provisions of Pub. L. 98-273 are intended to overcome.

These amendments to the Perishable Agricultural Commodities Act provide suppliers and sellers of fruits and vegetables, or their agents, a self-help tool that will enable them to protect themselves against the abnormal risk of losses resulting from slow-pay and no-pay practices by buyers or receivers of fruits and vegetables. Pub. L. 98-273 impresses a trust on commodities received, food and other products derived from them, and any receivables or proceeds from their sale for the benefit of all unpaid suppliers, sellers, and agents. When goods are not paid for promptly, suppliers, sellers, or agents must file written notice with the debtor and the Secretary to preserve their right to trust benefits. The district courts of the United States are vested with jurisdiction to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust. Failure to maintain the trust is a violation of section 2 of the Act, and action can be taken by the Secretary to revoke or suspend the license of a violator. The proposed regulations clarify and add to present rules in order to establish, where needed, times for prompt payment so as to qualify the transactions for trust benefits. The proposed regulations also set forth the maximum time within which suppliers, sellers, and agents may agree payment is due, and still be covered by the trust provision. They also define the responsibilities of agents to protect the rights of their principals.

Explanation of the Proposed Regulations

The proposed regulations define the rights and obligations of sellers, buyers, and third parties with respect to the trust. The following section-by-section analysis sets forth the reasons for the regulations, and their anticipated application to the business and buying and selling perishable agricultural commodities.

Section 46.46(a) provides that all transactions in perishable agricultural commodities existing as of and entered

into on or after the effective date of the regulations will be subject to the trust requirements of § 46.46. The regulations fulfill the Congressional intent as to the application of the statutory trust provisions.

The legislation includes the terms "received," "dissipation", and "calendar days" without providing a full definition. These terms are essential to the administration of the trust provisions, but they are not currently defined in the regulations. Definitions are proposed for inclusion in the regulations as § 46.46(b). The regulations also define the term "default" in § 46.46(b)(3).

Section 5(c)(2) of the legislation impresses a trust on perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and on all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products for the benefit of all unpaid sellers, suppliers, and agents until full payment is made of the sums owing in connection with such transactions. As used in section 5(c)(2) of Pub. L. 98-273, "received" means the time when the buyer, receiver, or agent gains ownership of, control over, or possession of the perishable agricultural commodities. This definition is contained in proposed § 46.46(b). It is not intended that this definition would affect contractual relations.

The term "dissipation" can be summarized as an act or failure to act which would prejudice trust assets or the ability of the unpaid supplier, seller, or agent to obtain payment due.

The definition would clarify the circumstances or actions that constitute "dissipation", and which could trigger action by the Secretary when he initiates action in the district courts of the United States to obtain a restraining order or other injunctive relief against such dissipation of trust assets. This definition is contained in proposed § 46.46(b)(2) of the regulations.

The legislation establishes that a beneficiary must act to preserve its rights to trust benefits by filing a written notice with the debtor and the Secretary within 30 calendar days after a default in payment by a buyer or receiver in connection with the purchase or receipt of perishable agricultural commodities. The proposed regulations make it clear that a default occurs when a buyer or receiver of perishable agricultural commodities fails to pay for them within the appropriate time period for the type of transaction involved, as provided in § 46.2(aa) of the regulations, or as otherwise agreed upon by the parties. A

default also occurs when a party first learns that a payment instrument which it has received has been dishonored. This definition is contained in proposed § 46.46(b)(3) of the regulations.

Defining "calendar days" as used in section 5(c)(2) of the legislation establishes the means of protecting trust beneficiaries' ability to file a timely notice to preserve their trust benefits when the thirtieth calendar day falls on a Saturday, Sunday, or holiday. This definition is found in proposed § 46.46(b)(4) of the regulations.

The legislation provides that the perishable agricultural commodities received in all transactions and all inventories of food, or other products derived from the commodities, and all receivables or proceeds from the sale of such commodities shall comprise the trust. Section 46.46(c) of the proposed regulations clarifies the intent of Congress that the trust is to be a nonsegregated "floating" trust, and that commingling of trust assets is permitted. There is no necessity to specifically identify all of the trust assets through the entire accrual and disposal process other than as required under current regulations. When claiming under the trust it is the responsibility of the claimant against the trust to establish, through business records, the details of the transaction for which payment is sought.

Trust assets are available for other uses by the buyer or receiver. For example, it is intended that trust assets may be used to pay other creditors. It is the buyer's or receiver's responsibility as trustee to insure that it has sufficient assets to assure prompt payment for produce and that any beneficiary under the trust would receive full payment, including sufficient assets to cover the value of disputed shipments.

While the proposed regulations do not prohibit a buyer or receiver from granting a secured interest in trust assets, they make it clear that the secured interest is secondary and specifically voidable in order to satisfy debts or unpaid suppliers, sellers, or agents in perishable agricultural commodity transactions. Similarly, claims of non-secured creditors are subordinate to the priority trust claims of supplier-creditors.

If a buyer or receiver declares bankruptcy, makes an assignment for the benefit of creditors, declares its intention to sell under the bulk sales law, or otherwise terminates its business, trust assets are not to be considered part of the estate to be distributed to other creditors or sold unless all trust beneficiaries have been paid. This follows the precedent of the

similar statutory trust imposed on certain assets of packers of livestock, which statutory provision was the model for the new trust provision of the PACA.

Since all types of transactions are subject to trust benefits, responsibilities accrue to each supplier, seller, agent, receiver, and buyer in the marketing chain. Section 46.46(d)(1) provides that a supplier, seller or agent is automatically eligible to participate in the trust upon the transfer of ownership, possession, or control of the commodities to the buyer or receiver. However, to preserve its rights to participate, such supplier, seller or agent must file notice of its intent to do so in accordance with § 46.46(g), which is discussed below.

Section 46.46(d)(2) deals with situations in which a commission merchant, dealer or broker acts as an agent for a seller or supplier. The provision makes clear that such an agent must negotiate a contract on behalf of its principal which qualifies it for trust protection unless the principal previously waived its right to participate in the trust. The requirements for an effective waiver are set forth in this section. The agent also has the duty to file timely notices to preserve trust benefits with the buyer or receiver and the Secretary as provided in § 46.46(g). It cannot avoid this duty by a contract provision.

When an agent gains ownership, possession or control of commodities, it is subject to the trust requirements. In other instances, the principal will have recourse against an agent because the agent has agreed to receive payment for the goods. Section 46.46(d)(2) makes it clear when a principal has recourse against the buyer or receiver and when it has recourse against its agent.

Section 46.46(e) makes failure to maintain the trust a violation of section 2 of the Act subjecting the violator to suspension or revocation of its license under the Act. This proposal carries out the intent of Congress in amending the Act. It is incumbent upon buyers or receivers to insure trust assets are available to pay suppliers, sellers, or agents. Dissipation of the trust assets and other actions which breach this duty of trust maintenance would be sanctionable. In addition, it is incumbent upon a seller's agent to protect its principal's rights to trust protection. The agent's responsibilities are set forth in §§ 46.46(d) and 46.2(z), (aa), and are discussed elsewhere in this proposal. The regulations impose strict duties on all sellers' agents because they have the potential to prejudice a seller's rights and thus defeat the purposes of the amendment. For example, under

these proposed regulations an agent who failed to preserve its principal's rights by failing to file the timely notices required would also be subject to sanctions for violation of section 2 of the Act.

The legislation provides that in order to preserve its benefits, a supplier, seller, or agent must file its written notice of intent to preserve its rights to trust benefits with the debtor and the Secretary within 30 calendar days after a debtor's default in payment. The legislation also sets forth requirements for the preparation and preservation of records of written agreements which vary the time for payment from the times prescribed in the regulations. Section 46.46(f)(1) carries out the expressed intent of Congress. It provides that if the sales contract is silent as to the time for payment, the times specified in § 46.2(aa) of the regulations apply to the transaction and that the transaction is subject to trust protection. If the parties agree to a payment period different from those established in § 46.2(aa), the agreement must be in writing and entered into prior to the time of the transaction. A copy must be maintained in each party's records, and the times for payment must be disclosed on invoices, accountings and others documents relating to the transaction.

Congress directed the Secretary to establish the maximum time by which the parties to a transaction can agree payment on a transaction must be made and still qualify for coverage under the trust. An agreement for payment after such time will not qualify for trust coverage.

Current payment practices, as reflected by administrative experience and industry sources, indicate that contracts calling for payment within 30 days from receipt and acceptance of the goods should qualify for trust coverage, and that contracts that call for later payment should not qualify for trust coverage. Therefore, as set forth in § 46.46(f)(2), if an agreement calls for payment 31 days or more after receipt and acceptance of the goods, the trust provisions will not apply to that transaction. An agreement reduced to writing which is prepared before the goods are received, as defined in § 46.46(b)(1), would be considered to be prepared in a timely manner for trust fund purposes. Other agreements would qualify if the time for payment was in accordance with the regulations.

So long as the seller or supplier could establish the terms of the transaction, meet the requirements of proposed § 46.46 (f) and (g), and meet all other requirements of the regulations, its right to trust benefits would be preserved.

Thus, the failure of a receiver to maintain proper records would not defeat the trust. These proposals would preserve the statutory protection which Congress intended to be available for unpaid sellers or suppliers who did all that was necessary to perfect their rights.

The legislation provides that the trust provision shall not apply to transactions between a cooperative association (as defined in the Agricultural Marketing Act, 12 U.S.C. 1141j(a)), and its members. It is proposed that § 46.46(f)(3) which reflects this determination be included in the regulations.

Many contracts between agents and their principals involve advances of funds by the agent for seed, equipment, or payment of contemplated expenses. Section § 46.46(f)(4) of the proposed regulations makes it clear that money advances or allowable expenses paid are not a part of the trust, and that the amount claimable by the supplier, seller or grower is the net amount due after allowable deductions for advances and all allowable expenses paid by the agent.

The legislation is clear that an absolute precondition to pursuing trust assets held by a defaulting buyer or receiver is the filing of a written notice by the seller, supplier or agent after a failure to pay within the prescribed time periods has elapsed. The prescribed time periods are set forth in § 46.46(g)(1), and track the legislative directive that the filing of a notice of intent to preserve the benefits of the trust must be made. These time frames have previously been explained in the discussion of § 46.46(f)(1), above.

Section 46.46(g)(2) provides that timely filing of the notice of intent to preserve trust benefits will be accomplished if written notice is given to the debtor and filed with the Secretary within 30 calendar days after default, as provided in Subsection (g)(1). Filing with the secretary is actual receipt by the P.A.C.A. Branch headquarters office in Washington, D.C. or one of its regional offices. Timely notice will enable the Secretary to take prompt action when necessary to prevent dissipation of trust assets. The contents of the notice as proposed in § 46.46(g)(3) insures that sufficient information is available to indicate that the transaction is entitled to trust protection under the regulations, and to establish the identity of the transaction to facilitate further action which may be necessary on eligible transactions.

Conforming Changes

As a result of the amendment establishing a trust for the benefit of

produce creditors, and the contents of the regulations to effectuate the trust fund provisions, it is necessary to revise the prompt accounting and prompt payment provisions for certain types of contracts to insure that the transactions covered by those provisions will be eligible for trust coverage. These proposed changes will not change the current administration of the program in significant ways, but rather will tend to make the trust fund provisions and other provisions of the Act operate in a uniformly consistent manner. The proposed changes deal with the definitions of "account promptly" contained in § 46.2(z) and "full payment promptly" contained in § 46.2(aa).

Section 46.2(z) deals with requirements pertaining to consignment or joint account transactions. The current provision provides for accountings within time frames that are measured from the date of final sale, the receipt of payment for the goods, or in the case of certain grower's agent agreements at reasonable intervals during the season and within a reasonable time following the close of transactions for a season. The proposed revision would require that appropriate accounting be made within time frames geared not only to dates of final sale and receipt of payment, but also to the date goods are received by the agent and received and accepted at destination, and in all cases would require such accounting to be made within 30 days or less from the date of receipt of the goods by the agent for sale.

Section 46.2(aa)(1) current provides that full payment promptly with respect to consignment or joint account transactions means payment within 10 days after the date of final sale with respect to each shipment. The proposed revision would require that payment be made within that time frame, or within 20 days from the date the goods are accepted at destination, whichever comes first.

Section 46.2(aa)(8) currently provides that a grower's agent or shipper who delivers individual lots of produce for or on behalf of others must make full payment within five days after receipt of payment from the purchaser or receipt of the net proceeds with respect to consignment or joint account transactions. The proposed revision would establish definite maximum times for payment so as to insure trust applicability.

Section 46.2(aa)(9) currently provides in part that partial payments are to be made at reasonable intervals during a shipping season by a grower's agent or

shipper who harvests, packs or distributes entire crops or multiple lots for or on behalf of others, and final payment is to be made within a reasonable time after the last transaction in a season. The proposed revision would establish definite maximum times of payment so as to insure trust applicability.

A new § 46.2(aa)(10) is proposed to establish a time for prompt payment for contracts based on terms not described elsewhere in the regulations. It would require payment within 20 days from the date of acceptance of a shipment as provided for in the contract, and as the term "acceptance" is defined in § 46.2(dd).

Section 46.2(aa)(9) also provides that parties to a contract may enter an express agreement at the time a contract is made to provide a different time for payment than that prescribed in the regulations for the type of contract involved. This provision would be removed from § 46.2(aa)(9) and renumbered § 46.2(aa)(11), and include the requirement that the terms of any agreement to vary the times for payment prescribed in paragraphs (a) (1) through (10) be reduced to writing so as to assure conformity with the provisions of the trust.

Finally, the last sentence of § 46.2(aa) would be revised to delete the provision that payment in connection with transactions or situations not covered by the rest of the subsection must be made in a reasonable time.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Commodities exchange, Penalties.

PART 46—[AMENDED]

Accordingly, it is proposed to amend 7 CFR Part 46 as follows:

1. The authority for Part 46 reads as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499a.

2. Section 46.2 is amended by revising paragraphs (z)(2), (aa)(1), (aa)(8), (aa)(9), and the last sentence of the flush paragraph at the end of (aa), and by adding paragraphs (aa)(10) and (aa)(11) to read as follows:

§ 46.2 Definitions.

(z) * * *

(2) In connection with consignment or joint account transactions, within 10 days after the date of final sale with respect to each shipment, or within 20 days from the date the goods are accepted at destination, whichever

comes first: *Provided*, That whenever a grower's agent or shipper distributes individual lots of produce for or on behalf of others, accounting to the principal shall be made within 30 days after receipt of the shipment from the principal for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first.

Whenever a grower's agent or shipper harvests, packs, or distributes entire crops or multiple lots therefrom for or on behalf of others, an accounting on the initial shipment shall be rendered within 30 days after receipt of the goods for sale. Accountings for subsequent shipments shall be made at 10-day intervals from the date of the accounting for the initial shipment and a final accounting for the season shall be made to each principal within 30 days from the date the agent receives the last shipment for the season from that principal: *Provided further*, That nothing in the regulations in this part shall prohibit cooperative associations from accounting to their members on the basis of seasonal pools or other arrangements provided by their regulations or bylaws; and

* * *

(aa) * * *

(1) Payment of net proceeds for produce received on consignment or the pro rata share of the net profits for produce received on joint account, within 10 days after the date of final sale with respect to each shipment, or within 20 days from the date the goods are accepted at destination, whichever comes first.

* * *

(8) Payment by growers agents or shippers who distribute individual lots of produce for or on behalf of others, within 30 days after receipt of the goods from the principal for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first.

(9) Whenever a grower's agent or shipper harvests, packs, or distributes entire crops of multiple lots therefrom for or on behalf of others, payment for the initial shipment shall be made within 30 days after receipt of the goods for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first. Payment for subsequent shipments shall be made at 10-day intervals from the date of the accounting for the initial shipment or within 5 days after the date the agent receives payment for the goods, whichever comes first, and final payment for the season shall be made to each principal within 30 days from the

date the agent receives the last shipment for the season from that principal.

(10) When contracts are based on terms other than those described in these regulations, payment is due the supplier-seller within 20 days from the date of acceptance of the shipment under the terms of the contract and § 46.2(dd).

(11) Parties who elect to use different times of payment than those set forth in paragraphs (aa) (1) through (10) of this section must reduce their agreement to writing before entering into the transaction and maintain a copy of the agreement in their records. If they have so agreed, then payment within the agreed upon time shall constitute "full payment promptly": *Provided*, That the party claiming the existence of such an agreement for time of payment shall have the burden of proving it.

* * * If there is a dispute concerning a transaction, the foregoing time periods for prompt payment apply only to payment of the undisputed amount.

3. Section 46.46 is added to read as follows:

§ 46.46 Statutory Trust.

(a) *Scope*. The requirements of this section cover all transactions existing as of and entered into on or after the effective date of these regulations which have been issued pursuant to Pub. L. 98-273.

(b) *Definitions*. (1) "Received" means the time when the buyer, receiver, or agent gains ownership, control, or possession of the perishable agricultural commodities: *Provided*, That when perishable agricultural commodities have not been received as described above, and there is a rejection that is not valid, the goods will be considered to have been received on the date they were proffered.

(2) "Dissipation" means any act or failure to act which could result in the diversion of trust assets or which could prejudice or impair the ability of unpaid suppliers, sellers, or agents to recover money owed in connection with produce transactions.

(3) "Default" means the failure to pay promptly money owed in connection with transactions in perishable agricultural commodities; *i.e.*, within the period of time applicable to the type of transaction as established by the provisions of the regulations (§ 46.2(aa)), or as otherwise agreed upon by the parties.

(4) "Calendar days" as used in section 5(c)3 of the Act means every day of the week, including Saturdays, Sundays, and holidays, except that if the thirtieth

calendar day falls on a Saturday, Sunday, or holiday, the final day with respect to the time for filing a written notice of intent to preserve the benefit of the trust shall be the next day upon which there is a postal delivery service.

(c) *Trust Assets.* The trust is made up of perishable agricultural commodities received in all transactions, all inventories of food or other products derived from such perishable agricultural commodities, and all receivables or proceeds from the sale of such commodities and food or products derived therefrom. Trust assets are to be preserved as a nonsegregated "floating" trust. Commingling of trust assets is contemplated.

(d) *Trust Benefits.* (1) When a seller, supplier or agent transfers ownership, possession, or control of goods to a commission merchant, dealer, or broker, it automatically becomes eligible to participate in the trust. Participants who preserve their rights to benefits in accordance with paragraph (g) of this section remain beneficiaries until they are paid in full.

(2) Commission merchants, dealers, and brokers acting on behalf of others have the duty to preserve their principals' rights to trust benefits by filing timely written notice with their customers and with the Secretary in accordance with paragraph (g) of this section. The responsibility for filing the notice to protect the principals' rights is obligatory and cannot be avoided by the agent or receiver by means of a contract provision. Person acting as agents also have the responsibility to negotiate contracts which entitle their principals to the protection of the trust provisions: *Provided*, That a principal may elect to waive its right to trust protection. To be effective, the waiver must be in writing and separate and distinct from any agency contract, must be signed by the principal prior to the time affected trading contracts are negotiated, must clearly state the principal's intent to waive its right to become a trust beneficiary on a given transaction, or a series of transactions, and must include the date the agent's authority to act on its behalf expires. In the event an agent receives the goods or is authorized to receive payment from a buyer or receiver, the principal's recourse shall be against the agent, and it is the responsibility of such principal to preserve its rights to trust benefits by filing appropriate notice with the agent and the Secretary in accordance with paragraph of this section.

(e) *Trust Maintenance.* (1) Commission merchants, dealers and brokers are required to maintain trust assets in a manner that such assets are

freely available to satisfy outstanding obligations to sellers of perishable agricultural commodities. Any act or omission which is inconsistent with this responsibility, including dissipation of trust assets, is unlawful and in violation of section 2 of the Act, (7 U.S.C. 499b).

(2) Agents who sell perishable agricultural commodities on behalf of a principal are required to preserve the principal's rights as a trust beneficiary as set forth in § 46.2 (z) and (aa) and paragraphs (d) and (g) of this section. Any act or omission which is inconsistent with this responsibility, including failure to give timely notice of intent to preserve trust benefits, is unlawful and in violation of section 2 of the Act, (7 U.S.C. 499b).

(f) *Prompt Payment and Eligibility for Trust Benefits.* (1) The times for prompt payment and prompt accounting are set out in § 46.2 (z) and (aa). Parties who elect to use different times for payment must reduce their agreement to writing before entering into the transaction and maintain a copy of their agreement in their records, and the times of payment must be disclosed on invoices, accountings, and other documents relating to the transaction.

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree and still qualify for coverage under the trust is 30 days after receipt and acceptance of the commodities as defined in § 46.2(dd) and paragraph (b)(1) of this section.

(3) The trust provisions do not apply to transactions between a cooperative association (as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), and its members.

(4) The amount claimable against the trust by a beneficiary or grower will be the net amount due after allowable deductions of contemplated expenses or advances made in connection with the transaction by the commission merchant, dealer, or broker.

(g) *Filing Notice of Intent To Preserve Trust Benefits.* (1) Notice of intent to preserve benefits under the trust must be in writing, given to the debtor, and filed with the Secretary within 30 calendar days:

(i) After expiration of the time prescribed by which payment must be made pursuant to regulation,

(ii) After expiration of such other time by which payment must be made as the parties have expressly agreed to in writing before entering into the transaction, but not longer than the time prescribed in paragraph (f)(2) of this section, or

(iii) After the time the supplier, seller or agent has received notice that a

payment instrument promptly presented for payment has been dishonored.

Failures to pay within the time periods set forth in paragraphs (g)(1)(i) and (ii) of this section constitute defaults.

(2) Timely filing of a notice of intent to preserve trust benefits by a trust beneficiary will be considered to have been made if written notice is given to the debtor and filed with the Secretary by delivery at the headquarters office or a regional office of the P.A.C.A. Branch of the Fruit and Vegetable Division, Agricultural Marketing Service, within 30 calendar days after default as described in paragraph (6)(3) of this section.

(3) An appropriate notice of intent to preserve trust benefits must be in writing, must include the statement that it is a notice of intent to preserve trust benefits, and must include information which establishes for each shipment:

(i) The name and addresses of the trust beneficiary, seller-supplier, commission merchant, or agent and the debtor, as applicable.

(ii) The date of the transaction, contract terms, invoice price, and the date payment was due,

(iii) The date of receipt of notice that a payment instrument has been dishonored (if appropriate),

(iv) The amount past due and unpaid.

Dated: August 22, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-22758 Filed 8-27-84; 9:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, 1099, 1102, and 1108

[Docket Nos. AO-356-A22 etc.]

Milk in the Upper Florida and Certain Other Marketing Areas; Emergency Decision on Proposed Amendments To Marketing Agreements and to Orders

7 CFR Parts	Marketing area	Docket Nos.
1006	Upper Florida	AO-356-A22
1007	Georgia	AO-366-A24
1011	Tennessee Valley	AO-251-A27
1012	Tampa Bay	AO-347-A25
1013	Southeastern Florida	AO-286-A32
1046	Louisville-Lexington-Evansville	AO-123-A53
1093	Alabama-West Florida	AO-386-A3
1094	New Orleans-Mississippi	AO-103-A45
1096	Greater Louisiana	AO-257-A32
1097	Memphis, Tennessee	AO-219-A40
1098	Nashville, Tennessee	AO-184-A47
1099	Paducah, Kentucky	AO-183-A39
1102	Fort Smith, Arkansas	AO-237-A33
1108	Central, Arkansas	AO-243-A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts, on an emergency basis, proposed amendments to the Upper Florida and 13 other Federal milk marketing orders. The order changes would increase the Class I differentials of 11 orders by 20-cents a hundredweight for the months of September 1984 through February 1985. Also, a hauling credit would be provided for handlers in 11 orders for supplemental milk bought from other milk orders during those months. For 8 of the orders, base-excess plans would be modified.

The changes were considered at a public hearing held on August 7, 1984, in Atlanta, Georgia. The order changes were requested by a cooperative association that represents dairy farmers who supply milk to the 14 markets.

The adopted order changes are necessary to reflect current marketing conditions and to insure that all handlers in the affected markets share more equitably in the cost of obtaining substantial supplies of supplemental milk during September through February. Marketing conditions are such that prompt amendatory action is required. Accordingly, a recommended decision and the opportunity to file exceptions thereto have been omitted.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of section 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote more orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding: Notice of Hearing: Issued August 1, 1984; published August 3, 1984 (49 FR 31072).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. 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 Atlanta, Georgia on August 7, 1984. Notice of such hearing was issued on August 1, 1984, and published in the Federal Register on August 3, 1984 (49 FR 31072).

Interested parties were given until August 14, 1984, to file post-hearing briefs on the proposals as published in the notice of hearing, and on whether the proposals should be considered on an emergency basis.

The material issues on the record of the hearing relate to:

1. Whether the Class I differentials of 11 orders should be increased and a hauling credit provided for the months of September 1984 through February 1985.
2. Whether the base-excess plans of 8 orders should be amended on a temporary basis to provide bases for producers whose milk is moved among the 8 orders.
3. Whether emergency marketing conditions in the 14 regulated areas warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

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. The Upper Florida; Georgia; Tennessee Valley; Tampa Bay; Southeastern Florida; Louisville-Lexington-Evansville; Alabama-West Florida; New Orleans-Mississippi; Greater Louisiana; Nashville, Tennessee; and Paducah, Kentucky orders should be amended to provide:

(a) An increase of 20-cents a hundredweight in the Class I differentials of the respective orders for the months of September 1984 through February 1985, and

(b) A hauling credit of 3.3 cents a hundredweight for each 10 miles on bulk fluid milk purchased from the pool plants of other Federal milk orders and allocated to Class I milk, minus the amount per hundredweight that the other order Class I differential is lower, for the months of September 1984 through February 1985.

Dairymen, Inc., (DI) a cooperative association of dairy farmers proposed the amendments. The association represents producers whose milk is pooled under the orders.

A spokesman for DI testified that the Federal milk order program always has used classified pricing to encourage an adequate supply of fluid grade milk for

the order markets covered by the program. Also, an objective of the Agricultural Marketing Agreement Act of 1937, as amended, is to establish minimum prices that are uniform to all handlers, subject to specified adjustments. These were important considerations in requesting the temporary amendment of the Class I differentials for the above orders.

The DI spokesman said that in recent years, the support prices, under the Agricultural Adjustment Act of 1949, through their effect on the Minnesota-Wisconsin price series, have resulted in Class I prices sufficiently high to maintain an adequate supply of milk for the Southeast, although a burdensome milk surplus was generated nationwide. The witness said that the Dairy and Tobacco Adjustment Act of 1983 established the current milk diversion program which has substantially reduced milk supplies for the Southeast. In his view, while the supply of milk for the nation as a whole continues to be more than adequate, milk production in the Southeast is inadequate to meet the needs of the fluid market. The witness said that the proposed amendments will facilitate, on an emergency basis, the acquisition of an adequate supply of milk for fluid use in the Southeast without impairing the effectiveness of the diversion program instituted by the Dairy and Tobacco Adjustment Act of 1983.

The DI witness said that if an adequate supply of milk is to be achieved for the Southeast, the proposals made by the cooperative should be adopted as soon as possible. He said that for the coming months of September 1984 through February 1985, substantial quantities of milk will have to be imported from other regions of the country. Otherwise, some demands for fluid milk will go unmet.

The witness said that if proposals No. 1 and 2 are not adopted, there would be no semblance of uniform class prices to handlers. If a handler were short of milk, from usual local supply sources, he would have to obtain the needed milk from the Midwest region or elsewhere. It would be impossible for the handler to buy the milk, pay transport costs and have the same or similar costs as those of other handlers buying local producer milk associated with one of the southeastern Federal orders.

The DI witness testified that minimum Class I prices for the Southeast are inadequate to generate the supply needed to meet the Class I needs of consumers in the Southeast. Also, handlers who must go outside the region to obtain supplemental milk supplies

have higher costs than handlers who can obtain their milk supply from local producers. Cooperative associations that supply the needs of individual markets in the Southeast are having to pay the higher costs of importing supplemental milk, without recovering all of the higher costs from customers. This results in members of the cooperatives receiving lower pay prices than might otherwise be the case. The witness said that proposals No. 1 and 2 would provide a mechanism for bringing in supplemental milk and maintain Class I price alignment among the markets in the Southeast region.

The DI witness testified that the proposals for 11 orders would provide a temporary hauling credit to handlers who buy supplemental milk from the pool plants regulated under other Federal orders. He said that supplemental bulk fluid milk purchases from a plant fully regulated by another Federal order and transferred to a handler regulated under one of the 11 Federal orders affected, and classified to Class I or Class II pursuant to the allocation provisions of the order, would qualify for a hauling credit. The witness testified that milk that was received at requested Class II or Class III should not receive a hauling credit. He said that the rate of the proposed hauling credit should be 3.3 cents a hundredweight per 10 miles distance between the shipping and receiving plants, less any positive difference between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant. The witness testified that if a cooperative association obtained the other order milk for one of its customers, that is, a handler under one of the 11 orders, the cooperative should receive the hauling credit, and not the receiving pool plant. The DI witness testified that the proposal to increase the Class I differentials of the 11 orders by 20 cents is intended to generate revenue that, on average for the 11 southeastern orders, would cover most of the value of the emergency hauling credit.

There was no opposition testimony to proposals 1 and 2. A total of 13 additional witnesses testified in favor of the two proposals. The witnesses represented local and regional handlers, a national association of milk dealers, and several producer organizations and cooperatives.

One of the additional witnesses testified concerning the milk supply and Class I sales situation in the three Florida markets. He represented Independent Dairy Farmers Association, Tampa Independent Dairy Farmers

Association, Upper Florida Milk Producers Association, and Suncoast Milk Producers Cooperative.

The witness testified that the four associations represent about 80 percent of the milk delivered to handlers under the three Florida orders. He said that in a normal year, Florida milk production does not satisfy plant requirements from July through October. During these months, supplemental milk supplies usually are obtained from other areas in the Southeast region. He said that on rare occasions over the past several years it has been necessary to obtain milk from Wisconsin.

The witness said that this year will not be a normal year by any stretch of the imagination. Reduced milk production this year appears to be great enough to require the Florida cooperatives to import most of the extra milk needed from Wisconsin. He said that for September 1984, it is expected that 31 million pounds of supplemental milk will be needed. The Florida cooperatives hope to obtain about 12.5 million pounds from southeastern States with the remaining 18.5 million pounds coming from Wisconsin. He said that by a large margin, this will be the largest quantity of milk that Florida has ever had to draw out of the Wisconsin area.

The witness said that the large financial burden of fully supplying milk to Florida handlers will fall heavily on the four cooperative associations. He said that the costs should be borne in part by all producers supplying the Florida markets. Also, he said, that these unusual costs should also be borne in part by handlers who will benefit by being assured an adequate supply of milk.

A handler witness testified that the proposed 20-cent increase for the Class I differentials was too high for the Louisville-Lexington-Evansville market, considering the relatively low level of imports that was estimated for the market by DI for the emergency period. The witness proposed no alternative Class I differential for that market.

The proponent, Dairymen, Inc., submitted 34 exhibits which provided detailed information concerning the supply and sales situation for each of the 11 markets for the recent past, the present, and estimates for the emergency period—the months of September 1984 through February 1985.

An evaluation of the data in the hearing record indicates that milk production in the Southeast region has declined substantially over the past six months or so. Milk production for Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina,

Tennessee and Virginia was down 7.72 percent for June 1984 compared with June 1983. Although milk production has been declining since the third quarter of 1983, the most substantial drop in production occurred during the first half of 1984 when it had decreased 4.7 percent during the first quarter and 6.35 percent during the second quarter.

Producer milk on the Southeast Federal milk orders also declined substantially between January and June 1984. For the month of June 1984, producer milk pooled on these orders was 14.57 percent below June 1983. June 1984 was the eighth straight month of declining producer milk pooled on the orders and was the largest monthly decrease for the year thus far.

Accompanying the decline in producer receipts for the orders in the Southeast has been an increase in the proportion of producer milk used in Class I. The percentage of producer milk in Class I has increased steadily since September 1983. For June 1984, the Class I utilization percentage was 82.3 percent or 12.7 percentage points over June 1983. Except for the month of September 1983, the June 1984 percentage was above all months during the fall of 1983. This is highly significant because June normally is a flush production month with a relatively low Class I utilization percentage.

For each of the orders affected by proposals 1 and 2, the hearing record contains estimates of producer receipts, Class I sales, a reserve for fluid needs, and the resulting excess or deficit that is expected for the months of September 1984 through February 1985.

Concerning the estimates, a seasonal production index, with June as a base, was computed for each order based on daily average production per producer for each month of 1983. A seasonal Class I sales index, with June as a base, was computed for each order using total Class I sales in the marketing area for the months of 1983. Producer receipts were estimated for each order for the months September 1984 through February 1985 by multiplying the actual producer receipts of the order for the month of June 1984 by the seasonal production index for each month to be estimated. Receipts were adjusted to reflect expected shifts in producer milk. Class I needs were estimated for each order for the months of September 1984 through February 1985 by multiplying the actual gross Class I sales (adjusted to eliminate bulk Class I sales made) for the order for the month of June 1984 by the seasonal Class I index for each month estimated. To obtain the volume of milk excess, or deficit, of Class I fluid

needs, a volume equal to 110 percent of estimated Class I needs was subtracted from estimated producer milk for each month during the period of September 1984 through February 1985. The proponent used a minimal reserve of 10 percent in most of the calculations. This provides a very conservative estimate of needs, and allows for no milk for Class II use at pool plants.

The results, combined for all orders, indicates that for the September 1984 through February 1985 period, the Class I deficit will amount to 523 million pounds, (13 percent of pooled receipts) with the high month of 144 million pounds being September 1984. It is anticipated that 80 percent of the supplemental milk needed will have to come from northern supply areas.

The hauling credit proposal provides for a rate of 3.3 cents per hundredweight for each 10 miles. This rate reflects the actual cost of transporting bulk milk, as indicated by detailed cost information introduced into evidence. During June 1984, there was a substantial volume of milk moved among and into the southeastern Federal milk markets, much of it from northern supply sources. The milk was moved in over-the-road transports with a substantial proportion hauled by contract haulers. Some of the milk hauled was in equipment owned by Dairyman, Inc. The proponent testified that the DI cost to haul comparable size loads in company owned equipment was 3.4 cents a hundredweight for 10 miles. Based on current actual hauling rates, a rate of 3.3 cents a hundredweight per 10 miles is reasonable to reflect the actual cost currently being incurred in moving bulk milk from distant outlets.

Since the 3.3 cents a hundredweight per 10 miles reflects actual hauling costs, it should be offset by an amount per hundredweight that the Class I differential applicable at the shipping plant is less than the Class I differential applicable at the receiving plant in the determination of the total hauling credit, as proposed by proponent.

Considering the quantity of supplemental milk likely to be needed during the months of September 1984 through February 1985, and the hauling cost cited above, it is estimated that the hauling credit cost for the 11 orders will be 21 cents a hundredweight, and the increase of 20 cents in the respective Class I differentials would almost offset it. It is concluded that the proposal to increase the Class I differential by 20 cents a hundredweight and the proposal to provide a hauling credit from the respective order pools at a rate of 3.3 cents a hundredweight should be adopted on a temporary basis for the

months of September 1984 through February 1985.

The amendments will provide that all producers and handlers shall share equitably in the cost of acquiring supplemental milk for the Southeast area during the coming months of September 1984 through February 1985.

One handler opposed the temporary 20-cent Class I price increase for the Louisville-Lexington-Evansville order. He testified that the record evidence indicates that Order 46 will not need as much supplemental milk as other markets. In his view, the Class I price increase for Order 46 should not be as much as 20 cents a hundredweight. However, he offered no alternative for consideration.

In this connection, it is recognized from the record evidence that some markets will require more supplemental milk than others. On balance, the adopted proposals will provide the hauling credits and the pool revenue to facilitate the acquisition of supplemental milk for the Southeast region as a whole. Adjustment of pool revenue to cover hauling credits on an individual order basis would result in significant and undesirable variations in the Class I prices of the respective orders. Adoption of the proposals will provide the financial assistance needed, and preserve the necessary inter-order price alignment.

In its testimony, DI requested that the pool credit be applied to the cooperative association if it had obtained the supplemental milk for the pool handler. This should not be done since the cooperative is not a handler under the order on such milk. The pool credit should apply to the pool plant handler, with the cooperative settling with the handler on the cost of providing the supplemental milk to the handler.

The adopted proposals will provide an increase of 20-cents in the Class I differentials of the respective orders for each of the months of September 1984 through February 1985. If the adopted increase is approved by producers and made effective for September 1984, the Class I price for September will already have been announced for the respective orders. No new order language is needed. The market administrators of the respective orders would issue a corrected Class I price announcement based on the amendments resulting from this proceeding.

The application of the hauling credit provided herein is somewhat different from the application of the credit that was proposed by DI. The credit herein would apply only to supplemental bulk fluid milk products that is allocated to

Class I milk. The entire record focused on the need to facilitate the acquisition of milk Class I fluid use. The pool credit should not apply to any other use that might result.

2. For the emergency period covered by this decision, producers delivering milk to more than one of the eight southeastern Federal order markets in which returns to producers are distributed according to base-excess plans should be assured that the computation of their bases will not be affected adversely if part of their milk is pooled under a Federal order other than one under which they earn a base. The base plans under each of the affected orders (Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas) should be amended temporarily to provide that a producer's base be computed on the basis of the producer's total milk pooled under the eight orders involved. The base plans in the affected orders currently provide that producer bases be computed only on the basis of milk delivered to or diverted from plants pooled on the order under which the bases are issued.

The base plans in the affected orders are all seasonal base-excess plans. Such plans are designed to encourage production in the fall months of seasonally low production by using the producer's daily average amount of milk produced and pooled in those months to compute a base. Producer bases are then used to determine the distribution of payments for producer milk during the spring months of seasonally high production. Producers are encouraged to limit surplus production during spring months by the payment of higher "base" prices for production that does not exceed their bases established during the prior fall "base-forming" period. Milk produced in excess of producer bases is subject to lower surplus prices. The base plans have no effect on the cost of milk purchased by handlers, but are a means of distributing payments among producers.

Under the orders which contain base plans and are affected by this decision, producer bases are established on the basis of pooled production during the months of September through January in six orders. In the other two orders, producer bases are computed from deliveries of pooled milk during the months of September through December. All of the eight orders specify a minimum number of days of a producer's production that must be pooled under the order during the base-

forming period in order for the producer to earn a base. The minimum number of days necessary to earn a base varies between the orders, from 100 to 153 days. During the spring base-paying months, a producer without a daily base is paid the excess milk price for his entire production. The months during which producers are paid on the basis of their daily bases are March through July in five orders, March through June in two orders, and February through August in one order. Other provisions, such as those that specify when bases may be transferred between producers, the minimum amounts of base that may be transferred, and other base rules also differ between the orders.

The base plan amendments adopted in this decision were proposed by Dairymen, Inc., (DI), and represent a modification of DI's original proposals as contained in the notice of hearing. The amendments originally proposed by DI would have created a common base-excess plan, with identical provisions for all of the eight southeastern orders which contain base plans. According to the DI witness, the original proposal was revised in an attempt to minimize the changes made in any one of the affected base plans, and to make the proposal more acceptable to the producers operating under those plans. He stated that the base plans of the respective orders should retain the same base-forming periods, base-paying periods, and base transfer provisions as currently contained in the orders. The witness pointed out that although the Central Arkansas and Fort Smith, Arkansas, orders are not otherwise involved in the supply and pricing problems addressed in this proceeding, the base plans in those orders are closely tied with, and contain provisions identical to, the base plan in the Memphis, Tennessee, order.

The DI spokesman testified that all of a producer's deliveries to plants pooled under the eight orders listed above should be included in the computation of the base to be issued to any producer whose milk is pooled under one or more of those orders. The witness stated that such a change in base computations would facilitate the movement of milk between the affected orders during the shortage of milk expected this fall and winter in the Southeast. Exhibits introduced by the witness show that the milk procurement areas for many of the orders involved overlap significantly. He concluded that milk may easily move directly from the farm to plants pooled under Federal orders other than the order under which the producer normally is pooled.

During the time of anticipated milk shortage in the Southeast, producer milk should be encouraged to move to the plants at which it is needed most. The present base plan provisions would be likely to make producers reluctant to allow their milk to be delivered to other order plants during the base-forming fall months when the worst of the milk supply shortage is expected. The temporary amendments adopted in this decision will facilitate producer milk movements between orders without materially changing the effect of the existing base plans on the producers involved.

3. Emergency Action. The due and timely execution of the functions of the Secretary under the Act imperatively and unavoidably require the omission of a recommended decision and an opportunity for written exceptions with respect to Issues No. 1 and 2. The continued orderly marketing of milk in the respective areas requires that the attached order be made effective for the months of September 1984 through February 1985 for Issue No. 1 above, and for the base-making and base-paying months for the respective orders covered by Issue No. 2. Handlers, cooperative associations and others should know promptly and with certainty the basis of pricing Class I milk through February 1985, the period covered by the order amendments contained herein.

The hearing notice stated that consideration would be given to the emergency marketing conditions relating to proposals No. 1, 2, and 3. Action under the procedure described above was supported at the hearing and in briefs submitted by participants at the hearing.

It is therefore found good cause exists for omission of a recommended decision and the opportunity for filing exceptions to it.

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 supplement those that were made when the aforesaid order were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and 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.

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 orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, 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 orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

June 1984, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby

proposed to be amended, regulating the handling of milk in the aforesaid marketing areas, except Louisville-Lexington-Evansville, is approved or favored by producers, as defined under the terms of the orders (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 respective marketing areas.

Referendum Order To Determine Producer Approval; and Designation of Representative Period and Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the order, as amended, and as hereby proposed to be amended, regulating the handling of milk in the Louisville-Lexington-Evansville 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 the representative period were engaged in the production of milk for sale within the said marketing area.

The representative period for the conduct of such referendum is hereby determined to be June 1984.

The agent of the Secretary to conduct such referendum is hereby designated to be Arnold Stallings.

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, 1099, 1102, and 1108

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C. on August 22, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order¹ Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those

that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. 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 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 each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. In § 1006.50, paragraph (a) is revised to read as follows:

§ 1006.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$2.85, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1006.60, paragraph (h) is revised to read as follows:

§ 1006.60 Handler's value of milk for computing uniform price.

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. In § 1007.50, paragraph (a) is revised to read as follows:

§ 1007.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$2.30, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1007.60, paragraph (g) is revised to read as follows:

§ 1007.60 Handler's value of milk for computing uniform price.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1007.90 is revised to read as follows:

§ 1007.90 Base milk.

"Base milk" means the producer milk of a producer in each month of February through August that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of February 1985 through August 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the

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.

producer's production pooled pursuant to § 1007.13.

4. In § 1007.92, the following language is added to paragraphs (a) and (b):

§ 1007.92 Computation of base for each producer.

(a) * * * For producer bases to be calculated on or before March 1, 1985, and subject to § 1007.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 145, whichever is more.

(b) * * * For bases calculated from the September 1984-January 1985 base-forming period, and except as provided in paragraph (c) of this section, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. In § 1011.50, paragraph (a) is revised to read as follows:

§ 1011.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$2.10, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1011.60, paragraph (g) is revised to read as follows:

§ 1011.60 Handler's value of milk for computing uniform price.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that

were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1011.90 is revised to read as follows:

§ 1011.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through June 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1011.13.

4. In § 1011.92, the following language is added to paragraphs (a) and (b):

§ 1011.92 Computation of base for each producer.

(a) * * * For producer bases to be calculated on or before February 1, 1985, and subject to § 1011.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September through December 1984 by the number of days' production represented by such producer milk or by 100, whichever is more.

(b) * * * For bases calculated from the September-December 1984 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1012.50, paragraph (a) is revised to read as follows:

§ 1012.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$2.95, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1012.60, paragraph (h) is revised to read as follows:

§ 1012.60 Handler's value of milk for computing uniform price.

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. In § 1013.50, paragraph (a) is revised to read as follows:

§ 1013.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$3.15, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1013.60, a new paragraph (h) is added to read as follows:

§ 1013.60 Handler's value of milk for computing uniform price.

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the

receiving plant less the Class I differential applicable at the shipping plant.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. In § 1046.50, paragraph (a) is revised to read as follows:

§ 1046.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$1.70, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1046.60, paragraph (g) is revised to read as follows:

§ 1046.60 Handler's value of milk for computing uniform price.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1046.90 is revised to read as follows:

§ 1046.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through June 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1046.13.

4. In § 1046.92, the following language is added to paragraphs (a) and (b):

§ 1046.92 Computation of base for each producer.

(a) * * * For producer bases to be calculated on or before February 1, 1985, and subject to § 1046.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully

regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas Marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September through December 1984 by the number of days' production represented by such producer milk or by 100, whichever is more.

(b) * * * For bases calculated from the September-December 1984 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. In § 1093.50, paragraph (a) is revised to read as follows:

§ 1093.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$2.30, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1093.60, a new paragraph (g) is added to read as follows:

§ 1093.60 Handler's value of milk for computing uniform price.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1093.90 is revised to read as follows:

§ 1093.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through July that is not in excess of the

producer's base multiplied by the number of days in the month, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1093.13.

4. In § 1093.92, the following language is added to paragraphs (a) and (b):

§ 1093.92 Computation of base for each producer.

(a) * * * For producer bases to be calculated on or before February 28, 1985, and subject to § 1093.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 120, whichever is more.

(b) * * * For bases calculated from the September 1984-January 1985 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.50, paragraph (a) is revised to read as follows:

§ 1094.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$2.85, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1094.60, a new paragraph (h) is added to read as follows:

§ 1094.60 Handler's value of milk for computing uniform price.
* * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. In § 1096.50, paragraph (a) is revised to read as follows:

§ 1096.50 Class prices.
* * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$2.47, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1096.60, a new paragraph (g) is added to read as follows:

§ 1096.60 Handler's value of milk for computing uniform price.
* * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. Section 1097.90 is revised to read as follows:

§ 1097.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1097.93, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base

multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1097.13.

2. In § 1097.92, the following language is added:

§ 1097.92 Computation of daily average base for each producer.
* * *

For producer bases to be calculated on or before February 25, 1985, and subject to § 1097.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milks to a handler's plant which first became a fluid milk plant or a pool plant under any of the above orders during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a fluid milk plant or a pool plant during such period.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. In § 1098.50, paragraph (a) is revised to read as follows:

§ 1098.50 Class prices.
* * *

(a) *Class I price.* The Class price shall be the basic formula price for the second preceding month plus \$1.85, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1098.60, a new paragraph (g) is added to read as follows:

§ 1098.60 Handler's value of milk for computing uniform price.
* * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the

amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. In § 1098.90, the following language is added:

§ 1098.90 Base milk.
* * *

For the months of March 1985 through July 1985, base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1098.13.

4. In § 1098.92, the following language is added:

§ 1098.92 Computation of daily average base for each producer.
* * *

For producer bases to be calculated on or before February 25, 1985, and subject to § 1098.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 153, whichever is more; or by 138, pursuant to the above proviso.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. In § 1099.50, paragraph (a) is revised to read as follows:

§ 1099.50 Class prices.
* * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$1.70, and plus \$0.20 for the months of September 1984 through February 1985.

2. In § 1099.60, a new paragraph (g) is added to read as follows:

§ 1099.60 Handler's value of milk for computing uniform price.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

1. Section 1102.90 is revised to read as follows:

§ 1102.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1102.93, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1102.13.

2. In § 1102.92, the following language is added:

§ 1102.92 Computation of daily average base for each producer.

For producer bases to be calculated on or before February 25, 1985, and subject to § 1102.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which

milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became an approved plant or a pool plant under any of the above orders during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been an approved plant or a pool plant during such period.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.90 is revised to read as follows:

§ 1108.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1108.93, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1108.13.

2. In § 1108.92, the following language is added:

§ 1108.92 Computation of daily average base for each producer.

For producer bases to be calculated on or before February 25, 1985, and subject to § 1108.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a pool plant under this order or any of the above orders during or after the end of the base-forming period, the daily

average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a pool plant under this or any of the above orders during such period.

[FR Doc. 84-22785 Filed 8-27-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjust of Status to That of Persons Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: The Service has extended from August 22, 1984 to September 22, 1984 the deadline for submitting comments on the amendments the Service proposed on July 23, 1984 that would redefine the current Service definition of immediate visa availability for adjustment of status to conform with that of the Department of State. The Service has extended the deadline to allow the public additional opportunity to comment.

DATE: Comments are now due on or before September 22, 1984.

ADDRESS: Please submit written comments, in duplicate, to the Director of Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington DC 20536.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Service has extended the deadline for submitting comments from August 22, 1984 to September 22, 1984 to allow the public additional opportunity to comment on the proposed amendments published on July 23, 1984 (49 FR 29618). This proposed revision would allow the Service to depend upon the telephonic recording of the Visa Availability Bulletin rather than the written Visa Office Bulletin on Availability of Visa Numbers when determining if a visa is immediately available at the time of the filing of the application. In addition, the Service would adopt the language of the Department of State in considering if a visa applicant has a priority date

"earlier than" the date shown on the Visa Bulletin in place of the current policy of considering a visa number available if the applicant has a priority date "no later than" the date shown on the Visa Bulletin.

Dated: August 23, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations
Immigration and Naturalization Service.

[FR Doc. 84-22858 Filed 8-27-84; 8:45 am]

BILLING CODE 4410-10-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 221, 250, and 257

[EDR-474; Economic Regs. Docket 41971]

Tariffs, Oversales, and Counter Signs

AGENCY: Civil Aeronautics Board.

ACTION: Erratum.

SUMMARY: This erratum notice adds information concerning the filing of comments and placing names on the service list for the rulemaking proceeding concerning counter signs. The section containing this information was inadvertently omitted. Persons wishing to place their names on the service list in Docket 41971 have until August 31, 1984, to do so. In addition, this notice changes the number for the proposed new part number from Part 255 to Part 257 because the former number has already been used for a different rule.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Rules and Legislation Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. (202) 673-5442.

SUPPLEMENTARY INFORMATION: In EDR-474, 49 FR 30742, August 1, 1984, the Board proposed alternative ways to consolidate and simplify several consumer protection notices that the CAB requires air carriers to display on counter signs. The Board requested comments by September 17, 1984, and reply comments by October 2, 1984. Information concerning how and where to file these comments and the date for being put on the service list was inadvertently omitted.

As with all Board rulemakings, comments and other relevant information received after the close of the comment period will be considered by the Board only to the extent practicable.

Requests to be put on the Service List should be received by the Board's Docket Section by August 31, 1984.

Twenty copies of comments should be sent to Docket 41971, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies.

Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 as soon as they are received.

In addition, this notice changes the proposed part number from 14 CFR Part 255 to Part 257. Part 255 is already being used for the rule concerning computer reservations.

Dated: August 21, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-22847 Filed 8-27-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 271

[Docket No. RM84-8-001]

Petition of Ashland Oil Inc. et al. for Expedited Establishment of Procedures for the Collection of Excess Royalty Payments

Issued: August 24, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying rehearing of a petition for rulemaking filed by Ashland Oil Company, Inc., requesting that the Commission issue a rulemaking establishing procedures for granting a special relief rate under sections 104, 106, and 109 of the Natural Gas Policy Act for excess royalty payments. As indicated in its earlier order denying the petition for rulemaking, the Commission will consider whether to allow the recovery of the excess royalty payments in individual special relief proceedings, rather than in a generic rulemaking.

DATE: The order is effective on August 24, 1984.

FOR FURTHER INFORMATION CONTACT: Ken Malloy, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 8602-A, Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On May 8, 1984, the Federal Energy Regulatory Commission (Commission) issued an order denying a petition for rulemaking

filed by Ashland Oil Inc. (Ashland). The petition requested that the Commission initiate a rulemaking to establish, on an expedited basis, procedures for the collection of excess royalty payments. The Commission's order denied the petition for rulemaking stating that it would address the issue of excess royalties on a case-by-case basis, not a generic basis. Petition of Ashland Oil Inc., et al., for Expedited Establishment of Procedures for the Collection of Excess Royalty Payments, 49 FR 21914 (May 23, 1984) (Order Denying Petition for Rulemaking).

On June 7, 1984, the Commission received a timely petition for rehearing of this order from Ashland Oil Inc.¹ Ashland makes three arguments in its petition for rehearing. First, Ashland argues that the Commission has indicated its willingness to establish procedures that would be available to producers when royalty payments exceeded the amount assumed by the Commission in establishing just and reasonable rates.²

Second, Ashland argues that the Commission's stated reason for rejecting Ashland's petition does not apply to the excess royalty problem. Ashland states that the Commission relied on alternative price incentive mechanism under the NGPA to alleviate those instances in which producers face escalating production costs or the need to rework wells in order to continue or maintain production. Ashland argues that this reasoning has no application to instances of judicially-imposed excess royalty obligations that are in addition to the normal production costs and expenses of producers.

Third, Ashland argues that there are no incentive pricing options that can be used by a producer to correct or mitigate the excess royalty dilemma faced by Ashland and other similarly situated producers.

The Commission is denying Ashland's petition for rehearing. All three of Ashland's arguments proceed from a central assumption which the Commission finds to be erroneous. Ashland's arguments proceed from the assumption that the Commission has substantively denied Ashland's petition requesting relief from excess royalty payments.

¹ On July 3, 1984, the Commission issued an order granting rehearing solely for the purpose of further consideration. 49 FR 27934 (July 9, 1984).

² Ashland cites the following authority for this proposition: *FERC v. Pennzoil Producing Co.*, 493 U.S. 508, 517 (1979); *Mobil Oil Co. v. FPC*, 417 U.S. 283, 329 (1974); *Tenneco Oil Company v. FERC*, 571 F.2d 832, 834 (5th Cir. 1978).

In its order denying Ashland's petition for rulemaking, the Commission indicated that it preferred to handle applications for special relief on a case-by-case basis rather than promulgating generic rules to establish the Commission's policy for special relief under sections 104, 106, and 109 of the NCPA. In that order, the Commission did not indicate that it would not grant relief from excess royalty payments. The Commission's order was only a procedural disposition stating that it would not grant the relief requested by Ashland by means of a generic rulemaking. The Commission has pending before it at least five applications for special relief requesting that the Commission raise the otherwise existing maximum lawful price under section 104 to include amounts attributable to excess royalty payments ordered by the Kansas courts.³ The Commission's order denying Ashland's petition for rulemaking is not a substantive disposition of the issues raised by Ashland's petitions or the relief requested in the pending cases. The Commission continues to believe that it will be a more efficient use of Commission resources to handle special relief applications on a case-by-case basis rather than to develop generic rules to cover the myriad situations that may exist for granting special relief. See generally *Procedures Governing Applications for Special Relief* under sections 104, 106, and 109 of the Natural Gas Policy Act of 1978, 49 FR 21 910, 21 911-12 (May 23, 1984). Accordingly, Ashland's petition for rehearing is denied.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-22685 Filed 8-27-84; 8:45 am]

BILLING CODE 6717-01-M

³ Ashland states that its petition was prompted by royalty litigation in the state courts of Kansas, including the decision of the Supreme Court of the State of Kansas in *Matzen v. Cities Service Oil Co.*, 233 Kan. 846, 667 P.2d 337 (1983), *petition for cert. filed*, 52 U.S.L.W. 3583 (U.S. Jan. 26, 1984) (No. 83-1234). In that decision, the Kansas Supreme Court upheld a royalty award to landowners based on its ruling that a "market value" or "market rate" royalty should be based on the highest regulated price, notwithstanding that the producers had been limited to much lower vintage just and reasonable rates for their sales of Kansas gas in interstate commerce. The Kansas Supreme Court held that the existence of Federal price regulations applicable to natural gas sales was no barrier to the use of a higher imputed or hypothetical value for purposes of calculating royalty payments.

18 CFR Parts 2 and 271

[Docket No. RM84-8-001]

Petition of Ashland Oil, Inc., et al. for Expedited Establishment of Procedures for the Collection of Excess Royalty Payments; Order Granting Rehearing for the Purpose of Further Consideration

Correction

FR Doc. 84-18120 was published on page 27934 in the issue of Monday, July 9, 1984. It appeared in the Rules section of the Federal Register; however, it should have appeared in the proposed Rules section.

BILLING CODE 1505-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2643-4]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed disapproval.

SUMMARY: USEPA is proposing to disapprove revisions to the Michigan State Implementation Plan (SIP) for the following four Ford Motor Company assembly plants: (1) Wixom Assembly Plant, No. 15-1983; (2) Michigan Truck Assembly Plant, No. 16-1983; (3) Dearborn Assembly Plant, No. 17-1983; and (4) Wayne Assembly Plant, No. 18-1983. The revisions consist of Consent Orders which provide detailed compliance schedules related to Volatile Organic Compound (VOC) emissions from surface coating lines. USEPA's proposed disapproval of these SIP revisions is based on, among other things, the lack of a current valid attainment demonstration for the Detroit area.

DATE: USEPA must receive comments on or before September 27, 1984.

ADDRESS: Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Please submit an original and three copies if possible. You may inspect copies of the submittal and USEPA's evaluation during normal business hours at:

U.S. Environmental Protection Agency,
Air and Radiation Branch, Region V,
230 South Dearborn Street, Chicago,
Illinois 60604

Michigan Department of Natural
Resources, Air Quality Division, State
Secondary Government Complex,
General Office Building, 7150 Harris
Drive, Lansing, Michigan 48821.

FOR FURTHER INFORMATION CONTACT:

Toni Lesser, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On October 20, 1981, USEPA published a Policy Statement (46 FR 51386) to reduce the regulatory burden on the automotive industry. The policy as summarized below, established the following criteria whereby States would defer certain compliance dates for surface coating operations at automotive and light truck assembly plants:

1. For electrophoretic deposition process (EDP) operations—Compliance date extensions to 1984 to allow the postponement of significant capital expenditures; deferral up to 1987, if necessary, to implement alternative complying techniques or if additional time will eliminate significant costs.

2. For primer-surfacer operations—In plants scheduled to install EDP, the deferral of the conversion to waterborne primer surfacer or its equivalent to follow the EDP installation should be considered appropriate.

3. For topcoat—deferral of compliance with topcoat emission limits until 1986/1987.

Michigan's Rule 336.1603 requires individual sources to submit compliance schedules containing specific increments of progress for achieving compliance with VOC emission limits in Part 6 of the Michigan Air Pollution Control Commission's (MAPCC) Rules. On May 6, 1980 (45 FR 29790), USEPA conditionally approved R336.1603. The condition required that the State submit the individual compliance schedules to USEPA as revisions to the SIP, in order that the SIP conform to the requirements of 40 CFR 51.1(Q) and 51.15. Michigan's Rule 336.1610 contains interim and final VOC emission limits for various automobile plant operations.

On December 20, 1983, the State of Michigan submitted Consent Orders No. 15-1983; 16-1983; 17-1983; and 18-1983 for four Ford Motor Company assembly plants, as a revision to the Michigan SIP

for VOC. These revisions request compliance date extensions for the automotive surface coating lines in the State of Michigan Truck Assembly Plants in Oakland County; and the Dearborn, Wayne, and Michigan Truck Assembly Plants in Wayne County. The facilities are located in an urban ozone nonattainment area with an attainment date of December 31, 1987.

Michigan's VOC SIP limits contained in Rule 336.1610 are expressed in terms of pounds VOC per gallon of coating, while the emission limits in the four Ford Motor Company's consent orders are expressed in terms of pounds VOC per gallon of applied coating solids. The consent order limits are obtained by converting the SIP limits to pounds VOC per gallon of coating solids and dividing by the transfer efficiency. The following schedule contains interim final emission limits that are permitted by the consent order.

The limits in the following are all in terms of pounds VOC per gallon of applied coating solids

A. Ford Motor Company, Wixom Assembly Plant

1. Primer Surfacer Operations:

26.1 until December 31, 1986
14.9 after December 31, 1986

2. Topcoat (Non-basecoat/Clearcoat) Operations:

34.7 until December 31, 1987
14.9 after December 31, 1987

3. Topcoat (Basecoat and Clearcoat) Operations:

106.4 until December 31, 1981 (Basecoat)
34.3 until December 31, 1987 (Clearcoat)
14.9 after December 31, 1987 (Basecoat and Clearcoat)

4. Final Repair (Non-Basecoat/Clearcoat):

48.8 until December 31, 1987
34.3 after December 31, 1987

5. Final Repair (Basecoat/Clearcoat):
125.0 until December 31, 1987 (Basecoat)
34.3 until December 31, 1987 (Clearcoat)
34.3 after December 31, 1987

B. Ford Motor Company Michigan Truck Plant, Wayne

1. Topcoat Operations:

31.8 until December 31, 1987
14.9 after December 31, 1987

2. Final Repair Operations:

35.8 until December 31, 1987
34.3 after December 31, 1987

C. Ford Motor Company, Dearborn Assembly Plant, Dearborn

1. Primer Surfacer Operations:

26.1 until December 31, 1986
14.9 after December 31, 1986

2. Topcoat Operations:

31.8 until December 31, 1986
14.9 after December 31, 1986

3. Final Repair Operations:

35.8 until December 31, 1986
34.3 after December 31, 1986

D. Ford Motor Company, Wayne Assembly Plant, Wayne

1. Primer Surfacer Operations:

26.1 until December 31, 1986
14.9 after December 31, 1986

2. Topcoat (Non-Basecoat/Clearcoat) Operations:

40.7 until December 31, 1986
14.9 after December 31, 1986

3. Topcoat (Basecoat/Clearcoat) Operations:

106.4 until December 31, 1986 (Basecoat)
34.3 until December 31, 1986 (Clearcoat)
14.9 after December 31, 1986

4. Final Repair (Non-Basecoat/Clearcoat):

48.8 until December 31, 1986
34.3 after December 31, 1986

5. Final Repair (Basecoat/Clearcoat):
125.0 until December 31, 1986 (Basecoat)
34.3 until December 31, 1986 (Clearcoat)
34.3 after December 31, 1986

USEPA has reviewed Consent Orders Nos. 15-1983, 16-1983, 17-1983 and 18-1983 for the Ford Motor Company assembly plants, and has prepared a Technical Support Document (TSD), dated April 4, 1984, evaluating these requested VOC SIP revisions. A copy of the TSD is available at EPA's Region V Office.

USEPA is proposing to disapprove the four compliance date extension requests for three reasons. First, Michigan does not yet have an approved 1982 Ozone SIP for the Detroit area and, therefore, lacks a valid, current attainment demonstration for the Detroit area. It is not possible to evaluate whether these compliance date extensions would interfere with the requirement of "reasonable further progress" toward the goal of full attainment by December 31, 1987. EPA policy requires an approved 1982 Ozone SIP attainment demonstration as a prerequisite to granting site-specific relaxations in nonattainment areas, such as Detroit. (See Memorandum from Sheldon Meyers, to Directors, Air and Waste Management Divisions and Air Management Divisions, dated July 29, 1983, on "Source Specific SIP Revisions".)

Second, the assembly plants' primer surface extension requests do not comply with EPA's October 20, 1981 Policy Statement (46 FR 51386) applicable to surface coating operations

at automotive and light truck assembly plants. The electrophoretic deposition process (EDP) lines are already in operation at these plants. The Policy Statement, however, only permits time extensions for primer surface operators scheduled to install EDP systems. It does not permit compliance date extensions for operations predicated solely on the basis of deferring control costs. Nor did the State submit any additional justification for extending the compliance date to December 31, 1986.

Finally, the state did not submit any data to support the "final repair" compliance date extensions. EPA's October 20, 1981 Policy Statement does not specifically address final repair operations. The State did not provide documentation of coding technology information to support the final repair compliance date extension to December 31, 1987. This documentation would need to show that this extension is as expeditious as practicable.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. 605(b), I certify that this proposed disapproval will not have a significant economic impact on a substantial number of small entities because it applies to only four assembly plants of the Ford Motor Company.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

This notice is issued under authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: August 7, 1984.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 84-22799 Filed 8-27-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. 6604]

Proposed Flood Elevation Determinations

Correction

In FR Doc. 84-15271 beginning on page 23874 in the issue of Friday, June 8, 1984, make the following correction:

On page 23876, in the first entry for "Illinois", in the fifth column, second line, "677" should have read "667".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-634; FCC 84-392]

Changes in the Corporate Structure and Operations of the Communications Satellite Corporation

AGENCY: Federal Communications Commission.

ACTION: Second notice of proposed rulemaking.

SUMMARY: The Notice seeks public comment on proposed modifications to the Form M and Form 901 financial reports which Comsat is currently required to submit to the Commission. The Notice implements specific aspects of the Second Comsat Structure Order, in the Matter of the corporate structure and operations of the Communications Satellite Corporation, 49 FR 19118 (May 4, 1984), calling for an updating of Comsat's reporting system consistent with its current organizational structure. This notice proposes to strengthen reports necessary for regulatory purposes, while deleting or simplifying others where possible.

DATES: Comments are due on or before September 28, 1984. Reply comments are due on or before October 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Joel Pearlman, International Conference Staff, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-3214.

Second Notice of Proposed Rulemaking

In the matter of changes in the corporate structure and operations of the Communications Satellite Corporation; CC Docket No. 80-634.

Adopted: August 8, 1984.

Released: August 14, 1984.

By the Commission: Commissioner Rivera absent.

I. Introduction

1. On April 20, 1984, we released a *Second Memorandum Opinion and Order* in this proceeding¹ (hereinafter

¹Changes in the corporate structure and operations of the Communications Satellite Corporation, FCC 84-128 (released April 20, 1984).

Second Comsat Structure order), addressing the structure and operations of the Communications Satellite Corporation (Comsat). We concluded that Comsat's cost allocation system did not fairly allocate common costs, such as those associated with its Headquarters and Laboratory operations, between jurisdictional² and nonjurisdictional accounts. We therefore directed Comsat to revise its cost allocation system and file new tariffs (at its authorized rate of return) to reflect changed revenue requirements brought about by these revisions.

2. In addition, we concluded that Comsat should modify its common carrier activity reporting system in order to better reflect its new cost allocation processes and its expansion of activity into nonjurisdictional areas. As a beginning to this process, we accepted Comsat's proposal³ to file certain additional schedules to its Annual Report Form M and its Monthly Report Form 901. We also indicated that we would soon institute a proceeding devoted exclusively to Comsat's reporting requirements, with the expectation of revising and simplifying its filings. This Second Notice of Proposed Rulemaking (NPRM) is intended to implement this aspect of our *Second Comsat Structure* order.

II. Discussion

A. Current Reporting Requirements

3. Under the authority of sections 219 and 220 of the Communications Act of 1934⁴ and §§ 43.21 and 43.31 of the Commission's Rules and Regulations, Comsat currently files three series of Annual (Form M) and monthly (Form 901) reports.⁵ The first, called "Comsat

²The term jurisdictional in this context refers to Comsat's INTELSAT and INMARSAT activities mandated by the Communications Satellite Act of 1962, as amended, and by the INTELSAT and INMARSAT Agreements.

³Supplemental Report on Allocation of Shared Services and Comsat Labs, CC Docket No. 80-634, submitted May 9, 1983.

⁴47 U.S.C. 219, 220 (1983).

⁵Form M is an annual report filed by carriers which, through a variety of schedules and forms, provides: (a) Detailed financial and accounting on the carrier's operations; (b) plant and operating data; (c) pension, welfare and employment data; and (d) general corporate information relating to directors, officers and shareholders. This data is used by the Commission to fulfill its regulatory responsibilities under Titles II and III of the Communications Act of 1934, as amended. Form 901 is a monthly summary of revenues, expenses, assets and traffic.

Unconsolidated", covers the parent legal entity which includes its World Systems Division and Headquarters operations. These operations include Comsat's jurisdictional INTELSAT and INMARSAT functions. The second, called "COMSAT General Unconsolidated", covers COMSAT General itself, but not COMSAT General's subsidiaries, such as Business Communications, Inc. and Telematics, Inc.⁶ The final series is called "Comsat-Consolidated" and covers Comsat as a whole, including all of its divisions, subsidiaries,⁷ and partnership investments.

4. Comsat has adopted Form M to its particular operations and files most of the schedules on this form, including general information, financial and accounting data, plant and operating data, pensions and welfare data, and employment data.⁸ Comsat has also adapted Form 901 to its activities. For Comsat-Unconsolidated (World Systems Division and Headquarters Division), Comsat files a Statement of Operations, a Statement of Financial Position, and selected detailed Traffic and Financial Data, including operating revenues and plant in service. For Comsat Consolidated, Comsat also files a Statement of Operations and certain Traffic and Financial Data. Finally, on the COMSAT General Form 901, Comsat files a Statement of Operations, a Statement of Financial Position, and certain Financial Data.

⁶Business Communications, Inc. is a corporation set up by Comsat to invest in the SBS partnership. Telematics, Inc. is a corporation set up to invest in the INTELNET partnership.

⁷Comsat's wholly-owned subsidiaries include: COMSAT General Corp., Amplicon, Inc., Telesystems, Inc., COMPACT Software, Inc., Environmental Research and Technology, Inc., and Satellite Television Corporation.

⁸Comsat does not file the following schedules which it deems inapplicable: Schedule 2 (Control over Respondent); Schedule 12C (Analysis of Property Held for Future Use); Schedule 13A (Analysis of Plant Acquired); Schedule 13B (Analysis of Plant Acquisition Adjustments); Schedule 14B (Theoretical depreciation Reserve Study); Schedule 15A (Analysis of Entries in Depreciation Reserve); Schedule 15B (Bases of Annual Amortization Charges); Schedule 16 (Miscellaneous Physical Property); Schedule 18 (Sinking Funds); Schedule 19 (Special Cash Deposits); Schedule 20 (Notes Receivable); Schedule 22 (Deferred Charges); Schedule 26 (Capital Stock and Funded Debt Reacquired or Retired During the Year); Schedule 27 (Matured Long Term Debt); Schedule 30 (Accumulated Deferred Income Taxes—Other); Schedule 39 (Special Expenses); Schedule 44 (Nondistortive Delayed Items); Schedule 51 (Statistics Relating to Central Offices); Schedule 52 (Telephones in Service); Schedule 53 (Telephone Calls); Schedule 54 (Telegraph Stations); Schedule 56 (Interstate Private Line Statistics); Schedule 57A (Overseas Telephone and Related Services); Schedule 58A (Stations Left in Place); and Schedule 58B (Station Apparatus in Stock).

5. Focusing on those portions of the annual (Form M) and monthly (Form 901) reports covering the World Systems and Headquarters Divisions, Comsat does not currently provide separate data on the separate divisions and subdivisions within the parent legal entity.⁹ Nor does Comsat provide data on how it allocates common costs, such as those associated with its Headquarters Division or the Laboratories subdivision, or jurisdictional accounts.

B. Proposed Reporting Requirements

6. *General.* As we concluded in the *Second Comsat Structure* order, the improper assignment of costs and expenses to jurisdictional accounts results in an inflated revenue requirement for Comsat and excessive rates to INTELSAT and INMARSAT users. We also noted that improper cost allocations result in subsidies to Comsat activities outside of its jurisdictional operations. To address these concerns, Comsat's reporting system should be designed to facilitate our monitoring of Comsat's jurisdictional common carrier activities, including the provision of INTELSAT and INMARSAT services. It should also enable us to ensure that Comsat's rates for these services are cost-based and that jurisdictional revenues do not improperly cross-subsidize other Comsat activities. Further, the reporting system should provide an accurate picture of the future corporation in order to assure that Comsat's nonjurisdictional activities do not adversely affect the overall financial viability of the corporation and thus increase the cost of capital assumed in jurisdictional revenue requirements. On the other hand, Comsat should not be required to expend funds on reports or schedules not useful to the above objectives. Such expenditures would not enhance our regulatory function and could place an unnecessary burden on Comsat. We shall examine in light of these considerations the three types of

reports—Comsat Unconsolidated (Forms M and 901), COMSAT General (Forms M and 901) and Comsat Consolidated (Forms M and 901)—that are now being filed and offer tentative conclusions on changes to these reports.

7. *Comsat Unconsolidated Reports (Forms M and Form 901).* Comsat, as a legal entity, files a separate Form M report that is not "consolidated" with its wholly-owned subsidiaries (e.g., COMSAT General, Satellite Television Corporation, ERT, Telesystems, Amplic, etc.) This report primarily covers Comsat's jurisdictional INTELSAT and INMARSAT operations but also includes data on shared operations, such as Headquarters and the Laboratories, and on certain nonjurisdictional operations, such as its INTELSAT Technical Services line of business.¹⁰ This Unconsolidated Form M report covers both jurisdictional and nonjurisdictional income and balance sheet data because we have permitted certain nonjurisdictional functions to be performed within the parent legal entity.

8. Although we recognize that it is necessary for accounting purposes for Comsat to submit balance sheet and income data on the entire legal entity, rather than only on its jurisdictional activities, we propose that Comsat report the percentage shares of balance sheet and income entries that it has allocated among the INTELSAT jurisdictional, the INMARSAT jurisdictional, and the nonjurisdictional accounts. In particular, all entries pertaining to shared activities, such as the Headquarters Division, the Laboratories, and the Maintenance and Supply Center, should have their jurisdictional and nonjurisdictional amounts separately detained. The purpose of such modifications is twofold. First, they will allow the staff to compute revenue requirements separately for each of Comsat's jurisdictional businesses—INTELSAT services and INMARSAT services.¹¹ Second, they will allow the staff to determine if Comsat is properly allocating common expense and common plant costs among its various jurisdictional and nonjurisdictional accounts. Therefore, we tentatively conclude that Comsat should modify all income and balance sheet schedules in its Unconsolidated Form M to separately state INTELSAT, INMARSAT, and nonjurisdictional entries.

⁹ Second Comsat Structure order, n. 38.

¹⁰ Under Comsat's current format, balance sheet and income data for INTELSAT and INMARSAT operations are not separately reported.

9. Comsat's Unconsolidated Form 901 is intended to better reflect Comsat's jurisdictional accounts than its Unconsolidated Form M. The Form 901 presents the World Systems Division (and some Headquarters Division) net operating income, other income, and selected financial data of use in computing certain revenue requirements for the regulated jurisdictional businesses.¹² However, similarly to the Form M reports, we believe that the information reported is not of sufficient detail to allow for computation of INTELSAT and INMARSAT revenue requirements individually or to enable the staff to monitor Comsat's allocation of common expenses and capital costs to ascertain whether such allocation is in accordance with our orders. Therefore, we propose that Comsat submit on Form 901 separate income and financial schedules for its INTELSAT and INMARSAT operations. Comsat should also reconcile these schedules with total World Systems and Headquarters schedules (e.g., the Comsat legal entity) to show in detail what amounts of World Systems and Headquarters expenses and capital items were excluded from jurisdictional accounts pursuant to our orders in CC Docket 80-634. Such schedules should clearly show all data relevant to Comsat's revenue requirements for each of its jurisdictional activities. Included in such schedules would be the numerical basis for cost allocation as prescribed by the Commission—numbers of employees, cash expenses, assets, investment, and expenditures—for the divisions and subdivisions of the parent company and the relative percentages for the company as a whole. We tentatively conclude that submission of the revised schedules described above would be in the public interest.

10. *COMSAT General (Form M and Form 901)* COMSAT General Corporation, a wholly-owned subsidiary

¹² The financial data presented are: (1) INTELSAT Plant and Service; (2) INTELSAT Plant Held for Future Use; (3) INTELSAT Plant Under Construction; (4) Earth Station and M&S Plant in Service; (5) Laboratories and DED Plant in Service; (6) Headquarters Plant in Service; (7) Computer Plant in Service; (8) TTC&M Plant in Service; (9) Maritime Services Plant in Service; (10) AFUDC; (11) Depreciating Reserve; (12) Working Capital/Materials and Supplies; (13) Plant Under Construction—Other than INTELSAT; (14) Plant Held for Future Use—Other than INTELSAT; (15) Current Assets; (16) Accrued Liabilities; (17) Escrow Deposits; (18) Capital Stock; (19) Retained Earnings; (20) Deferred Income Taxes; (21) Unamortized Investment Tax Credits; (22) R&D Expenses and Departmental Expenses for INMARSAT Services; and (23) Revenues, Departmental Expenses and Assets for services from Palau, Micronesia, Marshall Islands.

⁹ There are five subdivisions within the World Systems Division: (1) INTELSAT Communications Services (ICS), which acts as Signatory to INTELSAT and provides INTELSAT space segment and earth station common carrier services to authorized U.S. users; (2) Maritime Services (MS), which acts as Signatory to INMARSAT and provides INMARSAT common carrier services to U.S. users; (3) Comsat Laboratories, which supports ICS, MS, and other activities within and outside of Comsat; (4) Maintenance and Supply Center, which supports ICS, MS, and other activities within and outside of Comsat; and (5) INTELSAT Technical Services, which supplies services under contract to INTELSAT. These subdivisions perform both jurisdictional and nonjurisdictional functions. There are no subdivisions within the Headquarters Division, which also provides both jurisdictional and nonjurisdictional support within the company.

of Comsat, currently provides satellite-based systems and services for a broad range of communications needs. COMSAT General leases the capacity of its COMSTAR satellites to AT&T for domestic communications and furnishes capacity to the U.S. Navy and INMARSAT through the MARISAT system. COMSAT General also provides nationwide network television distribution, worldwide consulting, and international video services.

11. COMSAT General's Forms M and 901 are filed in a format similar to Comsat's other filings. We question whether this level of reporting is necessary for regulatory purposes. Comsat's leases of COMSTAR and MARISAT capacity are diminishing as these satellites reach the end of their useful lives and are not being replaced. In addition, we have streamlined the regulatory requirements for domestic satellite common carriers generally.¹³ We tentatively conclude that there is no rationale for treating COMSAT General differently than other domestic satellite carriers, and that COMSAT General need not be required to file Form M and Form 901 reports on its domestic satellite operations. In view of our proposals to refine the treatment of jurisdictional reporting, we tentatively conclude that our overall objectives would be served by this approach. To the extent that COMSAT General or other Comsat subsidiaries or partnerships offer services other than domestic satellite operations, such entities would remain subject to the reporting requirements set forth in Part 43 of the Commission's Rules and Regulations and other applicable Commission decisions.

12. *Comsat Consolidated (Form M and Form 901)*. Comsat's Consolidated Forms M and 901 contain income and balance sheet data for Comsat as a whole, including its wholly-owned subsidiaries. They also describe Comsat's investment in partnerships and joint ventures. These consolidated forms are required by §§ 43.21 and 43.31 of our Rules and Regulations.¹⁴

13. Since consolidated reports are the only reports that give the full picture of the health of the corporation and the relationship of jurisdictional activities to total activities, we tentatively conclude that Comsat should continue to file

consolidated reports, although with certain possible revisions. These revisions should serve the joint purposes of: (a) providing the Commission with sufficient data to assess the overall size and viability of the company; and (b) providing sufficient data on the number of personnel, and the assets, investments, expenditures, and expenses of the various subsidiaries and partnerships, by individual entity, to enable verification of our cost allocation formulas. It should be noted in this respect that under section 201(c) of the Communications Satellite Act of 1962 we have a statutory interest in the capital structure of the firm.

14. Addressing the first of these objectives, we tentatively conclude that the current format gives us sufficient data on the combined income or losses of Comsat, especially when viewed in conjunction with materials submitted under the Capitalization Plan orders.¹⁵ As to the second objective, we observe that Comsat does not generally report data individually for its subsidiaries and partnerships in arriving at its consolidated schedules. Instead, as in Schedule 35 for example, only consolidated figures for data such as operations and maintenance and research and development expenses are shown. In order for us to be in a position to evaluate the proper application of cost allocation formulas, we tentatively conclude that Comsat should report all data pertaining to the allocation process (such as personnel, expenses, assets, investments, and expenditures data) individually for each subsidiary and partnership. Therefore, we tentatively conclude that Comsat should report this information in its current Consolidated reports, with revisions as indicated herein. If Comsat views this data on its subsidiaries and partnerships to be proprietary, we would consider treating it as such in a manner similar to that established for its Capitalization Plan submissions.

15. *All Comsat Reports*. We believe that Comsat, although it has a special statutory relationship with two international organizations, should not be burdened with filing requirements that do not serve the public interest. In this light, we request comment on whether other report or individual schedule within a report that Comsat now files provides an insufficient public interest benefit to justify the expense of its continued preparation and filing. We further request comment on whether

other schedule that Comsat files can be simplified or revised to reduce Comsat's costs and to make more explicit or concise certain information necessary for regulatory purposes.

III. Ordering Clauses

16. Accordingly, in view of all the above, It is Ordered, pursuant to sections 1, 4, 201-205, 218, 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-05, 218, 219, 220, and 403 (1983), and Titles 1 through 4 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701-44 (1983), and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (1983), that a rulemaking proceeding is hereby commenced into the above-described matters.

17. It is further ordered, that, pursuant to applicable procedures set forth in §§ 1.410 and 1.415 of the Commission's Rules, interested parties may file comments on or before September 28, 1984 and reply comments on or before October 19, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

18. It is further ordered, that for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file.

¹³ See Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefore (Fourth Report and Order), FCC 83-181 (released November 2, 1983).

¹⁴ Many schedules provided on these forms are not supplied separately in the Consolidated reports because Comsat believes that the data are contained in the Comsat Unconsolidated and COMSAT General reports.

¹⁵ Consolidated Capitalization Plan for 1983-1985 of the Communications Satellite Corporation, FCC 83-273 (released June 13, 1983), *recon. granted in part*, FCC 83-381 (released August 17, 1983).

Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

19. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), it is certified, that sections 603 and 604 of the Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603, 604, 605(b). This rulemaking affects only Comsat and its affiliates.

20. It is further ordered, that the Secretary shall cause a copy of this order to be published in the Federal Register and shall mail a copy of this NPRM to the Chief for Advocacy of the Small Business Administration.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-22745 Filed 8-27-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, and 178

[Docket No. HM-139G; Notice No. 84-9]

Conversion of Individual Exemptions Into Regulations of General Applicability

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The MTB is considering amending the regulations governing the transportation of hazardous materials to incorporate therein a number of changes

based on existing exemptions which have been granted to individual applicants allowing them to perform particular functions in a manner that varies from that specified by the regulations.

Adoption of these exemptions as rules of general applicability would provide wider access to the benefits of transportation innovations recognized as effective and safe. In addition, these proposed changes would eliminate the need for recordkeeping by the exemption holder(s); eliminate the need for marking the exemption number on the package and shipping paper(s), and, eliminate the need for MTB to receive, review, docket, evaluate, and issue a renewal of the exemption every two years.

DATE: Comments must be received by October 31, 1984.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C.

Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590, (202-426-2075).

SUPPLEMENTARY INFORMATION: Each of the proposed amendments described in the following table is founded upon either (1) actual shipping experience gained under an exemption, or (2) the data and analysis supplied in the application for an exemption. In each case the resulting level of safety being afforded the public is considered at least equal to the level of safety provided by the current regulations.

These proposals would not significantly affect the cost of regulatory enforcement, nor would additional costs be imposed on the private sector, consumer, or Federal, State or local governments, since these proposals would merely authorize the general use of shipping alternatives previously available to only a few users under

exemptions. The safety record of shipments under the identified exemptions demonstrates that no significant environmental impact would result from any of the proposals. Adoption of an amendment derived from an existing exemption would obviate the need for the exemption and effectively terminate it. Upon such termination the holder of the exemption and parties thereto would be individually notified. Adoption of an amendment derived from an application for exemption should provide the relief sought, in which event the exemption request would be denied and the applicant so notified. In the event the Bureau decides not to adopt any of these proposals, each pertinent application would be evaluated and acted upon in accordance with the applicable provisions of the exemption procedures in 49 CFR Part 107, Subpart B. Consequently, persons commenting on the proposals may wish to address both the proposed amendment and the exemption application.

Each mode of transportation for which a particular exemption is authorized or requested is indicated in the "Nature of Exemption or Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

The MTB certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. Also, because the proposals made in this Notice relate to exemptions which have already been approved by the Materials Transportation Bureau, we have further determined that the Notice—(1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact would be so minimal; (4) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (5) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

List of Subjects in 49 FR Parts 172, 173 and 178

Hazardous materials transportation, Labeling, Packaging and containers.

Exemption No.	Applicant holder	Regulation affected	Nature of exemption or application	Proposed amendment
DOT-E 7085	California Seal Control Corp.....	§ 172.101	Authorizes shipments of pest control devices (Class C explosives) in limited quantities. Devices authorized under DOT-E 7085 consist of a fused spiral wound cardboard tube approximately 2.5 inches long and $\frac{3}{16}$ inch in diameter. Each unit contains a flash powder of potassium perchlorate and pyro-aluminum power not exceeding 36 grains, and inert material. Devices authorized under DOT-E 8585 consist of pasteboard tube 4 inches long and $\frac{1}{16}$ inch in diameter. Each unit contains a mixture of not more than 40 grains of potassium perchlorate, sulfur and aluminum powder. Each unit also contains 40 grains of iron oxide in a separate compartment in the tube. Devices authorized under DOT-E 8646 consist of a 12 gauge primed cartridge case; not more than 100 grains of smokeless powder; not more than 15 grains of black powder or pyrodex; and not more than 20 grains of a mixture containing 66% aluminum powder and 34% potassium perchlorate. (Modes 1, 2, and 3).	To amend the § 172.101 Table by adding the shipping name "Explosive pest control devices" (see the Table for complete entry). Also, § 173.100 would be amended by adding a definition under § 173.100 to read as follows: (ii) Explosive pest control devices, class C explosives, consist of a cardboard-pasteboard type tube not exceeding 4 inches in length and $\frac{1}{16}$ inch in diameter or a shotgun shell type having an explosive projectile. They may contain a mixture of potassium perchlorate, aluminum powder, sulfur, black powder, smokeless powder or similar pyrotechnic mixture. The component which produces the audible effect may not contain more than 40 grains of explosive composition. Devices and packaging must be of a type examined by the Bureau of Explosives or the Bureau of Mines and approved by the Associate Director for HMR. To revise paragraph (a)(12) of § 173.245 to read as follows: (12) Specification 12B (§ 178.205 of this subchapter). Fiberboard boxes with inside packagings of metal, polyethylene, or other non-fragile plastic material resistant to the leaching, not exceeding 1-gallon each. Metal packagings authorized only for materials that are not corrosive to metal. Gross weight must not exceed 65 pounds.
DOT-E 8595	American Pyrotechnics Corp., Odeco Manufacturing Co.....	§ 173.100		
DOT-E 8646	Marshall Hyde Inc.....	§ 172.101		
		§ 173.100		
DOT-E 7966	The Enterprise Companies.....	§ 173.245(a)(12)	Authorizes shipments of Paint and varnish remover which are corrosive to skin but not corrosive to steel in one gallon capacity steel containers overpacked in a DOT-12B fiberboard box. (Modes 1 and 2).	To amend the § 172.101 Table by revising Column (7)(c) for the entries Carbon bisulfide, or Carbon disulfide and Nickel carbonyl, in limited quantities, aboard vessels, which are also carrying explosives, under conditions approved by the Captain of the Port. (Mode 3). For the entry Carbon bisulfide or Carbon disulfide, column (7)(c) would read as follows: Keep cool. Not permitted on any vessel transporting explosives, except that quantities not exceeding 200 pounds may be transported on such vessels under conditions approved by the Captain of the Port. For the entry Nickel carbonyl, column (7)(c) would read: Shade from radiant heat. Segregation same as for flammable liquids. Not permitted on a vessel transporting explosives, except that quantities not exceeding 200 pounds may be transported on such vessels under conditions approved by the Captain of the Port.
DOT-E 8083	Matson Navigation Co.....	§ 172.101 Column (7)(c).	Authorizes shipments of Carbon bisulfide, or Carbon disulfide and Nickel carbonyl, in limited quantities, aboard vessels, which are also carrying explosives, under conditions approved by the Captain of the Port. (Mode 3).	

Exemption No.	Applicant holder	Regulation affected	Nature of exemption or application	Proposed amendment
DOT-E 8129	RAD Service, Inc., d/b/a Triangle Resources, Inc., University of Florida Resource Technology Services, Inc., Applied Technology, Inc., Florida State University, Drew Chemical Corp., Bell Laboratories, TRW Inc., Rhone-Poulenc Inc., American Scientific Products, Lions Technology Inc., CECOS International Inc., Iowa State University, University of Maryland, Allied Chemical, Stanford University, FMC Corp., Safety Specialists, Inc., ARCO Chemical Co., The American Recovery Co., Findly Chemical Disposal, Inc., Borg-Warner Chemicals, Inc., Reichold Chemicals, Inc., Ford Aerospace & Communications, Corp., Midwest Research Institute, Union Carbide Corp., The Curators of the University of Missouri, Ecoflo, Inc., Varian Associates, Inc., Solvent Service, Inc., Disposal Control Service, Containerized Chemical Disposal, Inc. Bunker Ramo Electronic Systems, U.S. Pollution Control, Inc., Lawrence W. Bierlein, P.C. Advanced Environmental Technology, Corp., Emergency Technical Services Corp., Environmental Transfer Corp., Rollins Environmental Services (DE), Inc., PPG Industries, Inc., Lab Waste Services, Multichem Corp., The BF Goodrich Co., Henkel Corp., Kansas State University, Monsanto Co., Environmental Cleaning Specialists, RCA Corp., IT Corp., Hallmark Cards, Inc., Union Carbide, S & W Waste, Inc., Virginia Polytechnic Institute, and State University, F.T.C. Hazardous, Inc., Chemical Waste Management, Inc., Georgia Institute of Technology, Enviro-Chem Waste Management Services, Earth Industrial Waste Management, Inc. Hewlett-Packard Co., General Electric, McCloskey Varnish Company, Harvey Mudd College, Waste Conversion, Inc., Tonawanda Tank Transport Service, Inc., Utah State University, Ralston Purina Company, General Foods Corp., Sherwin Williams Co., Ecology Chemical & Refining Co., Waste Technology Service, Inc., Purdue University, Northwestern University, Chemical Waste Disposal Corp., Chemical Pollution Control, Inc., Drug & Laboratory Disposal, Inc., Stauffer Chemical Co., E.I. DuPont Burroughs Welcome Co., The University of Wyoming, Environmental Response Inc., Synergen, Inc., Cornell University, Hopkins Agricultural Chemical Co., Lawrence University, Industrial Waste Engineering, University of Colorado, Kerr-McGee Chemical Corp.	49 CFR Part 173 Subparts D, E, F, H, K, L, M, O, and § 177.834(k).	Authorizes shipments of waste material, liquid or solid, classed as flammable liquid, oxidizer, flammable solid, corrosive materials, Poison B liquids and solids, ORM A, B, C or E in inside glass packagings not over 1-gallon capacity, plastic or metal packagings not over 5-gallons capacity overpacked in a DOT Specification 37A, 5-gallons capacity drum or DOT Specification 17H or 6J, 30 or 55 gallon capacity drum. Inside packagings of liquids must be surrounded by non-combustible, absorbent materials capable of absorbing the total liquid contents of the inside containers. (Mode 1).	To add § 173.12 to read as follows: § 173.12 <i>Exceptions for shipment of waste material.</i> (a) <i>General.</i> Waste material classed as flammable liquid, flammable solid, oxidizer, corrosive material, Poison B or ORM-A, B, C, and E are excepted from the specification packaging requirements of this subchapter if packaged in combination packagings in accordance with this section and transported for disposal or recovery by private or contract motor carrier by highway only. In addition, a generic description from § 172.101 may be used, in place of specific chemical names, when two or more wastes materials in the same hazard class are packaged in the same outside packaging, provided the wastes materials are chemically compatible. (b) <i>Outside packagings.</i> The outside packagings must be a specification metal or fiber drum; or a polyethylene drum capable of withstanding (1) the vibration and compression tests specified in § 178.19-7(c)(1) and (2) except the compression test value must be no less than 2400 pounds and (2) a four-foot drop onto an unyielding surface and impacting to top head. (c) <i>Inside packagings.</i> The inside packagings must be either glass packagings not exceeding 1-gallon rated capacity or metal or plastic packagings not exceeding a rated capacity of 5 gallons. (d) <i>Additional packaging requirements.</i> The following additional requirements are applicable: (1) Each outside packaging may contain only one class of hazardous material; (2) Inside packagings of liquid must be surrounded by a compatible absorbent material compatible with the liquid and capable of absorbing the total liquid contents; and (3) Solid hazardous materials may not exceed 200 pounds net weight per outside package. (e) <i>Prohibited materials.</i> The following materials are not authorized under the provisions of this section: acrolein; bromine pentafluoride; bromine trifluoride; chloric acid; chlorine trifluoride; nitric acid, fuming; pyroforic liquids; and sulfuric acid, fuming.
DOT-E 8144	Atlas Powder Co., Hercules Inc., ICI Americas Inc.	§ 173.133(a), (a)(1) and (a)(2).	Authorizes shipments of spirits of nitroglycerin not over 10 percent by weight of nitroglycerin in ethyl alcohol or propylene glycol in DOT Specification 12A or 12B fiber board boxes, or 21C fiber drums with inside specification 2E bottles or 2U containers not exceeding 6 quarts capacity each. (Modes 1, 3, and 4).	To amend paragraph (a)(1) of § 173.133 by deleting the word "metal" containers. Also, the introductory text of paragraphs (a) and (b) would be amended by adding the words "or propylene glycol" immediately after the words "ethyl alcohol". Paragraph (a)(2) would be added to read as follows: (2) Specification 12A or 12B (§§ 178.210 or 178.205 of this subchapter). Fiberboard boxes or Spec. 21C (§ 178.224 this subchapter) fiber drums laminated with a 0.004 inch polyethylene lining. Inside containers must be Spec. 2E polyethylene bottles or Spec. 2U polyethylene containers not exceeding 6 quart capacity each, overpacked in a strong polyethylene bag. The inside containers must be entirely surrounded by at least 2 inches of dry, fine sawdust or kieselguhr. Not more than 6 quarts of this mixture may be packed in one outside packaging.
DOT-E 8177	A.O. Smith-Inland Inc.	§ 173.245(a)(12).	Authorizes shipments of a material corrosive to skin, but not to metal, in a non-DOT specification metal can, overpacked with a non-hazardous material, in a DOT-12B fiberboard box. (Modes 1, 2, 3 and 4).	See proposed change for DOT-E 7966.

Exemption No.	Applicant holder	Regulation affected	Nature of exemption or application	Proposed amendment
DOT-E 8445	Dow Chemical Co., McDonnell Douglas Corp., Atlantic Coast Environmental, Inc., RCA Corporation, Rohm and Haas, Union Carbide, Diamond Shamrock Corp., SDS Biotech Corp., Waste Conversion, Inc., Resource Technology Services, Inc., Advanced Environmental Technology, Corp., Emergency Technical Services Corp., Environmental Transfer Corp., University of Minnesota, Rollins Environmental Services, Inc., E.I. DuPont, Ace Service Corp., Tennessee Eastman Company, Ciba-Geigy Corp., Earth Industrial Waste Management, Inc., Ecoflo, Inc., Kerr-McGee Chemical Corp., FMC Corp., Owens-Corning Fiberglas Corp.	49 CFR Part 173 Subpart D, E, F & H.	Authorizes shipment of waste material, liquid or solid, classed as flammable liquid, oxidizer, flammable solid, corrosive materials, Poison B liquids and solids (for which exceptions are authorized), ORM-A, B, C or E in inside plastic, glass, earthenware or metal containers, not exceeding one-gallon capacity, overpacked in a DOT specification removable head steel or fiber drum, not exceeding 55 gallons capacity or a 55-gallon removable head polyethylene drum as authorized in DOT-E 7011. (Mode 1).	See proposed amendment for DOT-E 8129.
DOT-E 8511	E.I. DuPont, Interox America, Oxychem Co., Inc., FMC Corp., Montgomery Tank Lines, Inc., The Chloramone Corp., Coyne Chemical Co.	§ 173.266(f)	Authorizes shipments of Hydrogen peroxide solution in water, containing no greater than 70 percent hydrogen peroxide by weight in DOT Specification MC 312 cargo tanks and DOT Specification 103CW or 111A60W7 tank cars which are constructed to Type 304L, 316, or 316L stainless steel. Each cargo tank must have a MAWP of at least 40 psig and all openings on the top of the tank. Tank must be passivated and the design for venting and pressure relief devices must be examined by the B of E and approved by the Associate Director for HMR. The design of each tank car must be approved in accordance with § 173.31(a) (4) and § 179.3(a). (Modes 1 and 2).	To revise paragraph (f)(1) and the first three sentences of paragraph (f)(2) of § 173.266 to read as follows: (1) Specification 103A-ALW, 103CW, 111A60ALW2, or 111A60W7 (§ 179.200, 179.201 of this subchapter). Tank cars. The 103CW and 111A60W7 tank cars must be fabricated of Type 304L, 316, or 316L stainless steel. (See §§ 173.31(a)(4) and 179.3(a) for additional requirements). (i) * * * (2) Specification MC 310 or MC 312 (§ 178.343 of this subchapter). Tank motor vehicles. Tanks shall be fabricated of aluminum conforming to Aluminum Association Nos. 1060, 1260, 5254, or 5652. Specification MC 312 may be fabricated of Type 304L, 316 or 316L stainless steel * * *.
DOT-E 8565	Olin Corp., PPG Industries, Inc., Pennwalt Corp.	§ 173.217(a)(3)	Authorizes shipments of Calcium hypochlorite mixture, dry or Calcium hypochlorite, hydrated in DOT Specification 21C fiber drums having an inner ply consisting of a lamination of polyester film mounted on aluminum foil. (Modes 1, 2, and 3).	To revise paragraph (a)(3) of § 173.217 to read as follows: (3) Specification 21C (§ 178.224 of this subchapter). Fiber drums with inner ply a laminated sheet of paper and aluminum foil, internally coated. Cover of drum shall be gasketed. Authorized net weight not over 400 pounds.
DOT-E 8940	Arapahoe Chemicals, Inc.	§ 173.230	Authorizes shipments of Sodium, metal dispersion in organic solvent in inside DOT Specification 5, 5C, 6B, or 6C closed head metal drums of not over 30 gallons capacity and further overpacked in a DOT Specification 17H metal drum of not over 55 gallons capacity. Inside drum must be snugly packed in the outside drum by being completely and evenly surrounded with vermiculite or equivalent nonreactive cushioning material. (Mode 1).	To add paragraph (a)(5) to § 173.230 to read as follows: (5) Specification 17H (§ 178.118 of this subchapter). Metal drum, with one inside Specification, 5, 5C, 6B, or 6C (§§ 178.80, 178.83, 178.98, 178.99 of this subchapter) closed head metal drum not over 30 gallons capacity. Inside drum must be completely surrounded with incombustible cushioning material.
DOT-E 8946	Department of Defense	§ 173.127	Authorizes shipments of Nitrocellulose, wet with not less than 30 percent by weight of heptane in packaging prescribed in § 173.127. Present regulations restrict the flashpoint of the solvent to not lower than 30 °F. Heptane has a flashpoint of 25 °F. Test data indicates that a difference of 5 °F. will not make the material more hazardous. (Mode 1).	To amend the introductory text of paragraph (a) in § 173.127 by changing the "30 °F." to read "25 °F" each time it appears.
DOT-E 8982	Olin Corp., PPG Industries, Inc.	§ 173.217(a)(6)	Authorizes shipments of Calcium Hypochlorite, hydrated in DOT Specification 56 steel portable tanks. (Modes 1 and 2).	To revise paragraph (a)(6) of § 173.217 by adding calcium hypochlorite, hydrated.
DOT-E 9009	Stauffer Chemical Co.	§ 173.356	Authorizes shipments of Thiophosgene in DOT Specification 5C drums constructed of Type 304 stainless steel. (Modes 1, 2, and 3).	In § 173.356, paragraph (a)(3) would be renumbered paragraph (a)(4); a new paragraph (a)(3) would be added to read as follows: (3) Specification 5C (§ 178.83 of this subchapter). Steel barrels or drums made of Types 304 stainless steel.
DOT-E 9038	E.I. DuPont	§ 173.301(d)	Authorizes shipment of Tetrafluoroethylene, inhibited in DOT Specifications 3A2400 or 3AA2400 cylinders that are manifolded in accordance with § 173.301(d)(2) during transportation. (Mode 1).	To amend paragraph (d)(2) of § 173.301 to include tetrafluoroethylene, inhibited as an authorized nonliquefied gas in manifolded cylinders.
DOT-E 9042	Noury Chemical Corp.	§ 173.221	Authorizes shipment of tert-Butyl cumyl peroxide in DOT Specification 57 metal portable tanks filled to not more than 90% capacity. (Mode 1).	To add paragraph (a)(13) to § 173.221 to read as follows: (13) Specification 57 (§ 178.253 of this subchapter). Metal portable tanks. Authorized only for tert-butyl cumyl peroxide. Tank may not be filled to more than 90 percent capacity.
DOT-E 9081	Diamond Shamrock Corp.	§ 173.164(a)(6)	Authorizes Shipments of chromic acid, solid in DOT Specification 21C fiber drums lined with low density polyethylene film having a minimum thickness of 0.003-inch or co-extruded multilayered thermoplastic material (identified as "SARANEX") having a minimum thickness of 0.003-inch. (Modes 1 and 2).	To revise paragraph (a)(6) of § 173.164 to read as follows: (6) Specification 21C (§ 178.224 of this subchapter). Fiber drums lined with a plastic material having a minimum thickness of 0.003-inch. Net weight may not exceed 115 pounds.
DOT-E 9125	Tri-Wall Container (Israel), U.S. Agent: C.T. Corp., System, N.Y.	§ 178.168-9 § 178.169-9	Authorizes the use of Mediterranean pine for the construction of DOT Specification 15A and 15B wooden boxes. (Modes 1 and 3).	To amend Group 1 in § 178.168-9, and § 178.169-9 by adding "Mediterranean pine" to the list of authorized woods.

Exemption No.	Applicant holder	Regulation affected	Nature of exemption or application	Proposed amendment
DOT-E 9127	FMC Corp.	§ 173.217(a)(8)	Authorizes shipments of Trichloro-s-triazinetrione as specified in § 173.217(a)(8) except that the inside bottles may have a maximum net weight of 20 pounds each instead of a maximum net weight of 16 pounds each. (Mode 1).	To revise paragraph (a)(8) of § 173.217 to read as follows: (8) Specification 12B (§ 178.205 of this subchapter). Fiberboard boxes with inside polyethylene bottles with a minimum wall thickness of 0.015 inch. Not more than 2 polyethylene bottles may be packed in one box and each bottle shall contain not more than 20 pounds net weight of commodity. Packaging must be such that it will not react dangerously with or be decomposed by the commodity.
DOT-E 9167	Disposal System, Inc.	§ 173.272(i)(25) and (i)(28) § 173.257(a)(4) § 173.262(a)(11) § 173.262(b)(4) § 173.265(b)(4) § 173.297(a)(1)	Authorizes the use of DOT Specification MC 310, MC 311 or MC 312 cargo tanks lined with a material other than prescribed. In addition to the above, and based on a petition from the National Tank Truck Carriers, Inc., the MTB is proposing to change §§ 173.262(a)(11), 173.262(b)(4), 173.265(b)(4), and 173.297(a)(1) to provide for additional types of lining as authorized in § 173.263(a)(10). (Mode 1).	To revise §§ 173.262(a)(11), 173.262(b)(4), 173.265(b)(4), 173.272(i)(25), 173.272(i)(28) and 173.297(a)(1) to read as follows: Specification MC 310, MC 311 or MC 312 (§ 178.343 of this subchapter). Tank motor vehicle lined with rubber or equally acid-resistant material of equivalent strength and durability. Bottom outlets are authorized if they meet the requirements of § 178.343-5 of this subchapter. Note: In § 173.272(i)(28) the sentence "Not authorized for transportation by water" would not be removed.
DOT-E 9191	E.I. DuPont	§ 173.264(b)(2) § 179.101 Table, Note 4	Authorizes shipments of Hydrogen fluoride in DOT Specifications 112A400W, 112S400W, and 114A400W tank cars that have a dark colored band not exceeding 14 feet wide, around the center of the tank in the top platform and fitting area. (Mode 2).	To amend Note 4 of the § 179.101 Table by deleting the period at the end, and adding a sentence to read as follows: 4 * * *, except that tanks used for Hydrogen fluoride may have a dark colored band not exceeding 14 feet wide around the center of the tank in the top platform and fitting area.
DOT-E 9227	Canadian Arsenals, Ltd. (U.S. Agent: Department of Defense).	§ 172.101 § 173.74	Authorizes shipments of Barium styphnate, monohydrate as prescribed in § 173.74 (Mode 1).	To revise column 2 of the § 172.101 Table for the entry Initiating explosive (lead styphnate (lead trinitroresorcinate)) to read Initiating explosive (barium styphnate, monohydrate) lead styphnate (lead trinitroresorcinate)). Also, Barium styphnate, monohydrate, See Initiating explosive would be added to the § 172.101 Table. In § 173.74 barium styphnate, monohydrate would be added each time lead styphnate (lead trinitroresorcinate) appears.

§ 172.101 Hazardous Materials Table

+ E A W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	Barium styphnate, monohydrate. See Initiating explosive.	Class C explosive		Explosive C	None	173.100	50 pounds	150 pounds	1, 3	1, 3D	
	Explosive pest control devices.	Class A explosive		Explosive A	None	173.74	Forbidden	Forbidden	6	5	
	Initiating explosive (barium styphnate, monohydrate), lead styphnate (lead trinitroresorcinate). REMOVE										
	Initiating explosive (lead styphnate (lead trinitroresorcinate)).	Class A explosive		Explosive A	None	173.74	Forbidden	Forbidden	6	5	

[49 U.S.C. 1803, 1804, 1808, 49 CFR 1.53, App. A to Part 1 and paragraph (a)(3) of App. A to Part 106]

Issued in Washington, D.C. on August 23, 1984.

Alan I Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-22808 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petitions for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petitions for rulemaking.

SUMMARY: This notice denies two petitions for rulemaking to establish safety requirements for bumpers on vehicles other than passenger cars. One of the petitions requested that the agency establish a bumper height requirement for all vehicles. The other petition requested that rear bumpers be required on pick-up trucks. The establishment of requirements along the lines suggested by the petitioners would significantly reduce the utility of the vehicle types in question. In addition, the agency does not possess data documenting a safety problem which would justify rulemaking at this time.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202-426-1740).

SUPPLEMENTARY INFORMATION: NHTSA has received two petitions for rulemaking to establish safety requirements for bumpers on vehicles other than passenger cars. The first petition was submitted by Mr. E.G. Frey, who requested that the agency establish a bumper height requirement for all vehicles. The petitioner stated that any bumper which exceeds the height of the normal family automobile defeats the intended purpose of the bumper and is a safety hazard.

Mr. Frey's petition cited his concern about the safety of a vehicle he had observed while driving. The vehicle in question had apparently been altered by means of a lift kit, i.e., the body of the vehicle, including the bumper, had been hoisted to a height significantly above the usual design height of such vehicles. Also included in the materials submitted by Mr. Frey was a letter written by the Insurance Institute for Highway Safety (IIHS) discussing the safety of pick-up trucks with lift kits. The IIHS letter stated that since the bumpers on such pick-up trucks are unlikely to match the heights of bumpers of many other vehicles on the highway, the ability of the bumpers to function as damage

limiting devices is negated. The IIHS letter also stated that such bumpers pose an occupant protection problem in side impacts, since a vehicle with elevated bumpers impacting the side of a passenger car will be much more likely to produce intrusion into the occupant compartment of the passenger car.

The IIHS letter also noted that while there has been a Federal bumper height requirement for passenger cars for many years, there is no requirement for other vehicles. The IIHS letter stated that without such a requirement there is no guarantee that the bumpers on such vehicles as pick-up trucks, vans or utility vehicles will match the bumpers on other vehicles with which they might collide.

The second petition was submitted by Mr. Harold E. Simmons, who requested that rear bumpers be required on pick-up trucks. Mr. Simmons stated that he had recently learned that some pick-up trucks are sold without rear bumpers and that he believes this creates a significant safety hazard for the truck and all other vehicles operating in its vicinity. Mr. Simmons also stated that he believes that pick-up trucks without rear bumpers negate the bumper standard.

The purpose of the agency's bumper standard, including the bumper height requirement, is to limit the damage which occurs to vehicles in accidents. See 49 CFR Part 581. The primary safety effect of the standard is preventing damage that might cause future accidents if it goes unrepaired. For example, broken tail lamps which are not repaired may be the cause of a future accident. It should be noted that bumpers do not play a significant role in crash energy management. Therefore, neither bumper mismatch nor the absence of a rear bumper will significantly affect injury levels in a crash.

While it is conceivable that a bumper height requirement for vehicles other than passenger cars could result in some slight, non-quantifiable safety benefits relating to unrepaired damage, the agency is unaware of any data indicating any significant safety problem with the bumpers (or lack of rear bumper) on pick-up trucks, vans or utility vehicles, relating to mismatch problems, crash energy management, or side impact intrusion. Neither petitioner provided any such data.

In considering possible rulemaking, NHTSA must consider both safety issues and whether a proposed requirement would be reasonable, practicable and appropriate for the particular type of motor vehicle or item

of motor vehicle equipment for which it is prescribed. This is specifically required by section 103(f)(3) of the Safety Act.

Bumpers on vehicles other than passenger cars are typically higher than passenger car bumpers for reasons related to the use of the vehicle. Many such vehicles are used for off-road operation, which requires higher ground clearance. Use of a lift kit permits operation on particularly severe terrain. Also, the longer wheelbases of some of these vehicles necessitate higher ground clearance in order to negotiate ramps and driveways.

Similarly, the absence of rear bumpers on some pick-up trucks is related to the use of the vehicle. The absence of a rear bumper permits such things as installation of campers. Also, the absence of a rear bumper permits the rear gate to be lowered in such a way as to make loading easier.

Establishing a bumper height requirement for vehicles other than passenger cars or requiring rear bumpers on pick-up trucks would thus significantly reduce the utility of the vehicle types in question. In addition, the agency does not possess data documenting a safety problem which would justify rulemaking at this time.

For the reasons set forth above, the agency denies these two petitions.

(Secs. 103, 119 and 124, Pub. L. 898-563, 80 Stat. 7189 (15 U.S.C. 1392, 1407 and 1410a); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on August 22, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-22811 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 82-16; Notice 3]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associate Equipment; Motorcycle Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Safety Standard No. 108 that would allow installation of a modulating headlamp on motorcycles. Such a headlamp, whose use is currently not allowed, could improve conspicuity of a motorcycle and its operator during daylight. The proposal implements the

agency's grant of a petition by Harley-Davidson Motor Co., Inc., and is a revision of the notice of proposed rulemaking published on September 23, 1982 (47 FR 42009). The notice also proposes amending Safety Standard No. 123 to establish location and operation requirements for headlamp modulator switches for new motorcycles on which modulating headlamps have been installed as original equipment.

DATES: Comment closing date for the proposal is October 12, 1984. Effective date of an amendment would be 30 days after publication of the final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket number and notice number of this notice and be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590 [Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: Paragraph S4.6(b) of Standard No. 108 requires headlamps to be steady burning when in use although allowing them to be flashed automatically for signalling purposes. This paragraph allows cycles of activation and deactivation of the headlamp but it has not been interpreted as allowing cycles of varying intensity (modulation).

Harley-Davidson Motor Co., Inc., of Milwaukee, a manufacturer of motorcycles, wished to introduce headlamp modulation as an option and petitioned the agency for an amendment to Standard No. 108 to allow it. The agency granted the petition and published an NPRM on September 23, 1982 (Notice 1, 47 FR 42009), later extending the time in which to comment (Notice 2, 47 FR 47896) upon petition by the American Motorcycle Association.

Background of Initial NPRM

In 1979, on behalf of the agency, the Highway Safety Research Institute evaluated various means of increasing the conspicuity of motorcycles and their operators (DOT-HS-805143). More than 30 types of conspicuity treatments were developed. Three principal means of improvement were found. One was the wearing by the cyclist of a high visibility vest and helmet cover. Another was continual operation of the low beam of the headlamp during daylight (it is now the practice of virtually all cycle manufacturers to wire the headlamp so that it is on when the engine is running). The third was high beam modulation of

the headlamp from full to low intensity at three times per second. Data show that about 75 percent of motorcycle accidents occur in daytime. Therefore, enhancement of conspicuity during daylight hours is manifestly in the interests of motor vehicle safety. For this reason and because some State legislatures have shown interest in allowing modulated headlamps on their highways, NHTSA tentatively concludes that cyclists should be afforded an option to choose this type headlamp.

The initial proposal would have amended what is presently designated as S4.6 to allow a normally steady burning motorcycle headlamp to be wired to modulate on the upper beam from higher to lower intensity at a pulse rate from 150 to 240 cycles per minute.

The agency particularly solicited comments from States, and from individuals who have used these lamps. Emphasis was placed on whether there is a potential for misuse, such as the likelihood of use of the modulating mode under conditions such as inclement weather or dusk when the steady-burning mode is required for safety.

Comments on Initial NPRM

Over 150 comments were received on the initial NPRM, of which only 17 could be characterized as objecting to the proposal. The principal comments in opposition were submitted by the States of Maryland and Minnesota. Each raised the possibility that a motorcycle with a modulating white headlamp might be perceived as a potential emergency vehicle, since flashing white lights in those States are generally reserved for emergency vehicles. Maryland commented that a mixture of motorcycles with and without modulating headlamps would compound the potential for confusion. It suggested mandatory usage of a measure other than modulating headlamps to enhance conspicuity. Minnesota asked for safeguards to prevent the modulator from being operated when steady-burning headlamps are required. Commenters also asked for an automatic fail-safe provision to allow headlamp use if the modulator or its circuit failed.

The issue of "photic driving" was raised by the Insurance Institute for Highway Safety, the National Society for the Prevention of Blindness, and others. This issue concerns potential adverse reactions in the central nervous system from regularly flashing lights. These potential adverse reactions, similar to epileptic seizures, from such a light source are termed "photic driving" and can occur in persons not otherwise prone to epilepsy. These commenters

recommended that the agency determine whether modulating headlamps would cause a photic problem prior to permitting their use. Another concern was the rate of modulation that would be allowed. One commenter, the California Highway Patrol, suggested a modulation rate between 200 and 280 cycles per minute, the standard allowable in that State, be specified by the agency.

A final grouping of comments expressed concern that modulating headlamps would prove distracting to drivers, either when viewed directly oncoming, or indirectly in rearview mirrors.

The agency gave lengthy consideration to all these comments and concluded that none of them justified termination of the rulemaking action. It also concluded that the standard should not be amended in the manner proposed, and that a further notice of proposed rulemaking would be required to implement the suggestions and allay the concerns expressed in the comments to the initial proposal.

The Current NPRM

The agency does not deem it likely that a modulating headlamp would be perceived as belonging to an emergency vehicle for several reasons. One is that there would be only one headlamp flashing rather than a pair as would be the case with an emergency vehicle. Also, emergency vehicles would have either red or blue flashing lights in addition to the flashing headlamps, which a motorcycle would not have. The modulated headlamp would also be substantially different than the white "strobe" lights that are used on emergency vehicles and which are usually intense, of short duration and flash at a higher rate than proposed here for modulated headlamps. "Strobe" lights also have a sharp distinction between the "on" condition and the "off" condition whereas modulated headlamps make a gradual transition from a higher intensity to a lesser one.

NHTSA tentatively concurs with Minnesota's request for a fail-safe requirement and is proposing, in essence, that any modulating system be wired to switch the 12 volt supply to the upper beam filament. Also proposed is a requirement to prevent excessive voltage drops in the circuit caused by inferior switches. The limit for voltage drop is .45 volt.

The agency has reviewed its proposed flash rate of 150 to 240 cycles per minute, and concluded that 150 cycles was too close to that of turn signals and hazard warning signals for its intended

purpose. Because the State of California has had its requirements for 200 to 280 cycles per minute for 3½ years with no apparent problems, the agency is proposing a cycle rate of 240±40 per minute.

With respect to the photic driving phenomenon, the agency has tentatively concluded that modulating headlamps would cause no problem during daytime if a pulse rate of 4 per second (240 cycles per minute) is used. This conclusion was based upon two aspects of the phenomenon: the pulse rate of the light and the amount of contrast between the light and the background. From the available studies on the subject, it appears that people are most likely to be affected if the light flashes at about 10 flashes per second (600 per minute) and when the background is very dark. However, modulation of headlamps at night might produce a signal that is in the range of reported conditions that produce photic reactions. Accordingly, NHTSA is proposing, in essence, that the modulation be allowed only during daylight conditions. This can be accomplished through use of a light sensor, which NHTSA believes can be incorporated into the system for less than \$1.00. Specific comments are sought on the incremental cost of such a sensor. With such a device, headlamp modulation would cease when the level of ambient light falls below the normal daytime light level (or below the level of high intensity street lights). The sensor would be mounted either upward to measure direct light, from above the motorcycle, or downward to measure indirect light, reflected off the pavement beneath the motorcycle.

In developing this aspect of the proposal, NHTSA gave close attention to comments from Dotech, Inc., submitted to the docket on January 9, 1984, and April 30, 1984. Dotech had measured both incident light and reflected light levels from various types of street lighting in parking lots and on parkways at night to determine appropriate values for direct or reflected light to deactivate the modulator. Dotech found that incident light levels did not change significantly as it moved the light meter from waist level up and down several feet, when conducting measurements under street lights 30 feet above the pavement. Reflected light was measured by a meter three feet above the pavement. Dotech initially concluded that the modulator sensor should have a vertical orientation to avoid light reflected from headlamps or other sources, and that appropriate values appeared to be 430 lux (40 foot-

candles) of direct light, or 150 lux (13.9 foot-candles) of indirect reflected light. Subsequently, Dotech recommended 270 lux (25 foot-candles) for direct light and 60 lux (5.6 foot-candles) for reflected light as more appropriate based on its experiments. Accordingly, NHTSA is proposing that modulator systems be equipped with a sensor which will deactivate the modulator whenever the light level appropriate for the sensor's orientation is reached. The upward or downward orientation of the sensor would be at the option of the manufacturer. The light source that NHTSA will use in its compliance tests of the systems will be a tungsten filament lamp operating at 3000 degrees Kelvin. Because of the apparent lack of research in this area, other than that of Dotech, and because of Dotech's own modified conclusions, NHTSA is particularly interested in comments on the appropriateness of the proposed values of 270 lux (25 foot-candles) of direct light or 60 lux (5.6 foot-candles) of reflected light.

There are also additional features that were not proposed in the initial notice that NHTSA is now proposing to incorporate into a modulating headlamp standard.

The first of these is the proposal of a modulation depth limit to assure that not less than 17 percent of full luminous intensity is available regardless of lamp wattage. This will serve to prevent early bulb filament failure and to ensure that a distinction remains between the modulating headlamp and flashing strobe lights used on emergency vehicles, as well as lessening the likelihood of a "photic response."

To assure performance of the headlamp modulator, NHTSA is proposing an accelerated environmental requirement comprised of temperature and humidity tests. NHTSA has used the SAE Standard for vehicle hazard warning signal flashers, J945b, as a guide to thermal extremes, acceptable voltage variation and general procedure. Humidity exposure was added as were performance checks at each environmental extreme. The test duration proposed is 60 hours.

A companion amendment to Standard No. 123, *Motorcycle Controls and Displays*, is proposed for location and operation requirements for modulator switches on vehicles equipped by their manufacturers with modulating headlamps. The agency specifically invites comments on the location of the Modulate position on the Headlamp Beam Control Switch.

With respect to the aftermarket, NHTSA is proposing only that each

modulator be labelled with the maximum wattage for which it is intended. Some motorcycles may have two 70-watt headlamps while others may have a single 35-watt headlamp. The consumer must be provided information to determine whether a modulator is sufficient to drive high-wattage or multiple headlamps.

NHTSA has considered the impacts of this proposal and has determined that it is neither major within the meaning of Executive Order 12291 nor significant under Department of Transportation guidelines regarding regulatory policy and procedure. The proposal will have an impact only on those who voluntarily choose to produce and buy an alternative headlamp. Because the modulating headlamp will not be required but simply an option to a standard motorcycle headlamp, there will be no mandatory increased manufacturing costs connected with this proposal. The cost to the purchaser who chooses a headlamp with a modulating switch could be as much as \$40. However, since this feature would presumably be desired only by those purchasers who selected it as an option, we do not anticipate any impact on motorcycle sales. The impacts are so minimal that preparation of a regulatory impact analysis or a full regulatory evaluation is not warranted.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act, and has determined that it would not have a significant effect on the human environment since neither the weight nor quantity of materials used in the manufacture of the lamps is greatly affected.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a flexibility analysis. Manufacturers of motorcycle headlamps and modulators, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, compliance with the proposed changes would be optional. Small organizations and governmental jurisdictions would be affected only to the extent that law enforcement agencies chose to purchase motorcycles with modulating headlamps.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The engineer and attorney primarily responsible for this notice are Jere Medlin and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Motor vehicle equipment, Lamps—reflective devices and associated equipment.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR 571.108 and 49 CFR 571.123 be amended as follows:

§ 571.108 [Amended]

1. Paragraph S4.6 would be redesignated S4.5.8 and revised to read:

S4.5.8 The wiring requirements for lighting equipment in use are:

(a) Turn signal lamps, hazard warning signal lamps, and school bus warning lamps shall be wired to flash;

(b) Headlamps and side marker lamps may be wired to flash for signaling purposes;

(c) A motorcycle headlamp may be wired to allow its upper beam to be both steady burning and to modulate from a higher intensity to a lower intensity in accordance with section S4.6;

(d) All other lamps shall be wired to be steady burning.

2. A new section S4.6, *Motorcycle headlamp modulation system*, would be adopted to read:

S4.6 *Motorcycle headlamp modulation system.*

S4.6.1 A headlamp on a motorcycle may be wired to modulate the upper beam from its maximum intensity to a lesser intensity provided that:

(a) The rate of modulation shall be 240 ± 40 cycles per minute.

(b) The headlamp shall be operated at a maximum power for 50 to 70 percent of each cycle.

(c) The lowest intensity shall be not less than 17 percent of the maximum intensity.

(d) The modulator switch shall be wired into the power lead to the upper beam filament and not through the ground.

(e) Means shall be provided so that both the lower beam and upper beam remain operable in the event of a modular failure.

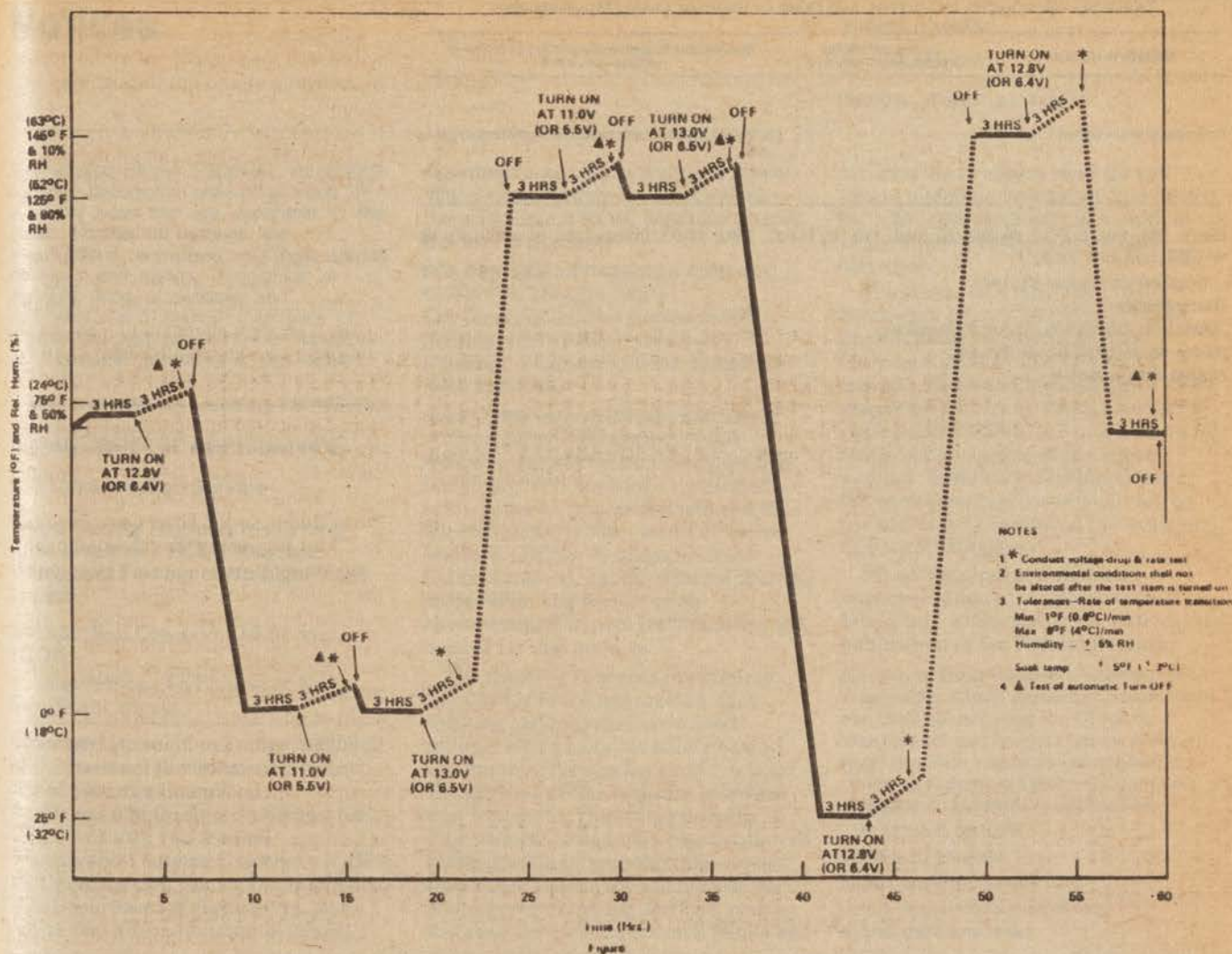
(f) The system shall include a sensor which shall be mounted with its axis perpendicular to a horizontal plane. Automatic headlamp modulation shall cease whenever the level of light, as emitted by a tungsten filament light source operating at 3000° Kelvin and measured by the sensor, is either less than 270 lux (25 foot-candles) from above or less than 60 lux (5.6 foot-candles) of reflected light when pointed down using a silicon cell type light meter and a Kodak Gray Card (Kodak R-27) for producing the reflected light.

(g) When tested in accordance with the profile shown in Figure—, the voltage drop across the modulator at 11.0 volts for 12 volt systems and 5.5 volts for 6 volt systems or above shall not be greater than .45 volt.

(h) Means shall be provided so that the upper beam functions at design voltage when the headlamp beam control switch is in either the upper beam or modulate position when the modulator is off.

S4.6.2 Each motorcycle headlamp modulator not intended as original equipment, or its container, shall be labeled with the maximum wattage, and the minimum wattage, appropriate for its use. Additionally, each such modulator shall comply with S4.6.1 (a) through (g) when connected to a headlamp of the maximum rated power and a headlamp of the minimum rated power and shall provide means so that the upper beam functions at design voltage when the modulator is off.

3. A new Figure — would be added as follows:



§ 571.123 [Amended]

1. Table 1, item 3 would be amended by revising the entries under columns 1 and 3 as follows:

TABLE 1.—MOTORCYCLE CONTROL LOCATION AND OPERATION REQUIREMENTS

Equipment control—column 1	Location—column 2	Operation—column 3
3. Headlamp beam control		Up for upper beam, center for headlamp modulation, down for lower beam. If beam control is combined with the headlamp on-off switch, means shall be provided to prevent inadvertent actuation of the "off" function.

2. Table 3, item 5 would be amended by revising the entries under columns 1 and 3 as follows:

TABLE III.—MOTORCYCLE CONTROL AND DISPLAY IDENTIFICATION REQUIREMENTS

Equipment—column 1	Control and display identification—column 2	Identification at appropriate position of control or display—column 3
5. Headlamp beam control		Hi, Mod (if equipped with headlamp modulating system), Lo.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on August 21, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-22812 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

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Tuesday, August 28, 1984

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

Soil Conservation Service

Wood County Highway HH Critical Area Treatment RC&D Measure; Wisconsin; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact

statement is not being prepared for the Wood County Highway HH Critical Area Treatment RC&D Measure, Wood County, Wisconsin.

FOR FURTHER INFORMATION CONTACT:

Cliffon A. Maguire, State Conservationist, Soil Conservation Service, 4601 Hammersley Road, Madison, Wisconsin, 53711, telephone (608) 264-5351.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Cliffon A. Maguire, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this projects.

The measure concerns the primary objective is to control erosion, thus reducing sedimentation and land voiding, eliminating the safety hazard and improve the aesthetics of the area. The purpose of this measure is critical area treatment. The planned works of improvement include the construction of a riprapped area to protect the culvert outlets and reduce the gradient of the drainageway, reshape, fertilize, mulch and seed the existing channel banks and

install a tile to reduce seepage and assure adequate vegetation. The south 54" x 83" CMP arch culvert would be removed and reinstalled to a new elevation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cliffon A. Maguire.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: July 26, 1984.

Cliffon A. Maguire,
State Conservationist.

[FR Doc. 84-22784 Filed 8-27-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Permits filed under Subpart Q of the Board's Procedural Regulations; week ended August 17, 1984.

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Subpart Q Applications

Date filed	Docket No.	Description
Aug. 14, 1984	42416	Soundair Corporation, c/o L. Harvey Poe, Jr., Poe & Noble, 1701 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Application of Soundair Corporation pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit to operate transborder charters, carrying persons and/or property, under Part 212 of the Board's Economic Regulations, to the United States using large and small equipment. Answers may be filed by September 11, 1984.
Aug. 17, 1984	42431	National Airlines, Inc., c/o Richard J. Kendall, Burger & Kendall, 1726 M Street, N.W., Washington, D.C. 20036. Application of National Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to engage in scheduled foreign air transportation between the United States and Japan. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 14, 1984.
Aug. 14, 1984	42321	Hawaii One Corporation, c/o Allen W. Markham, Suite 400, 4801 Massachusetts Ave., N.W., Washington, D.C. 20016. Amendment No. 1 to the Application of Hawaii One Corporation for interstate and overseas scheduled air transportation. Answers may be filed by September 11, 1984.
Aug. 15, 1984	42262	Westates Airlines, Inc., c/o David J. Marchant, Graham & James, One Maritime Plaza, Suite 300, San Francisco, California 94111. Amendment No. 1 to the Application of Westates Airlines, Inc. for (1) a Determination of Fitness, and (2) a Certificate of Public Convenience and Necessity. Answers may be filed by September 12, 1984.
Aug. 17, 1984	42194	Air Via, Inc., c/o John W. Simpson, Kelley Drye & Warren, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036.

Date filed	Docket No.	Description
		Amendment No. 2 to the Application of Air Via, Inc. for a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation. Answers may be filed by September 14, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-22846 Filed 8-27-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

New York/New Jersey Advisory Committee; Agenda and Notice of Public 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 New York and New Jersey Advisory Committees will convene at 8:00 p.m. on September 20, 1984 and will end at 5:00 p.m. on September 21, 1984, at the Gateway Helton Center, Raymond Boulevard and McCarter Highway, Newark, New Jersey 07102. The purpose of the meeting is to discuss the role and structure of SACs in fiscal year 1985 and followup on the report on bigotry and violence in New Jersey and New York.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Eastern Regional Office at (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 23, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-22796 Filed 8-27-84; 8:45 am]

BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public 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 South Carolina Advisory Committee to the Commission will convene at 10:30 a.m. and will end at 12:30 p.m., on September 21, 1984, at the Gressette Senate Office Building, Room 309, State Capitol Complex, Columbia, South Carolina 29201. The purpose of the meeting is to hear reports from the Regional SAC Conference, the National Chairpersons' Conference, and to discuss the concept for a project on voting rights and plan its implementation.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 23, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-21791 Filed 8-27-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 13-82]

Foreign-Trade Zone 45, Portland, OR; Withdrawal of Application for Subzone

Notice is hereby given that the Port of Portland, grantee of Foreign-Trade Zone 45 and Subzone 45A, has requested withdrawal of its application, without prejudice to its possible resubmission, for an additional subzone at the steel pipe plant of the Northwest Pipe and Casing Company in Clackamas filed on May 14, 1982 (Doc. 13-82, 47 FR 24162, 6/3/82). The company indicates that zone procedures, to the extent they would be available under Board policy, are not needed at this time because its export plans have been changed by market conditions.

The withdrawal is approved without prejudice and the case is closed effective this date.

Dated: August 22, 1984.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 84-22855 Filed 8-27-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on January 5, 1984, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: September 13, 1984, at 9:30 a.m., Herbert C. Hoover Building, Room 4630, 14th Street and Constitution Avenue, N.W., Washington, D.C. The meeting will continue to its conclusion on September 14, 1984, in Room 3407, Herbert C. Hoover Building.

Agenda

The Committee will begin with an open meeting to invite public comments with regards to existing commodity or technology controls. The commodities and technologies that falls under the responsibility of the Committee are those relating to the following Commodity Control List (CCL) entries:

1510	1531	1561	1585
1516	1533	1564	1587
1522	1534	1568	6598
1529	1541	1572	
4529	1560	1584	

Invited comments will be restricted to these or substantially related items.

In particular the Committee would like to invite public evidence of foreign available equipment (or technology) falling within the above mention CCL entries. Information is desired relating to equipment (or technologies) produced or available in the following country groups:

- Proscribed countries (East Bloc Countries)
- Non-COCOM free world countries. Specific information is needed on:
 1. Manufactures and country of origin.
 2. Product's capabilities and features.
 3. Product availability and price.
 4. Proof of delivery of products in sufficient quantity and quality, and

5. Location where the Electronic Instrumentation Technical Advisory Committee can obtain a sample for evaluation.

The Committee is generally concerned with future regulatory levels and changes needed to existing commodity and technology regulation levels. Public comments should be formulated to support changes in either commodity or technology control level. Request specifically oriented to individual license application should not be presented at this time.

If you wish to attend this open meeting of the Electronic Instrumentation Technical Advisory Committee, please call or write Margaret Cornejo at 377-2583, U.S. Department of Commerce 14th & Constitution Ave., N.W. Washington, D.C. at least five working days in advance in order to reserve a seat as there is limited space available. With this advance notice, arrangement can be made for more space, should that be necessary.

Following the open session the Committee will meet in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meeting or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information contact Mrs. Margaret A. Cornejo 202-377-2583.

Dated: August 23, 1984.

Milton M. Baltas,
Director of Technical Programs, Office of
Export Administration.

[FR Doc. 84-22856 Filed 8-27-84; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Appointment of Member to General Performance Review Board

In a notice published in the *Federal Register* on January 3, 1984 (49 FR 130-131), the National Bureau of Standards (NBS) announced the membership, terms and purpose of the General Performance Review Board (GPRB).

This notice announces a change in the membership of the GPRB through the

appointment of Dr. James R. Wright, Deputy Director for Operations, National Engineering Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, in place of Dr. Alvin H. Sher who has resigned from the GPRB. Dr. Wright's appointment is effective immediately and his term of membership is to December 31, 1985.

Persons desiring any further information about the GPRB as its membership may contact Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, Maryland, 20899, (301) 921-3555.

Dated August 22, 1984.

Ernest Ambler

Director.

[FR Doc. 84-22763 Filed 8-27-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/2331

David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 308, 1 Southpark Circle, Charleston, SC 29407, 803/571-1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 605 W. Fourth Avenue, Anchorage, AK 99510, 907/271-4064

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1608, Honolulu, HI 96813, 808/523-1368.

FOR FURTHER INFORMATION CONTACT: Shirley Whitted or John D. Kelly (Fees, Permits and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the *Federal Register*. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1984 have been received from the Government(s), shown below.

Dated: August 23, 1984.

Roland Finch,

Director, Office of Fisheries Management,
National Marine Fisheries Service.

Code	Fishery	Regional Fishery Management Councils
ABS	Atlantic billfishes and sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SMT	Seamount groundfish	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific billfishes and sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity Code Fishing Operations

- 1—Catching, processing and other support
- 2—Processing and other support only
- 3—Other support only
- 4—"Joint venture" in support of U.S. vessels

Nation/Vessel name/ vessel type	Application No.	Fishery	Activity
Government of Japan Hokko Maru No. 137 medium stern trawler.	JA-84-1199	BSA	1

PORTUGAL

Joint Venture—The Government of Portugal has applied for fishing permits to engage in joint venture activities. The International Trading and Shipping Agency, Inc., 19 Rector Street, N.Y. 10006, Tele: [212] 425-5686, will represent the Portuguese side of the joint venture and Trident Seafood Corporation, 653 N.W. 41st Street, Seattle, WA 98107, Tele: [206] 786-3818 will be the American partner. The application requests that Portuguese vessels receive transshipments in the FCZ of U.S. harvested Alaska groundfish in the amount of 1,762 mt from domestic vessels. The Portuguese vessels that will participate in this operation also made a request for directed fishing, and were listed in the **Federal Register** notice published August 14, 1984, at 49 FR 32441. The joint venture will take place between September 1, 1984 and December 31, 1984.

[FR Doc. 84-22854 Filed 8-27-84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of the Air Force

SN 6-297,527 (4,453,827)

Optical Distortion Analyzer System

SN 6-315,599 (4,454,590)

Programmable Signal Processing Device

SN 6-316,703 (4,449,043)

Optical Power Source Control System

SN 6-326,972 (4,454,371)

Solar Energy Concentrator System

SN 6-337,349 (4,453,804)

Real-Time Optical Filtering System with Spatial and Temporal Enhancement of Visual Information

SN 6-337,350 (4,448,486)

Varying Bandpass of Optical Spatial Filter by Rotating Mirrors Having Changing Reflectivity

SN 6-357,439 (4,453,401)

Pressure Sensor and Soil Stress Isolation Filter Arrangement in Pore Pressure Probe

SN 6-357,440 (4,454,589)

Programmable Arithmetic Logic Unit

SN 6-379,806 (4,448,377)

Mounting Arrangement for an Inertial Measurement Unit

SN 6-379,807 (4,454,430)

Universal Control Grid Modulator

SN 6-393,265 (4,455,526)

Fet Switching Regulator

SN 6-398,131 (4,449,235)

Electronic Cancelling of Acoustic Traveling Waves

SN 6-401,163 (4,448,354)

Axisymmetric Thrust Augmenting Ejector with Discrete Primary Air Slot Nozzles

SN 6-413,296 (4,449,242)

Flexible, Resilient Anti-Contamination Baffle

SN 6-418,115 (4,454,349)

Perfluoroalkylether Substituted Phenyl Phosphines

SN 6-429,939 (4,448,887)

Method for the Particle Size Independent Spectrometric Determination of Metal Particles in Lubricating Oils and Hydraulic Fluids

SN 6-444,006 (4,448,078)

Three-Wire Static Strain Gage Apparatus

SN 6-449,921 (4,453,914)

Low Heat Loss Laser Combustion Chamber

SN 6-465,214 (4,447,947)

Process for Making Fluid-Cooled Electrical Conductor

SN 6-473,391 (4,449,001)

Oxy and Thioaryl-Phenylated Aromatic Biscyclopentadienones

SN 6-504,354 (4,448,859)

Deactivation of Thionyl Chloride Cells

SN 6-539,352

Laser Beam Duct Pressure Controller System

SN 6-539,603

Process for the Epitaxial Deposition of III-V Compounds Utilizing a Binary Alloy as the Metallic Source

SN 6-556,874

Solid State Tetrachloroaluminate Storage Battery Having a Transition Metal Chloride Cathode

SN 6-583,026

CW HFR-BRANCH LASER

SN 6-587,432

Machined Two-Piece Microwave Waveguide

SN 6-592,033

Protected Ethynylated Phenols

SN 6-592,034

Soldering Method for Cable Connectors

SN 6-592,036

Distribution Sensitive Constant False Alarm Rate (CFAR) Processor

SN 6-593,759

Transverse Flow CW Atomic Iodine Laser System

SN 6-598,780

Shaft Positioning Device

SN 6-599,022

Multi-Barrel Revolver Gun

SN 6-599,088

Portable Visual Function Tester

SN 6-601,198

Phase Shift Keying Apparatus

SN 6-603,795

Beam Recombination Via Cylindrical Mirror

SN 6-607,090

Method of Measuring Optical Properties of a Transparency

SN 6-611,041

Thrust Reverser/Exhaust Nozzle Assembly for a Gas Turbine Engine

SN 6-611,060

Backfire Bifilar Helix Antenna

Department of the Army

SN 6-616,632

Retractable Tie-Down Device

SN 6-616,632

[FR Doc. 84-22779 Filed 8-27-84; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Group on Electron Devices; Meeting

ACTION: Notice of the DOD Advisory Group on Electron Devices Meeting.

SUMMARY: Working Group C (Mainly Opto-electronics) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed door session on September 20-21, 1984 at Army Chemical Research Development Center, Edgewood Area, Aberdeen Proving Ground, Building E3330, Room 134, Aberdeen, Maryland 21010.

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 C 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 opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: August 23, 1984.

Patricia H. Means,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 84-22770 Filed 8-27-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Chemical Warfare and Biological Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Chemical Warfare and Biological Defense will meet in closed session at Edgewood Arsenal, Maryland.

The mission of the Defense Science Board is to advise the Secretary Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review progress in chemical warfare and biological defense since the 1980 DSB Summer Study on Chemical Warfare and changes in the chemical/biological threat environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

DATES: October 11-12, 1984.

August 23, 1984

Patricia H. Means,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 84-22768 Filed 8-27-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Data Network (Defensive Systems Subgroup)

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Defense Data Network (Defensive Systems Subgroup) will meet in closed session in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Subgroup will discuss the application of technology to systems designed to improve future U.S. air defense capabilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

DATES: September 24-25, 1984.

August 21, 1984

Patricia H. Means,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 84-22769 Filed 8-27-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Secretary of the Navy's Advisory Committee on Naval History; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of the Navy's Advisory Committee on Naval History will meet on September 20, 1984, at 10:00 a.m., in the Dudley Knox Center for Naval History Conference Room, second floor, Building 57, Washington Navy Yard, Washington, D.C. The meeting will be open to the public.

The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Committee in May 1983 and to make comments and recommendations on these activities to the Secretary of the Navy.

For further information concerning this meeting, write to the Director of Naval History, Washington Navy Yard, Washington, D.C. 20374, or telephone Dr. Dean C. Allard at (202) 433-3170.

Dated: August 22, 1984.

William F. Roos, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve,
Federal Register Liaison Officer.

[FR Doc. 84-22821 Filed 8-27-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 6461-001, et. al.]

Hydroelectric Applications (City of Port Angeles, Washington, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

- 1a. Type of Application: License (Minor).
- b. Project No: 6461-001.
- c. Date Filed: May 31, 1984.
- D. Applicant: City of Port Angeles, Washington.
- e. Name of Project: Morse Creek Hydroelectric Project.
- f. Location: On Morse Creek, near Port Angeles, in Clallam County, Washington.
- g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. Contact Person: Gregory A. Booth, Power Manager, City of Port Angeles Light Department, 240 West Front Street, P.O. Box 1150, Port Angeles, Washington 98362.

i. Comment Date: October 4, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 25-foot-long concrete diversion weir and intake structure at elevation 670 feet; (2) an existing 750-foot-long, 30 by 36-inch-diameter concrete tunnel; (3) an existing 11,400-foot-long, 24-inch-diameter steel penstock; (4) a Tee connection in the existing penstock at elevation 622 feet; (5) a 1,500-foot-long, 24-inch-diameter steel penstock; (6) a powerhouse at elevation 228 feet with a single generator having a rated capacity of 465 kW and an annual energy production of 3.05 GWh; (7) a transformer; (8) a 2,800-foot-long, 12.5-kV transmission line to connect with an existing P.U.D. No. 1 of Clallam County line; and (8) 3,100 feet of

new access road and an existing 1,300-foot-long access road. Applicant estimates the cost of the project to be \$965,000.

k. Purpose of the project: The applicant proposes to use the power to augment their power supply needs.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2a. Type of Application: License.

b. Project No: 7568-001.

c. Date Filed: December 12, 1983.

d. Applicant: Allegheny County, Pennsylvania.

e. Name of Project: Dashields Locks and Dam.

f. Location: On the Ohio River in Allegheny County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. James W. Knox, Director, Allegheny County Department of Planning, 429 Forbes Avenue, Pittsburgh, Pennsylvania 15219.

i. Comment Date: October 9, 1984.

j. Description of Project: The proposed project would utilize the existing Army Corps of Engineers' Dashields Locks and Dam and would consist of: (1) A new powerhouse with an installed capacity of 25 MW; (2) a new 2.2-mile-long, 69 kV transmission line; and (3) appurtenant facilities. The Applicant estimates an average annual generation of 100,000 MWh.

l. Purpose of Project: The Applicant plans to market the power output to the Duquesne Power and Light Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3a. Type of Application: Preliminary Permit.

b. Project No: 8020-000.

c. Date Filed: February 1, 1984.

d. Applicant: City of Mishawaka, Indiana.

e. Name of Project: Mishawaka Water Power Project.

f. Location: St. Joseph River, St Joseph County, Indiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Gary West, City of Mishawaka, 204 East First Street, Mishawaka Indiana 46544.

i. Comment Date: October 1, 1984.

j. Competing Application: Project No. 7492-000, Date Filed: August 1, 1983.

k. Description of Project: The proposed project would be located at an existing dam in Mishawaka, Indiana, which is owned by Uniroyal, Inc. The project would consist of: (1) An existing reservoir with a surface area of 130 acres and with a storage capacity of 750-acre-feet; (2) an existing timber crib, rockfill and concrete dam, 327 feet in

length and 10 feet high; (3) the proposed installation of 2-foot-high flashboards; (4) a proposed powerhouse to be located just downstream of the west end of the dam with the installation of three turbine/generator units operating at a hydraulic head of 12 feet for a total capacity of 3400 kW; (4) a proposed 400-foot-long, 4.16 kV transmission line and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 18.0 GWh.

l. Purpose of Project: The Applicant intends to use the power generated at the proposed facility in the Applicant's municipal electric utility system.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is \$100,000.

4a. Type of Application: License (Minor).

b. Project No: 8093-000.

c. Date Filed: February 16, 1984.

d. Applicant: Methuen Falls Hydro Electric Company.

e. Name of Project: Methuen Falls Project.

f. Location: On the Spickett River in Essex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Eugene P. McGann, Tom Troyan Associates, 274 Main Street, Reading, Massachusetts 01867.

i. Comment Date: October 15, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 20-foot-high, 188-foot-long stone masonry dam; (2) a reservoir with a surface area of 30-acres, a storage capacity of 210 acre-feet and a normal water surface elevation of 104.3 feet m.s.l.; (3) a proposed 120-foot-long, 6-foot-diameter steel penstock; (4) a proposed powerhouse containing two generating units with a total installed capacity of 357 kW; (5) a proposed 20-foot-long, 2-foot-wide, 2-foot-deep tailrace; (6) a proposed 200-foot-long, 3.74-kV transmission line; and (7) appurtenant facilities. The Applicant

estimates the average annual generation would be 1,700,000 kWh. The existing dam and project facilities are owned by Geraldine McNamara and Spickett River Corporation.

k. Purpose of Project: All project power generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5a. Type of Application: License (Minor).

b. Project No: 8118-000.

c. Date Filed: February 21, 1984.

d. Applicant: Jerry B. Buckley.

e. Name of Project: Jerry B. Buckley.

f. Location: On Clear Creek in Clear Creek County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: William J. Kenney, Suite 209, 2600 Virginia Avenue, NW., Washington, D.C. 20037.

i. Comment Date: October 9, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing dam 30 feet high and about 100 feet long; (2) an existing reservoir with a gross storage of 750 acre-feet at elevation 8443.0 m.s.l.; (3) existing concrete outlet works; (4) a proposed 48 inch penstock, 1350 feet long; (5) a proposed woodframe powerhouse approximately 22 feet by 50 feet, housing four generating units with a total installed capacity of 653 kW; (6) a proposed switchyard; (7) a new 24.9 kV transmission line, 100 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,430,000 kWh. The proposed project would utilize lands under the jurisdiction of the U.S. Bureau of Land Management. The dam is owned by the Town of Georgetown, Colorado.

k. Purpose of Project: For sale of energy to utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6a. Type of Application: Preliminary Permit.

b. Project No: 8333-000.

c. Date Filed: June 1, 1984.

d. Applicant: CFS Hydroelectric Associates.

e. Name of Project: Faun Childers II Hydroelectric Project.

f. Location: On Nacimiento River in San Luis Obispo County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: J. Kirk Rector, CFS Hydroelectric Associates, 324 South State Street #500, Salt Lake City, Utah 84111.

i. Comment Date: September 28, 1984.
j. Description of Project: The proposed project would consist of: (1) The existing 210-foot-high, 1,630-foot-long Nacimiento Dam owned and operated by the Monterey County Flood Control and Water Conservation District; (2) the existing reservoir, formed by the dam, with 470,000 acre-feet total capacity which is proposed to be increased to 497,200 acre-feet by raising the spillway crest by 6.5 feet; (3) a powerhouse at the existing outlet of the dam, containing a single generating unit with a rated capacity of 4,000 kW operating under a head of 170 feet; and (4) a 2-mile-long, 12-kV transmission line connecting the project with an existing Pacific Gas and Electric Company's line in the area.

k. Purpose of Project: The estimated 14.2 million kWh of annual generation would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

7a. Type of Application: Preliminary Permit.

b. Project No: 8389-000.

c. Date Filed: June 22, 1984.

d. Applicant: PRODEX, Inc.

e. Name of Project: Crawford Dam Water Power.

f. Location: On Iron Creek in Delta County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Flake H. Wells, III, P.O. Box 12608, El Paso, Texas 79912.

i. Comment Date: October 15, 1984.

j. Description of Project: The proposed project would utilize a U.S. Bureau of Reclamation dam, reservoir and outlet tunnel and would consist of: (1) Two proposed intake pipes, equipped with shut-off valves—one pipe would be 42 inches in diameter and about 80 feet long, the other, 14 inches in diameter and 60 feet long; (2) two proposed powerhouses—the first, 80 feet by 30 feet, the second, 12 feet square. A total installed capacity of 800 kW is proposed; (3) two new discharge conduits (tailraces); (4) a proposed 120 feet of 12.47 kV buried transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy would be 2,000,000 kWh. The project would be on lands of the U.S. Bureau of Reclamation.

k. Purpose of Project: The Applicant anticipates that project energy would be sold to local utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a

preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$75,000.

8a. Type of Application: Major License.

b. Project No: 6998-001.

c. Date Filed: January 12, 1984.

d. Applicant: Upper Mississippi Water Company, Inc.

e. Name of Project: Muskingum River Lock and Dam No. 3.

f. Location: Town of Lowell on the Muskingum River in Washington County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Loren Dessonville, Kutak, Rock and Huie, 1650 Farnam St., Omaha, Nebraska 68101.

i. Comment Date: October 19, 1984.

j. Description of Project: The proposed project would be located at the existing Muskingum Lock and Dam No. 3 which is owned and operated by the Ohio Department of Natural Resources and would consist of: (1) An existing 840-foot-long, 14-foot-high rockfill dam; (2) an existing 600-acre reservoir with 600 acre-feet of surcharge storage capacity at an elevation of 607.64 feet M.S.L.; (3) an existing 5400-foot-long, 75-foot-wide canal; (4) an existing 160-foot-long, 35.8-foot-wide lock; (5) a proposed 700-foot-long intake channel; (6) a proposed 100-foot by 175-foot concrete powerhouse containing two 5-NW turbine generators with a total installed capacity of 10 MW; (7) a proposed 94-foot-long tailrace channel; (8) a proposed 4,500-foot-long, 23-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation would be 50,000 MWh.

k. Purpose of Project: Project power would be sold to Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

9a. Type of Application: Preliminary Permit.

b. Project No: 7900-000.

c. Date Filed: January 18, 1984.

d. Applicant: Jefferson Associates.

e. Name of Project: Ferrells Bridge Project.

f. Location: On Red River, in Marion County, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Joel Kirk Rector, Jefferson Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: October 22, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Ferrells Bridge Dam and Reservoir and would consist of: (1) A new penstock utilizing the existing outlet works; (2) a new powerhouse containing turbine-generator units having a total rated capacity of 5,000 kW; (3) a tailrace returning flow to the river near the outlet of the existing stilling basin; (4) a new transmission line approximately 2.3 miles long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 11,400,000 kWh. Project energy would be sold to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$125,000.

10a. Type of Application: Preliminary Permit.

b. Project No: 7997-000.

c. Date Filed: January 23, 1984.

d. Applicant: City of Logan, Utah.

e. Name of Project: Logan Third Dam Bypass Power Project.

f. Location: Logan River, Cache County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., 791(a)-825(r).

h. Contact Person: Vaun Bethers, Manager, Light and Power Department, 61 West 100 North, Logan, Utah 84321.

i. Comment Date: October 19, 1984.

j. Description of Project: The proposed project would be located at the existing Logan Third Dam, which is owned by the City of Logan, Utah, and would consist of: (1) An existing reservoir with a surface area of 37 acres and no significant storage capacity; (2) an existing 108-foot-long and 31-foot-high rock-filled timber crib and concrete dam; (3) existing 4.3-foot-high flashboards; (4) a proposed 60-foot-long and a 3-foot-diameter penstock; (5) a

proposed powerhouse at the toe and at the left side of the dam with the proposed installation of one turbine/generator unit, operating at a head of 22 feet, for a total installed capacity of 125 kW; (6) the proposed upgrading of a 1.4-mile-long transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy production to be 540 MWh.

k. Purpose of Project: The Applicant intends to use the power generated at the proposed facility in its municipally owned power grid system.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive, the Applicant intends to submit a license application. The Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is \$20,000.

11a. Type of Application: Preliminary Permit.

b. Project No: 8097-000.

c. Date Filed: February 16, 1984.

d. Applicant: Iowa Hydropower Development Corporation.

e. Name of Project: Decorah Upper Dam Hydroelectric Project.

f. Location: Upper Iowa River, Winnesheik County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., 791(a)-825(r).

h. Contact Person: Jean-Pierre Bourgeacq, Iowa Hydropower Development Corporation, 228 Melrose Court, Iowa City, Iowa 52240.

i. Comment Date: October 22, 1984.

j. Description of Project: The proposed project would be located at the existing Decorah Upper Dam, which is owned by the Iowa Conservation Commission, and would consist of: (1) An existing reservoir with a surface area of 5 acres and with a storage capacity of 5 acre-feet; (2) a proposed powerhouse to be located at the left end of the dam at the site of the old powerhouse; (3) the proposed installation of one turbine/generator unit operating at a hydraulic head of 17.0 feet for a total installed capacity of 450 kW; (4) a proposed 1,100-foot-long, 4.16-kV transmission line; and

(6) appurtenant facilities. The Applicant estimates the average annual energy production to be 1.9 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 18-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be \$10,000.

12a. Type of Application: Preliminary Permit.

b. Project No: 8107-000.

c. Date Filed: February 16, 1984.

d. Applicant: Iowa Hydropower Development Corporation.

e. Name of Project: Oakland Mills Power Project.

f. Location: On the Skunk River in Henry County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Jean-Pierre Bourgeacq, Iowa Hydropower Development Corporation, 228 Melrose Court, Iowa City, Iowa 52240.

i. Comment Date: October 18, 1984.

j. Description of Project: The proposed project would utilize the existing Oakland Mills Dam, owned by the Henry County Conservation Board, and would consist of: (1) The existing 260-foot-long, 10.5-foot-high dam; (2) a reservoir having minimal pondage; (3) an intake structure and penstock; (4) a powerhouse containing two turbine-generator units rated at 650 kW each for a total rated capacity of 1,300 kW; (5) a tailrace returning flow to the river a short distance downstream from the dam; (6) an 800-foot-long, 4.16-kV transmission line; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 5,830,000 kWh. Project energy would be sold to a local utility.

k. This notice also consist of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of preliminary permit for a period of 18 months during

which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$10,000.

13a. Type of Application: Preliminary Permit.

b. Project No: 8109-000.

c. Date Filed: February 16, 1984.

d. Applicant: Iowa Hydropower Development Corporation.

e. Name of Project: Steamboat Rock Power Project.

f. Location: On the Iowa River in Hardin County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Jean-Pierre Bourgeacq, Iowa Hydropower Development Corporation, 228 Melrose Court, Iowa City, Iowa 52240.

i. Comment Date: October 18, 1984.

j. Description of Project: The proposed project would utilize the existing Steamboat Rock Dam, owned by the Iowa Conservation Commission, and would consist of: (1) The 210-foot-long, 12-foot-high dam; (2) a reservoir having minimal pondage; (3) a new intake structure and penstock; (4) a new powerhouse containing two turbine-generator units rated at 280 kW; (5) a new tailrace returning flow to the river a short distance downstream from the dam; (6) a new 200-foot-long, 4.16-kV transmission line; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,230,000 kWh. Project energy would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$10,000.

14a. Type of Application: Preliminary Permit.

b. Project No: 8110-000.

c. Date Filed: February 16, 1984.
 d. Applicant: Iowa Hydropower Development Corporation.
 e. Name of Project: Alden Mill Power Project.
 f. Location: On the Iowa River in Hardin County, Iowa.
 g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
 h. Contract Person: Jean-Pierre Bourgeacq, Iowa Hydropower Development Corporation, 228 Melrose Court, Iowa City, Iowa 52240.
 i. Comment Date: October 18, 1984.
 j. Description of Project: The proposed project would utilize the existing Alden Mill Dam, owned by the City of Alden, Iowa, and would consist of: (1) The 200-foot-long, 11-foot-high dam; (2) a reservoir having minimal pondage; (3) an intake structure and penstock; (4) a powerhouse containing one turbine-generator unit rated at 220 kW; (5) a tailrace returning flow to the river a short distance downstream from the dam; (6) a 180-foot-long, 4.16 kV transmission line; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 970,000 kWh. Project energy would be sold to a local utility.
 k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
 l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$10,000.
 15a. Type of Application: Preliminary Permit.
 b. Project No: 8134-000.
 c. Date Filed: February 23, 1984.
 d. Applicant: Larry Hensley.
 e. Name of Project: Cox Creek.
 f. Location: On Cox Canyon Creek, within Eldorado National Forest in El Dorado County, California.
 g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
 h. Contact Person: Larry Hensley, 9240 Central Avenue, Orangevale, California 95662.
 i. Comment Date: October 22, 1984.
 j. Description of Project: The proposed project would consist of: (1) A 2-foot-high, 15-foot-long diversion dam at elevation 4,200 feet; (2) a 6-inch-

diameter, 3,000-foot-long penstock; (3) a powerhouse at elevation 3,550 feet containing a generating unit with a rated capacity of 30 kW; and (4) a 300-foot-long transmission line tying into the existing Pacific Gas and Electric Company line. The water used would be discharged back into Cox Canyon Creek. The Applicant estimates a 130,000 kWh average annual energy production.

A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to conduct feasibility studies and prepare a license application at a cost of \$1,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

16a. Type of Application: Preliminary Permit.

b. Project No: 8200-000.

c. Date Filed: March 26, 1984.

d. Applicant: Stockton-East Water District.

e. Name of Project: South Gulch Power.

f. Location: On Calaveras River in Calaveras and Stanislaus Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Edward M. Steffani, General Manager, Stockton-East Water District, P.O. Box 5117, Stockton, California 95205.

i. Comment Date: October 19, 1984.

j. Description of Project: The proposed project would consist of: (1) a 12-foot-high weir on the Calaveras River at elevation 500 feet; (2) a 12-foot-diameter, 3,000-foot-long tunnel leading to; (3) a reservoir with gross storage capacity of 160,000 acre-feet formed by; (4) a 130-foot-high, 2000-foot-long dam at elevation 330 feet; (5) a 500-foot-long penstock; (6) a powerhouse, with a rated capacity of 10 KW, on the south bank of the river, operating under a head of 130 feet; and (7) a 1.5-mile-long transmission line connecting the project with an existing Pacific Gas and Electric Company 115-kV transmission line north of the powerhouse.

k. Purpose of Project: Project's estimated annual generation of 35 million kWh would be partly utilized by the Applicant and the remainder sold to local municipalities.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

17a. Type of Application: Exemption.

b. Project No: 8282-00.

c. Date Filed: May 2, 1984.

d. Applicant: K & K Hydroelectric.

e. Name of Project: Steele's Mill.

f. Location: On Hitchcock Creek in Richmond County, North Carolina.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Kenneth Garven Smith, 2510 Quail Drive, Graham, North Carolina 27253.

i. Comment Date: October 1, 1984.

j. Description of Project: The proposed project is owned by Laurel Hill Paper Company, Inc., and will consist of: (1) the existing 15-foot-high, 100-foot-long, stone gravity dam; (2) the existing 2-acre reservoir which contains a storage capacity of 30 acre-feet; (3) a rehabilitated powerhouse to contain an installed generating capacity of 150 kW; (4) the existing 35-foot-wide and 300-foot-long tailrace; (5) the existing access road; (6) the proposed interconnection with an existing 13.2-kV Carolina Power and Light Company transmission line which runs to within 50 feet of the proposed project; and (7) appurtenant facilities.

The Applicant estimates that the average annual energy generation will be 1,314 MWh.

k. Purpose of Project: The Applicant proposes to sell all the electricity produced to Carolina Power and Light Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

18a. Type of Application: Preliminary Permit.

b. Project No: 8295-000.

c. Date Filed: May 7, 1984.

d. Applicant: Gaylord M. Carter.

e. Name of Project: Tire Creek.

f. Location: In Willamette National Forest, near the Town of West Hemlock, in Lane County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Gaylord M. Carter, 3267 Millers Cemetery Rd. Albany, Oregon 97321.

i. Comment Date: October 18, 1984.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high diversion weir at elevation 1,500 feet; (2) a 4,277-foot-long, 10-inch-diameter penstock pipe; (3) a powerhouse containing a single generating unit with a capacity of 45 kW and an average annual generation of

388,800 kWh; and (4) a short transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 18 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of \$3,500. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to a public utility, possibly Lane Electric Co-op or Pacific Power and Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

19a. Type of Application: Preliminary Permit.

b. Project No: 8348-000.

c. Date Filed: June 4, 1984.

d. Applicant: Carter County Associates.

e. Name of Project: Julie White.

f. Location: On Little Sandy River in Carter County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Joel Rector, Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: October 25, 1984.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Grayson Dam, reservoir, and 120-foot-long, 10-foot-diameter penstock and would consist of: (1) A proposed powerhouse containing a single generating unit having a rated capacity of 1 MW; (2) a proposed $\frac{1}{3}$ mile-long, 12.5 kV transmission line to interconnect with an existing 69 kV transmission line owned by East Kentucky Power (EKP); and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 6,315,960 kWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be either EKP or local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license

to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$115,000.

20a. Type of Application: Minor License.

b. Project No: 8357-000.

c. Date Filed: June 11, 1984.

d. Applicant: Al Forward.

e. Name of Project: Ponderosa/Bailey Creek.

f. Location: On Bailey Creek, near Manton, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Al Forward, Route 1, Box 325, Manton, California 96059 and Mr. Ronald F. Ott, Ott Water Engineers, Inc., 2334 Washington Avenue, Redding, California 96001.

i. Comment Date: October 19, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 7-foot-high, 100-foot-long concrete diversion dam located across Bailey Creek at elevation 2,720 feet msl; (2) a 42-inch-diameter, 5,000-foot-long buried steel pipeline; (3) a 36-inch-diameter, 1,200-foot-long elevated steel penstock; (4) a powerhouse located adjacent to Bailey Creek at elevation 2,420 feet msl containing a single impulse turbine-generator unit with a rated capacity of 1.1 MW and producing an estimated average annual generation of 4.6 GWh; (5) a 6,400-foot-long, 12-kV transmission line to interconnect with an existing Pacific Gas and Electric Company (PG&E) line. Project power would be sold to a PG&E. Applicant estimates project costs at \$1,890,000. No recreational facilities are proposed by the Applicant.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

21a. Type of Application: Preliminary Permit.

b. Project No: 8360-000.

c. Date Filed: June 11, 1984.

d. Applicant: John R. Anderson and Joseph D. Brostmeyer.

e. Name of Project: Meadow Brook.

f. Location: On the Concord River in Middlesex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, Massachusetts 01803.

i. Comment Date: October 22, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 3-foot-high and 150-foot-long concrete dam (presently breached); (2) a small reservoir; (3) an existing intake structure at the west side of the dam; (4) an existing 2,000-foot-long canal; (5) two

new 5-foot-diameter and 75-foot-long penstocks; (6) a new powerhouse with two turbine-generator units with a total installed capacity of 400 kW; (7) an existing short penstock; (8) a new-kV and 100-foot transmission line; and (9) other appurtenances. Applicant estimates an average annual generation of 2,000,000 kWh. Existing facilities are owned by David Frawley, Richard M. Hoffman, Kenneth M. Scagel, and William Taupier, residents of Lowell, Massachusetts.

k. Purpose of Project: Project energy would be sold to Massachusetts Electric.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$29,500.

22a. Type of Application: Preliminary Permit.

b. Project No: 8424-000.

c. Date Filed: July 11, 1984.

d. Applicant: John R. Anderson and Joseph D. Brostmeyer.

e. Name of Project: Billerica.

f. Location: on the Concord River in the Town of Billerica in Middlesex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, Massachusetts 01803.

i. Comment Date: October 22, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 7-foot-high and 120-foot-long dam; (2) a small reservoir with a normal surface elevation of 107 feet mean sea level; (3) an existing intake structure at the west side of the dam; (4) three new 4-foot-diameter and 200-foot-long penstocks; (5) an existing powerhouse with two new turbine-generator units with a total installed capacity of 200 kW; (6) a short tailrace; (7) a new 35.4-kV and 100-foot-long transmission line; and (8) other appurtenances. Applicants estimate an average annual generation of 1,000,000 kWh. Existing facilities are

owned by North Billerica Company and C.R.T. Development.

k. Purpose of Project: Project energy would be sold to Massachusetts Electric.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction.

Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the out-come of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$24,500.

23a. Type of Application: Preliminary Permit.

b. Project No.: 8439-000.

c. Date Filed: July 16, 1984.

d. Applicant: Eden Valley Hydro Ltd.

e. Name of Project: Eden Valley Hydroelectric Project.

f. Location: On Eden Creek, within Mendocino National Forest, in Mendocino County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Roy McDonald, Grove Energy Company, 1121 L Street, Suite 1000, Sacramento, California, 95814.

i. Comment Date: October 22, 1984.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion structure at elevation 2,000 feet; (2) an 8,000-foot-long low pressure pipeline; (3) a 48-inch-diameter, 2,700-foot-long penstock; (4) a powerhouse containing generating units with combined rated capacity of 7,350 kW, operating under a head of 840 feet; and (5) a 10-mile-long, 12.5-kV transmission line connecting to an existing Pacific Gas and Electric company (PG&E) line west of the project.

k. Purpose of Project: The project's estimated annual generation of 23 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

24a. Type of Application: Exemption for Small Hydroelectric Power Project of 5MW or Less Capacity.

b. Project No.: 8083-000.

c. Date Filed: February 13, 1984 and supplemented May 10, 1984.

d. Applicant: Briggs Hydroelectric.

e. Name of Project: Briggs Hydro Project.

f. Location: On the Teton Irrigation & Manufacturing Co. Canal which flows from the Teton River Tributary of the Snake River in Fremont County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: George L. Smith, P.O. Box 1016, Idaho Falls, Idaho 83401.

i. Comment Date: October 1, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing dam approximately 4-feet-high and 200-feet-long; (2) the existing Teton Canal which leads to; (3) a new concrete penstock forebay approximately 20-feet-wide by 12-feet-long and 35-feet-high; (4) a new concrete powerhouse with a total installed capacity of 245 kW; (5) a concrete tailrace; (6) new transmission line approximately 1,300-feet-long; and (7) appurtenant facilities. The Applicant estimates the average annual generation to be 1,760 MWh. All power generated would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

l. Proposed Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit

exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit—No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject

license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either: (1) A preliminary permit application, or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211,

.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS" or "MOTION TO INTERVENE", a applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 89-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly for the applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application

may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal request for comments will be made. Comments should be confined to

substantive issue relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Date: August 23, 1984.
Kenneth F. Plumb,
Secretary.
[FR Doc. 84-22850 Filed 8-27-84; 8:45 am]
BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board, Research Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Research Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and time: September 20, 1984—9:00 a.m.—5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 8E-089, Washington, D.C. 20585.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-5444.

Purpose of the Parent Board

To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- Discussion of information that will be required to carry out a comprehensive study of current health, safety, environment and basic research programs and those required for a balanced long-range R&D effort.
- Briefings by Department of Energy staff on the subject programs.
- Develop a plan for carrying out the study and assign tasks to panel members.
- Public comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is

empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 20, 1984.

Charles E. Cathey,
Deputy Director, Science and Technology
Affairs Staff, Office of Energy Research.

[FR Doc. 84-22840 Filed 8-27-84; 8:45 am]
BILLING CODE 6450-01-M

Energy Research Advisory Board, Demand Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Demand Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board.

Date and time: September 28, 1984—8:30 a.m.—5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-5444.

Purpose of the Parent Board

To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- Progress Report on Staff Studies.
- Review of ERAB Conservation Study.
- Presentation of DOE's Conservation R&D.
- Long Range Future of Ground Transportation.
- Future of the Automobile.
- Automobile R&D in DOE.
- Behavioral Science and Energy Use.
- Report on Visit to LBL.
- Discussion of Panel Report Outlines.
- Public comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone

number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 21, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-22839 Filed 8-27-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board; Infrastructure Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Infrastructure Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and time: September 26 & 27, 1984—8:30 a.m.—5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 5A-110 Washington, D.C. 20585.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5444.

Purpose of the Parent Board

To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- Review of Study Topics.
- Past Positions of ERAB on Selected Issues.
- Proposed Case Studies.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William L. Woodard at the address or telephone number listed above. Requests must be

received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 21, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff Office of Energy Research.

[FR Doc. 84-22838 Filed 8-27-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board, Light Water Reactor R&D Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Light Water Reactor R&D Panel of the Energy Research Advisory Board (ERAB).

Date and time: October 2 and 3, 1984—9:00 a.m.—5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, D.C. 20585.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-5444.

Purpose of The Parent Board

To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- To discuss the penultimate draft of the Panel's report on light water reactor R&D.
- If the draft is considered generally acceptable to make final additions, changes, and corrections and approve transmittal of the report to the Energy Research Advisory Board.
- Public comment (10-minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone

number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcript

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 22, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-22837 Filed 8-27-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of July 9 Through July 13, 1984

During the week of July 9 through July 13, 1984, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Keystone Fuel Oil Company, July 13, 1984.
BRO-1166

Keystone Fuel Company objected to a Proposed Remedial Order which the Northeast District Office of Enforcement of the Economic Regulatory Administration issued to the firm on March 1, 1980. In the Proposed Remedial Order, the Northeast District Office found that during the period August 19, 1973 through April 8, 1974, Keystone sold No. 2 heating oil and kerosene at prices that exceeded those permitted under 6 CFR 150.359 and 10 CFR 212.93. The DOE concluded that the Proposed Remedial Order should be issued as a final Order, with certain modifications. The most important issue discussed in the Decision and Order was the applicability of the new market rule to new large-volume customers that Keystone acquired after May 15, 1973. Other issues included the audit methodology used by the agency to calculate Keystone's increased product costs, whether the PRO made a *prima facie* showing of a regulatory violation, whether the agency abused its discretion by conducting multiple audits of Keystone, and whether the firm made a *prima facie* showing that it was entitled to retroactive exception relief.

Petition for Special Redress

Indianapolis Power and Light Company, July 13, 1984, HEG-0033

Indianapolis Power and Light Company filed a Petition for Special Redress in which the firm sought reimbursement for expenses incurred in responding to a mandatory Energy Information Administration (EIA) reporting survey, EIA-788(c). In considering the request, the DOE found that there was no evidence of any improper action on the part of the EIA with respect to its collection of energy information. Moreover, the DOE determined that it has no authority to order payment to reimburse respondents who file mandatory reports with the EIA. Accordingly, the Decision and Order denied the Petition for Special Redress.

Interlocutory Order

Texaco Inc., July 10, 1984, HRZ-0171

Texaco Inc. filed a motion requesting that the Office of Special Counsel (OSC) be deemed to have admitted certain factual contentions made by the firm in connection with its objections to a May 1, 1979 Proposed Remedial Order (PRO). The Office of Hearings and Appeals (OHA) noted that Texaco's motion frequently sought sweeping admissions as to the contents of thousands of documents, and failed to focus on narrow issues that are not in dispute. Nevertheless, OHA determined that detailed examination of the admission requests would promote the orderly conduct and expeditious resolution of the proceeding by narrowing the issues in dispute and eliminating from contention routine matters such as the authenticity of documents. Accordingly, the OHA granted the motion in part and entered limited admissions that recognized general patterns of conduct, such as the filing of various identified forms with state authorities, without limiting OSC's right to challenge the authenticity or existence in the record of a particular document. Finally, because Texaco's submissions indicated that facts on the basis of which earlier admissions were granted were incorrect, the OHA vacated portions of a stipulation and of three previous OHA decisions granting admissions.

Refund Applications

Belridge Oil Company/Arkansas; Standard Oil Company (Indiana)/Virginia; Standard Oil Company (Indiana)/West Virginia; Belridge Oil Company/West Virginia; Palo Pinto Oil & Gas/West Virginia; Standard Oil Company (Indiana)/North Dakota; Belridge Oil Company/North Dakota, July 13, 1984, RQ8-73; RQ21-91; RQ21-92; RQ8-93; RQ5-18; RQ21-95; RQ8-94

The States of Arkansas, West Virginia and North Dakota and the Commonwealth of Virginia filed proposed second-stage refund plans with the OHA pursuant to the consent orders entered into with Standard Oil Company of Indiana (Amoco), Belridge Oil Company (Belridge) and Palo Pinto Oil & Gas (Palo Pinto). Arkansas proposed to use \$1,049 plus accrued interest allotted to it in the Belridge decision to increase public awareness of state energy conservation programs through the media. Virginia

proposed to utilize the \$506,477 allocated to it by the Amoco determination for the benefit of motor gasoline consumers by providing fuel efficiency classes, automotive diagnostic analyses and energy conservation information through videos to the injured consumers. West Virginia proposed to use the \$181,695.97 allotted to it in the Amoco, Belridge and Palo Pinto decisions to provide "matching funds" for Federal Highway Administration funds (the Interstate Reconstruction, Renovation, Resurfacing and Rehabilitation funds). North Dakota proposed to use \$378,382 and \$377 allotted to it by the Amoco and Belridge decisions to supplement funds for road construction, repair and maintenance throughout the state. The OHA approved each applicant's proposal because consumers of motor gasoline and middle distillates would benefit through the implementation of the plans.

Standard Oil Company (Indiana)/Diesel Automobile Association, July 19, 1984, RQ21-83

The DOE issued a Decision and Order concerning an Application for Refund filed by the Diesel Automobile Association (DAA), which claimed to represent all owners and operators of diesel automobiles and light-duty diesel vehicles in connection with their purchases throughout the United States of diesel fuel from Standard Oil Company (Indiana), commonly known as Amoco. The application was filed in the second stage of the Amoco special refund proceeding. In denying the DAA's application, the DOE noted that it failed to meet any of the criteria established for second-stage Amoco refund applications in *Standard Oil Co. (Indiana)*, 11 DOE ¶ 85,185 (1983) (*Amoco II*). Rather, the DAA had merely resubmitted an Application for Refund which the DOE had previously dismissed as being inappropriate to the first stage of the Amoco refund proceeding. See *Standard Oil Company (Indiana)/Diesel Automobile Association*, 11 DOE ¶ 85,250 (1984). Noting that the *Amoco II* Decision had been issued more than four months prior to the time that the DAA filed its second-stage application, the DOE determined that the Association had had ample opportunity to take account of the specific requirements for second-stage applications and to correct any deficiencies in its submission.

Dismissal

The following submission was dismissed:

Name	Case No.
ERA/Petrotech Trading Co.	HRR-0088

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 7, 1984.

George B. Breznay,
Director, Office of Hearings and Appeals.
[FR Doc. 84-22843 Filed 8-27-84; 8:45 am]
BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of July 16 Through August 3, 1984

During the period of July 16 through August 3, 1984, the notice of objection to a proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 20, 1984.

George B. Breznay,
Director, Office of Hearings and Appeals.
Murphy Oil Corporation, El Dorado, Arkansas, HRO-0240 Crude Oil

On August 2, 1984, Murphy Oil Corporation, 200 Peach Street, El Dorado, Arkansas 71730 filed a Notice of Objection to a Proposed Order of Disallowance which the DOE Office of Special Counsel issued to the firm on July 3, 1984. In the POD, the Office of Special Counsel found that during 1979, Murphy reported costs incurred in purchases of imported crude oil in excess of those permitted under DOE regulations.

According to the POD the violation resulted in \$39,452,940.75 of cost overstatements.

[FR Doc. 84-22844 Filed 8-27-84; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed; Week of July 20 Through July 27, 1984

During the Week of July 20 through July 27, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings

and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of

service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such

comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 20, 1984.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 20 through July 27, 1984]

Date	Name and location of applicant	Case No.	Type of submission
July 25, 1984	MacMillan Ring-Free Oil Co., Inc., Washington, D.C.	HEF-0506	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with the Nov. 4, 1982, Consent Order issued to MacMillan Ring-Free Oil Co., Inc.
July 25, 1984	R. P. Trading Co. and Seldon R. Harris, Houston, TX.	HRH-0030	Request for Evidentiary Hearing. If granted: An Evidentiary Hearing would be convened in connection with the Statement of Objections submitted by R. P. Trading Company and Seldon R. Harris in response to the May 10, 1984 Proposed Remedial Order issued to R. P. Trading Company, et al.

REFUND APPLICATIONS RECEIVED

[Week of July 20 through July 27, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
July 23, 1984	Northeast Petroleum Industries, Inc./Massachusetts	RQ25-107
July 23, 1984	Amoco/Rich's Standard, et al.	RF21-12347 through RF21-12349
July 26, 1984	Belridge/New York	RQ8-108
July 26, 1984	Palo Pinto/New York	RM5-1
July 27, 1984	Amoco/Detroit Edison	RF21-12350
July 27, 1984	Amoco/Detroit Edison	RF21-12351

[FR Doc. 84-22841 Filed 8-27-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of July 27 Through August 3, 1984

During the Week of July 27 through August 3, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings

and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 20, 1984.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 27 through Aug. 3, 1984]

Date	Name and location of applicant	Case No.	Type of submission
June 9, 1982	Shell Oil Co., Washington, DC	HRD-0230	Motion for Discovery. If granted: Discovery would be granted to Shell Oil Co. in connection with the Statement of Objections submitted in response to the Oct. 26, 1981 Proposed Remedial Order (Case No. HRO-0021) issued to Shell Oil Co.
July 30, 1984	Merit Petroleum, Inc., Washington, DC	HFA-0235	Appeal of an Information Request Denial. If granted: The June 27, 1984 Freedom of Information Request Denial issued by the Office of Fuels Programs would be rescinded and Merit Petroleum, Inc. would receive access to 182 documents relating to crude oil resellers.
July 31, 1984	Robison Energy, Inc., Washington, DC	HRD-0227 and HRH-0227	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Robison Energy, Inc. in response to a Proposed Remedial Order issued to the firm.
July 31, 1984	John Wilson, Seattle, WA	HFA-0236	Appeal of an Information Request Denial. If granted: The July 2, 1984 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded and John Wilson would receive access to the Foleen Report.
Aug. 1, 1984	Getty Oil Co., Washington, DC	HRZ-0215	Interlocutory Order. If granted: The Economic Regulatory Administration would be compelled to produce additional information for Getty Oil Co. in connection with the July 2, 1984 Decision and Order (Case No. HRZ-0198) issued to the Economic Regulatory Administration.
Aug. 1, 1984	Dennis Van Matthews, Houston, TX	HRD-0228	Motion for Discovery. If granted: Discovery would be granted to Dennis Van Matthews in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. HRO-0235) issued to Edwin Milton Jones, Jr.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 27 through Aug. 3, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Aug 2, 1984	Crown Central Petroleum Corp., Baltimore, MD	HEG-0036	Request for Special Redress. If granted: The Office of Hearings and Appeals would review the May 7, 1984 Consent Order regarding the settlement of alleged overcharge liabilities of Austral Oil Co.
Aug. 2, 1984	Economic Regulatory Administration, Washington, DC	HRD-0229	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Shell Oil Co. in response to the October 28, 1981 Proposed Remedial Order (Case No. HRO-0021) issued to it.

REFUND APPLICATIONS RECEIVED

[Week of July 27 through Aug. 3, 1984]

Date	Name of refund proceeding/Name of refund applicant	Case No.
May 4, 1983	Amoco/Kerr-McGee Corporation	FR21-12352
July 30, 1984	Belridge/Mississippi	RQ8-109
July 30, 1984	Gulf/Rev. Peter Merrill	RF40-1
July 30, 1984	Gulf/Bud Erwin's Service Station	RF40-2
July 30, 1984	Gulf/M. B. Reed Company, Inc.	RF40-3
July 30, 1984	Gulf/Streffling Oil Company, Inc.	RF40-4
July 30, 1984	Gulf/Allan H. Wagner	RF40-5
July 30, 1984	Gulf/Janet U. Wolff	RF40-6
July 31, 1984	Gulf/Charles Allen's Gulf Service	RF40-7
July 31, 1984	Gulf/Martin L. Epps	RF40-8
July 31, 1984	Gulf/Turner's E-Z Go #31	RF40-9
Aug. 1, 1984	Gulf/Van Nortwick Bros., Inc.	RF40-10
Aug. 1, 1984	Gulf/Robert P. Olivier	RF40-11
Aug. 1, 1984	Gulf/Joseph Lickovich	RF40-12
Aug. 1, 1984	Gulf/Purmax Oil Company	RF40-13
Aug. 2, 1984	Gulf/Sidney W. Wertheimer	RF40-14
Aug. 2, 1984	Gulf/Visual Systems Company	RF40-15
Aug. 2, 1984	Gulf/James P. McArdle	RF40-16
Aug. 2, 1984	Gulf/Michael D. Woody	RF40-17
Aug. 2, 1984	Gulf/Mayo's Gulf Service Station	RF40-18
Aug. 2, 1984	Gulf/Koccolene Oil Corporation	RF40-19
Aug. 2, 1984	Gulf/Anthony J. Gallo	RF40-20
Aug. 2, 1984	Gulf/Look Oil Company, Inc.	RF40-21
Aug. 2, 1984	Gulf/E. Kaye Hamric	RF40-22
Aug. 2, 1984	Amoco/Cactus Flat	RF21-12353
Aug. 3, 1984	Marion/Kerr-McGee Corporation	RF37-12
Aug. 3, 1984	Gulf/David Feinmark Company	RF40-23

[FR Doc. 84-22842 Filed 8-27-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.**ACTION:** Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has adopted the appropriate procedures to be followed in refunding \$38,713,647 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings brought by the Economic Regulatory Administration of the Department of Energy involving the 27 natural gas processing firms set forth below. The DOE also indicated that it would accept comments regarding the disposition of funds remaining after meritorious claims of purchasers have been paid.

DATE AND ADDRESS: Applications for refund and comments must be filed within 90 days of publication of this notice in the *Federal Register* and should be addressed to the Office of

Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF-0275, *et al.*

FOR FURTHER INFORMATION CONTACT: Virginia A. Lipton, Deputy Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to consent orders entered into by the DOE and the 27 natural gas processing firms set out in the Appendix below.

The Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute the contents of escrow accounts funded by these natural gas processing firms pursuant to the consent orders. The DOE has

decided that Applications for Refund should be accepted from firms and individuals that purchased natural gas liquids (NGLs) and natural gas liquid products (NGLPs) sold by any of the 27 named firms during the relevant consent order period set forth in the Appendix. The Decision and Order provides that in order to receive a portion of the settlement funds, a purchaser must furnish the DOE with evidence that it was injured by the allegedly unlawful prices for NGLs or NGLPs charged by the relevant gas processing firm. This evidence should include specific documentation concerning the date, place, price, and volume of product purchased, indicate whether the increased costs were absorbed by the claimant or passed through to other purchasers, and state the extent of any injury alleged to have been suffered. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms which file refund claims amount to \$5,000 or less. According to the Decision and Order, the amount of the refund will generally

be a pro rata share of the funds made available by the relevant natural gas processing firm, plus a pro rata share of any interest accrued on those funds.

The DOE further indicated that it would determine at a future date the proper disposition of any funds remaining after all meritorious claims of purchasers have been paid, and that it would continue to accept comments regarding this issue. Applications for refund and comments regarding disposition of remaining funds must be filed within 90 days of publication of this notice in the *Federal Register*, and should be sent to the address set forth at the beginning of this notice. Refund applicants and commenting parties should file two copies of their submission. All applications and comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: August 10, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Names of Cases: Texas Oil & Gas Corporation, et al.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0275, et al.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals formulate and implement special procedures to make refunds, in order to remedy the effects of alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the ERA filed Petitions for the Implementation of Special Refund Proceedings in connection with consent orders entered into with the 27 natural gas processing firms set forth in the exhibits to the Appendix to this Decision. Audits of the records of those firms revealed possible pricing violations with respect to their sales of natural gas liquids (NGLs) and natural gas liquid products (NGLPs) during the periods indicated in the exhibits. (1) In order to settle all claims and disputes with the DOE regarding their sales of NGLs and NGLPs during their respective audit periods, the firms entered into consent orders. The amount of funds made available by those firms that is

subject to distribution in this proceeding is \$38,713,647.

Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured as a result of alleged regulatory violations resolved by a DOE consent order or remedial order or where the DOE is unable to readily ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On February 24, 1984, the Office of Hearings and Appeals issued a Proposed Decision and Order in which we tentatively concluded that the implementation of Subpart V proceedings was appropriate with respect to the 27 consent order firms referred to in the exhibits to the Appendix to this decision. *Texas Oil & Gas Corp.*, Case No. HEF-0275 (February 24, 1984) (proposed decision). We found that there was a considerable degree of difficulty in locating most of the persons who were injured by the alleged overcharges.

Proposed Refund Procedures

In the February 24 Proposed Decision we stated that in so far as possible the available funds should be distributed to customers that purchased product sold by the 27 consent order firms. We tentatively determined that successful refund applicants would generally be entitled to a pro rata share of the refund pool. We indicated that we would multiply the number of gallons of product purchased by a successful applicant by a factor using the total amount of the consent order fund provided by the individual gas plant operator as the numerator and using the total sales in gallons of all products covered by the relevant consent order as the denominator.

We further indicated that all successful applicants must establish that they have experienced some economic harm as a result of the alleged overcharges. However, we suggested in

the Proposed Order that a detailed showing of injury would not be necessary with respect to applicants who were ultimate consumers of the relevant product. We stated that these applicants would be required to demonstrate that they purchased a specific volume of product sold by a named gas plant operator during the relevant time period. We also stated that a detailed showing of injury would not be necessary for reseller applicants claiming refunds based on relatively small purchases of product, i.e., less than 600,000 gallons per year. This determination was based on our concern that the cost to the applicant in preparing and submitting information demonstrating injury not be out of proportion to the benefit obtained by the refund received.

We sent a copy of our Proposed Order to each purchaser identified in ERA audit files whose address we were able to ascertain. We informed these purchasers that they could request adjustments in the refund mechanism. We further published a notice in the *Federal Register* announcing that we were seeking comments regarding the proposed refund mechanism. 49 FR 9006 (March 9, 1984). We provided a 30 day period in which comments could be submitted. That period has now elapsed.

The purpose of this Decision is to address the comments received regarding the February 24 Proposed Order and to establish procedures to be used for filing and processing claims in the first stage of the refund process relating to the consent order firms listed in the Appendix. The Decision sets forth the information that a purchaser must submit in order to establish eligibility for a portion of the available funds.

Analysis of Comments and Adjustments to Refund Plan

We have received a number of comments regarding our proposed refund mechanism submitted by NGL purchasers, as well as by several states.⁽²⁾ Several commenters have suggested adjustments to our proposed refund mechanism which have considerable merit.

In its comments, The Coastal Company objects to our conclusion in the Proposed Order that a Subpart V proceeding is appropriate. The firm contends that no Subpart V proceeding is necessary with respect to the funds involved in this proceeding, since all customers have been identified. Coastal is incorrect. In the present case, while DOE files specified some customers of the consent order firms, we cannot presume that all possibly overcharged

customers have been identified. Further, absent a showing of injury by those customers, we are unable to ascertain the amounts, if any, that such firms should receive. 10 CFR 205.281(b). Consequently, we affirm our original conclusion that a Subpart V proceeding is both appropriate and necessary with respect to the consent order funds made available by the named firms.

Several firms have filed comments regarding our proposal that larger refund applicants that were not consumers of the relevant product be required to provide additional, detailed information regarding the magnitude of the injury they experienced as a result of the alleged overcharges. These firms generally assert that no showing of injury should be required in order for any purchaser to receive a refund.

We have in numerous prior Subpart V cases required that an applicant demonstrate injury in order to be eligible for a refund. *E.g., Office of Enforcement: Ada Resources, Inc.*, 10 DOE ¶ 85,029 (1982); *Office of Enforcement: PVM Oil Associates, Inc.*, 9 DOE ¶ 82,569 (1982); *Office of Enforcement: Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement: Vickers Energy Corp.*, 8 DOE ¶ 82,597 (1981). We will not reiterate the substance of those discussions here. However, the firms that filed comments with regard to our Proposed Decision and Order have not raised any significant arguments which suggest that the consistent requirement that a refund applicant demonstrate injury should be reevaluated.

Several firms also suggest that we have no authority to require refund applicants to demonstrate injury. We do not agree. The purpose of a special refund proceeding is to enable the DOE to effect refunds to "injured persons." 10 CFR 205.280. In order for the Office of Hearings and Appeals to fulfill the purpose of these special refund procedures it must necessarily have implicit authority to determine whether a refund applicant was actually injured by alleged overcharges. Such a determination may be reached by requesting that refund applicants respond to questions regarding the effects of alleged overcharges on their operations. See 10 CFR 205.284(b).

Several commenters contend that if a firm was identified in ERA audit documents as a purchaser of product sold by a consent order firm, that customer should automatically be eligible for a refund, without a showing of injury. We also must reject this assertion. The fact that the ERA may have identified some customers of consent order firms has no bearing on

the issue of whether an injury occurred. For instance, it is possible that a customer passed through the alleged overcharges. ERA generally did not examine this issue when it performed audits, since it rarely reviewed third parties' records. In any case, ERA's focus was on whether a violation occurred, not on the effects of that violation. Accordingly, it is entirely proper that we make this injury in a Subpart V proceeding. Consequently, applicants will be expected to satisfy the criteria discussed below, and demonstrate that they incurred injury.

Several firms filed comments regarding the type of information that applicants would be required to submit in order to substantiate an alleged overcharge. These firms suggest that although they know the identity of the seller, it might not be possible to demonstrate that they purchased NGLs or NGLPs from a particular gas plant. We are inclined to agree with their position. Accordingly, an applicant that explains why it is unable to determine the source of the product which was sold by a consent order firm will be required to establish that it purchased NGLs or NGLPs sold by one of the listed consent order firms during the period covered by the relevant consent order, but not necessarily establish from which gas plant the product originated.

Other firms have inquired as to whether purchasers who were not identified in the exhibits to the Appendix, but who purchased product sold by a consent order firm, may apply for refunds in this proceeding. The answer is yes. The reason we listed in the Appendix to the Proposed Decision the names of gas plants and customers of the consent order firms was not to restrict applicants to those who were identified as customers of a particular gas plant. As we pointed out above, we do not believe that the customer lists set forth in the exhibits are necessarily exhaustive. Rather, we intended, by providing as much relevant data as we were able to gather regarding the consent order firms, to assist purchasers of NGLs and NGLPs in determining whether they might have purchased product sold by any of those firms.

Warren Oil Company asserts that it would be difficult for it to submit dates, places and prices of its purchases. The firm claims that purchasers that were identified in the exhibits should only be required to certify that they purchased a specific volume of product from a consent order firm during the relevant period in order to be eligible for a refund.

We fail to see how a firm would be able to develop specific volume data

without, at the same time, being able to retrieve verification as to dates, prices and places of purchases. Nevertheless, if any purchaser makes a showing that it is excessively difficult for it to establish date and place of purchase, and we have no contrary information as to volumes purchased, we will accept that firm's certification that it purchased a specified volume of product sold by a consent order firm during the period covered by the consent order. An applicant expecting to make such a showing must submit evidence demonstrating why retrieval of date and place information would be impossible or impose a burden on the firm's resources disproportionate to the amount of the refund it is seeking. However, as we discuss below, information regarding prices may be necessary in connection with a showing of injury.

As we stated above, it was our tentative decision that customers who were refiners or resellers of NGLs of NGLPs would be required to show that they sustained injury as a result of the alleged overcharges. Several commenters requested that we provide more specific information as to the data that will be required.

We have decided to adopt the approach used in several prior Subpart V proceedings involving alleged overcharges related to NGLs. *National Helium Corp./Farmland Industries, Inc.*, 11 DOE ¶ 85,257 (1984); *Aluminum Co. of America/Tenneco Oil Co.*, 11 DOE ¶ 85,253 (1984); *Palo Pinto Oil & Gas/Gulf Oil Corp.*, 10 DOE ¶ 85,049 (1983). In these cases we used a three-step competitive disadvantage analysis, in which we determined whether an applicant was charged prices by the alleged violator which were above prices paid by the applicant's competitors. If so, we inferred that the applicant was at a competitive disadvantage with respect to those purchases and was therefore injured. In order to enable us to perform this type of analysis, refund applicants in the present proceedings should submit quarterly prices for each product for which a refund is claimed for the entire refund period. In addition, as we stated in our Proposed Order, refund applicants will be expected to demonstrate that they maintained a bank of unrecovered costs, in order to establish that the alleged overcharges were not subsequently recovered through price increases.

As we stated above, in our Proposed Order, we suggested that a separate, detailed showing of injury would not be required of refund applicants who were

ultimate consumers of the product involved. Several commenters who are large crude oil refiners state that they purchased NGLPs which were consumed as fuel or as raw material in a refining process. They suggest that they should be considered as consumers with respect to their refund applications for these NGLPs and should therefore not be required to demonstrate injury regarding purchases of these NGLPs.

We do not agree. The distinction we intended to draw in the Proposed Order was between end-users or ultimate consumers whose business operations were unrelated to the petroleum industry and applicants who as resellers, refiners or retailers of petroleum products were subject to the DOE regulatory scheme. The fuel costs of the former group are only one, indistinguishable component of their prices for goods and services. Further, this group was generally not subject to price controls during the consent order periods. Therefore, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum products and services would be beyond the scope of a refund proceeding. *Marion Corp.*, 12 DOE ¶ 85,014 (1984); *Ada Resources, Inc./Rapid Transit Lines, Inc.*, 11 DOE ¶ 85,047 (1983). Consequently, a refund applicant that was subject to the DOE regulatory program will be required to demonstrate injury with respect to the purchase of NGLs and NGLPs of which it was an end-user, with the exception discussed below.

As indicated above, we also suggested in our Proposed Order that a separate, detailed showing of injury would not be necessary for any firm claiming a refund based on purchases of 50,000 gallons of NGLs or any single NGLP per month or based on average annual purchases of up to 600,000 gallons of NGLs or any single NGLP. The States of California and New York filed comments objecting to our decision to establish this threshold level, below which a separate showing of injury would not be required. They suggest that the proof of injury requirement should be the same for all applicants. The States contend that most of the identified customers are large firms with sophisticated accounting capabilities that should have no difficulty retrieving the information necessary to establish injury. They further assert that smaller firms should be dealt with on an individual basis. They suggest that the threshold approach is unwarranted because it might provide windfall refunds. We are not persuaded by their position. Even though larger firms may

have more sophisticated data retrieval capabilities, there may nevertheless be considerable expenses involved in gathering appropriate data. As those expenses approach the value of the refund claimed, firms will be discouraged from applying for refunds. We find that establishing a reasonable threshold refund level should provide adequate incentive for firms to apply for relatively small refunds, minimize data retrieval burdens, especially for smaller firms, and promote efficient consideration of these types of applications by the Office of Hearings and Appeals.

On the other hand, several commenters that were NGL purchasers claim that the threshold level established in the Proposed Order should be reevaluated. They point out that in some instances the volumetric refund amount is so small that a refund claim based on purchases of 600,000 gallons annually would amount to only approximately \$500, while in other instances the volumetric amount is significantly larger and the threshold refund would amount to more than \$30,000. There is considerable merit to this position.

As we stated above, and in our Proposed Order, we established the threshold approach in order to facilitate the refund process for firms claiming relatively small refunds. We believe that in such cases, a complex refund process might discourage such firms from applying for refunds, because the amount of the refund they could expect to receive might be less than the cost of preparing a complex and detailed submission supporting their claims of injury. Thus, the benefits of the refund would be outweighed by the cost of preparing the application. These considerations are present with respect to the instant cases. We therefore continue to believe that it is appropriate to adopt a presumption of injury and establish a threshold refund level below which an applicant will not be required to submit a further detailed showing of injury. 10 CFR 205.282(e). However, it appears that using the volumetric threshold as described in the Proposed Order may not enable us to best effectuate our goal of facilitating disbursements to applicants applying for relatively small refunds. Consequently, we have decided that an adjustment in that approach is warranted. We have determined that it would best promote the above-stated goal and achieve consistency of treatment in this proceeding to base our threshold for a detailed demonstration of injury on a dollar amount, rather than on a

volumetric amount. Therefore, applicants who are claiming a refund of \$5,000 or less from any single consent order fund will not be required to provide a separate, detailed showing that they were injured by the alleged overcharges. See *Marion*, 12 DOE at ¶ 88,032.

One commenter suggests that volumetric refunds be based on the particular product purchased, so that purchasers of a product involving greater alleged overcharges would receive larger proportionate refunds. This commenter asks that we make publicly available data showing alleged overcharges by product. We wish to correct an apparent misapprehension regarding the information contained in the exhibits. These exhibits were prepared after reviewing relevant ERA audit files and contain virtually all significant available information which would be useful to a firm applying for a refund. The type of data requested by the commenter referred to above was simply not included in the audit files we examined. Therefore, we are unable to segregate volumetric amounts by product, as requested by that commenter. Consequently, our volumetric refund amounts will be based on alleged overcharges made with respect to all products, as set forth in the audit files we examined.

As an additional matter, as set forth in Exhibit 5, the consent order fund to be provided by Gary Energy Corporation totals \$600,000. As of June 30, 1984, the firm had provided \$300,000 to the DOE. The balance is to be paid by December 1, 1984. Consequently, if many claims are received from Gary purchasers, it may be necessary to make adjustments in the disbursement of monies with respect to this fund.

We will also establish a minimum amount of \$15 for first stage refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds of less than \$15 are sought outweighs the modest benefits of restitution in those situation. See, e.g., *Urban Oil Co.* 9 DOE ¶ 82,541 at 85,225 (1982). See also 10 CFR 205.286(b). Successful applicants will also be eligible to receive a pro rata portion of any interest accrued on the relevant consent order fund.

Application for Refund Procedures

After having considered all the comments received concerning the first-stage procedures tentatively adopted in our February 24 Proposed Decision, we have concluded that applications for refunds should now be accepted from

parties that purchased petroleum products sold by any named consent order firm. Applications must be filed within 90 days after publication of this decision and Order in the **Federal Register**. See 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify the name and case number of the consent order firm to which it pertains.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying enforcement proceeding. Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. See 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following subjects should be covered in each application:

A. Each applicant should provide data establishing the volumes of product that it purchased, which were sold by a named consent order firm. The applicant should also indicate date, place and price of purchase. However, if this latter data is unavailable, the applicant shall explain why it is unable to retrieve this information. If the product was not purchased directly from a consent order firm the applicant should state the

manner in which it determined that the product originated from a consent order firm.

B. Each applicant should specify how it used the products—e.g., whether it was a reseller, a refiner using the products in its own operations, or an ultimate consumer.

C. If the applicant is a reseller or refiner that wishes to claim a refund in excess of \$5,000 it should also:

(i) State whether it maintained banks of unrecouped product cost increases from the date of the alleged violation until the product was decontrolled, and if so, furnish OHA with quarterly bank calculations;

(ii) Provide sufficient corporate information to identify the parent corporation, the corporation selling or processing the product, and the corporation actually purchasing the product, and describe their corporate relationship;

(iii) State whether it or any of its affiliates filed any other applications for refund in which it has referred to its banks to demonstrate injury; and

(iv) Submit evidence of the quarterly prices it paid during the applicable periods for the products for which it is claiming a refund.

D. The applicant should report whether it is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. See 10 CFR 205.9(d).

Second Stage Refund Procedures

As a final matter, in the Proposed Order we stated that we would consider at a future date the appropriate disposition of any funds remaining after refunds to all successful purchasers have been effected. The states that filed comments regarding the Proposed Order have suggested methods for distributing any funds remaining after refunds to identifiable purchasers have been completed. These comments generally advocate that state governments, rather than the United States Treasury, are the appropriate recipients of these funds. We have in several refund proceedings adopted just such an approach. *E.g.*, *Belridge Oil Co.*, 11 DOE ¶ 85,197 (1983); *Palo Pinto Oil & Gas*, 11 DOE ¶ 85,034 (1983). However, it would be premature at this time to reach such a determination, since we cannot foresee

the size of the pool available for refund after all meritorious refund claims of purchasers have been satisfied. Consequently, we will not adopt the states' suggestion at this time. We will continue to accept apportionment plans for division of the remaining consent order monies. These comments should be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by the consent order firms listed in the Appendix to this Decision and Order may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

(3) This is a final Order of the Department of Energy.

Dated: August 10, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) NGLPs include propane, butane, ethane and natural gasoline. In some instances a gas plant operator may have sold small quantities of other products, such as condensate. Those volumes are indicated in the exhibits to the attached Appendix. We will also consider Applications for Refund filed by purchasers of these other products.

(2) The firms filing comments regarding our Proposed Order are: Ashland Oil, Inc., Mobil Oil Corporation, The Coastal Corporation, Koch Industries, Inc., Warren Petroleum Company, Enterprise Production Company, Chevron U.S.A., Inc., Commerce, Inc., and Bruin Corporation. The states which filed comments are Delaware, Iowa, Louisiana, North Dakota, Kansas, West Virginia, Rhode Island, New York, North Carolina, and Texas. Further, the town of Cheraw, South Carolina filed comments.

Appendix—Decision and Order Texas Oil & Gas Corporation, et al.

Case Names

Firm and Case No.

Texas Oil & Gas Corporation, HEF-0275
Associated Programs, Inc., HEF-0232
Gulf Energy & Development Corporation, HEF-0248
Houston Natural Gas Corporation, HEF-0251
Gary Energy Corporation, HEF-0245
Mitchell Energy Corporation, HEF-0261
Tripperary Corporation, HEF-0277
Atlanta Petroleum Production, Inc., HEF-0233
Devon Corporation, HEF-0242
Mississippi River Transmission Corporation, HEF-0260
Horner and Smith, A Partnership, HEF-0250
Pioneer Corporation, HEF-0270
Crystal Oil Company, HEF-0241
Ensearch Corporation, HEF-0244
Pronto Gas Company, HEF-0273
Gas Systems, Inc., HEF-0246

Montana Power Company, HEF-0262
 J. M. Haber Corporation, HEF-0252
 Apache Corporation, HEF-0230
 Adolf Coors Company, HEF-0140
 Breckenridge Gasoline Company, HEF-0235
 H. A. Chapman, HEF-0237
 Cap Oil Company, HEF-0236
 Texas Gas Exploration, HEF-0274
 Petro-Lewis Corporation, HEF-0267; HEF-0268
 Planet Engineers, Inc., HEF-0271
 Continental Resource Company, HEF-0239

Index to Exhibits

Exhibit and Firm

- 1—Texas Oil & Gas Corporation
- 2—Associated Programs, Inc.
- 3—Gulf Energy & Development Corporation
- 4—Houston Natural Gas Corporation
- 5—Gary Energy Corporation
- 6—Mitchell Energy Corporation
- 7—Tipperary Corporation
- 8—Atlantic Petroleum Production, Inc.
- 9—Devon Corporation
- 10—Mississippi River Transmission Corporation
- 11—Homer and Smith, A Partnership
- 12—Pioneer Corporation
- 13—Crystal Oil Company
- 14—Ensearch Corporation
- 15—Pronto Gas Company
- 16—Gas Systems, Inc.
- 17—Montana Power Company
- 18—J. M. Haber Corporation
- 19—Apache Corporation
- 20—Adolf Coors Company
- 21—Breckenridge Gasoline Company
- 22—H. A. Chapman
- 23—Cap Oil Company
- 24—Texas Gas Exploration
- 25—Petro-Lewis Corporation
- 26—Planet Engineers, Inc.
- 27—Continental Resource Company

Exhibit 1

Name of Consent Order Firm: Texas Oil & Gas Corporation.
 Consent Order Case Numbers:
 ERA: 6D0V00067.
 OHA: HEF-0275.
 Consent Order Period: April 1, 1976–January 27, 1981.
 Consent Order Fund: \$3,440,000.
 Names of Plants:
 1. Denton Plant
 2. Coynosa Plant
 3. Custer Plant
 4. Cimarron Plant
 5. Shackelford Plant
 6. Harmony Plant
 7. East Texas Plant
 8. Laredo Plant
 9. Jeffries Plant
 10. Elmwood Plant
 11. Laverne Plant
 12. Slocum Plant
 13. Seiling Plant
 Alleged Overcharges: (Propane, Butane & Gasoline) \$9,352,600.

Gallons Sold:	
Propane	272,714,260
Butane	156,637,700
Natural Gasoline	121,373,352
Total	550,725,312

Per Gallon Refund Amount: \$.006246.
 Identified Purchasers:
 1. Bruin Corporation, 1300 Main Street, Houston, TX 77002.
 2. Commerce, Inc., 1520 Capital Nat'l Bank Bldg., Houston, TX 77002.
 3. Koch Industries, Inc., P.O. Box 2256, Wichita, KS 67201.
 4. Conoco, Inc., Conoco Towers, 5 Greenway Plaza East, P.O. Box 2197, Houston, TX 77001.
 5. Coastal States Gas Corp., 5 Greenway Plaza East, Houston, TX 77001.
 6. Columbia LNG Corporation, 20 Montchanin Road, Wilmington, DE 19807.
 7. Wanda Petroleum Company, P.O. Box 53120, Houston, TX 77052.
 8. Mobil Oil Corporation, Southern Region, P.O. Box 1774, Houston, TX 77001.
 9. Mapco, Inc., Oil and Gas Division, 1800 S. Baltimore Avenue, Tulsa, OK 74119.
 10. Gulf States Oil & Refining Co., 200 Smith Street, Box 53137, Houston, TX 77052.
 11. Excel Corporation, P.O. Box 12340, Oklahoma City, OK 73112.
 12. UPG, Inc., 2223 Dodge Street, Omaha, NE 68102.

Exhibit 2

Name of Consent Order Firm: Associated Programs, Inc.
 Consent Order Case Numbers:
 ERA: 740V01389.
 OHA: HEF-0232.
 Consent Order Period: September 1, 1973–June 30, 1980.
 Consent Order Fund: \$225,000.
 Name and Location of Plant and Percentage of Ownership: Yenter Gas Processing Plant, Sterling, CO. 50%.
 Alleged Overcharges: \$496,197.81.
 Gallons Sold: (mixed stream & fractionated covered products) 30,664,474.
 Per Gallon Refund Amount: \$.007337.
 Identified Purchasers:
 1. Western Gas Corporation
 2. Union Oil Company

Exhibit 3

Name of Consent Order Firm: Gulf Energy & Development Corp.
 Consent Order Case Numbers:
 ERA: 710V03013.
 OHA: HEF-0248.
 Consent Order Period: September 1, 1973–December 31, 1975.
 Consent Order Fund: \$210,000.
 Name and Location of Plant and Percentage of Ownership:
 1. Lambert Plant (25%)
 2. Runge Plant (100%)
 3. Rio Grande City Plant (50%)
 4. Powell Plant, Navarro County, TX
 Alleged Overcharges: \$1,580,048.80.
 Gallons Sold: Natural Gasoline, Propane & Butane, 39,941,756.
 Per Gallon Refund Amount: \$.005257.
 Identified Purchasers:
 1. Wanda Petroleum Company
 2. Tesoro Petroleum Corporation
 3. Enterprise Products Company
 4. The Permian Corporation

5. Link Petroleum Company
6. Highway Pipeline Company

Exhibit 4

Name of Consent Order Firm: Houston Natural Gas Corporation.
 Consent Order Case Numbers:
 ERA: 6E0V00053.
 OHA: HEF-0251.
 Consent Order Period: September 1, 1973–January 27, 1981.
 Consent Order Fund: \$750,000.
 Names of Plants:
 1. Tuleta Plant
 2. Gregory Plant
 3. Victoria Plant
 4. Liverpool Plant
 5. Nueces River Plant
 6. Bammel Plant
 7. Robstown Plant
 8. Sonora Plant
 9. Loma Blanca Plant
 10. Pavey Plant
 11. Lafayette Plant
 12. Dubose Plant
 13. Refugio Plant
 14. Corpus Christi Bay Plant
 15. Mission Valley Plant
 16. Sutton Plant
 17. Thomaston Plant
 18. Tivoli Plant
 19. Alvin Plant
 20. Wharton Compressor Plant
 Alleged Overcharges: \$2,476,549.

Gallons Sold:	
Propane	172,845,375
Butane	109,489,945
B-P Mix	2,460,325
Gasoline	94,662,545
Condensate	7,135,155
Total	386,593,345

Per Gallon Refund Amount: \$.001940.
 Identified Purchasers:
 1. Wanda Petroleum Company
 2. Enterprise Products Company
 3. Sun Oil Company
 4. Tenneco Oil Company
 5. Tesoro Crude Oil Company
 6. Mobil Oil Corporation
 7. Coastal States Gas Processing Co.
 8. Phillips Petroleum Company

Exhibit 5

Name of Consent Order Firm: Gary Energy Corporation.
 Consent Order Case Numbers:
 ERA: 810V00002 and 810V00003.
 OHA: HEF-0245.
 Consent Order Period: January 1, 1973–January 27, 1981.
 Consent Order Fund: \$600,000.
 Names and Locations of Plants and Percentage of Ownership:
 1. Altonah Plant (25%)
 2. UT
 3. UT
 4. UT
 Alleged Overcharges: \$1,466,054.95.

	Altonah	Bluebell	Total
Gallons Sold:			
Propane	3,908,865	15,725,463	19,634,328
Butane	3,274,593		3,274,593
Butane Plus	183,993	28,791,735	28,975,718
Natural Gasoline	3,797,865		3,797,865
Total	11,165,306	44,517,198	55,682,504

Per Gallon Refund Amount: \$.010775.

Identified Purchasers:

1. Action Gas
2. Amerada Hess Corporation
3. Arizona Fuels Corporation
4. Cal Gas
5. Chevron Oil Company
6. Dix-O-Gas
7. Flying Diamond Corporation
8. Warren Petroleum Company
9. L.C.L. Oil
10. Par Gas
11. Petrolane
12. Tenneco Oil Company
13. Western Crude Oil, Inc.
14. Mapco, Inc.
15. Van Gas, Inc.
16. H. S. Sowards
17. Utah-Colorado Gas
18. Searle Bros.
19. Ideal Gas
20. G. M. Wallace
21. Husky Oil Company
22. Knudsen Philgas
23. Bob's Gas & Chemical
24. Butane Power & Equipment
25. Rio Algon Corporation
26. California Liquid Gas Corp.
27. Jay's Gas
28. Independent Gas Co.
29. Solar Petroleum

Exhibit 6

Name of Consent Order Firm: Mitchell Energy Corporation.

Consent Order Case Numbers:

ERA: 6DOV00053.

OHA: HEF-0261.

Consent Order Period: September 1, 1973–October 31, 1978.

Consent Order Fund: \$708,000.

Names and Locations of Plants:

1. Barton Chapel Plant, Perin, TX 76075
2. LaFitte's Gold Plant, Galveston, TX 77550
3. Huckabay 1 and 2 Plants, Huckabay, TX
4. La Sal Vieja Plant, Raymondville, TX 78580
5. Lone Camp 1, 2, 3, and 4 Plants, Lone Camp, TX
6. Mineral Wells Plant, Mineral Wells, TX 76067
7. Ponder 1 and 2 Plants, Ponder, TX 76259
8. Ranger 1 and 2 Plants, Ranger, TX 76470
9. Seven Oaks Plant, Seven Oaks, TX
10. Sutton County Plant, Senora, TX 76950
11. Gibtown Plant, Gibtown, TX
12. Converse County Plant, Douglas, WY 82633
13. Jackson Parish Plant, Choudrant, LA 71227
14. Leabo Plant
15. Winnie Plant

16. Gordon Plant

17. Galveston Plant

18. Cameron Plant

19. Lone Pine Plant

20. Cisco Plant

21. Devil's River Plant

Alleged Overcharges: Natural Gas

Liquids—\$3,078,735.11.

Gallons Sold: 283,131,418.

Per Gallon Refund Amount: \$.002500.

Identified Purchasers:

1. Tenneco Oil Company
2. Mobil Oil Corporation
3. Warren Petroleum Company
4. Swannee Petroleum
5. Union Texas
6. Phillips Petroleum Company

Exhibit 7

Name of Consent Order Firm: Tipperary Corporation.

Consent Order Case Numbers:

ERA: 670V00323.

OHA: HEF-0277.

Consent Order Period: September 1, 1973–January 27, 1981.

Consent Order Fund: \$400,000.

Names and Locations of Plants and

Percentage of Ownership:

1. Bowie Plant (90%) Montague County, TX
2. Claytonville Plant (90%) Fisher County, TX
3. Denton Plant (90%) Lea County, NM
4. Pearsall Plant Austin Chalk, South TX

Alleged overcharges:

Natural gas liquid products and natural gas liquids	\$1,374,426
Condensate	383,638
Total	1,758,064

Gallons Sold: 465,640,839.

Per Gallon Refund Amount: \$.000859.

Identified Purchasers:

1. El Paso Natural Gas
2. Southern Union Refining Co.
3. Lone Star Gas
4. Western Crude Oil, Inc.
5. Compton Corporation
6. Koch Oil Company

Exhibit 8

Name of Consent Order Firm: Atlanta Petroleum Production, Inc.

Consent Order Case Numbers:

ERA: 6DOV00010.

OHA: HEF-0233.

Consent Order Period: September 1, 1973–November 30, 1976.

Consent Order Fund: \$22,500.

Names and Locations of Plants and

Percentage of Ownership:

1. Cushing Plant (100%) Payne County, OK
2. Sandusky Plant (100%) Grayson County, TX
3. Stillwater Plant (100%) Payne County, OK

Alleged Overcharges: \$63,985.

Gallons Sold: Liquid Products—1,767,018.

Per Gallon Refund Amount: \$.012733.

Identified Purchasers:

1. Warren Petroleum Corporation
2. TLOK Marketing Corporation
3. Pioneer Energy Corporation

Exhibit 9

Name of Consent Order Firm: Devon Corporation.

Consent Order Case Numbers:

ERA: 740V01313.

OHA: HEF-0242.

Consent Order Period: September 1, 1973–April 30, 1980.

Consent Order Fund: \$340,000.

Names and Locations of Plants and

Percentage of Ownership:

1. Dubach Plant (25%) Lincoln Parish, LA
2. Dubach Plant (25%) Calhoun, LA
3. Lacassine Plant (9.895%) Louisiana
4. West Seminole Plant (.4356%) Gaines County, TX
5. Fairway Plant (.00612%) Henderson County, TX
6. Fort Trinidad Plant (.34474%) Texas
7. Garza Plant (5%) Texas

Alleged Overcharges: \$848,339.

Gallons sold:

Propane	20,735,839
ISO/butane	8,202,846
Normal butane	11,959,678
Total	40,898,363

Per Gallon Refund Amount: \$.008313.

Identified Purchasers:

1. Kerr-McGee Corporation
2. Triangle Refineries, Inc.

Exhibit 10

Name of Consent Order Firm: Mississippi River Transmission Corp.

Consent Order Case Numbers:

ERA: 720V00590.

OHA: HEF-0260.

Consent Order Period: September 1, 1973–December 31, 1979.

Consent Order Fund: \$76,500.

Names and Locations of Plants:

1. Perryville Plant, Perryville, LA
2. West Unionville Plant, West Unionville, LA

Alleged Overcharges: Natural Gas Liquids, \$384,511.40.¹

¹ In addition to these specific overcharges on the natural gas liquids sold from the Perryville and West Unionville gas plants, the firm also allegedly overcharged prices in the sales of condensate and natural gas liquid products from two leases as follows:

Leases	Condensate	NGLP's	Total
Parcel 3	\$1,907.27	\$1,121,271.06	\$1,123,178.33
Miss Murphy	33,946.86	731,213.70	765,160.56
Overcharges at the leases			1,888,338.89

Gallons sold:	
Natural gas liquids	4,225,281
Condensate	10,236
Total	4,235,517

Per Gallon Refund Amount: \$.018061.

Identified Purchasers:

1. Kerr-McGee Corporation
2. Kim Petroleum Company

Comments:

Exhibit 11

Name of Consent Order Firm: Horner and Smith, A Partnership.
Consent Order Case Numbers:
ERA: 6B0V00005.
OHA: HEF-0250.
Consent Order Period: September 1973–December 1976.
Consent Order Fund: \$175,000.
Name and Location of Plant and Percentage of Ownership: Locust Ridge Plant, Tensas Parish, LA, 100%.

Alleged overcharges:	
Propane	\$184,225.45
Butane	116,261.41
Total	300,486.86

Gallons sold:	
Propane	4,851,250
Butane	2,938,750
Total	7,790,000

Per Gallon Refund Amount: \$.0224646.

Identified Purchasers:

1. Triangle Refineries, Inc.
2. Falco, Inc.

Exhibit 12

Name of Consent Order Firm: Pioneer Corporation.
Consent Order Case Numbers:
ERA: 675V00279.
OHA: HEF-0270.
Consent Order Period: September 1, 1973–January 28, 1981.
Consent Order Fund: \$14,907,060.
Names and Locations of Plants and Percentage of Ownership:
1. Pampa Plant Gray County, TX (50%)
2. Turkey Creek Plant Potter County, TX (100%)
3. Fain Plant Potter County, TX (100%)
4. East Godsmith Plant Ector County, TX (100%)
5. Ranchland Hills Plant Midland, TX (100%)
6. Arrington Plant Hemphill County, TX (100%)
7. Ringwood Plant Major County, OK (100%)
8. Mandill Plant Marshall County, OK (100%)
9. Binger Plant Catto County, OK (100%)
Alleged Overcharges:
Gallons Sold:
Estimated Annual Volume: 190,000,000.
Consent Order Period Total: 1,409,186,667.
Per Gallon Refund Amount: \$.010573.
Identified Purchasers:

1. Philips Petroleum Corp., Bartelsville, Oklahoma
2. Koch Oil Co., Wichita, Kansas
3. Warren Petroleum Corp., Tulsa, Oklahoma

Exhibit 13

Name of Consent Order Firm: Crystal Oil Company.
Consent Order Case Numbers:
ERA: 810V00249.
OHA: HEF-0241.
Consent Order Period: August 19, 1973–July 31, 1977.
Consent Order Fund: \$175,000.
Name and Location of Plant and Percentage of Ownership: Vallery Plant, Sterling, CO (100%) 100%.

Alleged overcharges:	
Condensate	\$80,000
Butane/natural gasoline mix	120,000
Total	200,000

Gallons Sold: 7,273,000.

Per Gallon Refund Amount: \$.0009624.

Identified Purchasers:

1. Farmland Industries, Kansas City, MO
2. Western Gas Corp., Hastings, ME
3. Union Oil Co. of California, Palatine, IL

Comments: A direct payment of \$93,940.68 was made by Crystal Oil Company (formerly Vallery Corporation) to Union Oil Company (Union) on November 8, 1976 for the express purpose of refunding amounts which Crystal believed it had overcharged. Crystal also determined that it had improperly overcharged. Crystal also determined that it had improperly overcharged its customers in prior sales of NGL's and NGLP's. Therefore, on September 13, 1976, Crystal initiated a refund plan, as shown by statements made on Form P-110 submitted by Vallery, to the DOE, to reduce its sales prices to amounts less than its maximum legal selling price which resulted in a refund of \$74,059.32 to its customers. Accordingly, of the total consent order fund of \$175,000, Crystal refunded only \$7,000 directly to the DOE and it is this \$7,000 that is subject to the present refund proceeding.

Exhibit 14

Name of Consent Order Firm: Ensearch Corporation.
Consent Order Case Numbers:
ERA: 6D0V00039.
OHA: HEF-0244.
Consent Order Period: September 1, 1973–July 31, 1975.
Consent Order Fund: \$2,997,500.
Name of Plant:
1. Springtown Plant
2. Gordon Plant
3. Pueblo Plant
4. Ranger Plant
5. Trinidad Plant
6. Carlsbad Plant
7. Katie Plant
8. Wallville Plant
9. Needville Plant
10. Red Oak Plant
11. Madisonville Plant

12. Snyder Plant
 13. Diamond M Plant
 14. Person Plant
 15. Nueces River Plant
 16. Houston Central Plant
 17. Graham Plant
 18. East Panhandle Plant
 19. Elk City Plant
 20. Opelika Plant
 21. DeLeon Plant
- Alleged Overcharges: \$9,775,850.
Gallons Sold:
Annual Estimate: 225,000,000.
Consent Order Period Total: 431,250,000.
Per Gallon Refund Amount: \$.006951.
Identified Purchasers:
1. Warren Petroleum
2. UPG, Inc.
3. Koch Oil Company
4. Coastal States
5. Permian Corporation
6. Koch/Esperanza
7. Shell Oil Company
8. Atlantic Richfield
9. Shell/Dow Chemical
10. Enterprise Products
11. Western Crude
12. Stargas Company

Exhibit 15

Name of Consent Order Firm: Pronto Gas Company.
Consent Order Case Numbers:
ERA: 6D0V00024.
OHA: HEF-0273.
Consent Order Period: September 1973–March 1977.
Consent Order Fund: \$20,000.
Names of Plants and Percentage of Ownership:
1. Sweetwater Plant (100%)
2. Robert Lee Plant (100%)
Alleged Overcharges: \$125,410.
Gallons Sold: 3,029,000.
Per Gallon Refund Amount: \$.006602.
Identified Purchaser: Warren Petroleum.

Exhibit 16

Name of Consent Order Firm: Gas Systems, Inc., Ft. Worth, TX.
Consent Order Case Numbers:
ERA: 6D0V00013.
OHA: HEF-0246.
Consent Order Period: September 1, 1973–October 31, 1976.
Consent Order Fund: \$44,500.
Name of Plant and Percentage of Ownership: McGregor Plant, 100%.
Alleged Overcharges: \$86,749.91.

Gallons sold:	
Propane	791,002
Butane	1,772,487
Total	2,563,489

Per Gallon Refund Amount: \$.0173591.

Identified Purchasers:

1. John's Tractor & Gas Co. (\$16,050)
 2. TLOK Marketing/Dub Noble (\$67,857)
- Comments: The figures following the name of each purchaser indicate the proportion of the alleged overcharges incurred by each purchaser according to the Notice of Probable

Violation. Claimants may apply for refunds on the basis of these proportions, rather than using the per gallon refund amount.

Exhibit 17

Name of Consent Order Firm: Montana Power Company.
Consent Order Case Numbers:
ERA: 820V0210.
OHA: HEF-0262.
Consent Order Period: March 1, 1979-July 31, 1980.
Consent Order Fund: \$77,187.
Names and Locations of Plants and Percentage of Ownership: Dry Creek Plant, Carbon County, MT, 100%.

Alleged Overcharges:

Propane	\$39,847
Butane	15,026
Natural gas	22,314
Total	77,187

Gallons sold:

Propane	316,711
Butane	440,092
Natural gas	660,861
Total	1,417,574

Per Gallon Refund Amount: \$.05445.

Identified Purchasers:

1. American Smelt & Refining Co., East Helena, MT
 2. U.S. Gypsum Co., Lewistown, MT
 3. Kaiser Cement & Gypsum, Montana City, MT
 4. Burlington Northern, Inc., Livingston, MT
 5. Ideal Cement, Trident, MT
 6. Georgia-Pacific Corp., Lovell, WY
 7. Cenex, Laurel, MT
- Comments: Montana Power Company provided natural gas service to 100 customers, ninety-three of which were unidentified communities and retail customers, and seven of which were the wholesale customers listed above.

Exhibit 18

Name of Consent Order Firm: J. M. Haber Corporation.

Consent Order Case Numbers:
ERA: 733V02028.
OHA: HEF-0252.
Consent Order Period: September 1, 1973-January 28, 1981.
Consent Order Fund: \$207,000.
Names and Locations of Plants and Percentage of Ownership:

1. Ambrose Plant, Kay County, OK
2. Apache Plant, Caddo County, OK (10%)
3. Beaver Plant, Beaver County, OK
4. Edgewood Plant, Van Zandt County, TX
5. Elk City Plant, Beckham County, OK (5%)
6. Elmwood Plant, Beaver County, OK (1%)
7. Laverne Plant, Harper County, OK (1%)
8. Mooreland Plant, Woodward County, OK (8%)
9. Rock Creek Plant, Hutchinson County, TX
10. Sanford Plant, Hutchinson County, TX
11. Seiling Plant, Dewey County, TX (6%)
12. West Lucky Plant, Matagorda County, TX (25%)

Alleged Overcharges: \$743,434.62.

Gallons sold	
Propane	80,930,348
Butane	72,977,967
Natural gasoline	57,566,949
Depropanized mix	5,742,272
Total	217,217,536

Per Gallon Refund Amount: \$.00095298.
Identified Purchaser: Unidentified.

Exhibit 19

Name of Consent Order Firm: Apache Corporation.
Consent Order Case Numbers:
ERA: 660V00637.
OHA: HEF-0230.
Consent Order Period: September 1973-December 1978.
Consent Order Fund: \$495,000.
Name of Plant and Percentage of Ownership: Recluse Plant, 50%.
Alleged Overcharges: \$1,753,529.37.
Gallons Sold: 13,222,691.
Per Gallon Refund Amount: \$.0374356.
Identified Purchaser: Montana-Dakota Utilities Co.

Exhibit 20

Name of Consent Order Firm: Adolf Coors Company.
Consent Order Case Numbers:
ERA: 840V00203.
OHA: HEF-0140.
Consent Order Period: January 1, 1977-January 28, 1981.
Consent Order Fund: \$65,000.
Name of Plant and Percentage of Ownership: Wattenberg Plant, 100%.
Alleged Overcharges: \$96,370.
Gallons Sold: 4,627,397.
Per Gallon Refund Amount: \$.0140467.
Identified Purchasers:
1. Bob's Gas & Chemical Morrison, CO
2. UPC, Inc.
3. Flatiron

Exhibit 21

Name of Consent Order Firm: Breckenridge Gasoline Company.
Consent Order Case Numbers:
ERA: 710V03020.
OHA: HEF-0235.
Consent Order Period: September 1973-January 28, 1981.
Consent Order Fund: \$251,000.
Name and Locations of Plants:
1. Eliasville Plant, Stephens County, TX
2. Lodi Plant, Cass County, TX

Alleged overcharges:

Propane	\$93,914
Propane/butane mix	43,313
Butane	161,926
Natural Gas	294,807
Total	493,960

Gallons Sold:

Propane	3,742,928
Propane/butane mix	2,028,549
Butane	2,749,151
Natural Gas	7,796,178
Total	16,311,806

Per Gallon Refund Amount: \$.0153876.
Identified Purchaser: Warren Petroleum, Tulsa, OK.

Exhibit 22

Name of Consent Order Firm: H. A. Chapman.
Consent Order Case Numbers:
ERA: 740V01397.
OHA: HEF-0237.
Consent Order Period: September 1, 1973-November 30, 1979.
Consent Order Fund: \$125,000.
Name of Plant: Walker Creek Plant.

Alleged overcharges:

Propane	\$46,630.20
Butane	74,850.81
Natural gasoline	37,505.92
Total	158,986.93

Gallons sold:

Propane	6,016,666
Butane	6,681,666
Natural gasoline	5,858,333
Total	18,556,665

Per Gallon Refund Amount: \$.0067361.

Identified purchasers:

1. Texas Petroleum Gas
2. Aeropress Gas

Exhibit 23

Name of Consent Order Firm: Cap Oil Company.
Consent Order Case Numbers:
ERA: 740V01397.
OHA: HEF-0236.
Consent Order Period: September 1, 1973-November 30, 1979.
Consent Order Fund: \$55,400.
Name of Plant: Walker Creek Plant.
Alleged Overcharges: Condensate \$55,416.55.
Gallons Sold: Condensate 1,519,910.
Per Gallon Refund Amount: \$.0364495.
Identified Purchasers:
1. Texas Petroleum Gas
2. Aeropress Gas

Exhibit 24

Name of Consent Order Firm: Texas Gas Exploration.
Consent Order Case Numbers:
ERA: 6E0V00015.
OHA: HEF-0274.
Consent Order Period: September 1, 1973-January 28, 1981.
Consent Order Fund: \$2,060,000.
Name and Location of Plant: Eunice Plant, Arcadia Parish, LA.

Alleged overcharges:

Propane	\$1,176,648.41
Butane	1,869,734.20
Natural gasoline	542,377.42
Total	3,588,760.03

Gallons sold:	
Propane.....	549,802,470
Butane.....	331,484,000
Natural gasoline.....	428,565,370
Total.....	1,309,851,840

Per Gallon Refund Amount: \$.0015726.

Identified Purchasers:

1. Union Oil Co. of California
2. Enterprise Products Co.
3. Wanda Petroleum
4. Northern Propane
5. Union Texas Petroleum
6. Texas Petroleum Gas
7. Phillips Petroleum
8. Eldorado Petroleum
9. Goldking Refining
10. Union Petroleum Corp.
11. Chevron Oil Co.
12. Canal Refining Co.
13. Crystal Oil Co.
14. Coastal States
15. Ashland Oil Co.
16. Amoco Oil Co.

Exhibit 25

Name of Consent Order Firm: Petro-Lewis Corporation.

Consent Order Case Numbers:

ERA: 840V00202.

OHA: HEF-0267; HEF-0268.

Consent Order Period: August 19, 1973-June 30, 1980.

Consent Order Fund: \$5,900,000.

Names and Locations of Plants:

1. Ames-Rodman Plant Garfield County, OK
 2. Rodman-Basin-Choate Plant, Kingfisher County, OK
 3. Aline Plant, Alfalfa County, OK
- Alleged Overcharges: \$5,724,190.22.

Gallons sold:	
1. Ames-Rodman Plant.....	374,090,130
2. Rodman-Basin-Choate Plant.....	63,544,605
3. Aline Plant.....	3,762,556
Total.....	441,397,291

Per Gallon Refund Amount: \$.013367.

Identified Purchasers:

1. Cities Service Co.
 2. Koch Industries
- Comments:

PLANT OWNERSHIP

[In percent]

	Total Petro				
	Rodman share	Choate share	Acquired interest	Cities share	Reserve share
Rodman Plant 5/73.....	100				
Rodman Plant 8/73 to 8/77.....	50		50	50	
Ames addition to Rodman Plant 5/73 to 4/75.....	75	12.5	87.5		12.5
Ames addition to Rodman Plant 4/75 to 8/77.....	37.5	6.25	43.75	50	6.25

PLANT OWNERSHIP—Continued

[In percent]

	Total Petro				
	Rodman share	Choate share	Acquired interest	Cities share	Reserve share
Rodman-Basin Choate Plant 5/73 to 5/75.....	75	12.5	87.5		12.5
Rodman-Basin Choate Plant 5/75 to 8/77.....	37.5	6.25	43.75	50	6.25
Aline Plant 5/75 to 8/77.....	87.5	12.5	100		

Exhibit 26

Name of Consent Order Firm: Planet Engineer, Inc.

Consent Order Case Numbers:

ERA: 710V03016.

OHA: HEF-0271.

Consent Order Period: September 1, 1973-January 28, 1981.

Consent Order Fund: \$55,000.

Name and Location of Plant: McClave Plant, Lamar, CO.

Alleged Overcharges: \$209,341.89.

Gallons Sold: 19,065,000.

Per Gallon Refund Amount: \$.0028848.

Identified Purchasers: Unidentified.

Exhibit 27

Name of Consent Order Firm: Continental Resource Company (formerly Florida Gas Company).

Consent Order Case Numbers:

ERA: 413V00001.

OHA: HEF-0239.

Consent Order Period: August 19, 1973-August 31, 1979.

Consent Order Fund: \$4,500,000.

Name and Location of Plant and Percentage of Ownership: Brooker Plant, Brooker, FL, 100%.

Alleged Overcharges: \$12,938,723.

Gallons Sold: 349,186,760.

Per Gallon Refund Amount: \$.012887.

Identified Purchasers: Warren Petroleum Corp.

Comments: The total volume figure indicated above was derived from limited data located in the Decision and Order issued by the DOE on July 21, 1977. *Florida Gas Company*, 1 DOE ¶ 80,226 (1977). That Decision contained volume figures for the second quarter of 1973 (21,300,612 gallons) and the last quarter of 1976 (7,399,670 gallons). Based on this limited information, we calculated an average monthly volume of 4,783,380 gallons. By multiplying this monthly average by the 73 months encompassed by the consent order period we arrived at the total volume indicated above of 349,186,760 gallons.

[FR Doc. 84-22834 Filed 8-27-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-6-FRL-2661-2]

Region 6; Approval of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. *PSD-TX-243M-1*—Coastal States Petroleum Company; petroleum refinery located at 1320 Cantwell Drive, Corpus Christi, Nueces County, Texas; TX-243M-1 modifies TX-243 to reflect the scaled down refinery project and substitute a cogeneration facility for the originally permitted utility boilers; issued on April 4, 1984.

2. *PSD-TX-607*—Superior Oil Company; the permit authorizes the expansion of the existing North Word gas processing plant located on Highway 77A, approximately one mile southwest of Hallettsville, Lavaca County; issued on April 17, 1984.

3. *PSD-TX-630*—Amoco Production Company; this permit was issued for the construction of a CO₂ recovery plant at the existing Slaughter Gasoline Plant located on Highway 301, approximately 4 miles west of Sundown, Hockley County, Texas; issued on April 20, 1984.

4. *PSD-TX-102M-3*—Phillips Petroleum Company, petroleum refinery located on State Highway 119, approximately 3 miles northeast of Borger, Hutchinson County, Texas; PSD-TX-102M-3 modifies PSD-TX-102M-2 to reflect revisions to the BACT for fugitive VOC control; issued on April 25, 1984.

5. *PSD-OK-404M-1*—Fort Howard Paper Company; paper mill located on Harold Abitz Drive in Muskogee, Muskogee County, Oklahoma; PSD-OK-404M-1 modifies PSD-OK-404 to allow the deferral of testing time for the #4 boiler when burning natural gas, a standby fuel, as is provided in Specific Condition 2 when burning fuel oil, another standby fuel; issued on May 10, 1984.

6. *PSD-TX-478*—Houston Lighting and Power Company; this permit authorizes the construction of a lignite-fired steam electric generating facility to be located approximately 3 miles southwest of Malakoff, Henderson County, Texas; issued on May 18, 1984.

7. *PSD-OK-556M-2*—Ogden Martin Systems, Inc. (formerly Steam Supply Corporation); a municipal solid-waste incinerator/boiler facility located at the southwest corner of the intersection of 21st and Yukon Streets in Tulsa, Tulsa County, Oklahoma; PSD-OK-556M-2

modifies PSD-OK-556M-1 to reflect design changes by new constructor/operator and to authorize increased allowable fluoride emissions above the significance level; issued May 23, 1984.

8. PSD-TX-314M-1—Phillips Petroleum Company; natural gas treating and conditioning plant located on State Highway 448, near Giddings, Fayette County, Texas; PSD-TX-314M-1 modifies PSD-TX-314 to delete the requirement for operation of an oxygen analyzer to monitor the flue gas oxygen content of the two 650 hp internal combustion engines and replace it with a requirement to operate the engine at a two percent fuel penalty; issued on June 5, 1984.

9. PSD-TX-608—Cities Services Oil and Gas Corporation; Branton natural gas sweetening facility located on FM Road 1469, approximately 5 miles southwest of Jewett, Leon County, Texas; the permit authorizes an increase in the allowable SO₂ emissions due to a H₂S concentration increase from 10 ppm to 2.11 Vol % H₂S; issued on June 7, 1984.

10. PSD-TX-624—Lehigh Portland Cement Company; Portland cement plant located on U.S. Highway 84, west of Woodway, McLennan County, Texas; the permit authorizes the modification of the white cement kiln to: (1) Burn petroleum coke; and (2) construct new facilities to unload, store, and handle petroleum coke; issued on June 8, 1984.

11. PSD-TX-313M-1—Houston Pipeline Company; natural gas compressor station located on Kuykendahl Road, approximately 1 mile southeast of Bammel, Harris County, Texas; PSD-TX-313M-1 modifies PSD-TX-313 to: (1) Increase the operating hours from 6045 hours per year to 6048 hours per year; (2) delete Special Condition 2a which limits the CO emissions to 0.65 g/hp-hr (The company made a typographical error in the original application. It should have been 6.5 g/hp-hr.); (3) add 5 new dehydrators and delete the 2 dehydrators in the original permit because they are grandfathered; and (4) add a Special Condition requiring a temperature monitoring device on the intake manifold; issued on June 13, 1984.

12. PSD-TX-610—Sohio Chemical Company; Green Lake chemical process plant located on Highway 185, approximately 17 miles southwest of Port Lavaca, Calhoun County, Texas; the permit authorizes the addition of a third acrylonitrile reactor train; issued on June 18, 1984.

13. PSD-TX-464M-1—Warren Petroleum Company; Sandhills natural gas processing plant located off FM Road 1053, approximately 27 miles northwest of Crane, Crane County,

Texas; PSD-TX-464M-1 modifies PSD-TX-464 to: (1) Increase the allowance emissions of NO_x 11.02 lb/hr at 1000 hp (5gm/hp-hr) to 1603 lb/hr for each engine, based on stack sampling; and (2) add Special Condition 6 requesting the permittee to adjust the air to fuel ratios of the six engines, covered by this permit, monthly to minimize NO_x emissions; issued on June 20, 1984.

14. PSD-TX-618—Petro-Tex Chemical Corporation; this permit authorizes the construction of a cogeneration facility to be located at 8600 Park Place in Houston, Harris County, Texas; issued on June 28, 1984.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Under Section 307(b)(1) of the Clean Air Act, judicial review of the approval of these permits is available, if at all, 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 today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Documents pertaining to these permits are available for public inspection upon request at the following location: Environmental Protection Agency, Region 6, Air and Waste Management Division, 1201 Elm Street, InterFirst Two Building, Dallas, Texas 75270.

This notice will have no effect on the National Ambient Air Quality Standards.

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

Date: August 15, 1984.

Frances E. Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 84-22798 Filed 8-27-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2661-1]

Facilities Plan for Culebra, PR; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Preparation of an Environmental Impact Statement on the 201 Facilities Plan for Culebra, Puerto Rico.

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act, EPA has identified a need to prepare an environmental impact statement (EIS) on the 201 facilities plan for Culebra, Puerto Rico and, therefore, publishes this Notice of Intent (NOI) pursuant to 40 CFR 1507.2

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hargrove, Environmental Impacts Branch, U.S. Environmental Protection Agency—Region II, 26 Federal Plaza, Room 400, New York, New York 10278, Telephone: (212) 264-8670.

SUMMARY: Culebra is an island municipality approximately 13.5 miles off the east coast of Puerto Rico. The island encompasses approximately ten square miles of predominantly hilly terrain. There are five main areas of development on Culebra (Fulladosa, Clark, Dewey, Resaca, and Las Delicias) with a total population of 1047 (1976). Currently, there is little use of formal wastewater treatment facilities on the island. The major forms of wastewater disposal are cesspools, latrines, and direct ocean discharges.

Because of the sensitive nature of the island ecology and the need to develop a cost-effective wastewater management plan for Culebra, EPA is undertaking this EIS to develop a cost-effective, environmentally sound, and implementable wastewater treatment plan for the study area. Copies of the detailed NOI can be obtained from the contact listed above.

Scoping

Full public participation by interested federal, commonwealth, and local agencies as well as other interested organizations and the general public is encouraged. In this regard, EPA will hold a public meeting to refine the scope of the EIS on September 28, 1984, at 7:30 pm at Casa de Municipio, Culebra, Puerto Rico. The meeting will be held to receive comments on the scope of the EIS, reasonable alternatives that should be considered, anticipated environmental problems, and actions that might be taken to address them.

Participants are encouraged to submit, in advance, their intent to participate in the scoping meeting and any associated written materials. However, submission of intent to participate and written materials is not required for participation at the scoping meeting. In addition, if attendance at the scoping meeting is not possible, written comments on scoping issues may be sent to the Chief, Environmental Impacts Branch, U.S. Environmental Protection Agency—Region II; 26 Federal Plaza, New York, New York 10278.

Date: August 22, 1984.

Allan Hirsch,
Director, Office of Federal Activities.

[FR Doc. 84-22738 Filed 8-27-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 20, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Doris Peacock, Agency Clearance Officer (202) 632-7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503 (202) 395-4814.

OMB No.: 3060-0128

Title: Application for Radio Station Authorization in the Private Radio Services

Form No.: FCC 574

Action: Extension

Estimated Annual Burden: 141,518

Respondents: 778,349 Hours.

OMB No.: 3060-0129

Title: Supplemental Information for Trunked and Conventional Systems (806-821 MHz and 851-866 MHz Bands)

Form No.: FCC 574-A

Action: Extension

Estimated Annual Burden: 26,600

Respondents: 4,442 Hours.

OMB No.: 3060-0130

Title: Private Fixed, Mobile, and Radiolocation Services Supplementary Information

Form No.: FCC 574-B

Action: Extension

Estimated Annual Burden: 640

Respondents: 5,120 Hours.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84-22743 Filed 8-27-84; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 20, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

Title: Section 73.1250, Broadcasting

Emergency Information

Action: Extension

Respondents: Businesses (including small businesses)

Estimated Annual Burden: 500

Respondents: 500 Hours

Title: Section 73.1920, Personal Attacks (broadcast stations)

Action: Extension

Respondents: Businesses (including small businesses)

Estimated Annual Burden: 1,000

Respondents: 2,000 Hours

Title: Section 74.1281, Station Records (FM broadcast translator and booster stations)

Action: Revision

Respondents: Businesses (including small businesses)

Estimated Annual Burden: 741

Recordkeepers: 675 Hours

Title: Section 76.12, Registration Statement Required (cable television service)

Action: Revision

Respondents: Businesses (including small businesses)

Estimated Annual Burden: 2,200

Respondents: 1,100 Hours

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84-22744 Filed 8-27-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-389]

Cardinal Federal Savings Bank, Cleveland, OH; Final Action Approval of Conversion Application

August 22, 1984.

Notice is hereby given that on July 26, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Cardinal Federal Savings Bank, Cleveland, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Cincinnati, P.O. Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-22829 Filed 8-27-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-387]

Central Jersey Savings and Loan Association, East Brunswick, NJ; Final Action Approval of Conversion Application

August 22, 1984.

Notice is hereby given that on June 22, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Central Jersey Savings and Loan Association, East Brunswick, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-22831 Filed 8-27-84; am]

BILLING CODE 6720-01-M

[No. AC-388]

First Federal Savings and Loan Association of Marion County, Columbus, MS; Final Action Approval of Conversion Application

August 22, 1984.

Notice is hereby given that on June 27, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Marion County, Columbus, Mississippi, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C., and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, 500 E. John Carpenter Freeway, Post Office Box 619026, Dallas/Fort Worth, Texas 75261.

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 84-22830 Filed 8-27-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-390]

First Federal Savings Bank of Proviso Township, Hillside, IL; Final Action Approval of Conversion Application

August 22, 1984.

Notice is hereby given that on July 31, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings Bank of Proviso Township, Hillside, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary

[FR Doc. 84-22827 Filed 8-27-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-385]

Mutual Building Savings and Loan Association, F.A., Las Cruces, NM; Final Action Approval of Conversion Application

August 22, 1984.

Notice is hereby given that on June 22, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved this application of Mutual Building Savings and Loan Association, F.A., Las Cruces, New Mexico, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Dallas, 500 E. John Carpenter Freeway, Post Office Box 619026, Dallas/Fort Worth, Texas 75261.

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 84-22832 Filed 8-27-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION**Ocean Freight Forwarder License; Applicants**

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

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.

HPH International, Inc., 555 E. Ocean Blvd., Suite 711, Long Beach, CA 90802

Officers:

Gerald Y. Harada, President/Director
Carolyn J. Parker, Executive Vice President/Secretary/Treasurer/Director
Michael K. Hieda, Vice President/Director

International Distribution Enterprises, Inc., 4310 N.W., 37th Avenue, Miami, FL 33142

Officers:

Andre J.P. Kusters, President/Director
P.F.A. Van der Linden, Vice President/Director
Manuel Zarate, Vice President

Rex B. Guthrie, Secretary

By the Federal Maritime Commission.

Dated: August 23, 1984.

Francis C. Hurney,
Secretary.

[FR Doc. 84-22783 Filed 8-27-84; 8:45 am]

BILLING CODE 6230-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
1984	5-Star Air Freight Corporation, 625 No. Governor Printz Blvd., Essington, PA 19029.	Aug. 8, 1984.
2603	Macargo, Inc., 814 Ponce de Leon, Ste. 303, Coral Gables, FL 33134.	Aug. 16, 1984.
2666	Combined Transport Systems, Inc., 17 Battery Place, New York, NY 10004.	Aug. 20, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-22782 Filed 8-27-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**Chemical New York Corp.; Application to Engage de Novo in Permissible Nonbanking Activities**

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical New York Corporation*, New York, New York; to engage *de novo* through its subsidiary, Chemical Futures, Inc., New York, New York, in soliciting, executing and clearing, for nonaffiliated persons on major exchanges, through a designated firm, futures contracts and options on futures contracts with respect to U.S. government securities, certificates of deposit and other money market instruments that a bank may buy and sell in the cash market, foreign exchange, and bullion.

Board of Governors of the Federal Reserve System, August 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22759 Filed 8-27-84; 8:45 am]

BILLING CODE 6210-01-M

Jefferson Bankshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies. Unless otherwise noted, such activities will be conducted through the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1984.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Jefferson Bankshares, Inc.*, Charlottesville, Virginia; to engage *de novo* through its subsidiary, Jefferson Properties, Inc., Charlottesville, Virginia, in making, acquiring and/or servicing of loans and other extensions of credit for the account of Jefferson Bankshares, Inc., its affiliates and/or others and making real estate appraisals.

2. *Jefferson Bankshares, Inc.*, Charlottesville, Virginia; to engage *de novo* through its subsidiary, Jefferson Data Services, Inc., thereby engaging in financial, banking and/or economic data processing and data transmission services, facilities, data bases and/or access to such services, facilities and/or data bases.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstbank of Illinois, Co.*, Springfield, Illinois; to engage *de novo* through its subsidiary, FIBANK Credit Insurance Company, Springfield, Illinois, in reinsurance of credit life and credit accident and health insurance.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Montwood Bancshares, Inc.*, El Paso, Texas; to engage *de novo* through its subsidiary, Montwood Bancshares, Inc./Direct, El Paso, Texas, thereby engaging in making and servicing loans. Applicant intends to purchase loans which may include land development and interim construction loans, insured and conventional real estate loans and secured and unsecured commercial and industrial loans in the United States.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Western Bancorporation*, Moab, Utah; to engage *de novo* through its subsidiary, First Western Financial Services, Moab, Utah, in lending and leasing activities, pursuant to Regulation Y. These activities would be conducted in the States of Utah, Colorado, and New Mexico.

Board of Governors of the Federal Reserve System, August 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22761 Filed 8-27-84; 8:45 am]

BILLING CODE 6210-01-M

Maryland National Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that

outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 19, 1984.

A. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland National Corporation*, Baltimore, Maryland; to acquire Summit Industrial Bank, Lakewood, Colorado, thereby operating as an industrial bank in the manner authorized by Colorado law so long as it does not both accept demand deposits and make commercial loans, including but not limited to: acceptance of savings deposits (i.e. passbook, IRA, All Savers) and issuance of certificates of deposit (i.e. money market, investment); secured and unsecured consumer lending including second mortgages; secured and unsecured open end lending with or without overdraft credit lines; and sales of travelers cheques; and—engaging in the sale as agent of credit life, credit disability, credit accident and health, loan redemption and loan cancellation insurance in connection with extensions of credit by bank and nonbank subsidiaries of Maryland National. (Loan redemption and loan cancellation insurance will be limited to decreasing term policies and will not include level term policies.)

B. Federal Reserve Bank of Chicago
(Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Fairbank Bancshares, Inc.*, Fairbank, Iowa; to acquire Bellis Insurance Agency, Inc., Fairbank, Iowa, and thereby indirectly engage in the sale of general insurance conducted in a town of less than 5,000. These activities will be conducted in Fairbank, Iowa.

Board of Governors of the Federal Reserve System, August 22, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-22760 Filed 8-27-84; 8:45 am]

BILLING CODE 6210-01-M

**The Summit Bancorporation, et al.;
Formations of; Acquisitions by; and
Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 19, 1984.

A. Federal Reserve Bank of New York
(A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation*, Summit, New Jersey; to acquire 100 percent of the Series A cumulative, convertible preferred stock of Ultra Bancorporation, Bridgewater, New Jersey, thereby indirectly acquiring The Peoples National Bank of Central Jersey, Piscataway, New Jersey, and First National Bank of Central Jersey, Bridgewater, New Jersey.

B. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond, Virginia 23261:

1. *Twentieth Bancorp, Inc.*, Huntington, West Virginia; to acquire 100 percent of the voting shares of First National Bank of West Hamlin, West Hamlin, West Virginia.

C. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Prattville Financial Services Corp.*, Prattville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Prattville, Prattville, Alabama.

D. Federal Reserve Bank of Chicago
(Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American State Bankcorp.*, Sheridan, Indiana; to become a bank holding company by acquiring 80 percent or more of the voting shares of American State Bank of Sheridan, Sheridan, Indiana.

2. *Cylinder Bancorporation*, Cylinder, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Cylinder State Bank, Cylinder, Iowa.

3. *First Mazon Bancorp, Inc.*, Mazon, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Mazon State Bank, Mazon, Illinois.

4. *Standard Bancshares, Inc.*, Evergreen Park, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage/Standard Bank and Trust Company, Evergreen Park, Illinois.

E. Federal Reserve Bank of St. Louis
(Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens of Hardeman County Financial Services, Inc.*, Whiteville, Tennessee; to become a bank holding company by acquiring at least 80 percent of the voting shares of Whiteville Savings Bank, Whiteville, Tennessee.

F. Federal Reserve Bank of Minneapolis
(Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Frankson Investment Corporation*, Waseca, Minneapolis, Minnesota; to acquire 16.6 percent of the voting shares of The First National Bank of Waseca, Waseca, Minneapolis.

G. Federal Reserve Bank of Dallas
(Anthony J. Montelaro, Vice President)
400 South Akard Street, Dallas, Texas 75222:

1. *CNB Financial Corporation*, San Saba, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The City National Bank of San Saba, San Saba, Texas.

Board of Governors of the Federal Reserve System, August 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22762 Filed 8-27-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator Advisory Board; Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Board's subcommittee on Finance will meet on September 13, 1984 from 9:00 a.m. to 3:30 p.m. in Room 6120, 18th and F Streets, NW., Washington, D.C.

The meeting will be devoted to a review of GSA's program to improve the implementation of the Federal Managers' Financial Integrity Act and OMB Circular A-123, Management Controls.

This meeting is open to the public.

Questions regarding this meeting should be directed to Mr. James Dean on (202) 566-0382.

Dated: August 22, 1984.

Thomas J. Simon,

Director, Office Of Program Initiatives.

[FR Doc. 84-22760 Filed 8-27-84; 8:45 am]

BILLING CODE 6820-26-M

Office of the Administrator Advisory Board; Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Board's subcommittee on Facilities and Buildings Management will meet on September 14, 1984 from 9:00 a.m. to 3:30 p.m. in Room 6120, 18th and F Streets, NW., Washington, D.C.

The meeting will be devoted to a review of the Public Buildings Service's (PBS) program to increase the cost-effective utilization of vacant Federal office and other space.

This meeting is open to the public.

Questions regarding this meeting should be directed to Mr. James Dean on (202) 566-0382.

Dated: August 22, 1984.

Thomas J. Simon,

Director, Office Of Program Initiatives.

[FR Doc. 84-22781 Filed 8-27-84; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0252]

Antipyrine Test as an Index of Hepatic Drug-Metabolizing Capacity

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has established an Orphan Products Development Office to identify and facilitate the availability of products useful in treating or diagnosing uncommon diseases. This office will also promote availability of products for common diseases where commercial sponsorship of the products is either lacking or is not totally committed to obtaining marketing approval. By this notice, the Orphan Products Development Office invites submission of a New Drug Application (NDA) for use of oral antipyrine in the Antipyrine Test in patients to monitor the drug-metabolizing capacity of the liver.

FOR FURTHER INFORMATION CONTACT:

General Information: Roger C. Gregorio, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

Technical Information: Benjamin P. Lewis, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION:

Antipyrine is used in the Antipyrine Test to provide an index of hepatic drug-metabolizing capacity. It serves to test or monitor this important function of the liver. Antipyrine has been used as an investigational tool to identify host factors, both genetic and environmental in etiology, that affect rates of hepatic drug oxidation. The Antipyrine Test has served for this purpose in both normal volunteers under stable, carefully controlled conditions and in patients with various hepatic, endocrinological, renal, and cardiovascular disorders.

The special clinical pharmacological properties of antipyrine that make it suitable for this purpose are as follows: rapid and complete absorption from the gastrointestinal tract after oral administration; negligible first pass effect, binding to tissue or plasma proteins or renal elimination, distribution in total body water; and removal from the body almost exclusively by hepatic drug oxidation.

At clinical doses antipyrine concentrations in plasma and saliva are identical (first order kinetics) so that the Antipyrine Test can be used noninvasively by simply measuring salivary concentrations.

The Antipyrine Test consists of measurement of antipyrine elimination on several carefully controlled occasions in the same subject. Changes that occur in rates of elimination of antipyrine from one administration to another in the same subject have served to indicate the role of individual host factors that independently alter the rates of hepatic drug oxidation. Various host factors (i.e., liver function, renal function, dietary factors, gastrointestinal function, age, circadian and seasonal variations, exercise, disease, and others) affect drug response processes that include drug absorption, distribution, metabolism, excretion, receptor action, and combinations thereof. The Antipyrine Test has been used in patients with liver disease to monitor their hepatic drug-metabolizing capacity as liver function improves. Antipyrine can also be used in other disorders that affect hepatic function to indicate their effect on drug oxidation and to assess effects of renal, endocrinological, and cardiovascular conditions on hepatic drug metabolism. Some examples are chronic renal failure, cirrhosis, hepatitis, hypothyroidism, hyperthyroidism, and congestive heart failure. A large number of drugs and diets can affect antipyrine disposition and for that reason antipyrine can serve as a test to determine how each of these host factors alters hepatic capacity to metabolize other drugs. FDA has consulted Dr. Elliot S. Vesell regarding the Antipyrine Test and acknowledges his expert advice.

FDA has concluded a thorough review of the medical literature and has concluded that sufficient data exist in the published literature to invite submission of an NDA for the use of antipyrine in the Antipyrine Test as an index of hepatic drug-metabolizing capacity. Also, FDA has prepared official labeling information for antipyrine for this indication in accordance with 21 CFR 201.56 and 201.57. It is recommended that this labeling be used by the sponsor.

FDA would require the following information to be submitted in an NDA:

1. Manufacturing controls information.
2. A detailed summary and analysis of the published medical literature pertinent to the safety and effectiveness of the drug for the indication listed in the labeling.

3. Any other information the applicant has that bears on safety and effectiveness.

4. Labeling information has already been prepared by FDA and can be used by the sponsor to satisfy the requirements of 21 CFR 201.56 and 201.57.

FDA will be pleased to meet with potential sponsors to discuss the data and requirements. Manufacturers interested in submitting an NDA should contact Roger C. Gregorio at the address given above.

The published literature can be used by the applicant in support of safety and effectiveness information for antipyrine for use in the Antipyrine Test. Examples of the published literature that may be included in the application are:

1. Vesell, E. S., and J. G. Page, "Genetic Control of Drug Levels in Man: Antipyrine," *Science*, 161:72-73, 1968.
2. Vesell, E. S., and J. G. Page, "Genetic Control of Phenobarbital-induced Shortening of Plasma Antipyrine Half-lives in Man," *Journal of Clinical Investigations*, 44:2202-2209, 1969.
3. Vesell, E. S., "Commentary. The Antipyrine Test in Clinical Pharmacology: Conceptions and Misconceptions," *Clinical Pharmacology and Therapeutics*, 28:275-286, 1979.
4. Brodie, B. B., and J. Axelrod, "The Fate of Antipyrine in Man," *Journal of Pharmacology and Experimental Therapeutics*, 98:97-104, 1950.
5. Brodie, B. B., J. Axelrod, R. Soberman, and B. B. Levy, "The estimation of Antipyrine in Biological Materials," *Journal of Biological Chemistry*, 179:25-29, 1949.
6. Soberman, R., et al., "The Use of Antipyrine in the Measurement of Total Body Water in Man," *Journal of Biological Chemistry*, 170:31-42, 1949.
7. Cassidy, G., "Effect of Caesarean Section on Neonatal Body Water Spaces," *New England Journal of Medicine*, 285:887-891, 1971.
8. Welch, R. M., Y. E. Harrison, and W. Burns, "Implications of Enzyme Induction in Drug Toxicity Studies," *Toxicology and Applied Pharmacology*, 10:340-351, 1967.
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16. Chang, R. L., et al., "Antipyrine: Radioimmunoassay in Plasma and Saliva Following Administration of a High Dose and a Low Dose," *Clinical Pharmacology and Therapeutics*, 20:219-226, 1976.
17. Vesell, E. S., G. T. Passananti, P. A. Glenwright, and B. H. Dvorchik, "Studies on the Disposition of Antipyrine, Aminopyrine, and Phenacetin Using Plasma, Saliva, and Urine," *Clinical Pharmacology and Therapeutics*, 18:259-272, 1975.
18. Welch, R. M., R. L. DeAngelis, M. Wingfield, and T. W. Farmer, "Elimination of Antipyrine from Saliva as a Measure of Metabolism in Man," *Clinical Pharmacology and Therapeutics*, 18:249-258, 1975.
19. Greenberg, L. A., "Antipyrine: A Critical Bibliographic Review," Hillhouse Press, New Haven, CT, 1950.
20. Nelson, J., Letter solicited by the OCT Panel for Internal Analgesic, Antipyretic and Antirheumatic Products, October 3, 1975, copy in OTC Volume 030150.
21. "Establishment of a Monograph for OTC Internal Analgesic, Antipyretic and Antirheumatic Products, FDA, Federal Register, 42 FR 35435-35439, 35451-35452, 35468, July 8, 1977.
22. Brocq, L., "Eruption Erythematopigmentée Fixe due à l'Antipyrine," *Bulletin de la Société Française de Dermatologie et Syphilologie*, 5:86-91, 1894.
23. Woodbury, D. M., "Analgesic Antipyretics, Anti-inflammatory Agents, and Inhibitors of Uric Acid Synthesis," in "The Pharmacological Basis of Therapeutics," 4th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, pp. 334-335, 1970.
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35. Vesell, E. S., G. T. Passananti, and G. W. Hepner, "Interactions Between Antipyrine and Aminopyrine," *Clinical Pharmacology and Therapeutics*, 20:661-669, 1976.
36. Vesell, E. S., G. T. Passananti, and K. C. Aurori, "Anomalous Results of Studies on Drug Interaction in Man. I. Nortriptyline and Antipyrine," *Pharmacology*, 13:101-111, 1975.
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39. Vesell, E. S., "Aminopyrine and Antipyrine as Tests of Liver Function in Problems in Liver Diseases," edited by C. S. Davidson, Stratton Intercontinental Medical Book Corp., pp. 299-312, 1979.
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Hydroxylation in Man," *Proceedings of the BPS*, p. 417P, 3d-5th January, 1979.

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Dated: August 22, 1984.

Marion J. Finkel,

Director, Orphan Products Development.

[FR Doc. 84-22753 Filed 8-27-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0157]

Ciba-Geigy Corp.; Withdrawal of Petition for Food Additive

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

withdrawal without prejudice of a petition (FAP 2B3671) proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate as an antioxidant and/or stabilizer in poly(p-methylstyrene) intended to contact food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 Withdrawal of petition without prejudice of the procedural food additive regulations (21 CFR 1271.7), Ciba-Geigy Corp., Three Skyline Drive, Hawthorne NY 10532, has withdrawn its petition (FAP 2B3671), notice of which was published in the Federal Register of June 17, 1983 (48 FR 27834), proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate as an antioxidant and/or stabilizer in poly(p-methylstyrene) and rubber-modified poly(p-methylstyrene) intended to contact food.

Dated: August 20, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-22754 Filed 8-27-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Designation of Health Services Areas and Health Systems Agency Application Information

Correction

In FR Doc. 84-21881 beginning on page 32909 in the issue of Friday, August 17, 1984, make the following correction.

On page 32909, second column, in the "Supplementary Information" section, the first list of counties should include "Clermont".

BILLING CODE 1505-01-M

National Institutes of Health

Board of Scientific Counselors Division of Cancer Biology and Diagnosis; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board

of Scientific Counselors, DCBD, National Cancer Institute, November 7, 1984, at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on November 7, from 8:30 a.m. to 4:00 p.m. for concept review of proposed DCBD research projects. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 7, from 4:00 p.m. to adjournment, for the review, discussion, and evaluation of individual programs and projects conducted by DCBD, National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Ihor J. Mansnyk, Associate Director, Extramural Research Program, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A-04, National Institutes of Health, Bethesda, Maryland 20205 (301/496-4345) will furnish substantive program information.

Dated: August 21, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-22794 Filed 8-27-84; 8:45 am]

BILLING CODE 4140-01-M

Board of Scientific Counselors, Division of Cancer Treatment; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of

Cancer Treatment, National Cancer Institute, October 15-18, 1984, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20205. The meeting will be open to the public on October 15, from 8:30 a.m. to approximately 4:45 p.m., and on October 16, from 8:30 a.m. until adjournment, to review program plans, contract recompletions and budget for the DCT program. In addition, there will be a scientific review of one of the programs in the Division. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 15, from 5:00 p.m. until adjournment, for the critique and evaluation of the DCT intramural program in the Navy-Medical Oncology Branch, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Bruce Chabner, Executive Secretary, Board of Scientific Counselors, DCT, National Cancer Institute, Building 31, Room 3A52, National Institutes of Health, Bethesda, Maryland 20205 (301/496-4291) will furnish substantive program information.

Dated: August 21, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-22793 Filed 8-27-84; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the

following study sections for October through November 1984, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. In addition, the Human Development and Aging Study Section, Subcommittee 1, will hold a seminar on Thursday, October 25, 1984, from 3 P.M. to 5 P.M. to discuss the state of the art of conceptual and methodological issues in infancy research. This seminar will also be an open session. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	October to November 1984 meetings	Time	Location
Allergy and immunology—Dr. Eugene Zimmerman, Rm. 320, Tel. 301-496-7380.	Oct. 25 to 27	8:30	Holiday Inn, Georgetown, DC.
Bacteriology and mycology—1—Dr. Milton Gordon, Rm. 304, Tel. 301-496-7340.	Oct. 15 to 17	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Bacteriology and mycology—2—Dr. William Branche, Jr., Rm. 306, Tel. 301-496-7861.	Oct. 17 to 19	8:30	Holiday Inn, Georgetown, DC.
Behavioral medicine—Dr. Joan Rittenhouse, Rm. 232, Tel. 301-496-7109.	Oct. 10 to 12	9:00	Do.
Biochemical endocrinology—Dr. Norman Gold, Rm. 226, Tel. 301-496-7430.	Oct. 21 to 24	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Biochemistry—1—Dr. Adolphus P. Tolver, Rm. 318B, Tel. 301-496-7518.	Oct. 24 to 26	8:30	Georgetown Hotel, Washington, DC.
Biochemistry—2—Dr. Alex Liacouras, Rm. 318A, Tel. 301-496-7517.	Oct. 11 to 13	8:30	Dining Rm, Bldg. 60, Bethesda, MD.

Study section	October to November 1984 meetings	Time	Location
Bio-Organic and Natural Products Chemistry—Dr. Michael Rogers, Rm. A-27, Tel. 301-496-7107.	Oct. 18 to 20	9:00	Holiday Inn, Georgetown, DC.
Biophysical chemistry—Dr. John B. Wolff, Rm. 236B, Tel. 301-496-7070	Oct. 18 to 20	8:30	Community Rm, Bldg. 60, Bethesda, MD.
Bio-psychology—Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7058	Oct. 1 to 4	9:00	Do.
Cardiovascular and Pulmonary—Dr. Anthony C. Chung, Rm. 2A-04, Tel. 301-496-7316.	Oct. 17 to 19	8:30	Linden Hill Hotel, Bethesda, MD.
Cardiovascular and Renal—Dr. Rosemary Morris, Rm. 321, Tel. 301-496-7901.	Oct. 22 to 24	8:30	Holiday Inn, Georgetown, DC.
Cellular biology and physiology—1—Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396.	Oct. 24 to 26	8:30	Room A, Landow Bldg., Bethesda, MD.
Cellular biology and Physiology—2—Dr. Evelyn Horenshtein, Rm. 306, Tel. 301-496-7681.	Oct. 22 to 24	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Chemical pathology—Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078.	Oct. 9 to 11	8:00	Holiday Inn, Rockville, MD.
Diagnostic radiology—Dr. Catherine Wingate, Room 8, Rm. 219B, Tel. 301-496-7650.	Oct. 22 to 24	8:30	Holiday Inn, Georgetown, DC.
Endocrinology—Mr. Morris M. Graff, Rm. 333, Tel. 301-496-7346.	Oct. 15 to 17	3:00 p.m.	Room 9, Bldg. 31C, Bethesda, MD.
Epidemiology and disease control—1—Dr. Phyllis B. Eveleth, Rm. 203C, Tel. 301-496-7246.	Oct. 15 to 18	8:30	Holiday Inn, Bethesda, MD.
Epidemiology and disease control—2—Dr. Ann Schluenderberg, Rm. 203B, Tel. 301-496-7246.	Oct. 16 to 18	8:30	Do.
Experimental cardiovascular sciences—Dr. Richard Peabody, Rm. 234, Tel. 301-496-7940.	Oct. 16 to 18	8:30	Wellington Hotel, Washington, DC.
Experimental immunology—Dr. David Lavrin, Rm. 222B, Tel. 301-496-7238.	Oct. 17 to 19	9:00	Georgetown Hotel, Washington, DC.
Experimental therapeutics—Dr. Ira Kline, Rm. 319A, Tel. 301-496-7839.	Oct. 17 to 19	8:30	Holiday Inn, Bethesda, MD.
Experimental virology—Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474.	Oct. 22 to 24	8:30	Room 7, Bldg. 31C, Bethesda, MD.
General medicine A-1—Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797.	Oct. 24 to 26	8:30	Room 10, Bldg. 31C, Bethesda, MD.
General medicine A-2—Dr. Donna J. Dean, Rm. 354B, Tel. 301-496-7140.	Oct. 17 to 19	8:30	Room 8, Bldg. 31C, Bethesda, MD.
General medicine B—Dr. Antonia Novello, Rm. 322, Tel. 301-496-7730.	Oct. 3 to 5	8:30	Choir Rm, Bldg. 60, Bethesda, MD.
Genetics—Dr. David Remondini, Rm. 349, Tel. 301-496-7271.	Oct. 18 to 20	9:00	Room 7, Bldg. 31C, Bethesda, MD.
Hearing research—Dr. Joseph Kimm, Rm. 225, Tel. 301-496-7494.	Oct. 17 to 19	8:30	Georgetown Hotel, Washington, DC.
Hematology—1—Dr. Clark Lum, Rm. 355A, Tel. 301-496-7508.	Oct. 10 to 12	8:30	Holiday Inn, Georgetown, DC.
Hematology—2—Dr. Bruce Maurer, Rm. 355B, Tel. 301-496-7508.	Oct. 10 to 12	8:00	Do.
Human Development and aging—1—Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025.	Oct. 24	9:00	Georgetown Hotel, Washington, DC.
	Oct. 25	9:00 to 3 p.m.	
	Oct. 26	9:00	
Human development and aging—2—Dr. Samuel Rawlings, Rm. 305, Tel. 301-496-7640.	Oct. 10 to 12	9:00	Do.
Human development and aging—3—Dr. Susan C. Straufert, Rm. 203, Tel. 301-496-9403.	Oct. 16 to 17	8:30	Community Rm, Bldg. 60, Bethesda, MD.
Human embryology and development—Dr. Arthur Hoversland, Rm. 221, Tel. 301-496-7597.	Oct. 17 to 19	8:00	Holiday Inn, Chevy Chase, MD.
Immunobiology—Dr. William Stylos, Rm. 222A, Tel. 301-496-7780.	Oct. 10 to 12	8:30	Holiday Inn, Bethesda, MD.
Immunological sciences—Dr. Lottie Kornfeld, Rm. 223A, Tel. 301-496-7179.	Oct. 17 to 19	8:30	Wellington Hotel, Washington, DC.
Mammalian genetics—Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271.	Oct. 11 to 13	8:30	Room 5, Bldg. 31C, Bethesda, MD.
Medicinal chemistry—Dr. Ronald Dubois, Rm. A-27, Tel. 301-496-7107.	Oct. 10 to 12	9:00	Holiday Inn, Georgetown, DC.
Metabolism—Dr. Robert Leonard, Rm. 339A, Tel. 301-496-7091.	Oct. 25 to 27	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Metallobiochemistry—Dr. John A. Beiser, Rm. 310, Tel. 301-496-7733.	Oct. 25 to 27	9:00	Community Rm, Bldg. 60, Bethesda, MD.
Microbial physiology and genetics—1—Dr. Martin Slater, Rm. 238, Tel. 301-496-7183.	Oct. 24 to 26	8:30	Choir Rm, Bldg. 60, Bethesda, MD.
Microbial physiology and genetics—2—Dr. Gerald Liddell, Rm. 357, Tel. 301-496-7130.	Oct. 24 to 26	8:30	Holiday Inn, Rockville, MD.
Molecular and cellular biophysics—Dr. Patricia Straat, Rm. 236A, Tel. 301-496-7060.	Oct. 25 to 27	8:30	Sheraton Inn, Silver Spring, MD.
Molecular biology—Dr. Donald Disque, Rm. 328, Tel. 301-496-7830.	Oct. 18 to 20	8:30	Room A, Landow Bldg., Bethesda, MD.
Molecular cytology—Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149.	Oct. 11 to 13	8:30	Community Rm, Bldg. 60, Bethesda, MD.
Neurological sciences—Dr. Allen C. Stoolmiller, Rm. 439B, Tel. 301-496-7280.	Oct. 25 to 27	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Neurology A—Dr. Catherine Woodbury, Rm. 326, Tel. 301-496-7095.	Oct. 25 to 27	8:30	Wellington Hotel, Washington, DC.
Neurology B-1—Dr. Jo Ann McConnell, Rm. 2A03, Tel. 301-496-7422.	Oct. 30 to Nov. 2	8:30	Do.
Neurology B-2—Dr. Herman Teitelbaum, Rm. 2A05, Tel. 301-496-7422.	Oct. 30 to Nov. 2	8:00	Room 10, Bldg. 31C, Bethesda, MD.
Nutrition—Dr. John Schubert, Rm. 204, Tel. 301-496-7178.	Oct. 3 to 5	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Oral biology and medicine—Dr. Thomas M. Tarpley, Jr., Rm. 325, Tel. 301-496-7818.	Oct. 16 to 19	8:30	Linden Hill Hotel, Bethesda, MD.
Orthopedics and musculoskeletal—Ms.ileen Stewart, Rm. 350, Tel. 301-496-7581.	Oct. 18 to 20	8:30	Holiday Inn, Georgetown, DC.
Pathobiochemistry—Dr. Sharon Johnson, Rm. A-26, Tel. 301-496-7820.	Oct. 24 to 27	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Pathology A—Dr. John L. Meyer, Rm. 337, Tel. 301-496-7305.	Oct. 17 to 20	8:00	Holiday Inn, Chevy Chase, MD.
Pathology B—Dr. Martin Padarathsingh, Rm. 352, Tel. 301-496-7244.	Oct. 10 to 12	8:30	Holiday Inn, Georgetown, DC.
Pharmacology—Dr. Joseph Kattier, Rm. 206, Tel. 301-496-7408.	Oct. 23 to 25	8:00	Holiday Inn, Bethesda, MD.
Physical biochemistry—Dr. Jeanne Ketley, Rm. 218B, Tel. 301-496-7120.	Oct. 17 to 19	9:00	Do.
Physiological chemistry—Dr. Harry Brodie, Rm. 339B, Tel. 301-496-7837.	Oct. 10 to 12	8:30	Choir Rm, Bldg. 60, Bethesda, MD.
Physiology—Dr. Martin Frank, Rm. 209, Tel. 301-496-7878.	Oct. 17 to 20	9:00	Holiday Inn, Georgetown, DC.
Radiation—Dr. John Zimbrick, Rm. 219A, Tel. 301-496-7073.	Oct. 29 to 31	9:00	Room 9, Bldg. 31C, Bethesda, MD.
Reproductive biology—Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318.	Oct. 8 to 11	8:30	Holiday Inn, Bethesda, MD.
Respiratory and Applied Physiology—Dr. Nathan Watzman, Rm. 218A, Tel. 301-496-7320.	Oct. 15 to 17	8:30	Linden Hill Hotel, Bethesda, MD.
Sensory disorders and language—Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550.	Oct. 17 to 19	8:30	Georgetown Hotel, Washington, DC.
Social sciences and population—Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906.	Oct. 11 to 13	9:00	Quality Inn, Washington, DC.
Surgery and bioengineering—Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506.	Oct. 15 to 18	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Surgery, anesthesiology and Trauma—Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771.	Oct. 11 to 12	8:30	Westpark Hotel, Rosslyn, VA.
Toxicology—Ms. Faye J. Calhoun, Rm. 205, Tel. 301-496-7570.	Oct. 10 to 12	8:00	Marbury House, Washington, DC.
Tropical medicine and parasitology—Dr. Betty June Myers, Rm. 110, Tel. 301-496-7846.	Oct. 9 to 13	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Virology—Dr. Claire Winestock, Rm. 309, Tel. 301-496-7605.	Oct. 11 to 13	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Visual sciences A-1—Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000.	Oct. 24 to 26	9:00	Sheraton Hotel, Washington, DC.
Visual sciences A-2—Dr. Jane Hu, Rm. 439A, Tel. 301-496-7310.	Oct. 17 to 19	8:30	Holiday Inn, Georgetown, DC.

Study section	October to November 1984 meetings	Time	Location
Visual sciences B—Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	Oct. 24 to 26	9:00	Dining Rm, Bldg. 60, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: August 17, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-22792 Filed 8-27-84; 8:45 am]

BILLING CODE 4140-01-M

National Advisory Council on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the agenda for the meeting of the National Advisory Council on Aging, September 13-14, 1984, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland which was published in the *Federal Register* on Tuesday, August 7, 1984 (49 FR 31497). The meeting will be open to the public on Thursday, September 13, from 9:00 a.m. until noon for a status report by the Director, National Institute on Aging, a discussion of the Appeals System to review NIH Research Grant Applications by Dr. William F. Raub, and the review of the Biomedical Research and Clinical Medicine Program. It will again be open to the public on Friday, September 14, from 9:00 a.m. until adjournment to review the Behavioral Sciences Research Programs, a report from the Council ad hoc Committee on Program, and other administrative details. Attendance by the public will be limited to space available.

Dated: August 22, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-22791 Filed 8-27-84; 8:45 am]

BILLING CODE 4140-01-M

National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, September 17-18, 1984, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until approximately 12:00 noon on Monday, September 17, for opening remarks by the Director, National Eye Institute, and

presentations by the staff of the Institute.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 12:00 noon until recess on Monday, September 17, and from 9:00 a.m. to adjournment on Tuesday, September 18, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496-4903, will provide summaries of meetings and rosters of committee members.

Dr. Ronald G. Geller, Associate Director for Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4903, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: August 17, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-22790 Filed 8-27-84; 8:45 am]

BILLING CODE 4140-01-M

Cancer Clinical Investigation Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, October 29-30, 1984, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20205. This meeting will be open to the public on October 29, from 8:30 a.m. to 9:00 a.m. to review administrative details.

Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 29 from approximately 9:00 a.m. to recess and on October 30 from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual cooperative agreement applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winfield Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Richard K. Hsieh, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 819, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7481) will furnish substantive program information.

Dated: August 17, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 84-22789 Filed 8-27-84; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Privacy Act of 1974; Report of Altered System of Records and New Routine Uses Privacy Act Instructions

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Altered System of Records and New Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)), we are issuing public notice of our intent to make changes to the system of records entitled "Master Beneficiary Record (MBR), 09-60-0090." These changes are prompted by implementation of

provisions of Public Law (P.L.) 98-21 (the Social Security Amendments of 1983, hereinafter referred to as the Amendments).

We are amending the categories of individuals covered by the MBR to include individuals (nonclaimants) whose former spouses apply for or receive benefits based on their earnings and the categories of records in the MBR to include data relating to the amount of tax withheld on the benefits of nonresident aliens. Additionally, we are proposing to establish new routine uses of MBR data in accordance with 5 U.S.C. 552a(b)(3). The proposed routine uses provide for disclosure to the Department of the Treasury for determining the Federal tax liability on Social Security benefits and, as necessary, to deposit in the Social Security Trust Funds the tax withheld on the benefits of nonresident aliens. We also are making minor revisions to the MBR notice. We invite public comments on this publication.

DATES: We filed a report of altered system with the President of the Senate, the Speaker of House of Representatives and the Director, Office of Management and Budget on August 16, 1984. The proposals discussed in this publication will become effective as follows, unless we receive comments on or before the effective date which would result in a contrary determination.

The proposed alterations will become effective on October 15, 1984.

The proposed routine use providing for disclosure necessary to deposit the tax withheld on nonresident aliens' benefits will become effective on October 15, 1984. The data which will be disclosed is being added to the MBR by one of the proposed alterations; therefore, the effective date for the routine use is the same as that for the proposed alterations.

The proposed routine use providing for disclosure to the Department of the Treasury to determine the tax liability on Social Security benefits will become effective on September 15, 1984, however, no information associated with either proposed alteration will be disclosed prior to the effective date of the alterations.

The minor revisions are effective August 28, 1984.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at 3-F-1 Operations Building at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Hersh, Chief, Systems Security Staff, Office of System Requirements, Social Security Administration, Room 3-R-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-9076.

SUPPLEMENTARY INFORMATION: The MBR contains data about individuals who are or were entitled to receive Social Security benefits. The MBR also contains data pertaining to claimants whose benefits have been denied or disallowed, persons who are only enrolled in the Hospital Insurance and/or Supplemental Medical Insurance programs, and short reference records for persons entitled to Supplemental Security Income, Black Lung and Railroad Retirement Board benefits. The data maintained is used primarily to pay benefits to those individuals who are entitled. The Amendments (referred to previously) contain provisions which require that we make several changes to the MBR system of records. These changes are discussed below.

I. Proposed Alterations to the MBR

A. Expansion of the Categories of Records in the MBR

Section 871 of the Internal Revenue Code (IRC) imposes a yearly 30 percent tax on annuities received by nonresident aliens from sources within the United States (U.S.). Section 871 of the IRC, as amended by section 121 of the Amendments provides that the total Social Security benefit paid to a nonresident alien after December 31, 1983 (for months after November 1983) is to be included in the gross income of that individual for tax purposes. This provision of the IRC further requires SSA to withhold 15 percent of the total benefit of nonresident aliens, unless the individuals are exempt from such withholding by tax treaty. Currently, Canada has a tax treaty with the United States which limits the amount of benefits which may be withheld to 7.5 percent of the yearly benefit. Egypt, Japan, Malta, Romania and the United Kingdom have tax treaties which preclude the U.S. from withholding benefits paid to residents of those countries.

The beneficiary group affected by this provision will be those aliens residing outside the U.S. and alien beneficiaries who return to the U.S. with no intention of establishing a residence in the U.S. Social Security benefits subject to this tax are actual monthly benefit payments before any deductions, withholding or offset for medical insurance premiums, attorney fees or worker's compensation.

In implementing this provision of the Amendments, we will keep an accounting of all benefits paid to a nonresident alien in a given year and provide individuals a statement of the amount of benefits paid and tax withheld during the tax year. We also will make monthly deposits to the Treasury (Social Security Trust Funds) of those monies withheld. Implementation of this provision of the Amendments requires that we maintain a new category of data in the MBR—the amount of tax withheld on the Social Security benefits of nonresident aliens. This change is reflected in the MBR notice below.

B. Expansion of Categories of Individuals Covered by the MBR

Section 132 of the Amendments amended sections 202 and 203 of the Social Security Act to provide for payment of Social Security benefits to a divorced spouse by virtue of a former marriage. Under this provision, an individual who is at least 62 years of age, has been divorced from a former spouse for at least 2 years, and who meets other entitlement factors may receive benefits based on the earnings of the former spouse who is eligible for benefits, regardless of whether the former spouse has applied for benefits. Under prior law, a divorced person could receive benefits based on a former spouse's earnings only if the former spouse was a beneficiary.

Implementation of this provision of the Amendments will result in the maintenance of data in the MBR system of records on a group of individuals who are not currently covered by that system, individuals whose former spouses apply for benefits based on their earnings records. The change is reflected in the MBR notice below.

II. Proposed Routine Use Disclosures of Data in the MBR

A. Disclosure to the Department of the Treasury to Determine Federal Tax Liability on Social Security Benefits

Section 121 of the Amendments amended section 86 of the IRC to provide for taxation of Social Security benefits over a certain amount. Section 121 also amended section 6050 of the IRC to require the Secretary of HHS to file annual reports with the Secretary of the Treasury providing aggregate information pertaining to benefit payments, repayments and reductions with respect to an individual in a calendar year, along with the name and address of the individuals. This provision also requires similar reporting

to individuals. The aggregate information, which will be maintained in the MBR, will be derived from monthly benefit amounts which are maintained in the MBR. We have added language to the categories of records section of the MBR notice below reflecting that aggregate information will be maintained.

Compliance with this provision of the Amendments will require disclosure of personal information from the MBR to the Secretary of the Treasury. To comply with the Privacy Act before disclosing the information, we are establishing a routine use. The MBR notice already contains a routine use statement (routine use #5) which provides for certain disclosures to the Department of the Treasury. We are modifying that statement, as reflected below, to facilitate disclosure in this instance:

5. Disclosure may be made to the Department of the Treasury for * * *

(c) determining the Federal tax liability on Social Security benefits pursuant to 26 U.S.C. 86 and 6050, as amended by Pub L. 98-21. The information disclosed will consist of the following:

(1) the aggregate amount of Social Security benefits paid with respect to any individual during any calendar year;

(2) the aggregate amount of Social Security benefits repaid by the individual during such calendar year;

(3) the aggregate reduction under section 224 of the Social Security Act in benefits which would otherwise have been paid to such individual during the calendar year on account of amounts received under a workmen's compensation act; and,

(4) the name and address of such individual.

B. Disclosure to the Department of the Treasury, As Necessary, to Deposit in the Social Security Trust Fund the Tax Withheld on Benefits Paid to Nonresident Aliens

This proposed routine use disclosure will result from implementation of those provisions of section 121 which require SSA to withhold tax on the benefits of nonresident aliens and deposit the amounts withheld in the Social Security Trust Fund (see I.A. above). Again, to comply with the Privacy Act before making any disclosures to the Department of the Treasury, we are modifying routine use #5 applicable to the MBR as follows:

5. Disclosure may be made to the Department of the Treasury for * * *

(d) depositing the tax withheld on the benefits of nonresident aliens in the

Treasury (Social Security Trust Funds) pursuant to section 871 of the Internal Revenue Code, as amended by P.L. 98-21.

C. Compatibility of the Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR Part 401) permit us to disclose information as a routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.310 of the regulation permits us to disclose information as a routine use when the information will be used to assist in administering our programs, assist other agencies in administering their programs which are similar to our programs or when disclosure is required or authorized by Federal law. The disclosures which may be made under the proposed routine uses are required by the IRC; thus, they meet our compatibility criteria and the routine uses are appropriate.

III. Effect of the Proposed Alterations and Routine Uses on the Rights of Individuals

The proposed alteration discussed in item I.A will allow some divorced spouses who may have otherwise waited several years beyond their own retirement age (because former spouses either delay retirement or fail to apply for benefits) to apply for benefits upon retirement. This measure, however, will not result in any loss of benefits to a former spouse to which he or she would otherwise be entitled. Consequently, we do not anticipate that the alteration would have an adverse effect on these individuals.

The alteration discussed in item I.B will result in the maintenance of the amount of tax withheld on the benefits of nonresident aliens. We are specifically required by Federal law to withhold these taxes. The purpose of this taxation and withholding is to treat the benefits of nonresident aliens the same as other periodic payments made to these individuals from sources within the U.S. We will implement this provision of the Amendments only as authorized therein; thus, we do not anticipate that the alteration being made to the MBR system will have an adverse effect on the individuals involved.

The proposed routine uses will permit disclosure to the Department of the Treasury so that Social Security benefits are properly taxed as required by law. Disclosure under the routine uses will be restricted to purposes involving taxation of the benefits. Consequently, we do not anticipate that the disclosures would

result in any unwarranted invasion of the privacy rights of individuals.

IV. Minor Changes Applicable to the MBR Notice

We have made minor changes to the system name and system manager sections of the MBR notice to reflect recent organizational changes. The acronym of the SSA component which now has primary responsibility for the MBR has been added to the system name section and the title and business address of the SSA official who now has responsibility for the MBR is reflected in the system manager section. We also have revised the contesting record procedures section of the MBR notice to include additional instructions an individual should follow when contesting a record in the MBR system.

The notice below contains the revisions discussed above.

Dated: August 16, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

09-60-0090

SYSTEM NAME:

Master Beneficiary Record (MBR), HHS/SSA/OSR.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of System Operations, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Social Security beneficiaries who are or were entitled to receive Retirement, Survivors, or Disability Insurance (RSDI) benefits; individuals (nonclaimants) whose former spouses apply for RSDI benefits on their earnings records; persons who are only enrolled in the Hospital and/or Supplementary Medical Insurance (SMI) programs; and claimants whose benefits have been denied or disallowed.

The system also contains short reference to records for persons entitled to Supplemental Security Income payments, Black Lung benefits or Railroad Retirement Board benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

The MBR contains information about each claimant who has applied for RSDI benefits, or to be enrolled in the Hospital or SMI programs; a record of the amount of Federal tax withheld on benefits paid to nonresident aliens; and to aggregate amount of benefit payments, repayments and reductions

with respect to an individual in a calendar year. A record is maintained under each individual's Social Security number (SSN). However, if the individual has filed on another person's SSN, only a short 'pointer' record is maintained. Personal and general data about the claim is maintained under the SSN of the claim. Data about the claimant can be accessed using the claimant's SSN or the SSN on which benefits have been awarded or claimed (claim account number (CAN)).

There are three types of data in each CAN:

Account data. This includes the primary insurance amount, insured status of the SSN holder (if no monthly benefits are payable), data relating to the computation (use of military service credits, railroad retirement credits, or the foreign country when the primary insurance amount is based on wage credits under a totalization agreement), and, if only Survivor's benefits have been paid, identifying data about the SSN holder (full name, date of birth, date of death and verification of date of death).

Payment data. This includes the payee name and address, data about a financial institution (if benefits are sent directly to the institution for deposit), the monthly payment amount, the amount and date of a one-time payment of past due benefits, and, where appropriate, a scheduled future payment. Payment data can refer to one beneficiary or several beneficiaries in a combined payment.

Beneficiary data. This includes personal information (name, date of birth, sex, date of filing, relationship to the SSN holder, other SSN's, benefit amount and payment status), and, if applicable, information about a representative payee, data about disability entitlement, worker's compensation offset data, estimates and report of earnings, or student entitlement information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202a-205, 223, 226, 228, 1818, 1836 and 1840 of the Social Security Act.

PURPOSES(s):

Data in this system are used by a broad range of Social Security employees for responding to inquiries, generating followups on beneficiary reporting events, computer exception processing statistical studies, conversion of benefits, and generating records for the Department of the Treasury to pay the correct benefit amount. Data in this system also are available to the HHS Inspector General

for use in the performance of his/her duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To applicants or claimants, prospective applicants or claimants (other than the data subject), their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and receive and account for benefits.

2. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for, or entitlement to, benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

- (1) He/she is incapable or of questionable mental capability;
- (2) He/she cannot read or write;
- (3) He/she cannot afford the cost of obtaining the information;
- (4) A language barrier exists; or
- (5) The custodian of the information will not, as a matter of policy, provide it to the individual.

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

- (1) His/her eligibility for benefits under the Social Security program;
- (2) The amount of his/her benefit payment; or
- (3) Any case in which the evidence is being reviewed as a result of suspected fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

3. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

4. To a person (or persons) on the rolls when a claim is filed by another individual which is adverse to the person on the rolls:

- (a) An award of benefits to new claimant precludes an award to a prior claimant or
- (b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the roll; but only for information concerning the facts relevant to the interests of each party in a claim.

5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act (including Social Security number verification services);

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks;

(c) Determining the Federal tax liability on Social Security benefits pursuant to 26 U.S.C. 86 and 6050, as amended by Public Law 98-21. The information disclosed will consist of the following:

(1) The aggregate amount of Social Security benefits paid with respect to any individual during any calendar year;

(2) The aggregate amount of Social Security benefits repaid by such individual during such calendar year

(3) The aggregate reductions under section 224 of the Social Security Act in benefits which would otherwise have been paid to such individual during the calendar year on account of amounts received under a workmen's compensation act; and

(4) The name and address of such individual; and

(d) Depositing the tax withheld on benefits paid to nonresident aliens in the Treasury (Social Security Trust Funds) pursuant to 26 U.S.C. 871, as amended by Public Law 98-21.

6. To the United States Postal Service for investigating the alleged theft or forgery of Social Security checks.

7. To the Department of Justice for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) Representing the Secretary of the Department of Health and Human Services; and

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State for administering the Social Security Act in foreign countries through services and facilities of that agency.

9. To the American Institute on Taiwan for administering the Social Security Act on Taiwan through services and facilities of that agency.

10. To the Veterans Administration, Philippines Regional Office, for administering the Social Security Act in the Philippines through the services and facilities of that agency.

11. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. Information necessary to adjudicate claims filed under an

international Social Security agreement that the United States has entered into pursuant to Section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

13. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his/her behalf.

14. To the Office of Education for determining the eligibility of applicants for basic educational opportunity grants.

15. To the Bureau of Census when it performs as a collecting agent or data processor for research and statistical purposes directly relating to this system of records.

16. To the Department of the Treasury, Office of Tax Analysis, for studying the effects of income taxes and taxes on earnings.

17. To the Office of Personnel Management for the study of the relationship of civil service annuities to minimum Social Security benefits, and the effects on the trust fund.

18. To State Social Security Administrators for administering agreements pursuant to Section 218 (State and local) of the Social Security Act.

19. To the Department of Energy for their study of the long-term effects of low-level radiation exposure.

20. To contractors under contract to the Social Security Administration (SSA) (or under contract to another agency with funds provided by SSA) for the performance of research and statistical activities directly relating to this system of records.

21. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

22. To the Department of Labor for conducting statistical studies of the relationship of private pensions and Social Security benefits to prior earnings.

23. To the Department of Justice in the event of litigation where the defendant is:

(a) The Department of Health and Human Services (HHS), any component of HHS, or any employee of HHS in his/her official capacity;

(b) The United States where HHS determines that the claim, if successful, is likely to directly affect the operations of HHS or any of its components; or

(c) Any HHS employee in his/her individual capacity where the Justice Department has agreed to represent such employee, HHS may disclose such records as it deems desirable or necessary to the Department of Justice

to enable that department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

24. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

25. To Federal, State, or local agencies (or agents on their behalf) for administering income maintenance or health maintenance programs (including programs under the Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement Act relating to railroad employment; for administering the Railroad Unemployment Insurance Act and for administering provisions of the Social Security Act relating to railroad employment;

(b) The Veterans Administration for administering 38 U.S.C. 412, and upon request, for determining eligibility for, or amount of, Veterans benefits or verifying other information with respect thereto;

(c) State welfare departments for administering sections 205(c)(2)(B)(i)(II) and 402(a)(25) of the Social Security Act requiring information about assigned Social Security numbers for Aid to Families with Dependent Children (AFDC) program purposes and for determining a recipient's eligibility under the AFDC program; and

(d) State agencies for administering the Medicaid program.

26. Upon request, information on the identity and location of aliens may be disclosed to the Department of Justice (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where appropriate, taking legal action against suspected Nazi war criminals in the United States.

27. To third party contacts (including private collection agencies under contract with the Social Security Administration (SSA)) for the purpose of their assisting SSA in recovering overpayments.

28. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under the routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an

agency function relating to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in magnetic media (e.g., magnetic tape and magnetic disk) and in microform and paper form.

RETRIEVABILITY:

Records in this system are indexed and retrieved by use of the SSN.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Automated Data Processing (ADP) System Manual, "Part 6, ADP System Security." All magnetic tapes and discs are within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges which are issued only to authorized personnel. All microform and paper files are accessible only by authorized personnel and are locked after working hours.

For computerized records, electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail. (See 47 Federal Register 45671, October 13, 1982, Appendix J for additional information relating to safeguards the Social Security Administration employs to protect personal information.

RETENTION AND DISPOSAL:

Primary data storage is on magnetic tape. A new version of the tape file is generated each month based on changes to the beneficiary's record (adjustment in benefit amount, termination, or new entitlements). The prior version is retained for 90 days in SSA's main data processing facility and is then sent to a secured storage facility for indefinite retention. Selected records also are retained on magnetic disc for on-line query purposes. The disc files are updated monthly and retained indefinitely. Microform records are disposed of by shredding or the application of heat after periodic replacement of a complete file. Paper records are usually destroyed after use, by shredding, except where needed for documentation of the claims folder, in which case they are retained therein

indefinitely (see the notice for Claim Folder system of records, 09-60-0089).

SYSTEM MANAGER(S) AND ADDRESS:

Director, *Office of Claims and Payment Requirements*, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him or her by contacting the most convenient Social Security office and providing his/her name, Social Security claim number (SSN plus alphabetic symbols), address and proper identification. (The addresses and telephone numbers of Social Security offices may be found listed in local directories under Social Security or under United States Department of Health and Human Services, Social Security Administration.) (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.) These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with HHS Regulations 45 CFR 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification *showing how the record is incomplete, untimely, inaccurate or irrelevant*. These procedures are in accordance with HHS Regulations 45 CFR 5b.

RECORD SOURCE CATEGORIES:

The information for the MBR comes primarily from the Claim Folders system (09-60-0089) and/or is furnished by the beneficiary at the time of filing for benefits, via the application form and necessary proofs, and during the period of entitlement when notices of events such as changes of address, work or marriage are given SSA by the beneficiary; and from States regarding Health Insurance third party premium payment/buy-in cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-22833 Filed 8-27-84; am]
BILLING CODE 4110-07-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14944-A, F-14944-B]

Alaska Native Claims Selection

On August 15, 1983, a Decision to Issue Conveyance (DIC) was issued to Tozitna, Limited, for certain lands in the vicinity of Tanana, under the provisions of sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), and published in the *Federal Register* (48 FR 37087, August 16, 1983).

On January 25, 1984, the final navigability determination was amended finding the Hay Slough navigable from its junction with the Tanana River upstream to the east side of sec. 9, T. 3 N., R. 20 W., Fairbanks Meridian and the Green Slough navigable from its junction with the Tanana River upstream to the south boundary of sec. 31, T. 3 N., R. 20 W., Fairbanks Meridian.

The submerged lands underlying the above sloughs within the lands described in the DIC of August 15, 1983, are hereby excluded from the lands approved for conveyance to Tozitna, Limited, for the Native village of Tanana.

Pursuant to Pub. L. 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies, and in no way affects the appeal period of the decision dated August 15, 1983, and the modified decision dated July 13, 1984.

Except as modified by this decision and the decision of July 13, 1984, the decision of August 15, 1983, stands as written.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the *Federal Register* and once a week for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner*.

Helen Burleson,
Section Chief, Branch of ANCSA
Adjudication.

[FR Doc. 84-22802 Filed 8-27-84; 8:45 am]

BILLING CODE 4310-JA-M

[INT FEIS 84-25]

Final Environmental Impact Statement; White Pine Power Project in White Pine, Lincoln, Elko, Eureka and Clark Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental policy Act of 1969, the Bureau of Land Management, Nevada, has prepared a FEIS on the proposed White Pine Power Project.

SUPPLEMENTARY INFORMATION: The White Pine Power Project FEIS analyzes the effects of development of the generating facilities and ancillary facilities (including a water supply system, a railroad connecting with existing railroad systems, and transmission lines interconnecting with existing facilities) on natural and human resources in White Pine, Lincoln, Elko, Eureka, and Clark Counties, Nevada. Alternatives considered along with the proposed action include a no project alternative and two alternative project sites, each with the appropriate ancillary facilities. Alternative transmission and railroad right-of-way segments are considered for each power plant site.

FOR FURTHER INFORMATION CONTACT:

State Director, Nevada (NV-933), Bureau of Land Management, 300 Booth St., P.O. Box 12000, Reno, Nevada 89520.

Or you may contact: District Manager Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301 702/289-4865.

Copies of the DEIS are available for review at the following locations:

Bureau of Land Management, Nevada State Office, 300 Booth St., P.O. Box 12000, Reno, Nevada 89520, 702/784-5448;

Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada 89801, 702/738-4071;

Bureau of Land Management, Winnemucca District Office, 705 East Fourth St., Winnemucca, Nevada 89445, 702/623-3676;

Bureau of Land Management, Carson City District Office, 1050 East Williams St., Carson City, Nevada 89701, 702/882-1631;

Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, 702/289-4865;

Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Dr., Las Vegas, Nevada 89102, 702/385-6403; and

Bureau of Land Management, Battle Mountain District Office, North Second and Scott Streets, Battle Mountain, Nevada 89820, 702/635-5181.

Also, copies are available for review at the following public libraries:

White Pine County Library, Court House Plaza, Ely, Nevada 89301;
University of Nevada, Las Vegas, James R. Dickenson Library, 4505 Maryland Parkway, Las Vegas, Nevada 89154;
University of Nevada, Reno, Getchell Library, Reno, Nevada 89507;
Washoe County Library, 301 South Center St., Reno, Nevada 89505;
Elko County Library, Elko, Nevada 89801;
Clark County Library, 1401 East Flamingo Road, Las Vegas, Nevada 89109;
Eureka County Library, Eureka, Nevada 89136;
Nevada State Library, Library Building, Carson City, Nevada 89701;
Lincoln County Library, Pioche, Nevada 89043; and
Nye County Library, Tonopah, Nevada 89049.

A limited number of copies of the FEIS are available upon request to the Ely District Manager or the Nevada State Director at the addresses above.

Dated: August 17, 1984.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 84-22806 Filed 8-27-84; 8:45 am]
BILLING CODE 4310-HC-M

[A-18416-A]

Navajo Relocation Exchange; Pima County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Designating Public Lands for Transfer out of Federal Ownership in Exchange for Private Lands Selected by the Navajo Tribe for Relocation Purposes.

SUMMARY: Under the provisions of Sections 4 and 28 of the Navajo and Hopi Indian Relocation Amendment Act, 1980, 25 U.S.C., 640-d10 and 25 U.S.C. 640d-26, the Navajo Tribe filed a selection application on June 30, 1983, for private lands in Apache County, Arizona, to be obtained by exchange for public lands. Interest has been expressed by the private landowners to select the following public lands for part of the compensation for the lands selected by the Navajo Tribe:

Gila and Salt River Meridian, Arizona

T. 11 S., R. 13 E.,
Sec. 13, W 1/2;
Sec. 24, NW 1/4.

Comprising 480 acres, more or less, located in Pima County.

In accordance with the regulations in 43 CFR 2201.1(b), publication of this Notice will segregate the public lands,

as described in this Notice, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document of conveyance to such lands to the private landowners or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Inquiries, comments and protests to the Notice should be addressed to either the Indian Project Manager, Indian Project Office, 2708 North 4th Street, Suite B-5, Flagstaff, Arizona 86001, or the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: August 16, 1984.

Marlyn V. Jones,
District Manager.

[FR Doc. 84-22786 Filed 8-27-84; 8:45 am]
BILLING CODE 4310-32-M

[ES-33801, Group 7]

Iowa; Filing of Plat of Dependent Resurvey and Subdivision

August 21, 1984.

1. The plat of the dependent resurvey of a portion of the subdivisional lines and a subdivision of sections 4, 5, 8, and 9, T. 82 N., R. 15 W., Fifth Principal Meridian, Iowa, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on October 5, 1984.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., October 5, 1984.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy.

Patricia A. Webb,
Acting Deputy State Director for Cadastral Survey.

[FR Doc. 84-22785, Filed 8-27-84; 8:45 am]
BILLING CODE 4310-GJ-M

Montana; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M28721, Pondera County,

Montana, was timely filed and accompanied by the required rental accruing from the date of termination, June 1, 1984.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$5 per acre and 16% respectively. Payment of a \$500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: August 20, 1984.

Cynthia L. Embretson,
Chief, Fluids Adjudication Section.

[FR Doc. 84-22787 Filed 8-27-84; 8:45 am]
BILLING CODE 4310-84-M

[U 51475, U 53694, and U 53716]

Salt Lake District; Notice of Realty Action for Lands in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This is a Notice of the indefinite postponement of three previously advertised sales of public land in Tooele County.

SUPPLEMENTARY INFORMATION: Three Notices of Realty action were published in the Federal Register to describe the following sales of public lands in Tooele County.

U 51475—A notice was published on July 19, 1984 describing a sale by competitive sealed bid of 12 parcels of public land near Terra, Utah described as:

T.6S., R.7W., SLB+M.

Sec. 3, lots 6-17; lots 21-24; lots 29-36.

The sale was planned for September 19, 1984.

U 53694—A Notice was published on July 26, 1984 describing a direct sale to Globe Investment Company of a parcel of public land near Saint John, Utah described as:

T.5S., R.5W., SLB+M.

Sec. 8, SE1/4NE1/4.

42.15 acres.

The sale was planned for September 27, 1984.

U 53716—A Notice was published on June 21, 1984 describing a direct sale to Mr. Gayle Bunker of a parcel of public land near Last Chance Ranch in West-Central Utah described as:

T6S., R.18W., SLB + M,
Sec. 4, W1/2E1/2SW1/4;
Sec. 8, NE1/4NE1/4;
Sec. 9, W1/2NE1/4NW1/4, NW1/4NW1/4.
140 acres.

The sale was planned for August 21, 1984.

The above described sales have been postponed indefinitely because of an appeal filed with the Director of the Bureau of Land Management.

John H. Stephenson,
Associate District Manager.

[FR Doc. 84-22884 Filed 8-27-84; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-56618 (OK)]

Public Land Sale, Beaver County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of 88.98 Acres of Public Land in Beaver County, Oklahoma by Non-Competitive Bid Only.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value (\$8,150.00):

Tract	Legal description	Acres
Beaver County (BV)		
	T. 6 N., R. 25 E., C.M.	
BV-8	Sec. 8, lots 3 and 4	5.47
BV-9	Sec. 9, lot 3	3.51
BV-10	Sec. 15, NW 1/4 NW 1/4	40.00
BV-11	Sec. 22, SE 1/4 NE 1/4	40.00

The lands described comprise approximately 88.9 acres.

This land is being offered at direct sale to Ann Adams Russell of Lawrence, Kansas, at the appraised fair market value of \$8,150.00. Ms. Russell is the only adjoining land owner and she controls all legal access to the sale parcels. The sale lands will be incorporated into Ms. Russell's current agricultural operations. The proposed sale is consistent with the Bureau's planning system and the Federal Land Policy and Management Act of 1976. Public interest will be served by disposition of the isolated parcels that are difficult and uneconomic to manage as part of the public lands, and are not suitable for management by another Federal department or agency. The

lands will not be offered for sale until 60 days after the date of this notice.

Patents when issued will contain the following reservations:

1. All minerals will be reserved to the United States;
2. A right-of-way for ditches and canals will be reserved to the United States; and
3. The sale of the land will be subject to all valid existing rights and reservations of record.
4. Portions of the above described public lands contain wetlands. The patent to parcel BV-8 (Section 8) will contain wetland protection patent restrictions. The type, location, and size of the wetland will appear in the patent as well as the following restrictive language:

In accordance with section 209 of the FLPMA of 1976, 43 U.S.C. 1718 (1976) and section 4 of Executive Order 11990 (1978), 3 Code of Federal Regulations 121 (1978), the patentee's use of the patented lands is restricted as follows:

a. Restrictions on use of wetlands contained in applicable federal, state, or local wetlands regulations are incorporated hereby as if set forth fully herein.

b. The patentee may not use the patented land, or authorize its use, in such a manner that would directly or indirectly result in an adverse alteration of the wetland characteristics or category of that portion of the lands identified above as wetlands.

The patent restrictions are binding upon the patentee and his successors, heirs, and assigns.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager. Any adverse comments will be evaluated by the District Manager, Tulsa District Office, Bureau of Land Management, 6136 East 32nd Place, Tulsa, Oklahoma, 74135, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Address: Comments and suggestions should be sent to: Bureau of Land Management, Tulsa District Office, 6136 East 32nd Place, Tulsa, Oklahoma 74135.

For Further Information Contact: Hans Sallani or Barron Bail at (405) 231-5491.

Dated: July 30, 1984.

Jim Sims,
District Manager.

[FR Doc. 84-22877 Filed 8-27-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM-56609 (OK), NM-56612 (OK), and NM-56613 (OK)]

Public Land Sale in Coal, Latimer, and Pittsburg Counties, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of 79.11 Acres of Public Land in Coal, Latimer, and Pittsburg Counties, Oklahoma, by Sealed Bid Only.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value:

Tract	Legal description	Acres
Coal County (CO)		
CO-4&5	T. 1 S., R. 10 E., I.M. Sec. 14, Lehigh Townsite, block 131, lots 1 and 4.	47
CO-6	Sec. 14, Lehigh Townsite, block 190, lot 1.	32
Latimer County (LT)		
LT-2&3	T. 6 N., R. 21 E., I.M. Sec. 31, lot 3, NE 1/4 SW 1/4	77.82
Pittsburg County (PT)		
PT-5&6	T. 5 N., R. 15 E., I.M. Sec. 10, Krebs Townsite, block 59, lots 1 and 2	50
Total Acres		

The above described lands will be sold by sealed bid only through a competitive bid type sale. The sale will be held on Friday, September 28, 1984, and the sealed bids will be opened at 10:00 a.m., Bureau of Land Management, Conference Room, 200 N.W. Fifth Street, Room 548, Oklahoma City, Oklahoma, 73102.

The subject lands are part of the remaining public land holdings in Oklahoma that are scattered throughout 42 counties (approximately 8,000 acres). The lands are being offered for sale since the BLM can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. Area residents favor the transfer of the lands into private ownership. The sale is consistent with the Bureau's planning for the lands involved and has been discussed with governmental units and local officials. The public interest would be served by offering the lands for sale. The terms and conditions applicable to the sale are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. The sale is for surface estate only. The patents will contain a reservation to the United States for all minerals.

3. The sale will be subject to all valid existing rights.

4. Patentees or their successors are limited by Section 3(d) of Executive Order 11988 of May 24, 1977 from seeking compensation from the United States or its agencies in the event existing or future facilities on these lands are damaged by flood.

5. No preference right would be given to adjoining land owners. No bids will be accepted for less than the appraised price. The appraised value of the land will be available to the public 30 days prior to the sale date. Federal law requires that bidders be United States citizens or, in the case of a corporation, subject to the laws of any state of the United States. Proof of citizenship shall accompany the bid.

The patent to parcel number LT-2 (Section 31) will contain a wetland protection patent restriction. The type, location, and size of the wetland will appear in the patent as well as the following restrictive language:

In accordance with section 209 of the FLPMA of 1976, 43 U.S.C. 1718 (1976) and section 4 of Executive Order 11990 (1978), 3 Code of Federal Regulations 121 (1978), the patentee's use of the patented lands is restricted as follows:

1. Restrictions on use of wetlands contained in applicable federal, state, or local wetlands regulations are incorporated hereby as if set forth fully herein.

2. The patentee may not use the patented land, or authorize its use, in such a manner that would directly or indirectly result in an adverse alteration of the wetland characteristics or category of that portion of the land identified above as wetlands.

The patent restrictions are binding upon the patentee and his successors, heirs, and assigns.

Sealed written bids will be considered only if received by the Bureau of Land Management, 200 NW., Fifth Street, Room 548, Oklahoma City, Oklahoma 73102 prior to 10:00 a.m., Friday, September 28, 1984. A separate written bid should be submitted for each sale parcel desired. The tract number should also be identified on the lower right hand corner of the mailing envelope (example, Land Sale—Tract CO-1). Each written sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashiers check made payable to the Department of the Interior, Bureau of Land Management for at least twenty percent of the amount bid. The written sealed bids will be opened and publicly

declared at the beginning of each sale. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid, shall be by drawing.

Once a high bid price is accepted, the successful bidder shall submit the remainder of the full bid price within 30 days of the sale. Failure to pay the full bid price within 30 days shall result in cancellation of the sale of the tract, and the deposit shall be forfeited and disposed of as other receipts of sale. All bids will be either returned, accepted, or rejected within 30 days of the sale date.

Parcels not sold on the assigned day of the sale will remain available for sale until sold or withdrawn. Sealed bids will be solicited on these parcels at no less than the appraised market value. The sale for these parcels will be held on the first Monday of each month and the described sale procedures will be utilized. The sale dates for the remainder of the 1984 calendar year for the unsold parcels are as follows: October 1, 1984; November 5, 1984; and December 3, 1984.

DATE: For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager. Any adverse comments will be evaluated by the District Manager, Tulsa District Office, Bureau of Land Management, 6136 East 32nd Place, Tulsa, Oklahoma, 74135, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

ADDRESS: Comments and suggestions should be sent to: District Manager, Bureau of Land Management, Tulsa District Office, 6136 East 32nd Place, Tulsa, Oklahoma 74135.

FOR FURTHER INFORMATION CONTACT: Hans Sallani (405) 231-5491.

Jim Sims,
District Manager.

[FR Doc. 84-22788 Filed 8-27-84; 8:45 am]
BILLING CODE 4310-F8-M

Minerals Management Service

Call for Information To Delineate Areas of Interest for Preparation of an Environmental Impact Statement on the Exploration for and Possible Recovery of Cobalt-Rich Manganese Crusts in the Hawaiian Exclusive Economic Zone

AGENCY: Minerals Management Service, Interior.

ACTION: Call for Information.

SUMMARY: To delineate areas of interest to be addressed in an environmental impact statement (EIS) on the exploration for and possible recovery of cobalt-rich manganese crusts in the Exclusive Economic Zone (EEZ) surrounding the Hawaiian Archipelago, the joint Federal/State of Hawaii Task Force on high-cobalt manganese crusts is requesting information on areas to be included in or excluded from the study.

DATE: Comments and information in response to this request should be postmarked or hand delivered no later than October 29, 1984.

ADDRESS: Comments and information may be mailed or delivered to Program Director, Office of Strategic Minerals and International Programs, 11 Golden Shore, Suite 260, Long Beach, California 90802. If information of a privileged or confidential nature is submitted, it should be enclosed in a separate sealed envelope and marked CONFIDENTIAL. This information will be exempt from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552). Indications of interest are considered privileged and confidential. However, the names of persons or entities indicating interest or submitting comments will be of public record.

For Further Information or for Copies of Call for Information Map Contact

Dr. John C. Wiltshire, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, telephone (808) 548-6262;

Dr. Michael J. Cruickshank

or
Mr. Robert C. Paul, Office of Strategic Minerals and International Programs, 11 Golden Shore, Suite 260, Long Beach, California 90802.

SUPPLEMENTARY INFORMATION:

Background: The Department of the Interior, in conjunction with the State of Hawaii, is considering the potential economic and environmental impacts resulting from the recovery of cobalt-rich manganese crusts found in the EEZ surrounding the Hawaiian Archipelago. On March 5, 1984, the Minerals Management Service (MMS) announced in the Federal Register its intent to prepare an EIS on exploration and possible recovery of cobalt-rich manganese crusts. Public hearings were held in the State of Hawaii at Honolulu on April 30, 1984, and at Hilo on May 1, 1984, to assist in determining the scope of the EIS. Significant concerns were expressed at the hearings regarding the possible effects of mining on the benthic and pelagic communities and the nature

and distribution of dispersed pollutants. Concerns were also expressed on the socioeconomic effects of such operations on other marine interests and on local coastal communities involved in the support of mining and processing operations. Transcripts of the hearings are available at each of the offices listed above. Supplemental information or comments relevant to the proposed action or the hearings may be submitted in response to this Call.

Purpose of Call for Information: The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and to assist the Federal/State Task Force in delineating areas of interest or areas that should be excluded from consideration for leasing. Interested parties are requested to outline on the Call for Information Map within the EEZ surrounding the Hawaiian Archipelago areas where they believe cobalt-rich manganese crusts or other strategic/critical or hard minerals

may occur and for which they may have an interest in leasing. Interested parties are also requested to outline areas that should be excluded from crust recovery and the reasons for exclusion.

Use of Information for Call: Information submitted in response to this Call will be considered in preparing the EIS for the proposal to lease cobalt-rich crusts. This information will also be used in identifying alternatives to the proposed action. Comments received on possible environmental effects and use conflicts may be used in the analysis of local environmental conditions within the Call area so that the potential effects of cobalt-rich crust exploration, development, and mining, other than the benefits accruing to the Nation as a result of inventorying and producing cobalt and associated minerals, can be assessed. These comments may also be useful in developing special lease terms and conditions designed to assure safe offshore operations. Comments submitted regarding such concerns as length of lease term, size of lease tract, royalty rates, and rentals may be used

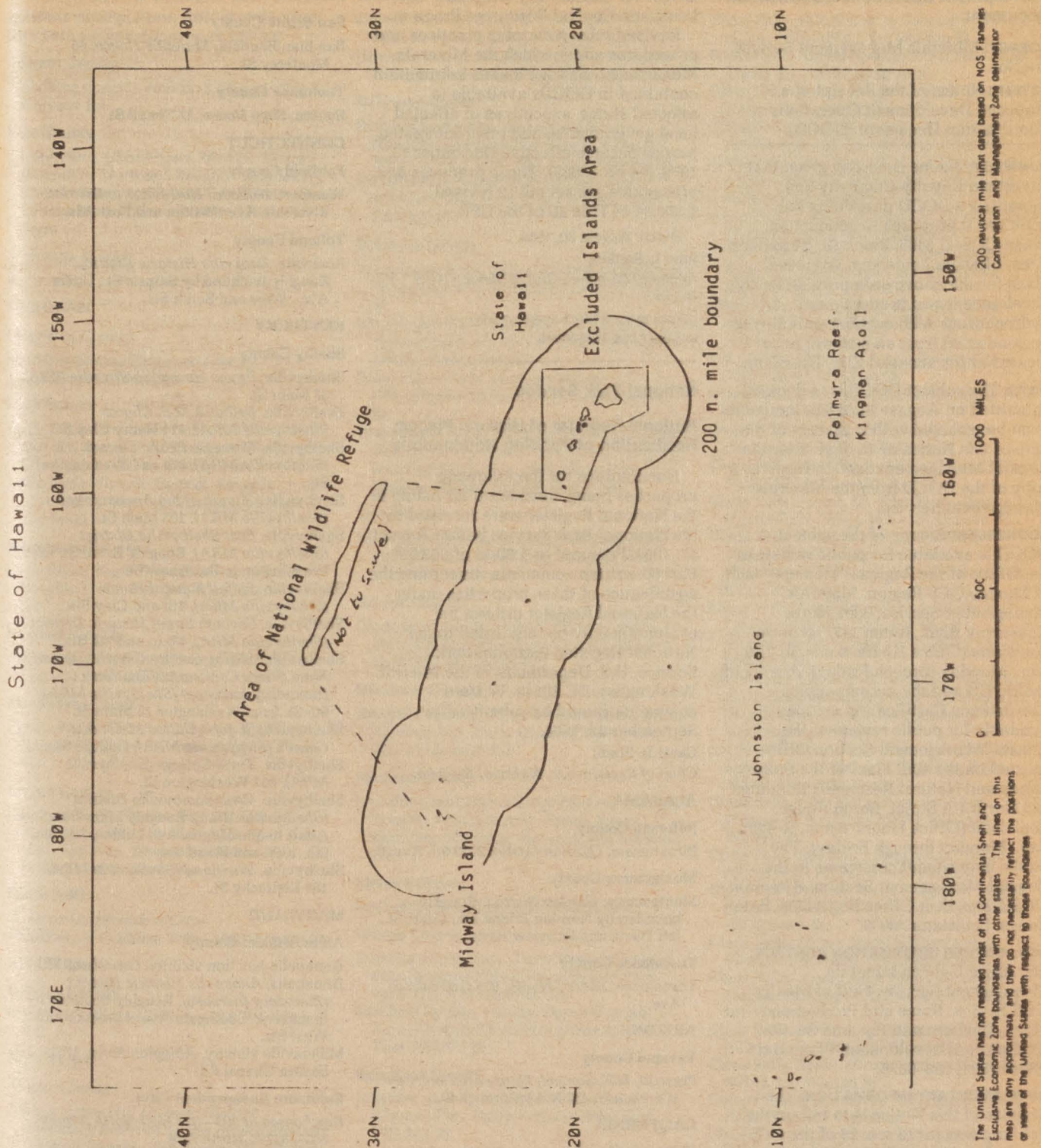
in the assessment of the appropriate initial lease term and appropriate tract size pursuant to section 8(k) of the OCS Lands Act, as amended (43 U.S.C. 1337).

Description of Area: The general area being considered for leasing is within the Hawaiian EEZ exclusive of the Hawaiian Islands National Wildlife Refuge and the submerged slopes of the islands of Niihau, Kauai, Oahu, Molokai, Lanai, Maui, Kahoolawe, and Hawaii.

Instructions on Call: Indications of interest should be limited to the areas included in the attached map. Those indicating interest are requested to use the Call for Information Map which is available free on request from the persons listed previously. This map shows the Call area selected by the MMS and Hawaii as having potential for the discovery of cobalt-rich manganese minerals. Respondents are requested to rank areas according to priority of interest (e.g., priority 1, 2, and 3).

Dated: August 13, 1984.

William D. Bettenberg,
Director, Minerals Management Service.
BILLING CODE 4310-MR-M



Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Southland Royalty Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5405, Block 88, Vermillion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 20, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the

DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 20, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-22775 Filed 8-27-84; 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 August 17, 1984. Pursuant to § 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 September 12, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Birmingham, *Quinlan Castle*, 2030 9th Ave. S.

Montgomery County

Montgomery, *Garden District*, Roughly bounded by Norman Bridge Rd., Court St., Jeff Davis and Fairview Aves.

Tuscaloosa County

Tuscaloosa, *Searcy House*, 815 Greensboro Ave.

ARIZONA

Yavapai County

Prescott, *Hill, Samuel, Hardware Company Warehouse*, 232 N. McCormick St.

CALIFORNIA

El Dorado County

Placerville, *Fountain-Tallman Soda Works*, 524 Main St.

Humboldt County

Ferndale, *Shaw House*, 703 Main St.

Los Angeles County

Pasadena, *Evanston Inn*, 385-395 S. Marengo Ave.

Pasadena, *Villa Verde*, 800 S. San Rafael

San Benito County

San Juan Bautista, *Marentis House*, 45 Monterey St.

Tuolumne County

Sonora, *Sugg House*, 37 Theall St.

CONNECTICUT

Fairfield County

Westport, *National Hall Historic District*, Riverside Ave., Wilton and Post Rds.

Tolland County

Rockville, *Rockville Historic District*, Roughly bounded by Snipsic St., Davis Ave., West and South Sts.

KENTUCKY

Shelby County

Shelbyville, *Bayne House (Shelbyville MRA)*, 37 Main St.

Shelbyville, *Bethel A.M.E. Church (Shelbyville MRA)*, 414 Henry Clay St.
Shelbyville, *Carnegie Public Library (Shelbyville MRA)*, 8th and Washington Sts.

Shelbyville, *Church of the Annunciation (Shelbyville MRA)*, 105 Main St.

Shelbyville, *East Shelbyville District (Shelbyville MRA)*, Roughly E. 3rd St. from Washington to Bradshaw St.

Shelbyville, *Saffell Funeral Home (Shelbyville MRA)*, 4th and Clay Sts.

Shelbyville, *Seventh Street Historic District (Shelbyville MRA)*, Main and 7th Sts.

Shelbyville, *Shelby County Courthouse and Main Street Commercial District (Boundary Increase) (Shelbyville MRA)*, 6th St. from Washington to Main St.

Shelbyville, *St. John United Methodist Church (Shelbyville MRA)*, College St.

Shelbyville, *Tevis Cottage (Shelbyville MRA)*, 607 Washington St.

Shelbyville, *West Shelbyville District (Shelbyville MRA)*, Roughly Main from Adair to 8th, Magnolia to Linden, 7th, 8th, 9th, 10th, and Bland Sts.

Shelbyville, *Wickland (Shelbyville MRA)*, 169 Kentucky St.

MARYLAND

Anne Arundel County

Annapolis Junction vicinity, *Grassland MD 32*
Annapolis, *Annapolis Historic District (Boundary Increase)*, Roughly bounded by Spa Creek, Southgate Ave., Hanover and West Sts.

Millersville vicinity, *Abington Farm*, 1761 Severn Chapel Rd.

Baltimore (Independent City)

Rowhouses at 303-327 East North Avenue, 303-327 E. North Ave.

Carroll County

Mount Airy, *Mount Airy Historic District*, Roughly Main, Church, Maple, Park, Hill, and Warfield Sts. (also in Frederick County)

Frederick County

Emmitsburg, *St. Euphemia's School and Sisters' House*, 5052 DePaul St.

Garrett County

Accident vicinity, *Kaese Mill*, N of Accident
Deer Park vicinity, *Glamorgan*, MD 135

Howard County

Woodbine vicinity, *Hobson's Choice*, 2921
Florence Rd.

Kent County

Chestertown, *Chestertown Historic District*
(Boundary Increase), Roughly bounded by
Chester River, Lynchberg, and Cannon Sts.,
College Ave., Philosophers and Riverside
Ters.

Worcester County

Berlin vicinity, *Henry's Grove*, MD 611

MICHIGAN**Chippewa County**

Sault Ste. Marie, *Chippewa County*
Courthouse, Court St.

Ionia County

Ionia, *Ionia Downtown Commercial Historic*
District, Roughly W. Main and Washington
Sts., from Dexter to Library Sts.

Ionia, *Ionia Historic District*, Roughly
bounded by Summit, Pleasant, Jefferson
and Main Sts.

Keweenaw County

Eagle River, *Eagle River Historic District*,
Roughly Front, 2nd, 3rd, 4th, 5th, and Main
Sts.

Lanawee County

Tecumseh, *Tecumseh Historic District*, W.
Chicago Blvd. and Union St.

Shiawassee County

Byron, *Byron Historic Commercial District*,
Roughly Saginaw St. from Maple to Water
Sts.

Wayne County

Hamtramck, *St. Florian Historic District*,
Roughly bounded by Joseph Campau Ave.,
Holbrook Ave., Dequindre, Norwalk,
Lumkin and Yemans Sts.

MISSOURI

St. Louis (Independent City)
Schollmeyer Building, 1976—1982 Arsenal St.

NEW JERSEY**Camden County**

Cherry Hill, *Bonnie's Bridge*, 350 Wayland
Rd.

NEW YORK**Albany County**

Albany Arbor Hill Historic District
(Boundary Increase to Ten Broeck Historic
District), Roughly Ten Broeck Pl., 1st, 2nd,
and Swan Sts.

Albany, *South End-Groesbeckville Historic*
District, Roughly bounded by Elizabeth,
2nd, and Morton Aves., Pearl and Franklin
Sts.

Cohoes, *Downtown Cohoes Historic District*,
Roughly bounded by Oneida, Van
Rensselaer, Columbia, Main, and Olmstead
Sts.

Chenango County

Greene vicinity, *Bates Round Barn (Central*
Plan Dairy Barns of New York TR), NY 12
Greene vicinity, *Yound Round Barn (Central*
Plan Dairy Barns of New York TR), NY 12

Delaware County

Bloomville vicinity, *McArthur-Martin*
Hexadecagon Barn (Central Plan Dairy
Barns of New York TR), McArthur Hill Rd.
Halcottsville vicinity, *Kelly Round Barn*
(Central Plan Dairy Barns of New York
TR), NY 30

Dutchess County

Wappingers Falls, *Bain Commercial Building*
(Wappingers Falls MRA), 59—61 W. Main
St.

Wappingers Falls, *Dutchess Company*
Superintendent's House (Wappingers Falls
MRA), 120 Market St.

Wappingers Falls, *Mulhern House*
(Wappingers Falls MRA), 14—16 Market
St.

Wappingers Falls, *Wappingers Falls Historic*
District (Wappingers Falls MRA), Roughly
bounded South Ave., Elm, Main, Park,
Walker, Market, and McKinley Sts.

Erie County

North Collins vicinity, *Gamel Hexadecagon*
Barn (Central Plan Dairy Barns of New
York TR), Shirley Rd.

Greene County

Coxsackie vicinity, *Bronck Farm 13-sided*
Barn (Central Plan Dairy Barns of New
York TR), Old Kings Rd.

Herkimer County

Newville vicinity, *Zoller-Frasier Round Barn*
(Central Plan Dairy Barns of New York
TR), Fords Bush Rd.

Madison County

Hamilton, *Hamilton Village Historic District*,
Roughly Kendrick Ave., Broad, Payne,
Hamilton, Madison, Pleasant, and Lebanon
Sts.

Monroe County

Rochester, *Shingleside*, 476 Beach Ave.

Otsego County

Garrattsville vicinity, *Lunn-Musser Octagon*
Barn (Central Plan Dairy Barns of New
York TR), S of Garrattsville
Richfield Springs vicinity, *Baker Octagon*
Barn (Central Plan Dairy Barns of New
York TR), NY 28

Schoharie County

Jefferson vicinity, *Parker 13-sided Barn*
(Central Plan Dairy Barns of New York
TR), NY 10

Schuyler County

Catherine vicinity, *Lattin-Crandall Octagon*
Barn (Central Plan Dairy Barns of New
York TR), E of Catherine

Suffolk County

Greenport, *Greenport Village Historic*
District, Roughly bounded by Stirling
Basin, Main, Monsell, 2nd, and Front Sts.

Warren County

Glens Falls, *18th Separate Company Armory*
(Glens Falls MRA), 147 Warren St.

Glens Falls, *Argent Apartments (Glens Falls*
MRA), 17—18 Sherman Ave.

Glens Falls, *Bemis Eye Sanitarium Complex*
(Glens Falls MRA), Glen St.

Glens Falls, *Birdsall, Stephen T., House*
(Glens Falls MRA), 186—192 Ridge St.

Glens Falls, *Burnham, Thomas, House*
(Potter, Ephraim B., Buildings TR) (Glens
Falls MRA), 195 Ridge St.

Glens Falls, *Colvin, Addison B., House (Glens*
Falls MRA), 453—455 Glen St.

Glens Falls, *Cowles, W.T., House (Potter,*
Ephraim B., Buildings TR) (Glens Falls
MRA), 43—47 William St.

Glens Falls, *Cunningham House (Bigelow,*
Henry Forbes, Buildings TR) (Glens Falls
MRA), 169 Warren St.

Glens Falls, *Delong, Zopher, House (Glens*
Falls MRA), 348 Glen St.

Glens Falls, *Dix, James L., House (Glens Falls*
MRA), 191 Ridge St.

Glens Falls, *Ferguson, Dr. James, Office*
(Glens Falls MRA), 5 Culvert St.

Glens Falls, *First Presbyterian Church (Glens*
Falls MRA), 402—410 Glen St.

Glens Falls, *Foster, Dr. Charles A., House*
(Glens Falls MRA), 162—164 Warren St.

Glens Falls, *Fredella Avenue Historic*
District (Fredella Concrete Block
Structures TR) (Glens Falls MRA), 15—21
R Fredella Ave.

Glens Falls, *Fredella, Joseph J., House and*
Garage (Fredella Concrete Block
Structures TR) (Glens Falls MRA), 15—17
Mohican St.

Glens Falls, *Glens Falls Feeder Canal (Glens*
Falls MRA), Roughly between Richardson
St. and Old Chaplain Canal (also in
Washington County)

Glens Falls, *Glens Falls High School (Potter,*
Ephraim B., Buildings TR) (Glens Falls
MRA), 421—433 Glen St.

Glens Falls, *Glen Falls Home for Aged*
Women (Glens Falls MRA), 178—186
Warren St.

Glens Falls, *Goodman, Stephen L., House*
(Glens Falls MRA), 65—67 Park St.

Glens Falls, *Hoopes House (Bigelow, Henry*
Forbes, Buildings TR) (Glens Falls MRA),
153 Warren St.

Glens Falls, *House at 216 Warren Street*
(Glens Falls MRA), 216 Warren St.

Glens Falls, *Hyde House (Bigelow, Henry*
Forbes, Buildings TR) (Glens Falls MRA),
161 Warren St.

Glens Falls, *Joubert and White Building*
(Glens Falls MRA), 79 Warren St.

Glens Falls, *Krum, Hiram, House (Glens Falls*
MRA), 133 Warren St.

Glens Falls, *Little, Russell M., House (Glens*
Falls MRA), 17 Center St.

Glens Falls, *McEchron, William, House*
(Glens Falls MRA), 65 Ridge St.

Glens Falls, *Ordway, Jones, House (Glens*
Falls MRA), 142 Warren St.

Glens Falls, *Parks, George H., House (Glens*
Falls MRA), 444 Glen St.

Glens Falls, *Parry, John E., House (Potter,*
Ephraim B., Buildings TR) (Glens Falls),
146 Warren St.

Glens Falls, *Peyser and Morrison Shirt*
Company Building (Potter, Ephraim B.,

Building TR (Glens Falls MRA), 211—217 Warren St.
 Glens Falls, *Potter, Ephraim B., House* (Potter, Ephraim B., *Buildings TR*) (Glens Falls MRA), 15 Sherman Ave.
 Glens Falls, *Rosekrans, Enoch, House* (Glens Falls MRA), 62 Warren St.
 Glens Falls, *Rugge, A.S., House* (Glens Falls MRA), 428 Glen St.
 Glens Falls, *Smith Flats* (Glens Falls MRA), 53—61 Bay St.
 Glens Falls, *Society of Friends Hall* (Glens Falls MRA), 172—174 Ridge St.
 Glens Falls, *St. Mary's Academy* (Glens Falls MRA), 10—12 Church St.
 Glens Falls, *Stilwell, Thomas, House* (Glens Falls MRA), 134 Maple St.
 Glens Falls, *Three Squares Historic District* (Glens Falls MRA), Roughly South, Glen, Maple, and Ridge Sts.
 Glens Falls, *Wait, F.W., House* (Glens Falls MRA), 173—175 Ridge St.
 Glens Falls, *Wilmarth, Martin L.C., House* (Potter, Ephraim B., *Buildings TR*) (Glens Falls MRA), 528 Glen St.
 Glens Falls, *Wing, Helen, House* (Potter, Ephraim B., *Building TR*) (Glens Falls MRA), 126 Warren St.

NORTH CAROLINA

Buncombe County

Asheville, *Reynolds House*, 100 Reynolds Hgts.

OKLAHOMA

Lincoln County

Chandler, *Conklin House* (Territorial Homes of Chandler TR), 206 W. 8th St.
 Chandler, *First Presbyterian Church of Chandler* (Territorial Era Carpenter Gothic Churches TR), 8th and Blaine Sts.
 Chandler, *Johnson House* (Territorial Homes of Chandler TR), 503 Manvel Ave.
 Chandler, *Kee House* (Territorial Homes of Chandler TR), 209 W. 8th St.

Logan County

Marshall, *Methodist Church of Marshall* (Territorial Era Carpenter Gothic Churches TR), Off OK 74

Muskogee County

Muskogee, *Central Baptist Church* (Black Protestant Churches of Muskogee TR), 515 N. 4th St.
 Muskogee, *First Baptist Church* (Black Protestant Churches of Muskogee TR), 6th and Denison Sts.
 Muskogee, *Spencer Memorial United Methodist Church* (Black Protestant Churches of Muskogee TR), 543 N. 7th St.
 Muskogee, *Ward Chapel A.M.E. Church* (Black Protestant Churches of Muskogee TR), 319 N. 9th St.
 Summit, *DuBois, W.E.B., School* (Educational Resources of All-Black Towns in Oklahoma TR), Off U.S. 69
 Taft, *Taft City Hall* (Historic Government Buildings in Oklahoma's All-Black Towns TR), Elm and Seminole Sts.

Noble County

Billings, *Renfrow Building* (Renfrow, T.F., *Historic Properties TR*), 127 W. Main St.

Billings, *Renfrow House* (Renfrow, T.F., *Historic Properties TR*), Graves St. and Broadway
 Morrison, *Morrison Baptist Church* (Territorial Era Carpenter Gothic Churches TR), 202 3rd St.

Pawnee County

Blackburn, *Blackburn Methodist Church* (Territorial Era Carpenter Gothic Churches TR), D St. and 4th Ave.

Seminole County

Lima, *Rosenwald Hall* (Educational Resources of All-Black Towns in Oklahoma TR), College St.

Texas County

Texhoma, *Farmers State Bank* (Texhoma *Historic Commercial Buildings TR*), 122 W. Main St.
 Texhoma, *First National Bank of Texhoma* (Texhoma *Historic Commercial Buildings TR*), 222 W. Main St.
 Texhoma, *Penick House*, 218 N. East St.
 Texhoma, *Post Office and Barne's Realty Co.* (Texhoma *Historic Commercial Buildings TR*), 109—111 S. 2nd St.
 Texhoma, *Ritz Theater* (Texhoma *Historic Commercial Buildings TR*), 119 Main St.
 Texhoma, *Texhoma Hotel* (Texhoma *Historic Commercial Buildings TR*), 200 W. Main St.
 Texhoma, *Thomason Brothers Dry Goods* (Texhoma *Historic Commercial Buildings TR*), 100—102 S. 2nd St.

Wagoner County

Red Bird, *Miller-Washington School* (Educational Resources of All-Black Towns in Oklahoma TR), Market St.
 Red Bird, *Red Bird City Hall* (Historic Government Buildings in Oklahoma's All-Black Towns TR), Boston St.

PUERTO RICO

San Juan County

Santurce, *Nuestra Senora de Lourdes Chapel*, Ponce de Leon and Miramar Aves.

SOUTH CAROLINA

Richland County

Columbia, *Wardlaw Junior High School* (Columbia MRA), 1003 Elmwood Ave.

TENNESSEE

Davidson County

Nashville, *Southern Methodist Publishing House*, 810 Broadway

Sevier County

Gatlinburg, *Mountain View Hotel*, 400 Parkway

TEXAS

Ochiltree County

Buried City Site (410C1).

VIRGINIA

Prince William County

Leesylvania Archeological Site (44PW7).

WYOMING

Big Horn County

Greybull vicinity, *Lower Shell School House*, U.S. 14

Carbon County

Baggs, *First State Bank of Baggs*, 10 S. Miles St.
 Rawlins, *Downtown Rawlins Historic District*, Roughly 2nd to 6th Sts. and Front to Buffalo Sts.

Platte County

Chugwater vicinity, *Diamond Ranch*, N W of Chugwater

Uinta County

Evanston, *Quinn, A.V., House*, 1049 Center St.

[FR Doc. 84-22786 Filed 8-27-84; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Restrictions of Financial Interests of State Employees, 30 CFR Part 705
 Abstract: Collect employment and financial interests information on State regulatory authority employees under section 517(g), Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, as no employee performing any function or duties under the Act shall have a direct or indirect financial interest in any underground or surface coal mining operation.

Bureau Form Number: OSM-23

Frequency: Annually

Description of Respondents: Any State regulatory authority employee who performs any function or duty under the Act is required to file a statement of employment and financial interests.

Annual Responses: 1900

Annual Burden Hours: 627

Bureau clearance officer: Darlene Boyd
 202-343-5447

Dated: August 9, 1984.

Carson W. Culp, Jr.,
Assistant Director, Budget and
Administration.

[FR Doc. 84-22778 Filed 8-27-84; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Application for Blaster Certification in Federal Program States and on Indian Lands.

Abstract: This information is being collected to ensure that persons who are in charge of blasting at surface coal mining sites are qualified and are not likely to channel explosives into undesirable segments of society.

Bureau Form Number: OSM-74.

Frequency: On occasion.

Description of Respondents: Blasters.

Annual Responses: 2,000.

Annual Burden Hours: 1,500.

Bureau clearance officer: Darlene

Grose Boyd (202) 343-5447.

Dated: August 2, 1984.

Carson W. Culp,
Assistant Director, Budget and
Administration.

[FR Doc. 84-22813 Filed 8-27-84; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the Advisory Committee on Voluntary Foreign Aid (ACVFA) which will be held in the Loy Henderson International Conference

Room, Department of State, Washington, D.C., September 13 and 14, 1984. To enter building, use C Street (Diplomatic Entrance) between 21st and 23rd Streets, NW., Washington, D.C.

Thursday, September 13, 1984: 8:00 a.m.—Registration and Logistics Information; 8:30 a.m.—Introductions by the ACVFA Chairman; opening remarks by AID Administrator; 9:00 a.m., a plenary session will be held on *Integrating Women into Economic Development*. 10:00 a.m.—Break. 10:15 a.m.—Workshops: *Women's Integration into Economic Development*: (1) Small Enterprise Development: Survivability versus Entrepreneurship; (2) Capital Formation: Strategies for Increasing Women's Access to Credit; (3) Income Generation: Economic Implications for Education and Training. 12:00—Lunch. 1:30 p.m.—Plenary session on *Economic Implications of Women's Participation in Human and Natural Resources Development*. 2:30 p.m.—Break. 2:45 p.m.—Workshops: *Strategies to Increase Female Participation in Human and Natural Resources Development*: (1) Primary Health Care Delivery; (2) Family Planning/Population Activities; (3) Women and Agriculture: Increasing Access to New Technologies; (4) Water and Reforestation: New Services, New Careers. 4:30 p.m.—Adjournment.

Friday, September 14, 1984: 8:30 a.m.—Introductions and Announcements; 9:00 a.m.—Workshop Reports: *Recommendations and PVO Policy Perspectives*: (a) Small Enterprise Development and Capital Formation: Increasing Women's Access to Economic Resources and Information; (b) Income Generation: What's Worked, What Hasn't and Why; (c) Primary Health Care and Family Planning/Population Activities: Increasing Women's Access to Services and Participation; (d) Women and Natural Resources: Innovations Integrating Women in Horticulture, Reforestation and Hydrology Projects. 11:00 a.m.—*Policy Implications for Donor Agencies and PVO's*. 12:30 p.m.—Lunch. 2:00 p.m.—Sub-Committee Updates: Development Education; PVO/Corporate Relations; Pub. L. 480/Food for Peace; PVO/University Relations; PVO/Policy. 2:30 p.m.—Closing plenary; ACVFA Business Session; 5:00 p.m.—Adjournment.

The meeting is open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee, in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in thirty (30) copies.

Persons not registered and wishing to attend the ACVFA meeting must call (703) 235-2708, or 3336, NLT September 10, 1984, to arrange entrance to the State Department Building.

There will be AID representatives at the meeting. Those desiring further information may call (703) 235-2708, or 3336, or contact by mail, the Advisory Committee on Voluntary Foreign Aid, Room 227, SA-8, Agency for International Development, Washington, D.C. 20523.

Dated: August 15, 1984.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 84-22776 Filed 8-27-84; 8:45 am]

BILLING CODE 6116-01-M

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the sixty-fifth meeting of the Board for International Food and Agricultural Development (BIFAD) on September 13, 1984.

The purpose of the meeting is to hear a presentation on an agricultural education project in Indonesia (by Russell Brannon, Chief of Party, and H. F. Massey of the University of Kentucky, with input from the AID Bureau for Asia and Indonesian Mission); and to receive and discuss reports on: Guidelines for the application and evaluation of Memorandums of Understanding (MOUs) between Title XII Universities and the Agency for International Development; applications for new Title XII Strengthening Grants; and activities of the Joint Committee on Agricultural Research and Development (JCARD).

The meeting will begin at 9:00 a.m. and adjourn at 12:00 noon, and will be held in Room C of the Pan American Health Organization Building, 525 23rd Street, N.W., Washington, D.C. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Coordinator, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, or telephone him at (703) 235-8929.

Erven J. Long,

A.I.D. Advisory Committee Representative,
Board for International Food and Agricultural
Development.

[FR Doc. 84-22857 Filed 8-27-84; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30502]

Gibson County Railroad Authority and West Tennessee Railroad Corporation; Exemption From 49 U.S.C. Subtitle IV**AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. Subtitle IV the Gibson County Railroad Authority, and the West Tennessee Railroad Corporation for acquisition of a rail line from the Illinois Central Gulf Railroad Company, trackage rights and operation, in Obion, Gibson and Madison Counties, TN, and issuance of a promissory note.

DATES: This exemption will be effective on August 27, 1984. Petitions to reopen must be filed by September 17, 1984.

ADDRESSES: Pleadings referring to Finance Docket No. 30502 should be sent to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 (2) Petitioners' representative: John F. Mchugh, Esq., c/o County Executive, Gibson County, Trenton, TN 38382.

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, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 17, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,
Secretary.

[FR Doc. 84-22771, Filed 8-27-84; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30520]

John D. Heffner; Exemption from 49 U.S.C. 11322**AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11322 the proposed holding by

John D. Heffner of positions as general counsel and director of the Northern Missouri Railroad, Inc. and Keokuk Junction Railway, Inc.

DATES: This exemption shall be effective on September 27, 1984. Petitions to stay must be filed by September 7, 1984, and petitions for reconsideration must be filed by September 17, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30520 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 (2) Petitioner's representative: John D. Heffner, 1250 Eye Street, N.W., Washington, DC 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, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,
Secretary.

[FR Doc. 84-22774, Filed 8-27-84; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-19)]

Intrastate Rail Rate Authority; Nebraska**AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of Decision.

SUMMARY: The Commission has extended the provisional certification of the Nebraska Public Service Commission under 49 U.S.C. 11501(b) to regulate Nebraska intrastate rail rates, classifications, rules, and practices, subject to its submission of standards and procedures as required by the full decision.

DATES: Nebraska's provisional certification will expire on October 29, 1984, unless prior to that date Nebraska files standards and procedures complying with the requirements stated in the full decision. If Nebraska timely files its revised standards, interested persons may file comments by November 28, 1984, and Nebraska must reply by December 18, 1984.

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 T.S. Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,
Secretary.

[FR Doc. 84-22772 Filed 8-27-84; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-73)]

Southern Pacific Transportation Company; Abandonment in Clackamas and Multnomah Counties, OR; Findings

The Commission has issued a certificate authorizing Southern Pacific Transportation Company to abandon its 6.05 mile rail line between Wilsonia (Milepost 768.209) and Portland, Jefferson St. (Milepost 774.259) in Clackamas and Multnomah Counties, OR. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered 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 served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423 no later than 10 days from publication of this notice. 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.

James H. Bayne,
Secretary.

[FR Doc. 84-22773 Filed 8-27-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 15-84]

Privacy Act System of Records; System Notice Modification

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) notice is

hereby given that the Antitrust Division, Department of Justice, proposes to modify an existing system of records and revise its system notice which was last published in the Federal Register on September 30, 1977, as the "Congressional Correspondence Log File, JUSTICE/ATR-002." (42 FR 53393)

First, the system name is being changed to "Congressional and White House Referral Correspondence Log File, JUSTICE/ATR-002" to more accurately describe the system. Second, a number of revisions are being made to various sections of the notice to clarify the character of the system. That is, the "Categories of individuals covered by the system" section now clearly shows that the system covers those individuals whose correspondence has been referred by Congressional Members or White House staff members to the Department's Antitrust Division for a response; the "Storage" section indicates that data will be stored on magnetic tapes and disks; the "Safeguards" section reflects increased security for the automated system; the "System manager(s) and address" section identifies the system manager most directly responsible for the system; and the "Retrievability" section reflects that data will now be retrieved by on-line methods. In addition, the "Retrievability" section is amended to show that the records are also retrieved by citizen name. Finally, other sections of the notice, i.e., "Categories of records in the system," and the "Record source categories" are being revised to clarify that the "inquiries or referrals" relate to citizen correspondence.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the proposed automation of the system. Therefore, the public, OMB, and the Congress are invited to comment. Comments should be addressed to Thomas F. O'Leary, Assistant Director, Administrative Services Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue, N.W., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress October 29, 1984, automation of the system will be implemented without further notice in the Federal Register.

A report of the proposed changes to this system has been provided to the Director, OMB, the President of the Senate, and the Speaker of the House of Representatives.

Dated: August 14, 1984.

Anthony C. Liotta,
Assistant Attorney General for
Administration.

JUSTICE/ATR-002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATION:

U.S. Department of Justice; 10th & Constitution Avenue, N.W.; Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress and citizens whose correspondence is referred by Congressional or White House staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to inquiries or referrals of citizen correspondence from members of the Congress and White House staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exists under 44 U.S.C. 3101 and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system is maintained as a record of inquiries or referrals by members or committees of the Congress and by White House staff. Routine use is made of this file by Antitrust Division personnel incident to monitoring the response status of or identifying other material related to such inquiries or referrals.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 C.F.R. 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the

individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in file folders; abbreviated or summarized information is stored on manual index cards and on magnetic disks and tapes.

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, subject matter, control number, etc. Summary data on inquiries received prior to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, summary data is retrieved from magnetic disks and tapes. Summary data consists of such data elements as Congressional Member or constituent name, subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Unit; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue, N.W.; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; Department of Justice; 10th & Constitution Avenue, N.W.; Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

Requests for access for a record from this system shall be written and clearly identified as a 'Privacy Access Request'. The request should include the name of the member of Congress or White House staff originating a request or referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information maintained in the system are those records (e.g., that Congressional or White House correspondence), reflecting inquiries or referrals of citizen correspondence by members of Congress or White House staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-22803 Filed 8-27-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR**Office of the Secretary****Agency Forms Under Review by the Office of Management and Budget (OMB)****Background**

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out. Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension**Employment and Training Administration**

Extended Benefits Trigger Data 1205-0028; ETA 539 Weekly

State or local governments 2756 responses; 2,067 hours; 1 form

Data for the determination of the initiation, continuance, or termination of an extended benefit period in any State by reason of the State "on" or "off" trigger. This data is also currently being used as part of the FSC triggering mechanism.

Reinstatement**Occupational Safety and Health Administration**

Fatality/Catastrophe Reporting 1218-0007; OSHA 36

On occasion

Farms; businesses or other for-profit; non-profit organizations; small businesses or organizations

1,200 responses; 300 hours; 0 forms

All workplace fatalities and catastrophes must be reported so that OSHA can schedule an inspection to

investigate. Such reporting is required by law.

Signed at Washington, D.C. this 24th day of August 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-22853 Filed 8-27-84; 8:45 am]

BILLING CODE 4510-26-M

Employment and Training Administration**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Airco-Welding Products, et al.**

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 7, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 7, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 20th day of August 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Airco Welding Products (workers)	Retreat, VA	8/13/84	7/30/84	TA-W-15, 421	Tips, heating, cutting.
Burlington Industries, Inc., Mountain City Plant (Co.)	Mountain City, PA	8/9/84	8/7/84	TA-W-15, 422	Fabrics, polyester, woven, textured.
Charles Parker Co/Union Mfg. (United Electrical Radio Workers)	Meriden, CT	8/10/84	8/6/84	TA-W-15, 423	Bottles, thermos, steel, stainless.
Kaiser Steel Corp., Fabricated Products Group, Structural Operations (USWA)	Fontana, CA	6/8/84	6/5/84	TA-W-15, 424	Products, steel, structural.
Kings Point Knitting Mills, Inc. (workers)	Spartanburg, SC	8/9/84	8/6/84	TA-W-15, 425	Fabrics, knit, double, single, circular.
Ladish Company (Boilermakers)	Cudahy, WI	8/13/84	8/7/84	TA-W-15, 426	Forgings and pipefitters.
(The) Linette Co., Inc. (Co.)	New York, NY	6/15/84	6/11/84	TA-W-15, 427	Interfacings for clothing industry and office.
Owens-Illinois, Inc. (Glass, Plastic, Pottery Allied Workers)	Wayne, NJ	8/14/84	8/3/84	TA-W-15, 428	Products, plastic.
Puritan Trim, Inc. (ILGWU)	Patchogue, NY	8/6/84	7/31/84	TA-W-15, 429	Trimmings for ladies garments.
Quality Unlimited, Inc. (ILGWU)	E. Newark, NJ	8/16/84	8/14/84	TA-W-15, 430	Coats and suits, ladies (contractor).
Quintana, Petro-chemical Company (company)	Corpus Christi, TX	8/13/84	8/9/84	TA-W-15, 431	Oil, heating, fuel, benzene and xylene.
Towmotor Corp. (UAW)	Mentor, OH	8/15/84	8/9/84	TA-W-15, 432	Trucks, lift, industrial.

[FR Doc. 84-22851 Filed 8-27-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,558]

Trifine Trouser Company, Inc., New York, NY; A Further Determination

Pursuant to the U.S. Court of International Trade remand in *Finkel v. Secretary of Labor*, (USCIT No. 82-11-01541) ordering (1) that certain deficiencies in the administrative record be corrected and the record be supplemented especially with those documents not originally submitted to the court but which were considered by the Secretary in his determination and (2) that the Department provide to the court certain customer information and reconsider its decision denying certification for trade adjustment assistance, the Department makes the following further determination for the former workers at Trifine Trouser Company, Inc., New York, New York.

According to the court's order, the Department has sent to the court under confidential cover certain specific information relating to Trifine and its customers. This comprises all the data and information in the Department's files on the subject case.

The plaintiff claims that the Department conducted an inadequate customer survey which contained deficiencies and misinterpreted the results. The Department carefully re-examined its customer survey to determine whether the plaintiff's claims have merit. The Department found that where there are data deficiencies in the customer survey, they are not significant and would not materially affect the Department's decision.

On reconsideration, the Department finds that there is no new evidence in its files that would provide a basis for

changing the original decision. Data discrepancies identified in the customer survey were small, they either involved customers who did not import men's and boys' slacks or customers who increased purchases from Trifine from 1979 to 1980 and therefore could not have contributed to Trifine's sales decline in 1980.

The worker group does not satisfy the "contributed importantly" test of Section 222 of the Group Eligibility Requirements of the Trade Act of 1974. The contributed importantly test is generally confirmed by the Department's customer survey.

The Department's survey of company customers was based on the customer list supplied by Trifine. It was augmented, in part, by data from a survey of major apparel retailers which form a data base. Data from this base is used when major retailers appear on a firm's customer list.

The respondents to the survey accounted for a very substantial part of Trifine's 1980 sales. The respondents, as a group, increased their purchases from Trifine in 1980 compared to 1979. Very few customers imported men's and boys' slacks during the relevant time periods of the investigation. The customers which reported imports represented a relatively small percent of Trifine's 1979 and 1980 sales. Most either decreased import purchases or increased purchases from Trifine during the relevant time periods. Only one customer had increased imports of men's and boys' slacks in 1980 while decreasing purchases from Trifine. That customer represented only a small percentage of Trifine's sales decline in 1980.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance for former workers at Trifine Trouser Company, Inc., New York, New York.

Signed at Washington, D.C., this 21st day of August 1984.

Harold A. Bratt,
Deputy Director, Office of Program
Management, IIS.

[FR Doc. 84-22852 Filed 8-27-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL CREDIT UNION ADMINISTRATION**Agency Forms submitted to the Office of Management and Budget for Clearance**

The following are those packages submitted to the Office of Management and Budget for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Participating Credit Union (PCU) Sample (3133-0001)

Respondents: A sample of federally insured credit unions

Abstract: Credit Union Monthly Survey provides financial data that serves as a basis for estimating consumer savings and credit, growth in assets, savings, investments and to monitor trends and developments at all U.S. credit unions. The information is used for supervisory program planning and management, and publication of industry statistics.

Subject: Loans to Members and Lines of Credit to Members 12 CFR Part 701
 Respondents: Federal credit unions
 Abstract: The NCUA Board adopted revised regulations concerning Federal credit unions to members and lines of credit to members. The revision simplified NCUA's previous regulation on the subject. Information collection is required of Federal credit unions. Each Federal credit union must have written lending policies. Also, a legal opinion must be on file in support of non-standard mortgage forms in use.

OMB Desk Officer: Judith McIntosh

Copies of the above information collection clearance package can be obtained by calling the National Credit Union Administration, Special Projects Officer, on (202) 357-1065.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: Judith McIntosh.

Dated: August 21, 1984.

Rosemary Brady,
 Secretary of the NCUA Board.

[FR Doc. 84-22777 Filed 8-27-84; 8:45 am]
 BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Research Improvement in Minority Institutions Program; Announcement

AGENCY: National Science Foundation.
ACTION: Notice of program announcement.

SUMMARY: This notice sets forth the program announcement for the National Science Foundation's Research Improvement in Minority Institutions (RIMI) Program.

EFFECTIVE DATE: This Announcement supersedes the Research Improvement in Minority Institutions Program Announcement (NSF 82-23). Changes incorporated here represent extensions and additions to the earlier program announcement rather than changes in program orientation. This announcement should be used in preparing all future RIMI proposals submitted to NSF as of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Dr. Roosevelt Calbert, Program Director, Research Improvement in Minority Institutions, Room 1144, Division of

Research Initiation and Improvement, National Science Foundation, Washington, D.C. 20550 (202/357-7350).

SUPPLEMENTARY INFORMATION: The National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), authorizes the National Science Foundation to initiate and support scientific research and programs to strengthen scientific research potential.

Research Improvement in Minority Institutions Program Announcement

The Research Improvement in Minority Institutions (RIMI) program provides grants to strengthen the research capabilities of predominantly minority institutions and institutions with substantial minority enrollments that have graduate programs in science or programs in engineering.

The objective of the RIMI program is to increase the contributions of minority institutions to the Nation's scientific and engineering research activities and, as mandated by Executive Order 12320, to increase the ability of historically black colleges and universities to participate in Federally sponsored programs. The RIMI program is designed to strengthen the research environment of participating institutions by supporting the faculty research in fields of science and engineering supported by the Foundation,* acquisition of modern research equipment, and cooperative research projects involving business and industry, Federal agencies, or other educational institutions.

Eligibility

For the purposes of this program, minority institutions are defined as those with a demonstrated commitment to the education of minorities with low representation in advanced levels of science and engineering. Institutions eligible to submit RIMI proposals are those whose student enrollments are (a) in total more than 50 percent comprised of a combination of any of the following groups: Alaskan Native (Eskimo or Aleut), American Indian, Black, Mexican American, Native Pacific Islander (Polynesian or Micronesian), Puerto Rican or (b) 20 percent or more of any one of the above eligible minorities. In

*NSF will not normally support research on the etiology, diagnosis, or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals. Animal models of such conditions, the development and testing of drugs, or other procedures for their treatment also generally are not eligible for Foundation support. If an investigator is uncertain as to whether the proposed research could be funded by the Foundation, he or she is encouraged to contact the RIMI Program Director.

order to assure full institutional commitment, each eligible institution may submit only one proposal per year to the RIMI program.

Scientists and engineers eligible to serve as principal investigators in this program are those who have full-time appointments at minority colleges and universities in the United States with graduate programs in the sciences or programs in engineering.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women, minorities, and physically handicapped persons to compete fully in this and other NSF programs.

Award Size and Duration

Research improvement projects will be supported up to a maximum amount of \$300,000 each and up to a maximum period of 36 months. Although RIMI awards are not renewable, institutions may submit proposals for subsequent RIMI or other NSF awards in accordance with standard procedures in order to continue work in the same or related areas of inquiry.

Proposal Deadlines

Proposals should be submitted to the RIMI program by December 1 of each year. Reviewing and processing of proposals may require 6 to 9 months. Meritorious proposals that are not funded in one fiscal year's competition due to unavailability of funds will be carried into the competition for the next fiscal year unless directed otherwise by the submitting institution.

Proposal Preparation and Submission

Proposal Format and Content

Proposals submitted in response to this program should follow the format in *Grants for Scientific and Engineering Research* (NSF 83-57), using copies of the forms included in Appendices II-VI. This publication, and the *NSF Guide to Programs* which briefly describes the Foundation's research programs, may be obtained by calling (202) 357-7861 or by writing to: Forms and Publications Unit, Room 232, National Science Foundation, Washington, D.C. 20550.

A proposal may consist of more than one disciplinary component and more than one principal investigator as long as the total document is clearly focused on a unified area of research. This is particularly relevant for proposals that request equipment only.

RIMI proposals should be set in the context of the institution's master plan for increasing its science and engineering research capabilities. Priority will be given to proposals that

enhance the institution's plan for development of its science and engineering research capabilities; strengthen staff and student research capabilities; and establish or enhance opportunities for sharing research capabilities with other institutions. Thus, in addition to the research project or equipment request described in the body of the proposal, the RIMI proposal must include responses to the following questions as an appendix:

(1) What specific long-range institutional plans are in place for science and engineering programs? How were these plans developed?

(2) What specific long-range institutional plans are in place for initiating other graduate programs in the sciences or programs in engineering?

(3) What plans now exist or are projected for improving the institution's research management infrastructure?

(4) What is the institution's commitment of its own resources to this project now and in the event little or no external funding is available in the future?

(5) What evidence is available to indicate that the proposed RIMI project may have positive regional impact?

(6) What specific plans are in place or will be in place that demonstrate how the institution will use this project to strengthen the research skills and capabilities of minority undergraduate students, minority graduate students, or minority faculty?

Institutional Endorsement

The proposal must include a signed statement of endorsement by each submitting institution's chief executive officer.

Project Director's Meeting

RIMI awardees will be expected to attend a project directors' meeting at the commencement of the project. The budget should include a line item for a two-day trip to Washington, D.C. Per diem should be requested in accordance with institutional policies, or in the absence of such policies, at the rate of \$75 per day.

Cover Page

Under the cover page heading "For Consideration by NSF Organizational Unit," the applicant should specify RIMI.

Proposal Submission

Fifteen copies of the proposal (including the copy bearing signatures) should be mailed in a single package to: Data Support Services Section, Attention: RIMI, National Science Foundation, Washington, D.C. 20550.

Proposal Evaluation

Eligible proposals submitted in response to this program announcement will be evaluated for scientific merit, in accordance with established Foundation standards and procedures, and by special panels of highly qualified scientists and engineers. (See *Grants for Scientific and Engineering Research* for description of proposal evaluation and standard evaluation criteria.) In addition, proposals will be evaluated in terms of the institutional criteria outlined under *Proposal Format and Content*. Site visits to institutions by a team of experts may also be part of the evaluation process.

After final decisions are made, verbatim copies of reviews, excluding identity of reviewers, will be mailed to each investigator.

NSF Grant Policies and Procedures

RIMI grants are administered in accord with the terms and conditions of NSF F.L. 200, *Grant General Conditions*, copies of which may be requested from the NSF Forms and Publications Unit. More comprehensive information is contained in the *NSF Grant Policy Manual (Revised)* available through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20420.

In the event that the submitting organization has never been the recipient of an NSF award, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the *NSF Grant Policy Manual*, which are applicable to most NSF awards. If a proposal is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are contained in Chapter III of the *Manual*.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or physical handicap shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation. Individuals with

hearing impairment may obtain information about Foundation programs by calling TDD (202) 357-7492.

RIMI Inquiries

General inquiries concerning the RIMI program should be made to the RIMI Program Director, Room 1144, Division of Research Initiation and Improvement, National Science Foundation, Washington, D.C. 20550, telephone (202) 357-7350.

Other Programs of Interest

Other Foundation programs that may be of particular interest to minority colleges and universities are:

Program	Telephone (Area Code 202)
Minority Research Initiation (MRI).....	357-7350
Research in Undergraduate Institutions (RIU).....	357-7456
Research Opportunity Awards (ROA).....	357-7456
Research Opportunities for Women (ROW).....	357-7734
NSF Visiting Professorships for Women (VPW).....	357-7734

Other programs for improving research environments include:

Program	Telephone (Area Code 202)
Biological Instrumentation Program.....	357-7652
Chemical Instrumentation Program.....	357-7660
Computer Science and Computer Engineering Research Equipment.....	357-7349
Earth Sciences Research Instrumentation Pro- gram.....	357-9591
Engineering Research Instrumentation Pro- gram.....	357-9834
Instrumentation for Material Sciences Re- search.....	357-7570
Scientific Computing Research Equipment for Mathematical Sciences.....	357-7349
Industry/University Cooperative Research Projects.....	357-7784

The Catalogue of Federal Domestic Assistance number for this program is 47.060, Research Improvement in Minority Institutions.

Dated: August 23, 1984.

Dr. Richard S. Nicholson,
Acting Deputy Director, National Science
Foundation.

[FR Doc. 84-22801 Filed 8-27-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

**Carolina Power and Light Co.;
Environmental Assessment and
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to

10 CFR 50 to Carolina Power and Light Company (the licensee), for the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would relax the requirement for complete area-wide automatic fire suppression coverage in the component coolant water pump room.

The exemption is responsive to the licensee's application for exemption dated April 27, 1982, as supplemented by letters dated June 7, 1983 and April 25, 1984.

The Need for the Proposed Action

The proposed exemption is needed because combustibles are only located in one section of the room in which fire suppression is proposed. Therefore area-wide suppression is not needed. The features described in the licensee's request regarding the existing fire protection at their plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased, and the post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in

the Final Environmental Statement (construction permit and operating license) for the H. B. Robinson Steam Electric Plant, Unit No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated April 27, 1982 and supplement dated June 7, 1983 and April 25, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Hartsville Memorial Library, Home and Fifth Avenue, Hartsville, South Carolina 29550.

Dated at Bethesda, Maryland this 17th day of August 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-22859 Filed 8-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-01-4 (Low Power)]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Special Prehearing Conference

August 22, 1984.

In accordance with the schedule previously adopted for hearing security contentions in a discrete proceeding,¹ a special prehearing conference will be held on August 30, 1984 at the U.S. Nuclear Regulatory Commission Hearing Room, located at 4350 East/West Highway, 5th Floor, Bethesda, Maryland, commencing at 9:30 a.m., local time.

This conference will consider and rule upon the security contentions, including any proposed amendments or refinements thereto, which have been filed on behalf of the Intervenor Suffolk County and the State of New York. Revisions to the balance of the proposed schedule may also be considered, in light of the Commission's recently expressed "concern" regarding the

¹ Order Concerning Security Contentions, entered July 18, 1984, at page 2.

schedule for litigation of security contentions.²

It is so ordered.

Dated at Bethesda, Maryland, this 22nd day of August 1984.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 84-22860 Filed 8-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a relief from the requirements of ASME Code section XI to Virginia Electric and Power Company (the licensee), for North Anna Power Station, Unit No. 1 (NA-1), located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The relief would negate the licensee's need to perform required hydrostatic testing of the NA-1 Steam Generator No. A after valve weld repairs prescribed in section XI of the ASME Boiler and Pressure Vessel Code.

The relief is responsive to the licensee's application for relief dated August 3, 1984.

The Need for the Proposed Action

The proposed relief is needed because a 1½ inch globe valve which is a socket welded valve on the steam header is leaking and requires a replacement valve. ASME XI, subsection IWA-4000 requires a pressure test after weld repair. To hydrostatically test this repair weld, a secondary hydrostatic test must be performed on the A-steam generator up to the main steam trip valve.

The NA-1 steam generators were designed for a limited number of hydrostatic tests. In order to reduce the number of hydrostatic tests performed on the steam generator, the licensee will perform a liquid penetrant examination on the joint end prep and final weld of

² Memorandum and Order entered by the Commission August 20, 1984: The Commission is concerned about the Licensing Board's July 18 Order setting out the schedule for litigation of security issues, insofar as it might be based on Commission schedule guidance in the Commission's May 16, 1984 Order, CLI-84-8. That guidance applied to the entire exemption hearing. Obviously, litigation of only several issues within the scope of the hearing need not necessarily consume as much time as the litigation of all issues within the scope of the hearing.

the valve. In addition, the liquid penetrant examination would be supplemented by a leakage test at operating pressure in accordance with section XI, subsection IWC-5000. The licensee's proposed alternate examination of the vent valve on the steam header will provide adequate indication of weld integrity.

Environmental Impacts of Proposed Action

The proposed relief will provide adequate assurance of valve weld integrity that is equivalent to that prescribed by the ASME Code. Consequently, the probability of the valve weld not operating properly will not be increased and postaccident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief.

With regard to potential non-radiological impacts, the proposed relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the North Anna Power Station, Unit No. 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the relief dated August 3, 1984 which is available for public inspection at the Commission's Public Document Room,

1717 H Street NW., Washington D.C., and at the Public Document Rooms located at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 22nd day of August 1984.

Frank J. Miraglia,

Acting Director, Division of Licensing.

[FR Doc 84-22861 Filed 8-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a relief from the requirements of ASME Code section XI to Virginia Electric and Power Company (the licensee), for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2), located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The relief will permit the licensee to defer a complete volumetric examination prescribed in ASME Code section XI on the accumulator tank welds 2 and 3 and the boron injection tank welds 1 and 2 for the present NA-1&2 refueling outages, No. 4 and No. 3, respectively. Complete volumetric examination will be required for NA-1&2 at the following refueling outages No. 5 and No. 4, respectively.

The relief is responsive (in part) to the licensee's application for relief dated February 13, 1984 and supplemented by letter dated February 21, 1984.

The Need for the Proposed Action

The proposed relief is needed because the complete volumetric examination prescribed by the Code cannot be performed due to the unavailability of a calibration block required to perform the examinations during the present refueling outages.

Environmental Impacts of the Proposed Action

The proposed relief is granted based on partial examinations of the affected welds by the licensee which provides reasonable assurance of the accumulator and boron injection tank structural integrity. Consequently, structural integrity of the vessels is assured and postaccident radiological releases will not be greater than

previously determined nor does the proposed relief otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief.

With regard to potential non-radiological impacts, the proposed relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the North Anna Power Station, Units No. 1 and No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the relief dated February 13, 1984 and supplement dated February 21, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Public Document Rooms located at the Board of Supervisors Office, Louisa County Courthouse, Louisa Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 22nd day of August 1984.

For the Nuclear Regulatory Commission,
Frank J. Miraglia,

Acting Director, Division of Licensing.

[FR Doc. 84-22862 Filed 8-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

**Virginia Electric and Power Co.;
Environmental Assessment and
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a relief from the requirements of ASME Code section XI to Virginia Electric and Power Company (the licensee), for the North Anna Power Station, Units No. 1 and No. 2, located in Louisa County, Virginia.

Environmental Assessment*Identification of Proposed Action*

The relief will allow the licensee not to perform the visual examination for support components for piping, valves and pumps that are buried within component insulation. The relief would allow the examination area to extend from the surface of the component insulation provided the support either carries the weight of the component or serves as a structural restraint in compression. In addition the examination area for which relief is requested applies to Class 1, 2 and 3 support components.

The relief is responsive to the licensee's application dated August 10, 1984.

The Need for the Proposed Action

Section XI of the ASME Boiler and Pressure Vessel Code, 1974 Edition with Summer 1975 Addenda, Table IWB-2500, examination category B-K-2, (support components for piping, valves and pumps) requires the examination area to include the support components that extend from the piping, valve and pumps attachment to and including the attachment to the supporting structure. In addition, ASME section XI, 1974 Edition with Summer 1975 Addenda, Subarticle IWD-2600(c), does not define examination areas for supports, restraints and hangers. The above ASME XI, 1974 Edition with Summer 1975 Addenda appropriately applies to the North Anna Power Station, Units No. 1 and No. 2.

However, ASME section XI, 1977 Edition with Summer 1979 Addenda, Subarticle IWF-1300 (e), allows the examination area (of a nonintegral support that is insulated where the mechanical connection is buried within the component insulation) to extend from the surface of the component insulation provided the support either carries the weight of the component or serves as a structural restraint in compression.

The relief would allow the use of the approved later edition of the code and is

consistent with the As Low As Reasonably Achievable (ALARA) program for the North Anna Power Station. Many man-rem of radiation exposure can be saved that would otherwise be required to remove and reinstall insulation from support components.

In addition, the examination area as requested in the relief request is consistent with all later editions of the approved ASME XI Code to date. Accordingly, the relief requested will not result in any shortcoming of the required inservice inspection program to meet the requirement of 10 CFR 50.55a(g)(4).

Environmental Impacts of the Proposed Action

The proposed relief will not compromise the required inservice inspection program at the North Anna Power Station. Therefore, the probability that piping, valves and pumps will not meet inservice testing requirements will not be increased and postaccident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief.

With regard to potential non-radiological impacts, the proposed relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the North Anna Power Station, Units No. 1 and No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the relief dated August 10, 1984 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Public Document Rooms located at Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 22nd day of August, 1984.

For the Nuclear Regulatory Commission,
Frank J. Miraglia,

Acting Director, Division of Licensing.

[FR Doc. 84-22863 Filed 8-27-84; 8:45 am]

BILLING CODE 7590-01-M

**OFFICE OF PERSONNEL
MANAGEMENT****Excepted Service**

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 24, 1984 (49 FR 29886). Individual authorities established or revoked under Schedules A, B, or C between July 1, 1984 and July 31, 1984 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions are established:

Department of Health and Human Services

Not to exceed 50 positions in the Public Health Service associated with health screening programs for refugees. Effective July 9, 1984.

Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS-11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year. Effective July 23, 1984.

Schedule B

The following exception is established:

National Endowment for the Humanities

Until September 30, 1985, one position of Humanist Administrator, Humanities Projects in Museums and Historical Organizations, Division of General Programs. Effective July 30, 1984.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Deputy Assistant Secretary for Governmental and Public Affairs. Effective July 9, 1984.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective July 11, 1984.

One Office Assistant to the Executive Assistant to the Secretary. Effective July 13, 1984.

Department of Commerce

One Deputy Director, Office of Intergovernmental Affairs. Effective July 9, 1984.

One Confidential Assistant to the Special Assistant to the Deputy Secretary. Effective July 11, 1984.

One Special Assistant to the Deputy Assistant Secretary for Import Administration. Effective July 19, 1984.

One Special Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective July 24, 1984.

Department of Defense

One Private Secretary to the General Counsel. Effective July 23, 1984.

Department of Education

One Confidential Assistant to the Director, Intergovernmental Affairs Staff. Effective July 5, 1984.

One Special Assistant to the Commissioner, Rehabilitation Services Administration. Effective July 10, 1984.

One Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective July 10, 1984.

One Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective July 10, 1984.

One Staff Assistant to the Secretary's Regional Representative in Philadelphia, Pennsylvania. Effective July 19, 1984.

One Confidential Assistant to the Counselor/Executive Assistant to the Secretary. Effective July 24, 1984.

One Legislative Liaison to the Director, Legislative Liaison Staff. Effective July 27, 1984.

Department of Energy

One Legal Advisor to a Member, Federal Energy Regulatory Commission. Effective July 9, 1984.

One Special Assistant to the Administrator, Economic Regulatory Administration. Effective July 17, 1984.

One Technical Advisor to a Member, Federal Energy Regulatory Commission. Effective July 27, 1984.

One Confidential Assistant (Secretary-Stenographer) to the Director of Regulatory Analysis, Federal Energy Regulatory Commission. Effective July 27, 1984.

Department of Health and Human Services

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective July 9, 1984.

One Confidential Staff Assistant to the Associate Commissioner for Family Assistance. Effective July 11, 1984.

One Director of Public Affairs to the Regional Director in Philadelphia, Pennsylvania. Effective July 20, 1984.

Department of Housing and Urban Development

One Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective July 3, 1984.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective July 3, 1984.

One Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs. Effective July 3, 1984.

One Staff Assistant (Scheduling and Liaison) to the Assistant Secretary for Public Affairs. Effective July 3, 1984.

One Special Assistant/Director, Executive Secretariat Operations to the Secretary. Effective July 3, 1984.

One Special Assistant to the Assistant Secretary for Policy Development and Research. Effective July 19, 1984.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Legislation. Effective July 23, 1984.

One Executive Assistant to the General Deputy Assistant Secretary for

Housing/Federal Housing Commissioner. Effective July 24, 1984.

Department of the Interior

One Special Assistant to the Assistant Secretary for Territorial and International Affairs. Effective July 18, 1984.

One Special Assistant to the Director, Congressional Liaison, Bureau of Mines. Effective July 24, 1984.

One Congressional Affairs Officer to the Director, Bureau of Land Management. Effective July 27, 1984.

Department of Justice

One Secretary (Typing) to the Commissioner, Immigration and Naturalization Service. Effective July 9, 1984.

One Special Assistant to the Director, Bureau of Justice Statistics. Effective July 12, 1984.

One Special Assistant to the Attorney General. Effective July 13, 1984.

Department of Labor

One Executive Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration. Effective July 5, 1984.

One Special Assistant to the Secretary. Effective July 13, 1984.

One Private Secretary to the Under Secretary. Effective July 19, 1984.

One Secretary (Typing) to the Regional Representative in Atlanta, Georgia. Effective July 27, 1984.

Department of State

One Assistant Chief of Protocol for Ceremonials. Effective July 3, 1984.

One Deputy Assistant Secretary for Asylum and Humanitarian Affairs. Effective July 3, 1984.

One Secretary (Stenography) to the Assistant Secretary for the Bureau of Near Eastern and South Asian Affairs. Effective July 24, 1984.

Department of Transportation

One Deputy Director, Office of Small and Disadvantaged Business Utilization. Effective July 3, 1984.

One Special Assistant to the Regional Representative in Fort Worth, Texas. Effective July 6, 1984.

One Staff Assistant to the Counselor to the Secretary. Effective July 9, 1984.

One Special Counselor to the Administrator, National Highway Traffic Safety Administration. Effective July 19, 1984.

One Special Assistant to the General Counsel. Effective July 23, 1984.

One Confidential Staff Assistant to the Chief Counsel, Federal Aviation Administration. Effective July 23, 1984.

Department of Treasury

One Special Assistant to the Assistant Secretary for Policy Planning and Communications.

ACTION

One Legislative Officer to the Assistant Director for Legislative and Governmental Affairs. Effective July 6, 1984.

One Special Assistant to the Director. Effective July 19, 1984.

Agency for International Development

One Director, Women in Development, Bureau of Program and Policy Coordination. Effective July 17, 1984.

One Special Assistant to the Assistant Administrator for the Bureau for Food for Peace and Voluntary Assistance. Effective July 24, 1984.

Commodity Futures Trading Commission

One Governmental Affairs Officer to the Chairman. Effective July 5, 1984.

Consumer Product Safety Commission

One Staff Assistant to a Commissioner. Effective July 27, 1984.

Equal Employment Opportunity Commission

One Director of Public Affairs. Effective July 10, 1984.

Executive Office of the President

One Confidential Assistant to the Director, Office of Management and Budget. Effective July 24, 1984.

One Legislative Analyst to the Assistant United States Trade Representative for Congressional Affairs. Effective July 27, 1984.

Federal Emergency Management Agency

One Special Assistant to the Associate Director for State and Local Programs and Support Directorate. Effective July 17, 1984.

International Trade Commission

One Staff Assistant (Legal) to the Chairwoman. Effective July 9, 1984.

One Congressional Liaison to the Chairwoman. Effective July 18, 1984.

One Staff Assistant (Legal) to a Commissioner. Effective July 19, 1984.

Office of Personnel Management

One Special Assistant to the Director. Effective July 20, 1984.

One Staff Assistant to the Assistant Director for Planning and Evaluation. Effective July 27, 1984.

One Supervisory Special Assistant to the Director. Effective July 27, 1984.

President's Commission on Executive Exchange

One Public Affairs Assistant to the Executive Director. Effective July 9, 1984.

One Staff Assistant to the Executive Director. Effective July 19, 1984.

Securities and Exchange Commission

One Secretary (Stenography) to the Director, Division of Market Regulation. Effective July 18, 1984.

Selective Service System

One Director of Congressional Affairs. Effective July 10, 1984.

Small Business Administration

One Assistant to the Director of Women's Business Ownership. Effective July 5, 1984.

One Assistant to the Assistant Administrator for Public Communications. Effective July 19, 1984.

U.S. Information Agency

One Special Assistant (Private Sector Committees) to the Director of Public Liaison. Effective July 26, 1984.

One Staff Assistant to the Director of Public Liaison. Effective July 27, 1984.

Veterans Administration

One Confidential Assistant to the Administrator. Effective July 18, 1984.

Dated: August 10, 1984.
Office of Personnel Management.
Donald J. Devine,
Director.

[FR Doc. 84-21730 Filed 8-27-84; 8:45 am]
BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Final Amendment

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendment.

SUMMARY: On August 8, 1984, the Northwest Power Planning Council amended one portion of its Northwest Conservation and Electric Power Plan (Power Plan). This notice describes that amendment.

FOR FURTHER INFORMATION CONTACT: Jeff King, Resource Analyst at Suite 200,

700 SW. Taylor, Portland, Oregon 97205, 503-222-5161, toll-free 1-800-222-3355 in Montana, Idaho, and Washington, and toll-free 1-800-452-2324 in Oregon.

SUPPLEMENTARY INFORMATION: Notice of proposed amendments to the Power Plan was published at pages 25908-25910 of the *Federal Register* of June 25, 1984. At its regular public meeting in Kalispell, Montana, on August 8, 1984, the Council voted unanimously to amend one portion of its Power Plan. The Pacific Northwest Electric Power and Conservation Planning Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 (the Act) allows the Council to amend the Power Plan from time to time. In adopting that amendment, the Council complied with all requirements of the Act and the Power Plan regarding substantial, non-technical amendments. Pursuant to those requirements, the Council:

- Announced the proposed amendment, public hearings and public comment period through the *Federal Register*, the Council's mailing list, and the Council's newsletter;
 - Held public hearings in Portland, Oregon (July 5); Seattle, Washington (July 11); Boise, Idaho (July 13); and Helena, Montana (July 23);
 - Accepted written comments through July 25, 1984;
 - Consulted with Bonneville Power Administration (Bonneville), regional utilities, state and local governments and other interested parties, and;
 - Compiled an administrative record.
- The amendment affects Chapter 10 of the Power Plan, the "Two-Year Action Plan."

Action Item 14.1 is amended to read:
14.1 Acquire options on a minimum of six hydropower projects for the primary purpose of testing the efficacy of the options concept for hydropower resources. The number of projects for which options are to be acquired and their capacities, locations, configurations and stage of development shall be chosen with the objective of identifying and resolving potential impediments to the optioning process. These include the FERC permitting and licensing process and the laws and regulations of the various states within the region. In acquiring options on hydropower projects, Bonneville shall adhere to the provisions of Appendix E. Bonneville shall consult with the Council on the development of the Request for Proposals for acquisition of these hydropower options and on the selection of projects to be optioned. The effect of the amendment will be to provide greater flexibility to

Bonneville in selecting hydropower projects for testing the hydropower options process. This increased flexibility will allow selection of a set of projects that best address constraints to the hydropower options process as understood at the time the request for proposals is issued.

Comments concerning the proposed revision were received from the Pacific Northwest Generating Company (PNGC), Bonneville, and from the Oregon Department of Energy (ODOE). All comments received were generally supportive of the amendment. Exception taken to the amendment focused on the requirement for acquisition of a minimum of six hydropower options. Reviews of the comments received are provided below:

1. *Maximum of Six Options.* PNGC generally supported the amendment, but recommended that the acquisition of hydropower options be limited to a maximum of six projects. The purpose of this limit would be to minimize the impact of the acquisitions on the Bonneville budget, given the current and projected surplus of electricity in the region.

Response: Council staff believes that there is no apparent need at present to acquire capability for the sole purpose of adding to the region's resource base. However, there is a need for the region to develop the ability to acquire resources through use of the options process. This ability can only be thoroughly tested by the actual acquisition of options on selected resources. The complexity and number of factors that potentially impact the options acquisitions process indicate that acquisition of options on six, and possibly more, projects may be required to adequately resolve the potential impediments to the options process. For these reasons, a minimum requirement of six projects was retained. The limit has been reworded, however, to emphasize that the primary purpose of the action item is to test the efficacy of the options concept for hydropower resources. This does not rule out, however, the possibility that these projects may be constructed and their output acquired by Bonneville should the need for additional power generating capability arise.

2. *Deletion of the Minimum Number of Options.* Bonneville was in general agreement with the amendment but expressed concern that setting a specific lower limit on the number of projects to be optioned may be too constraining. Bonneville argued that the options concept may be adequately tested with fewer than six projects and that since it is not known what the sizes and costs of

the hydroprojects offered by resource sponsors will be, it may be infeasible to option as many as six projects.

Response: As discussed above, six projects, and possibly more, may be required to identify and resolve the major factors potentially impacting the hydropower options process. Because it is important that the planning and budgeting for action item 14.1 recognize the likely scope of these activities, the requirement for a minimum of six options was retained in the amended action item. Should the full set of projects necessary to testing of the options concept not result from the first request for proposals, it is expected that additional solicitations will be issued until a full set of appropriate projects is obtained.

3. *Definition of "Request for Options."* ODOE concurred with the amendment but requested clarification of the term "request for options."

Response: The term "request for options" was in general use at the time the proposed amendment was originally drafted to refer to the document to be issued by Bonneville for solicitation of proposals from potential project sponsors. Bonneville has informed the Council that the solicitation documents will be called a "request for proposals" in conformance with procurement procedures. Accordingly, the wording of the final amendment was changed.

Edward Sheets,

Executive Director.

[FR Doc. 84-22742 Filed 8-27-84; 8:45 am]

BILLING CODE 000-00-M

Northwest Conservation and Electric Power Plan; Final Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of final amendments.

SUMMARY: On August 8, 1984, the Northwest Power Planning Council (Council) amended Appendix J of its Northwest Conservation and Electric Power Plan (Power Plan). This notice describes those amendments and explains how to obtain copies of the amendments.

ADDRESS: Copies of the final amendments may be obtained by contacting Dulcy Mahar at the phone numbers and address listed below.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, 700 SW Taylor, Suite 200, Portland, Oregon 97205 (toll-free 1-800-222-3355 in Montana, Idaho and Washington; toll-

free 1-800-452-2324 in Oregon; or 503-222-5161).

SUPPLEMENTARY INFORMATION: On April 27, 1983, the Northwest Power Planning Council (Council) adopted a Northwest Conservation and Electric Power Plan ("Power Plan") pursuant to the Pacific Northwest Electric Power Planning and Conservation Act ("Act"), (16 U.S.C. 839). On July 29, 1983, Cascade Natural Gas Company, CP National Corporation, Intermountain Gas Company, Northwest Natural Gas Company, Northwest Pipeline Corporation, and Washington Natural Gas Company appealed portions of the Council's Power Plan to the U.S. Court of Appeals for the Ninth Circuit in a case entitled *Cascade Natural Gas Corporation v. Evans*.

After negotiations, the parties reached an agreement which settled the lawsuit. The Council announced the proposed settlement in the *Federal Register* (49 FR 28342, July 11, 1984) and press releases and sought comments from the public before it voted to formally approve the agreement at its July 18 meeting. No public comments were received. As part of the agreement, the Council at its August 8 meeting in Kalispell, Montana made minor technical, non-substantial amendments to portions of the Power Plan's Appendix J, "Model Standard for Energy Conservation in New Buildings," to clarify that the Appendix is designed to apply only to electrically-heated structures.

For the reasons set out above, Appendix J of the Power Plan is amended as follows:

1. The title appearing on the title page is amended to read: Model Standard for Electric Energy Conservation in New Buildings.

2. The Preface on the title page is amended by adding the following as a new paragraph:

This Model Standard applies only to new electrically heated residences and new commercial buildings using electricity as the primary energy form for space conditioning. It was developed based upon the cost of electricity. The Council has not analyzed the economic feasibility of this Standard for consumers of other fuels used for space conditioning. The electric equipment performance requirements in section 406 through 423 and lighting power budget in section 424 are, however, also applicable in new commercial buildings in which electricity is not employed as the primary energy form for space conditioning.

3. Section 101A on page J-1 is amended to read:

The purpose of this Standard is to achieve efficient use of electric energy in buildings and structures.

4. Section 102A on page J-2 is amended to read:

This Standard sets forth certain requirements for the design of exterior envelopes, electric heating, ventilating and air conditioning systems (HVAC), electric service water heating, electric distribution, and illuminating systems and equipment to achieve more efficient use of electric energy.

5. Section 102B on page J-2 is amended by adding the following as a new subparagraph:

4. Buildings for which electricity is not employed as the primary energy form for space conditioning; provided, however, applicable electric equipment performance requirements in Sections 406 through 423, and lighting power budget, Section 424, shall apply to such buildings. Electricity is the primary energy form for space conditioning in mixed fuel buildings where the estimated annual electric energy requirements for electrically supplied space conditioning are greater than the estimated annual non-electric energy requirements for non-electrically supplied space conditioning.

6. Section 400 on page J-17 is amended to read:

This chapter establishes design criteria in terms of the thermal performance of the various components of a building. These criteria apply to all buildings except those exempt under Section 102B. Component U values can be combined for complete walls, roofs, etc., and adjusted by increased insulation in one for a decreased insulation in another, providing that the overall U_0 for the building does not change.

A building that is designed to be both heated and cooled shall meet the more stringent of the heating or cooling requirements as provided in this Standard when requirements differ.

7. Section 500 on page J-41 is amended to read:

This chapter establishes design criteria in terms of total electric use by a building, including all of its systems. These criteria apply to all buildings except those exempt under Section 102B. Sections 501 to 507 shall be used for all buildings except low-rise residential buildings of occupancy groups R-1 and R-3. Section 508 shall be used for low-rise residential buildings (R-1 and R-3 occupancy).

8. Section 501 on page J-41 is amended to read:

Compliance with this section shall require the use of an approved (certified) calculation procedure which yields an annual electric energy budget expressed in equivalent Btu/sq. ft./yr. or in kWh/sq. ft./yr.

A building designed in accordance with this chapter (the "alternative design building") shall comply with this Standard if the expected annual electric energy consumption is not greater than that of a building of similar design (A "standard design") whose enclosure elements and usage shall correspond to the expected occupancy and usage of the building.

The alternative design shall incorporate the applicable provisions of Section 414 (mechanical systems controls), Section 419D (water temperature control), and Section 423B (lighting switching).

9. Section 502 on page J-41 is amended to read in its entirety:

The standard design, conforming to the criteria of chapter 4, and the proposed alternative design shall be designed on a common basis as specified herein.

The comparison of total electric energy usage shall be expressed in Btu input per square foot of gross floor area per year for the standard design and the alternative design. Comparison of similar elements, systems, or components shall be expressed in dimensions or terms accepted by standard engineering practice.

Edward Sheets,

Executive Director.

[FR Doc. 84-22741 Filed 8-27-84; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Docket No. MC84-2]

Mail Classification Schedule, 1984; E-COM Service; Prehearing Conference

August 22, 1984.

On July 11, 1984, the Commission issued a Notice that the United States Postal Service had filed a Request for a Recommended Decision on deletion of E-COM Service from the Domestic Mail Classification Schedule. The Notice was published in the *Federal Register* on July 17, 1984 (49 FR 28953). It directed those desiring to participate in the proceeding to file notices of intervention on or before August 10, 1984. In response, this Commission has received five notices of intervention. These parties are listed in Attachment A.

The Secretary has transmitted a service list to be employed by all parties, whether full or limited participants, in making filings in the proceeding. The Postal Service, pursuant to section 65 of our rules of practice (39 CFR 3001.65), will serve copies of its Request and its prepared direct evidence upon the parties identified in Attachment A.

The Commission Notice indicated that it had not yet determined whether hearings would be held on the Postal Service proposal, and requested any party desiring to be heard on the proposal to so indicate in its notice of intervention. Only one party, the American Postal Workers Union (APWU), indicated a desire to participate in hearings, and that party did not state what position it might advocate at hearings. APWU indicates a desire to engage in discovery concerning the Postal Service request, and the Office of the Consumer Advocate has already filed interrogatories and a request that the Postal Service be directed to supplement its filing. The Commission is interested in identifying issues relevant to this request and in exploring the possibility of conducting this proceeding pursuant to 39 U.S.C. 3624(b)(5), without evidentiary hearings.

Wherefore a prehearing conference is scheduled in this docket for September 13, 1984, in the hearing room of the Commission, 2000 L Street, NW., Washington, D.C., at 10:00 a.m. to consider this and other matters. In addition to discussing whether evidentiary hearings are necessary, parties should be prepared to discuss the scheduling of any such hearings, and the need for special rules of practice such as have been utilized in other Commission proceedings. To facilitate discussion, an outline of a procedural schedule is attached to this notice as Appendix B.

Alternatively, it might be possible to stipulate relevant facts and to resolve issues of controversy in the Postal Service proposal through a settlement conference. This is particularly likely since the Commission has recently completed a full examination of E-COM costs and markets in Docket R83-1. The Commission looks with favor upon settlements, and parties are encouraged to narrow areas of controversy whenever possible. In furtherance of this policy, the officer of the Commission appointed in this proceeding to represent the interests of the general public, 39 U.S.C. 3624(a), is directed to contact each of the parties in the case to ascertain the feasibility of convening settlement discussions, and to undertake

to schedule such discussions should that be the will of the parties. A report on the progress of this effort should be provided at the September 13 prehearing conference.

By the Commission.

Cyril J. Pittack,
Acting Secretary.

Attachment A

Full Participants

American Postal Workers Union
U.S. Department of Justice
Mail Advertising Service Association,
International
Office of the Consumer Advocate

Limited Participants

Bell & Howell Business Equipment
Group
Business Corporation of America

Attachment B—Hearing Schedule for Proceedings, Mail Classification Schedule, 1984 E-COM Service

September 13, 1984.

Prehearing Conference (10:00 a.m. in the Commission hearing room).

Completion of all discovery directed to the Postal Service.

Beginning of hearings, i.e., cross-examination of the Postal Service's case-in-chief. (9:30 a.m. in the Commission hearing room.)

Filing of the case-in-chief of each participant (including that of OCA).

Completion of all discovery directed to the intervenors.

Beginning of evidentiary hearings as to the case-in-chief of other participants. (9:30 a.m. in the Commission hearing room.)

Rebuttal evidence of the Postal Service and each participant. (No discovery to be permitted on this rebuttal evidence; only oral cross-examination.)

Beginning of evidentiary hearings on rebuttal evidence. (9:30 a.m. in the Commission hearing room.)

Initial briefs filed.

Reply briefs filed.

Oral Argument (if scheduled).

[FR Doc. 84-22764 Filed 8-27-84; 8:45 am]

BILLING CODE 7715-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0184]

Grocers Capital Company, Inc.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Grocers Capital Company, Inc. (Grocers), 2600 S. Eastern Avenue, Los Angeles, California

90040, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of conflict of interest transactions.

Grocers proposes to make loans to the following companies:

Acapulco Enterprises, Inc. (\$69,000).
1355 N. Avalon Boulevard,
Wilmington, California 90744
Contextual Trading, Inc. (\$162,000), 3550
National Avenue, San Diego,
California 92113
Farid Hanafi & Jalal Brikho (\$60,000).
1505 Skyline Drive, Lemon Grove,
California 92045
Nagarah, Inc. (\$40,000), 6060 Banbury.
San Diego, California 92139

The proceeds of the loans will be used to purchase equipment or inventory from Grocers Equipment Company (GEC) and/or Certified Grocers of California, Ltd. (Certified), Associates of the Licensee.

All of Grocers' stock is owned by subsidiaries of Certified, a retailer owned grocery cooperative. G.E.C., a subsidiary of Certified, is a 41 percent shareholder of Grocers and is defined as an Associate by § 107.3 of the SBA Rules and Regulations.

As a result, Grocers' financing to these companies falls within the purview of §§ 107.3 and 107.903(b)(5) of the SBA Regulations. These loans require prior written approval of SBA.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in the San Diego and Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 17, 1984.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

[FR Doc. 84-22826 Filed 8-27-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 84-12]

Advisory Commission on the Reorganization of the Metropolitan Washington Airports; Public Hearing and Request for Comments

Notice is hereby given of a public hearing to be held by the Advisory Commission on the Reorganization of the Metropolitan Washington Airports, an advisory committee reporting to the Secretary of Transportation. The Commission is charged with developing a plan for the transfer of the Metropolitan Washington Airports, Washington National and Dulles International, from the federal government to an appropriate state, local, or interstate government body. Its charter was published in the Federal Register of June 18, 1984 (49 FR 24967).

Time and Location

The hearing will be held on Wednesday, September 12, 1984 at the Federal Aviation Administration (FAA) Auditorium, on the third floor of the FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. It will convene at 2:30 p.m. and continue until approximately 6 p.m., and reconvene at 7 p.m. and adjourn at approximately 9:30.

Registering to Speak

Any one is welcome to speak, but most of the time will be committed to speakers who have registered in advance. Registered speakers will be allowed up to ten minutes, all others a maximum of five, but lengthier statements may be submitted for the record. When the registered speakers have completed their presentations, time remaining will be available to others in attendance.

To register, speakers should contact the Commission between September 4 and close of business September 11 either by writing to the following address: Advisory Commission on the Reorganization of the Metropolitan Washington Airports, S-8, Room 9413, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590;

or by calling the Commission office at 472-7934. Speakers should indicate whether they prefer the afternoon or evening session. Requests will be treated on a first-come, first-served basis, and informal efforts will be made to adjust the speaking order to meet any special needs. Registration will be

confirmed by telephone, so letters should include a telephone number and some indication of the hours when it will be answered.

Procedures

A list indicating the sequence of speakers will be distributed at the hearing. While registered speakers will be assigned an order of speaking, whether the hearing will remain within the allotted time will depend on the cooperation of the participants.

Speakers will be called in order, and those not present when their turn comes up will be called a second time at the end of the list.

Registered speakers will be allowed up to ten minutes, all others a maximum of five, but lengthier statements may be submitted for the record.

Speakers will address the Commission from a podium. A colored light will indicate when a speaker's time is up.

Speakers are requested to provide the Commission with advance copies of their intended remarks.

Issues

The Commission's charter directs it to develop a plan for transferring National and Dulles to an appropriate state, local or interstate governmental body. Accordingly, its principal concern is the organization of a new airport operating authority. In particular, it seeks public views on the following general questions:

1. To which type of public agency should the airport be transferred: interstate, local, or state? The basic options appear to be an agency formed by interstate compact between the District of Columbia, Maryland, and Virginia; an airport authority formed under Virginia law by some or all of the Virginia cities and counties of the metropolitan area; or an airport authority created by Virginia statute.

2. Under any of the above options, how should the new organization reflect (1) the National interest; (2) the interests of the communities, both local and distant, that are served by the airports; and (3) the interests of the airport users and the traveling public, as well as those of the air carriers, commuter air carriers, and general aviation?

These complex questions can be answered in terms of the structure of a new entity, the powers given to its governing board, the authority that appoints members of such a board, or the establishment of any advisory committees, for example.

The Commission has already heard proposals with the following elements:

- An interstate authority with Maryland, D.C., and Virginia equally represented on a governing board, appointments to be made by the Governors and the Mayor.
- A Virginia-chartered and operated authority, subject to policy direction from a regional body.
- A Virginia-chartered authority with governing board appointed by the Governor of Virginia, with a requirement that certain appointments be made at the recommendation of the Governor of Maryland and the Mayor of the District of Columbia and be residents of those jurisdictions.
- An interstate authority with a seven-member governing board. The Governors and the Mayor would appoint two members each, and the President the seventh. One or both of the Maryland members would not vote until the authority also operated Baltimore-Washington International Airport as well.
- A Virginia-chartered authority with the two Governors and the Mayor as *ex officio* members, all other members to be from Virginia.

These examples are presented to illustrate the types of structures the Commission has been considering. They are not intended to limit speakers in any respect to a particular set of alternatives. Further, speakers are not limited to the structural examples outlined above. Any other proposals concerning the transfer are welcome.

In accordance with the Commission's charter, the scope of the hearing is narrow. The Commission is seeking views on the type of public agency to which National and Dulles Airports should be transferred, and the terms of transfer. It has not been charged with addressing any of the policy issues now subject to rulemaking [see 49 FR 24626; June 14, 1984], such as the annual passenger cap, the number of hourly operations, and slot allocation or reduction methods; other policy issues, such as nighttime curfews; or operational issues, such as flight paths into and out of National and departure procedures. Discussion of such issues may be ruled out of order if they exceed the intended scope of the hearing.

Invitation for Comment

The public is invited to submit comments on any aspects of the Commission's work. A docket will be established at the address listed above. It will be open for public inspection during normal business hours (9 a.m. to 5:30 p.m.) after September 4. Anyone interested in viewing the file should first call the Commission office at 471-7934.

Before September 4, additional information may be obtained from the Office of the Public Information at: U.S. Department of Transportation 400 Seventh Street, SW, Room 10413 Washington, D.C. 20590; Or by calling 202-426-4321.

Issued at Washington, D.C., on August 23, 1984

A. Linwood Holton, Jr.,

Chairman, Advisory Commission on the Reorganization of the Metropolitan Washington Airports.

[FR Doc. 84-22849 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Ventura County, CA

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 Ventura County, California.

FOR FURTHER INFORMATION CONTACT: Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 440-2804.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (CALTRANS), will prepare a Draft Environmental Impact Statement on a proposal to improve transportation on Route 118 in Saticoy by replacing the existing Santa Clara River bridge and widening or realigning the highway between Route 232 (Vineyard Avenue) and Route 126 (Santa Paula Freeway), a distance of 1.7 miles. The project is needed to relieve present congestion.

Replacement of the existing bridge is proposed due to exposed pile footings and deficient decking. Widening and realignment of this segment of Route 118 is proposed due to increased congestion and two existing sharp right angle curves.

Alternatives under consideration include: (1) A two-way roadway predominantly along the existing Los Angeles Avenue alignment; reconstruction of the Santa Clara River bridge; (2) a two-way roadway predominantly along Lirio Avenue; reconstruction of the Santa Clara River bridge; (3) a one-way couplet concept using Los Angeles and Lirio Avenues as two lane, one-way roadways; construction of two bridge crossings of

the Santa Clara River, (4) a by-pass to the northeast of Saticoy; reconstruction of the Santa Clara River bridge, (5) no project.

A scoping meeting has been scheduled for August 28, 1984 concerning this project. To ensure that the full range of issues related to the 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 FWHA at the address provided above.

Date issued: August 16, 1984.

John R. Schultz,

Acting District Engineer, Sacramento, California.

[FR Doc. 84-22807 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket No. S-760]

United States Lines, Inc.; Application for a Waiver of Section 804(a) to Allow for Certain Foreign-Flag Charter Arrangements

Pursuant to the provisions of section 804(b) of the Merchant Marine Act, 1936, as amended (Act), United States Lines, Inc. and its affiliate companies (collectively U.S. Lines) have requested a waiver of the provisions of section 804(a) of the Act in order to implement a foreign-flag feeder network for its 12 New York Class container vessels presently under construction. U.S. Lines intends to expand its current Atlantic and Pacific services to include an eastbound Round-the-World operation. After an initial phase-in period in which various interim vessel deployments will be used, U.S. Lines will provide weekly service at each of approximately 13 line haul ports around the world. U.S. Lines intends to serve other geographically related ports through a network of foreign-flag vessel charters and space charters. The requested waiver includes the following:

VESSEL CHARTERS

Line haul port	Feeder ports	Number of vessels	Maximum FEU capacity per vessel
A single port in the A U.A.E.	a U.A.E. Port, Ad Damman (Saudi Arabia), Kuwait.	2	275

VESSEL CHARTERS—Continued

Line haul port	Feeder ports	Number of vessels	Maximum FEU capacity per vessel
A single port in the U.A.E., Colombo or Singapore ¹ .	Muscat Matrah (Mina Qaboos), Cochin (India), Bombay (India), Karachi (Pakistan).	2	225
Singapore or Colombo ¹ .	Colombo (Sri Lanka), Madras (India), Calcutta (India), Chalna (Bangladesh), Chittagong (Bangladesh).	3	225
Kobe	Busan (Korea)	1	110
Southampton/ Flexistowe.	Greenock (Scotland), Dublin (Rep. of Ireland).	1	110
Rotterdam	Hamburg (Germany), Aarhus (Denmark), Goteborg (Sweden).	2	175
Rotterdam	Southampton (UK), Felixstowe (UK).	1	450
A single Western European Mediterranean Port ¹ .	Livorno (Italy), Genoa (Italy), Barcelona (Spain), Valencia (Spain), Fos.	1	175

¹ Line haul port to be utilized for these feeder operations has yet to be determined.

SPACE CHARTER ARRANGEMENTS

Line haul port	Feeder ports	Average weekly requirements
Singapore	Bangkok (Thailand)	55 FEUs
Singapore	Port Kelang (Malaysia), Panang (Malaysia), Phuket (Thailand).	55 FEUs
Singapore	Surabaya (Indonesia), Jakarta (Indonesia).	55 FEUs
Kaohsiung	Philippine Islands	90 FEUs

U.S. Lines has stated that the foregoing deployment projection and capacity requirements are considered tentative and certain adjustments may be necessary during the introductory phase of the Round-the-World service, and thereafter. Consequently, the company further requests authority to deviate from the projected deployment to the extent necessary to call at other ports in the same general port ranges on an *ad hoc* basis or to increase the feeder capacity as the need arises or to change from a vessel charter to a slot charter and vice versa as the conditions dictate. The term of the waiver requested is initially for a period of three years.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Comments must

be received no later than 5:00 P.M. on September 12, 1984. This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS)).

By Order of the Maritime Administrator.

Dated: August 23, 1984.

Murray A. Bloom,
Assistant Secretary.

[FR Doc. 84-22836 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP84-4; Notice 2]

Firestone Tire & Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by the Firestone Tire & Rubber Co. of Akron, Ohio to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on May 1, 1984, and an opportunity afforded for comment (49 FR 18663).

Section S4.3(e) of Standard No. 109 requires that the actual number of plies in a tire be indicated on both sidewalls. Firestone manufactured approximately 900 G78-15 Deluxe Champion 4 ply polyester tires with stamping on both sides indicating the tires have only three plies. Firestone argued that this is an inconsequential noncompliance because the legend "Load Range B" will indicate to prospective purchasers that the tire is one of four plies. Further, Tire & Rim Association load and inflation tables indicate the same load-carrying capacities for all ply ratings. Retreaders will be guided by Load Range B markings and will not be confused by the erroneous stampings. Finally, Firestone does not produce a three-ply tire and the tires are not likely to be sold as anything but what they are.

No comments were received on the petition.

After reviewing the matter, the agency has concluded that the erroneous ply

designation will have no effect upon the load carrying or endurance properties of the tires. Retreading operations will not be affected by the error in the number of plies indicated on the sidewall. Finally, any attempt to correct the error by rebranding the tire could possibly damage its bead area, thus detracting from safety.

Petitioner, therefore, has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

The engineer and attorney primarily responsible for this notice are A. Y. Casanova and Taylor Vinson respectively.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 22, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-22819 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-12; Notice 1]

Mitsubishi Motor Corp.; Receipt of Petition for Inconsequential Noncompliance

Mitsubishi Motor Corp. of Tokyo, Japan has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.101, Motor Vehicle Safety Standard No. 101, *Controls and Displays*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

The notice of receipt of a petition is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

Under Footnote 3 to Table 2 of Standard No. 101, if the odometer indicates kilometers, it shall be identified either by the word "KILOMETERS" or the abbreviation "km". Mitsubishi has designed an instrument panel cluster incorporating

an electronic digital display in which both the speedometer and odometer may be converted from registering speed and distance in miles to registering them in kilometers at the driver's whim. A noncompliance exists in that the odometer in the kilometer setting does not identify the read-out as representing a kilometer value. The noncompliance will exist in over 2600 1985-model Starions and Galants, and Dodge and Plymouth Conquests, to be produced in a period ending not later than November 15, 1984. The company is unable to effect a production change before that time.

Mitsubishi intends to affix a label to each of the cars in the vicinity of the odometer which will state "TRIP-ODOMETER indicates Km, when speedometer reads km/h". The speedometer itself, in the kilometer setting, is correctly identified. Mitsubishi believes that there will be no confusion after the initial operation of the system, and that even if there were a temporary confusion there would be no safety implications. For these reasons, petitioner argues that the noncompliance is inconsequential.

Interested persons are invited to submit written data, views and arguments on the petition of Mitsubishi Motors Corp. described above. Comments should refer to the docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: September 27, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: August 22, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-22809 Filed 8-27-84; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

AGENCY: United States Information Agency.

ACTION: Modification of notice.

SUMMARY: The United States Information Agency is modifying a notice found at 49 FR 10768, (March 22, 1984) regarding immunity from judicial seizure for the painting, "The Flaying of Marsyas" by Titian, on loan to the National Gallery, by changing the dates of the exhibit from March 23, 1984 to September 3, 1984, to September 1, 1984 to February 1, 1984.

EFFECTIVE DATE: The modification is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Office of General Counsel, United States Information Agency, 400 "C" Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency is modifying a notice published at 49 FR 10768 (March 22, 1984). The notice rendered immune from judicial process the painting: "The Flaying of Marsyas" by Titian, on loan to the National Gallery. The exhibit lent by the National Gallery of Art, Kromeriz, Czechoslovakia was originally scheduled from March 23, 1984 to September 3, 1984. However, the exhibit is now scheduled September 1, 1984 to February 1, 1985. Therefore, the determination published in the Federal Register is modified to reflect the change in dates.

Dated: August 17, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison, United States Information Agency.

[FR Doc. 84-22797 Filed 8-27-84; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 168

Tuesday, August 28, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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African Development Foundation.....	1
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Federal Reserve System.....	3
International Trade Commission.....	4
Securities and Exchange Commission.....	5

1

AFRICAN DEVELOPMENT FOUNDATION

Board Meeting

TIME: 2:00 p.m.—5:00 p.m.

PLACE: 1724 Massachusetts Avenue, NW., Suite 200, Washington, D.C. 20036.

DATE: September 7, 1984.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Chairman's Report
2. Acting President's Report
3. Program Committee Report, Dr. Blackshear
4. Discussion of Board Manual
5. Pre-scheduling of Board Meetings
6. Discussion of Proposed African Trip
7. Appointment of Leonard H. Robinson, Jr. as President of African Development Foundation for a two year term and authorization of the Chairman to execute an employment contract with Mr. Robinson

CONTACT PERSON FOR MORE

INFORMATION: Ms. Marge Cook, (202) 634-9864.

Leonard H. Robinson, Jr.,
Acting President.

ADF Agency Number 11010006
ADF BOAC Number 953901

August 24, 1984.

[FR Doc. 84-22891 Filed 8-24-84; 11:32 am]

BILLING CODE 9539-01-M

2

COMMODITY CREDIT CORPORATION

TIME AND DATE: 9:30 a.m., August 28, 1984.

PLACE: Room 104A-Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTER TO BE CONSIDERED:

1. Minutes of CCC Board meeting on March 16, 1984.
2. Minutes of CCC Board meeting on June 6, 1984.

3. Memorandum re: Peanut Loan and Purchase Program for the 1982 through 1985 Marketing Years, XCP-31a, Advisory Memorandum No. 2.

4. Memorandum re: Tobacco Price Support Program for the 1982 and Subsequent Crops, XCP-40a, Advisory Memorandum No. 2.

5. Docket XCP-98a, Amendment 1 re: Milk Price Support Program 1983-83 through 1984-85 Marketing Years.

6. Resolution re: Ratification of Policy Docket CZ-161a, Revision 4, Amendment 3, Policies for Collection, Settlement, and Adjustment of Certain Claims By or Against Commodity Credit Corporation.

7. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.

8. Resolution re: Ratification of Docket CZ-266, Resolution No. 21, Amendment 2, Commodities Available for Public Law 480 During Fiscal Year 1984.

9. Report re: Cash Management Report.

10. Report re: Status Report on Pilot Program for Ultra High Temperature (UHT) Milk.

11. Report re: Status of Commodity Donation Programs.

12. Resolution re: Ratification of Repurchase Offers on Export Credit Guarantees for Sudan and Peru.

13. Report re: Status Report on \$90 Million African Assistance Sale Program.

14. Resolution re: Sale of Dairy Products to Mexico.

15. Memorandum re: Current Status of Polish Indebtedness.

16. Report re: Status of Direct Credit and Guarantees, By Country, as of June 30, 1984.

CONTACT PERSON FOR MORE

INFORMATION: Richard A. Ashworth, Secretary, Commodity Credit Corporation, Post Office Box 2415, Room 3086 South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447-8165.

Richard A. Ashworth,

(Dated August 24, 1984.

Secretary, Commodity Credit Corporation.

[FR Doc. 84-22890 Filed 8-24-84 3:52 p.m.]

BILLING CODE 3410-05-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, September 4, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, 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.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3702, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 24, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22955 Filed 8-24-84; 3:52 pm]

BILLING CODE 6210-01-M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 12:00 Noon, Wednesday, September 5, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436 and Room 2003-A, Government Center, John F. Kennedy Federal Building, Boston, Massachusetts (by telephone).

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
 - a. Pull-type golf carts and wheels thereof (Docket No. 1088).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-22935 Filed 8-24-84; 3:24 pm]

BILLING CODE 7020-02-M

5

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 27, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, August 28, 1984, at 10:00 a.m. An open meeting will be held on

Thursday, August 30, 1984, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 28, 1984, at 10:00 a.m., will be:

Formal order of investigation.

Settlement of administrative proceedings of an enforcement nature.

Litigation matter.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive action.

The subject matter of the open meeting scheduled for Thursday, August 30, 1984, at 2:30 p.m., will be:

1. Consideration of whether to publish for comment a proposed release describing the Commission's approach to financing a contract to be let to a vendor to develop and implement an electronic filing, analysis and dissemination system for the SEC. For further information, please contact David T. Copenhafer at (202) 272-3794.

2. Consideration of whether to adopt amendments to Regulation E and Regulation A under the Securities Act of 1933 to: (i) Increase the aggregate offering price of all securities of an issuer that may be sold within a twelve month period under Regulation E from \$500,000 to \$5,000,000; (ii) increase the aggregate offering price of all securities of an issuer that may be sold under Regulation E without the use of an offering circular from \$50,000 to \$100,000; (iii) permit the use of a preliminary offering circular of certain underwritten public offerings under

Regulation E between the date of filing the notification and the date on which the company's securities may be sold; (iv) permit certain investment companies which elect to be treated as business development companies under the Investment Company Act of 1940 to use Regulation E, and preclude business development companies from using Regulation A; and (v) revise Schedule A of Regulation E for small business investment companies and add Schedule B to that regulation for use by business development companies. For further information, please contact Stephen C. Beach at (202) 272-3040.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barry Mehlman at (202) 272-2648.

George A. Fitzsimmons,
Secretary.

August 22, 1984.

[FR Doc. 84-22892 Filed 8-24-84; 11:32 am]

BILLING CODE 8010-01-M

Federal Register

Tuesday
August 28, 1984

Part II

Enforcement of Nondiscrimination on the
Basis of Handicap in Federally Conducted
Programs

National Capital Planning Commission
National Commission for Employment
Policy
Nuclear Regulatory Commission
National Credit Union Administration
Commodity Futures Trading Commission
Tennessee Valley Authority
United States Department of State
United States Information Agency
Inter-American Foundation
Japan-United States Friendship
Commission
Navajo & Hopi Indian Relocation
Commission
Occupational Safety and Health Review
Commission
Pension Benefit Guaranty Corporation
Advisory Council on Historic Preservation
Pennsylvania Avenue Development
Corporation
Commission of Fine Arts
Committee for Purchase From the Blind
and Other Severely Handicapped
General Services Administration
National Foundation on the Arts and the
Humanities, National Endowment for the
Arts
Federal Maritime Commission
Interstate Commerce Commission

NATIONAL CAPITAL PLANNING COMMISSION

1 CFR Part 457

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

1 CFR Part 500

NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 794

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 149

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1313

DEPARTMENT OF STATE

22 CFR Part 144

UNITED STATES INFORMATION AGENCY

22 CFR Part 530

INTER-AMERICAN FOUNDATION

22 CFR Part 1005

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

22 CFR Part 1600

NAVAJO & HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 720

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2205

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2608

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 812

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 909

COMMISSION OF FINE ARTS

45 CFR Part 2104

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51-9

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-8

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1153

FEDERAL MARITIME COMMISSION

46 CFR Part 507

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1014

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCIES: National Capital Planning Commission; National Commission for Employment Policy; Nuclear Regulatory Commission; National Credit Union Administration; Commodity Futures Trading Commission; Tennessee Valley Authority; Department of State; U.S. Information Agency; Inter-American Foundation; Japan-United States Friendship Commission; Navajo & Hopi Indian Relocation Commission; Occupational Safety and Health Review Commission; Pension Benefit Guaranty Corporation; Advisory Council on Historic Preservation; Pennsylvania Avenue Development Corporation; Commission of Fine Arts; Committee for Purchase From the Blind and Other Severely Handicapped; General Services Administration; National Endowment for the Arts; Federal Maritime Commission; Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to program or activities conducted by the agencies listed above.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 26, 1984. Comments should refer to specific sections in the regulation.

ADDRESSES: See individual agencies below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:**Background**

The purpose of this proposed rule is to provide for the enforcement of section

504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the following agencies (hereinafter "the agencies"): National Capital Planning Commission, National Commission for Employment Policy, U.S. Nuclear Regulatory Commission, National Credit Union Administration, Commodity Futures Trading Commission, Tennessee Valley Authority, United States Department of State, U.S. Information Agency, Inter-American Foundation, Japan-United States Friendship Commission, Navajo and Hopi Indian Relocation Commission, Occupational Safety and Health Review Commission, Pension Benefit Guaranty Corporation, Advisory Council of Historic Preservation, Pennsylvania Avenue Development Corporation, Commission of Fine Arts, Committee for Purchase from the Blind and Other Severely Handicapped, General Services Administration, National Endowment for the Arts, Federal Maritime Commission, Interstate Commerce Commission. As amended by the Rehabilitation, Comprehensive Service, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794) (amendment italicized)

Because the agencies are required by this amendment to promulgate implementing regulations, and because the proposed standards and procedures to be established are the same for all of the agencies, the agencies are publishing this notice of proposed rulemaking jointly. The final rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as indicated in the information provided for individual agencies below. The agencies agreed to joint publication of the preamble and the

text of the regulation in order to expedite its issuance and minimize costs in view of the identity in proposed standards among the agencies. If, following the public comment period, one or more of the agencies desires to promulgate a final regulation with different substantive provisions in order to account for its particular needs identified in response to public comments, it will, of course, do so.

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section —.101 Purpose.

Section —.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive

agencies or the United States Postal Service.

Section —.102 Application.

The proposed regulation applies to all programs or activities conducted by the agency.

Section —.103 Definitions.

"Assistant Attorney General."

"Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § —.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligations to investigate a complaint (see § —.170(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ —.149, —.150, and —.170(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Historic preservation programs," "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of § —.150 (a)(2) and (b)(2), which relate to accessibility of historic preservation programs.

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs [see, e.g., 45 CFR 84.3(k)(2)]. It provides that a handicapped person is qualified for preschool, elementary, or secondary education programs conducted by the agency, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, a handicapped person is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make

modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

We encourage comment on paragraph (2). The language we have proposed comes directly from the Supreme Court's interpretation of section 504. However, so long as the definition of "qualified handicapped person" remains faithful to the statute and current case law, we are receptive to alternative language.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section —.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working

relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section —.111 Notice.

Section —.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section —.130 General prohibitions against discrimination.

Section —.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § —.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § —.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual

evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ —.150— .151) and communications (§ —.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny

handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The program or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designated to benefit only handicapped persons or a given class handicapped persons may be limited to those handicapped persons.

Section—140 Employment.

Section—140 prohibits discrimination on the basis of handicap in employment

by Executive agencies. This regulation is in accord with a decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt v. United States Postal Service*, 662 F.2d 292 (5th Cir. 1981). Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 170(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section—149 Program accessibility: Discrimination prohibited.

Section—149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 150 and 151.

Section—150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–58), with certain modifications. Thus, § 150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 150(a)(1)). However, § 150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 150(a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic

preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This subparagraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 160(e). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dapico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation (DOT). The court in *APTA* noted "that at some point at transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(3) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal

of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § —.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § —.150(a) would fundamentally alter the nature of a program of activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § —.170.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Section —.150(a)(2) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against handicapped

persons on the other, § —.150(a)(2) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § —.150(b)(2) requires the agency to give priority to methods of providing program accessibility that permit handicapped persons to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified handicapped persons (§ —.130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § —.150(b)(2).

The special limitation on program accessibility set forth in § —.150(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (*see supra* definition of "historic preservation program," § —.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days. The Department of Justice is considering

whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement included in § —.150(d).

Section—.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section—.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § —.150.

Section—.160 Communications.

Section—.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § —.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ —.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § —.160(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions

interpreting it (*see supra* preamble § —.150(a)(3)). Unless not required by § —.160(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § —.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § —.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § —.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed

devices, readers for personal use or study, or other devices of a personal nature (§ —.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § —.111 is effectively communicated to handicapped persons.

Section —.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency will designate an official responsible for coordinating implementation of this section § —.170(c).

The agency is required to accept and investigate all complete complaints (§ —.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ —.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ —.170(g)). One appeal within the agency shall be provided (§ —.170(i)). The appeal will not be heard by the same person who made the initial

determination of compliance or noncompliance (§ —.170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

NATIONAL CAPITAL PLANNING COMMISSION

1 CFR Part 457

ADDRESSES: Comments should be sent to: Daniel H. Shear, Secretary, National Capital Planning Commission, 1325 G Street, NW., Washington, D.C. 20576.

Comments received will be available for public inspection at Legal and Secretariat Services Section, 10th Floor, 1325 G Street, NW., Washington, D.C. 20576 from 9:00 A.M. to 5:00 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen K. McKay, Assistant General Counsel, 1325 G Street, NW., Washington, D.C. 20576, (202) 724-0170 or (202) 724-7678 (TDD).

List of Subjects in 1 CFR Part 457

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 1 of the Code of Federal Regulations be amended by adding Part 457 as set forth at the end of this document.

Daniel H. Shear,
Secretary.

PART 457—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL CAPITAL PLANNING COMMISSION

- Sec.
457.101 Purpose.
457.102 Application.
457.103 Definitions.
457.104-457.109 [Reserved]
457.110 Self-evaluation.
457.111 Notice.
457.112-457.129 [Reserved]
457.130 General prohibitions against discrimination.
457.131-457.139 [Reserved]
457.140 Employment.
457.141-457.148 [Reserved]
457.149 Program accessibility:
Discrimination prohibited.
457.150 Program accessibility: Existing facilities.

Sec.
457.151 Program accessibility: New construction and alterations.
457.152-457.159 [Reserved]
457.160 Communications.
457.161-457.169 [Reserved]
457.170 Compliance procedures.
457.171-457.999 [Reserved]
Authority: 29 U.S.C. 794.

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

1 CFR Part 500

ADDRESSES: Comments should be sent to: 1522 K Street, NW., Suite 300, Washington, D.C. 20005.

Comments received will be available for public inspection at National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, D.C. 20005 from 8:30 A.M. to 5 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ann Donohue, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, D.C. 20005, (202) 724-1545, (202) 724-7678 (TDD).

List of Subjects in 1 CFR Part 500

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 1 of the Code of Federal Regulations be amended by adding Part 500 as set forth at the end of this document.

Patricia W. Hogue,
Director, National Commission for Employment Policy.

PART 500—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Sec.
500.101 Purpose.
500.102 Application.
500.103 Definitions.
500.104-500.109 [Reserved].
500.110 Self-evaluation.
500.111 Notice.
500.112-500.129 [Reserved].
500.130 General prohibitions against discrimination.
500.131-500.139 [Reserved].
500.140 Employment.
500.141-500.148 [Reserved].
500.149 Program accessibility: Discrimination prohibited.
500.150 Program accessibility: Existing facilities.
500.151 Program accessibility: New construction and alterations.
500.152-500.159 [Reserved].

Sec.
500.160 Communications.
500.161-500.169 [Reserved].
500.170 Compliance procedures.
500.171-500.999 [Reserved].
Authority: 29 U.S.C. 794.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

ADDRESSES: Comments should be sent to: Secretary, U.S. Nuclear Regulatory Commission, 1717 H Street NW, Washington, DC 20555, Attention: Docketing and Service Branch.

Comments received will be available for public inspection at NRC Public Document Room, 1717 H Street NW, Washington, DC 20555 from 8:15 A.M. to 5:00 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Tucker, Office of Small and Disadvantaged Business Utilization/Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7697, TDD: (202) 724-7678.

List of Subjects in 10 CFR Part 4

Administrative practice and procedure, Blind, Civil Rights, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal building and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 10 of the Code of Federal Regulations be amended by adding Subpart E to Part 4 as set forth at the end of this document.

William J. Dircks,
Executive Director for Operations.

PART 4—[AMENDED]

Part 4, Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by U.S. Nuclear Regulatory Commission

Sec.
4.501 (—101) Purpose.
4.502 (—102) Application.
4.503 (—103) Definitions.
4.504 (—104) to 4.509 (—109) [Reserved]
4.510 (—110) Self-evaluation.
4.511 (—111) Notice.
4.512 (—112) to 4.529 (—129) [Reserved]
4.530 (—130) General prohibitions against discrimination.
4.531 (—131) to 4.539 (—139) [Reserved]
4.540 (—140) Employment.
4.541 (—141) to 4.548 (—148) [Reserved]
4.549 (—149) Program accessibility: Discrimination prohibited.
4.550 (—150) Program accessibility: Existing facilities.
4.551 (—151) Program accessibility: New construction and alterations.
4.552 (—152) to 4.559 (—159) [Reserved]
4.560 (—160) Communications.

Sec.
4.561 (—161) to 4.569 (—169) [Reserved]
4.570 (—170) Compliance procedures.
4.571 (—171) to 4.999 (—999) [Reserved]
Authority: 29 U.S.C. 794.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 794

ADDRESSES: Comments should be sent to: Secretary of the NCUA Board, 1776 G Street NW., Washington, D.C. 20456.

Comments received will be available for public inspection at 1776 G Street NW., Washington, D.C. 20456, from 8:00 a.m. to 4:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Blaisdell, 1776 G Street NW., Washington, D.C. 20456, (202) 357-1080; TDD Contact Number (202) 357-1050.

List of Subjects in 12 CFR Part 794

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 12 of the Code of Federal Regulations be amended by adding Part 794 as set forth at the end of this document.

Rosemary Brady,
Secretary, NCUA Board.

PART 794—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL CREDIT UNION ADMINISTRATION

Sec.
794 —101 Purpose.
794 —102 Application.
794 —103 Definitions.
794 —104-794.109 [Reserved]
794 —110 Self-evaluation.
794 —111 Notice.
794 —112-794.129 [Reserved]
794 —130 General prohibitions against discrimination.
794 —131-794.139 [Reserved]
794 —140 Employment.
794 —141-794.148 [Reserved]
794 —149 Program accessibility: Discrimination prohibited.
794 —150 Program accessibility: Existing facilities.
794 —151 Program accessibility: New construction and alterations.
794 —152-794.159 [Reserved]
794 —160 Communications.
794 —161-794.169 [Reserved]
794 —170 Compliance procedures.
794 —171-794.999 [Reserved]
Authority: 29 U.S.C. 794.

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 149**

ADDRESSES: Comments should be sent to: Jane K. Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Room 806, Washington, D.C. 20581.

Comments received will be available for public inspection at Office of the Secretariat—Records, Commodity Futures Trading Commission, 2033 K Street NW., Room 304, Washington, D.C. 20581 from 8:00 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Frank H. Alston, III, Equal Employment Opportunity Officer, Commodity Futures Trading Commission, 2033 K Street NW., Room 202, Washington, D.C. 20581, 202-254-3275 (Voice) or 202-724-7678 (TDD).

List of Subjects in 17 CFR Part 149

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 17 of the Code of Federal Regulations be amended by adding Part 149 as set forth at the end of this document.

Jane K. Stuckey,
Secretary of the Commission.

PART 149—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMODITY FUTURES TRADING COMMISSION

- Sec.
149.101 Purpose.
149.102 Application.
149.103 Definitions.
149.104–149.109 [Reserved]
149.110 Self-evaluation.
149.111 Notice.
149.112–149.129 [Reserved]
149.130 General prohibitions against discrimination.
149.131–149.139 [Reserved]
149.140 Employment.
149.141–149.148 [Reserved]
149.149 Program accessibility: Discrimination prohibited.
149.150 Program accessibility: Existing facilities.
149.151 Program accessibility: New construction and alterations.
149.152–149.159 [Reserved]
149.160 Communications.
149.161–149.169 [Reserved]
149.170 Compliance procedures.
149.171–149.999 [Reserved]

Authority: 29 U.S.C. 794.

TENNESSEE VALLEY AUTHORITY**18 CFR Part 1313**

ADDRESSES: Comments should be sent to: Herbert S. Sanger, Jr., General Counsel, Tennessee Valley Authority, E11B33, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Comments received will be available for public inspection at Technical Library, OGM, Tennessee Valley Authority, E2B7, 400 West Summit Hill Drive, Knoxville, Tennessee 37902 from 8:00 A.M. to 4:45 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Jr., Associate General Counsel, Tennessee Valley Authority, E11B37, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, 615-632-4142 (Voice), 615-632-3461 (TDD).

List of Subjects in 18 CFR Part 1313

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 18 of the Code of Federal Regulations be amended by adding Part 1313 as set forth at the end of this document.

William F. Willis,
General Manager.

PART 1313—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY TENNESSEE VALLEY AUTHORITY

- Sec.
1313.101 Purpose.
1313.102 Application.
1313.103 Definitions.
1313.104–1313.109 [Reserved]
1313.110 Self-evaluation.
1313.111 Notice.
1313.112–1313.129 [Reserved]
1313.130 General prohibitions against discrimination.
1313.131–1313.139 [Reserved]
1313.140 Employment.
1313.141–1313.148 [Reserved]
1313.149 Program accessibility: Discrimination prohibited.
1313.150 Program accessibility: Existing facilities.
1313.151 Program accessibility: New construction and alterations.
1313.152–1313.159 [Reserved]
1313.160 Communications.
1313.161–1313.169 [Reserved]
1313.170 Compliance procedures.
1313.171–1313.999 [Reserved]

Authority: 29 U.S.C. 794; 16 U.S.C. §§ 831–831dd.

DEPARTMENT OF STATE**22 CFR Part 144**

ADDRESSES: Comments should be sent to: Carl R. Sosebee, Attorney Adviser, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 3214, Washington, D.C. 20520.

Comments received will be available for public inspection at Room 3214, Department of State, Washington, D.C. 20520 from 8:15 A.M. to 5:00 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Carl R. Sosebee, Attorney Adviser, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 3214, Washington, D.C. 20520 (202) 632-9251 (voice) (202) 724-7678 (TDD).

List of Subjects in 22 CFR Part 144

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 144 as set forth at the end of this document.

Myra H. Shiplett,
Associate Director for Personnel, Handicap Program Coordinator, Department of State.

PART 144—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY UNITED STATES DEPARTMENT OF STATE

- Sec.
144.101 Purpose.
144.102 Application.
144.103 Definitions.
144.104–144.109 [Reserved]
144.110 Self-evaluation.
144.111 Notice.
144.112–144.129 [Reserved]
144.130 General prohibitions against discrimination.
144.131–144.139 [Reserved]
144.140 Employment.
144.141–144.148 [Reserved]
144.149 Program accessibility: Discrimination prohibited.
144.150 Program accessibility: Existing facilities.
144.151 Program accessibility: New construction and alterations.
144.152–144.159 [Reserved]
144.160 Communications.
144.161–144.169 [Reserved]
144.170 Compliance procedures.
144.171–144.999 [Reserved]

Authority: 29 U.S.C. 794.

UNITED STATES INFORMATION AGENCY

22 CFR Part 530

ADDRESSES: Comments should be sent to: Handicap Program Manager, Office of Equal Employment Opportunity, U.S. Information Agency, Washington, D.C. 20547.

Comments received will be available for public inspection at Room M-10, 301 4th Street, S.W., Washington, D.C. 20547, from 9:30 A.M. to 4:30 P.M. Monday through Friday except legal holidays, by appointment only.

FOR FURTHER INFORMATION CONTACT: Helen Murphy, Handicap Program Manager, U.S. Information Agency, Room M-10, 301 4th Street, S.W., Washington, D.C. 20547, Telephone: Voice/TTY: (202) 485-7157.

List of Subjects in 22 CFR Part 530

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 530 as set forth at the end of this document.

Woodward Kingman,

Associate Director, Bureau of Management.

PART 530—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES INFORMATION AGENCY

- Sec.
- 530.101 Purpose.
 - 530.102 Application.
 - 530.103 Definitions.
 - 530.104-530.109 [Reserved]
 - 530.110 Self-evaluation.
 - 530.111-530.129 [Reserved]
 - 530.130 General prohibitions against discrimination.
 - 530.131-530.139 [Reserved]
 - 530.140 Employment.
 - 530.141-530.148 [Reserved]
 - 530.149 Program accessibility: Discrimination prohibited.
 - 530.150 Program accessibility: Existing facilities.
 - 530.151 Program accessibility: New construction and alterations.
 - 530.152-530.159 [Reserved]
 - 530.160 Communications.
 - 530.161-530.169 [Reserved]
 - 530.170 Compliance procedures.
 - 530.171-530.999 [Reserved]
- Authority: 29 U.S.C. 794.

INTER-AMERICAN FOUNDATION

22 CFR Part 1005

ADDRESSES: Comments should be sent to: Office of the General Counsel, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Virginia 22209.

Comments received will be available for public inspection at Office of the General Counsel, Fifth floor from 8:30 A.M. to 5:14 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Alejandro J. Palacios, Associate General Counsel, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209, Tel: 703-841-3819, TDD: 202 724-7678.

List of Subjects in 22 CFR Part 1005

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 1005 as set forth at the end of this document.

Stephen N. Abrams,
General Counsel.

PART 1005—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INTER-AMERICAN FOUNDATION

- Sec.
- 1005.101 Purpose.
 - 1005.102 Application.
 - 1005.103 Definitions.
 - 1005.104-1005.109 [Reserved]
 - 1005.110 Self-evaluation.
 - 1005.111-1005.129 [Reserved]
 - 1005.130 General prohibitions against discrimination.
 - 1005.131-1005.139 [Reserved]
 - 1005.140 Employment.
 - 1005.141-1005.148 [Reserved]
 - 1005.149 Program accessibility: Discrimination prohibited.
 - 1005.150 Program accessibility: Existing facilities.
 - 1005.151 Program accessibility: New construction and alterations.
 - 1005.152-1005.159 [Reserved]
 - 1005.160 Communications.
 - 1005.161-1005.169 [Reserved]
 - 1005.170 Compliance procedures.
 - 1005.171-1005.999 [Reserved]
- Authority: 29 U.S.C. 794.

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

22 CFR Part 1600

ADDRESSES: Comments should be sent to Japan-United States friendship

Commission, 1875 Connecticut Avenue, N.W., Suite 910, Washington, D.C.

Comments received will be available for public inspection at 1875 Connecticut Avenue N.W., Suite 910, Washington, D.C. 20009 from 9:00 A.M. to 5:30 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Roberta Stewart, 1875 Connecticut Avenue N.W., Suite 910, Washington, D.C. 20009, Tel. (202) 673-5295, TDD No. (202) 724-7678.

List of Subjects in 22 CFR Part 1600

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 1600 as set forth at the end of this document.

Richard A. Ericson, Jr.,
Executive Director.

PART 1600—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY JAPAN-UNITED STATES FRIENDSHIP COMMISSION

- Sec.
- 1600.101 Purpose.
 - 1600.102 Application.
 - 1600.103 Definitions.
 - 1600.104-1600.109 [Reserved]
 - 1600.110 Self-evaluation.
 - 1600.111 Notice.
 - 1600.112-1600.129 [Reserved]
 - 1600.130 General prohibitions against discrimination.
 - 1600.131-1600.139 [Reserved]
 - 1600.140 Employment.
 - 1600.141-1600.148 [Reserved]
 - 1600.149 Program accessibility: Discrimination prohibited.
 - 1600.150 Program accessibility: Existing facilities.
 - 1600.151 Program accessibility: New construction and alterations.
 - 1600.152-1600.159 [Reserved]
 - 1600.160 Communications.
 - 1600.161-1600.169 [Reserved]
 - 1600.170 Compliance procedures.
 - 1600.171-1600.999 [Reserved]

Authority: 29 U.S.C. 794.

NAVAJO & HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 720

ADDRESSES: Comments should be sent to: Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

Comments received will be available for public inspection at The offices of Navajo and Hopi Indian Relocation Commission, 201 East Birch, Flagstaff, Arizona from 7:30 A.M. to 4:30 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002, Telephone (602) 779-2721 (voice) or (202) 724-6768 (TDD).

List of Subjects in 25 CFR Part 720

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

A separate notice of proposed rulemaking amending this notice of proposed rulemaking to add provisions dealing with the Commission's housing programs is published elsewhere in this Part of today's Federal Register.

It is proposed that Title 25 of the Code of Federal Regulations be amended by adding Part 720 as set forth at the end of this document.

Ralph A. Watkins, Jr.,
Chairman.

PART 720—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

- Sec.
- 720.101 Purpose.
 - 720.102 Application.
 - 720.103 Definitions.
 - 720.104-720.109 [Reserved]
 - 720.110 self-evaluation.
 - 720.111-720.129 [Reserved]
 - 720.130 General prohibitions against discrimination.
 - 720.131-720.139 [Reserved]
 - 720.140 Employment.
 - 720.141-720.148 [Reserved]
 - 720.149 Program accessibility: Discrimination prohibited.
 - 720.150 Program accessibility: Existing facilities.
 - 720.151 Program accessibility: New construction and alterations.
 - 720.152-720.159 [Reserved]
 - 720.160 Communications.
 - 720.161-720.169 [Reserved]
 - 720.170 Compliance procedures.
 - 720.171-720.999 [Reserved]

Authority: 29 U.S.C. 794.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2205

ADDRESSES: Comments should be sent to: Edward T. Johnson, Director of Personnel Occupational Safety and Health Review Commission, Suite 409, 1825 K Street, NW., Washington, DC 20006.

Comments received will be available for public inspection in Suite 410, 1825 K Street, NW., Washington, DC 20006 from 9:00 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward Johnson, 202-634-7991, TTD messages: 202-724-7678.

SUPPLEMENTARY INFORMATION: On July 14, 1983, we published a Notice of Proposed Rulemaking (NPRM) to implement section 504 of the Rehabilitation Act of 1973, as amended, with respect to our federally conducted programs and activities (48 FR 32191). That NPRM was based on a prototype prepared by the Department of Justice and distributed to agencies on April 15, 1983. The Department of Justice subsequently revised its prototype in response to comments received on its NPRM, published on December 16, 1983, and advised the agencies to consider those revisions in drafting NPRM's for their own programs. Because we are considering making these changes in our NPRM, and because they were not reflected on our record before the comment period closed, we believe it is appropriate for us to issue a new NPRM instead of a final rule. For these reasons, we are participating in this joint publication.

List of Subjects in 29 CFR Part 2205

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 29 of the Code of Federal Regulations be amended by adding Part 2205 as set forth at the end of this document.

Michel N. Korbey,
Executive Director.

PART 2205—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

- Sec.
- 2205.101 Purpose.
 - 2205.102 Application.

- Sec.
- 2205.103 Definitions.
 - 2205.104-2205.109 [Reserved]
 - 2205.110 Self-evaluation.
 - 2205.111 Notice.
 - 2205.112-2205.129 [Reserved]
 - 2205.130 General prohibitions against discrimination.
 - 2205.131-2205.139 [Reserved]
 - 2205.140 Employment.
 - 2205.141-2205.148 [Reserved]
 - 2205.149 Program accessibility: Discrimination prohibited.
 - 2205.150 Program accessibility: Existing facilities.
 - 2205.151 Program accessibility: New construction and alterations.
 - 2205.152-2205.159 [Reserved]
 - 2205.160 Communications.
 - 2205.161-2205.169 [Reserved]
 - 2205.170 Compliance procedures.
 - 2205.171-2205.999 [Reserved]

Authority: 29 U.S.C. 794.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2608

ADDRESSES: Comments should be sent to: the General Counsel, Suite 7200, Legal Department, Pension Benefit Guaranty Corporation (Code 250), 2020 K Street, NW., Washington, DC 20006. Comments received will be available for public inspection at Suite 7100, at the above address, from 9 a.m. to 4 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Linda E. Rosenzweig, Legal Department, Pension Benefit Guaranty Corporation (Code 250), 2020 K Street, NW., Washington, DC 20006, (202) 254-4889. Persons with hearing impairments can obtain further information by calling our telecommunication devices for the deaf (TTY) at (202) 724-7678.

List of Subjects in 29 CFR Part 2608

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 29 of the Code of Federal Regulations be amended by adding Part 2608 as set forth at the end of this document.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

**PART 2608—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY THE
PENSION BENEFIT GUARANTY
CORPORATION**

- Sec.
2608.101 Purpose.
2608.102 Application.
2608.103 Definitions.
2608.104-2608.109 [Reserved].
2608.110 Self-evaluation.
2608.111 Notice.
2608.112-2608.129 [Reserved].
2608.130 General prohibitions against
discrimination.
2608.131-2608.139 [Reserved].
2608.140 Employment.
2608.141-2608.148 [Reserved].
2608.149 Program accessibility:
Discrimination prohibited.
2608.150 Program accessibility: Existing
facilities.
2608.151 Program accessibility: New
construction and alterations.
2608.152-2608.159 [Reserved].
2608.160 Communications.
2608.161-2608.169 [Reserved].
2608.170 Compliance procedures.
2608.171-2608.999 [Reserved].

Authority: 29 U.S.C. 794.

**ADVISORY COUNCIL ON HISTORIC
PRESERVATION**

36 CFR Part 812

ADDRESSES: Comments should be sent to: Ms. Charlotte R. Bell, Associate General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, D.C. 20004.

Comments received will be available for public inspection at Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, D.C. 20004 from 8:30 A.M. to 5:00 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Charlotte R. Bell, Associate General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, D.C. 20004. Telephone number (202) 786-0503, TDD telephone number (202) 724-7678.

List of Subjects in 36 CFR part 812

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 36 of the Code of Federal Regulations be amended by

adding Part 812 as set forth at the end of this document.

Robert R. Garvey, Jr.,
Executive Director.

**PART 812—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY
ADVISORY COUNCIL ON HISTORIC
PRESERVATION**

- Sec.
812.101 Purpose.
812.102 Application.
812.103 Definitions.
812.104-812.109 [Reserved].
812.110 Self-evaluation.
812.111 Notice.
812.112-812.129 [Reserved].
812.130 General prohibitions against
discrimination.
812.131-812.139 [Reserved].
812.140 Employment.
812.141-812.148 [Reserved].
812.149 Program accessibility:
Discrimination prohibited.
812.150 Program accessibility: Existing
facilities.
812.151 Program accessibility: New
construction and alterations.
812.152-812.159 [Reserved].
812.160 Communications.
812.161-812.169 [Reserved].
812.170 Compliance procedures.
812.171-812.999 [Reserved].

Authority: 29 U.S.C. 794.

**PENNSYLVANIA AVENUE
DEVELOPMENT CORPORATION**

36 CFR Part 909

ADDRESSES: Comments should be sent to: 425 Thirteenth Street, NW, Suite 1148, Washington, D.C. 20004.

Comments received will be available for public inspection at 425 Thirteenth Street, NW, Suite 1148, Washington, D.C. 20004 from 8:00 A.M. to 5:00 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Madeline B. Schaller, Pennsylvania Avenue Development Corporation, 425 Thirteenth Street, NW, Suite 1148, Washington, D.C. 20004. Telephone (202) 566-1078 or (202) 724-7678 (TDD).

List of Subjects in 36 CFR Part 909

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 36 of the Code of Federal Regulations be amended by

adding Part 909 as set forth at the end of this document.

Robert E. McCally,
Acting Executive Director and General
Counsel.

**PART 909—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY
PENNSYLVANIA AVENUE
DEVELOPMENT CORPORATION**

- Sec.
909.101 Purpose.
909.102 Application.
909.103 Definitions.
909.104-909.109 [Reserved].
909.110 Self-evaluation.
909.111 Notice.
909.112-909.129 [Reserved].
909.130 General prohibitions against
discrimination.
909.131-909.139 [Reserved].
909.140 Employment.
909.141-909.148 [Reserved].
909.149 Program accessibility:
Discrimination prohibited.
909.150 Program accessibility: Existing
facilities.
909.151 Program accessibility: New
construction and alterations.
909.152-909.159 [Reserved].
909.160 Communications.
909.161-909.169 [Reserved].
909.170 Compliance procedures.
909.171-909.999 [Reserved].

Authority: 29 U.S.C. 794.

COMMISSION OF FINE ARTS

45 CFR Part 2104

ADDRESSES: Comments should be sent to: Charles H. Atherton, Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, D.C. 20006.

Comments received will be available for public inspection at the above address from 9:00 A.M. to 5:00 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Charles H. Atherton, Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, D.C. 20006, (202) 566-1066 (voice), (202) 724-7678 (TDD).

List of Subjects in 45 CFR Part 2104

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 45 of the Code of Federal Regulations be amended by

adding Part 2104 as set forth at the end of this document.

Charles H. Atherton,
Secretary, Commission of Fine Arts.

**PART 2104—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP OR ACTIVITIES
CONDUCTED BY THE COMMISSION
OF FINE ARTS**

Sec.

- 2104.101 Purpose.
- 2104.102 Application.
- 2104.103 Definitions.
- 2104.104-2104.109 [Reserved]
- 2104.110 Self-evaluation.
- 2104.111-2104.129 [Reserved]
- 2104.130 General prohibitions against discrimination.
- 2104.131-2104.139 [Reserved]
- 2104.140 Employment.
- 2104.141-2104.148 [Reserved]
- 2104.149 Program accessibility: Discrimination prohibited.
- 2104.150 Program accessibility: Existing facilities.
- 2104.151 Program accessibility: New construction and alterations.
- 2104.152-2104.159 [Reserved]
- 2104.160 Communications.
- 2104.161-2104.169 [Reserved]
- 2104.170 Compliance procedures.
- 2104.171-2104.999 [Reserved]

Authority: 29 U.S.C. 794.

**COMMITTEE FOR PURCHASE FROM
THE BLIND AND OTHER SEVERELY
HANDICAPPED**

41 CFR Part 51-9

ADDRESSES: Comments should be sent to: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

Comments received will be available for public inspection at Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia from 7:30 A.M. to 4:00 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202, Telephone (703) 557-1145, TDD (202) 724-7678.

List of Subjects in 41 CFR Part 51-9

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 41 of the Code of Federal Regulations be amended by

adding Part 51-9 as set forth at the end of this document.

C. W. Fletcher,
Executive Director.

**PART 51-9—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY
COMMITTEE FOR PURCHASE FROM
THE BLIND AND OTHER SEVERELY
HANDICAPPED**

Sec.

- 51-9.101 Purpose.
- 51-9.102 Application.
- 51-9.103 Definitions.
- 51-9.104-51-9.109 [Reserved]
- 51-9.110 Self-evaluation.
- 51-9.111 Notice.
- 51-9.112-51-9.129 [Reserved]
- 51-9.130 General prohibitions against discrimination.
- 51-9.131-51-9.139 [Reserved]
- 51-9.140 Employment.
- 51-9.141-51-9.148 [Reserved]
- 51-9.149 Program accessibility: Discrimination prohibited.
- 51-9.150 Program accessibility: Existing facilities.
- 51-9.151 Program accessibility: New construction and alterations.
- 51-9.152-51-9.159 [Reserved]
- 51-9.160 Communications.
- 51-9.161-51-9.169 [Reserved]
- 51-9.170 Compliance procedures.
- 51-9.171-51-9.999 [Reserved]

Authority: 29 U.S.C. 794.

**GENERAL SERVICES
ADMINISTRATION**

41 CFR Part 101-8

ADDRESSES: Comments should be sent to: Office of Civil Rights, General Services Administration, 18th and F Streets, NW, Washington, D.C. 20405.

Comments received will be available for public inspection at Room 6221, General Services Administration, Washington, D.C. 20405 from 8 A.M. to 4:30 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Henderson, Office of Civil Rights, General Services Administration, Washington, D.C. 20405 (202) 566-1368, (202) 566-1633 TDD.

List of Subjects in 41 CFR Part 101-8

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 41 of the Code of Federal Regulations be amended by adding a new subpart 101-8.1 to Part

101-8 as set forth at the end of this document.

Grant B. Williams, Jr.,
Director of Civil Rights.

PART 101-8 [AMENDED]

**SUBPART 101-8.1—Enforcement of
Nondiscrimination on the Basis of Handicap
in Programs or Activities Conducted by
General Services Administration**

Sec.

- 101-8.101 Purpose.
- 101-8.102 Application.
- 101-8.103 Definitions.
- 101-8.104-101-8.109 [Reserved]
- 101-8.110 Self-evaluation.
- 101-8.111 Notice.
- 101-8.112-101-8.129 [Reserved]
- 101-8.130 General prohibitions against discrimination.
- 101-8.131-101-8.139 [Reserved]
- 101-8.140 Employment.
- 101-8.141-101-8.148 [Reserved]
- 101-8.149 Program accessibility: Discrimination prohibited.
- 101-8.150 Program accessibility: Existing facilities.
- 101-8.151 Program accessibility: New construction and alterations.
- 101-8.152-101-8.159 [Reserved]
- 101-8.160 Communications.
- 101-8.161-101-8.169 [Reserved]
- 101-8.170 Compliance procedures.
- 101-8.171-101-8.199 [Reserved]

Authority: 29 U.S.C. 794.

**NATIONAL FOUNDATION ON THE
ARTS AND THE HUMANITIES**

45 CFR Part 1153

ADDRESSES: Comments should be sent to: Arthur Warren, Office of General Counsel, room 522, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506.

Comments received will be available for public inspection at Room 524, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506, from 9:00 A.M. to 5:30 P.M. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Paula Terry, Office of Special Constituencies, Room 614, National Endowment for the Arts, Washington, D.C. 20506, (202) 682-5532, TTY Number: (202) 682-5496.

SUPPLEMENTARY INFORMATION:

Section 1153.130 General Prohibitions Against Discrimination.

Paragraph (b): The following is an additional, NEA-specific example of permissible use of an irrefutable presumption.

It would be permissible, therefore, to exclude without an individual evaluation, all persons who are totally blind from eligibility

to serve on a panel that screens slides of artwork; however, deaf individuals would be eligible to serve on the same panel.

Section 1153.160 Communications.

Paragraph (d): The following statement describes the methods through which the NEA may transmit information regarding section 504 rights and protections to handicapped persons.

Methods of providing this information include, for example, the publication of information in handbooks, manuals, guidelines, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

List of Subjects in 45 CFR Part 1153

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1153 as set forth at the end of this document.

F.S.M. Hodsoll,

Chairman, National Endowment for the Arts.

PART 1153—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ENDOWMENT FOR THE ARTS

Sec.

- 1153.101 Purpose.
- 1153.102 Application.
- 1153.103 Definitions.
- 1153.104—109 [Reserved]
- 1153.110 Self-evaluation.
- 1153.111 Notice.
- 1153.112—129 [Reserved]
- 1153.130 General prohibitions against discrimination.
- 1153.131—139 [Reserved]
- 1153.140 Employment
- 1153.141—148 [Reserved]
- 1153.149 Program accessibility: Discrimination prohibited.
- 1153.150 Program accessibility: Existing facilities.
- 1153.151 Program accessibility: New construction and alterations.
- 1153.152—159 [Reserved]
- 1153.160 Communications.
- 1153.161—169 [Reserved]
- 1153.170 Compliance procedures.
- 1153.171—999 [Reserved]

Authority: 29 U.S.C. 794.

FEDERAL MARITIME COMMISSION

46 CFR Part 507

ADDRESSES: Comments should be sent to: Francis C. Hurney, Secretary, Federal

Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

Comments received will be available for public inspection at: Federal Maritime Commission, 1100 L Street, NW., Room 11101, Washington, D.C. 20573 from 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Hazel L. Wyatt, Director, Office of Equal Employment Opportunity, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5806 (voice) or (202) 343-3674.

List of Subjects in 46 CFR Part 507

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 46 of the Code of Federal Regulations be amended by adding Part 507 to Subchapter A as set forth at the end of this document.

Francis C. Hurney,

Secretary.

PART 507—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY FEDERAL MARITIME COMMISSION

Sec.

- 507.101 Purpose.
- 507.102 Application.
- 507.103 Definitions.
- 507.104-507.109 [Reserved]
- 507.110 Self-evaluation.
- 507.111 Notice.
- 507.112-507.129 [Reserved]
- 507.130 General prohibitions against discrimination.
- 507.131-507.139 [Reserved]
- 507.140 Employment.
- 507.141-507.148 [Reserved]
- 507.149 Program accessibility: Discrimination prohibited.
- 507.150 Program accessibility: Existing facilities.
- 507.151 Program accessibility: New construction and alterations.
- 507.152-507.159 [Reserved]
- 507.160 Communications.
- 507.161-507.169 [Reserved]
- 507.170 Compliance procedures.
- 507.171-507.999 [Reserved]

Authority: 29 U.S.C. 794.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1014

ADDRESSES: Comments should be sent to: Office of Equal Employment Opportunity, Interstate Commerce Commission, Room 3115, 12th Street & Constitution Avenue, Northwest, Washington, D.C. 20423.

Comments received will be available for public inspection at Office of Equal Employment Opportunity, Interstate Commerce Commission, Room 3115, 12th Street & Constitution Avenue, Northwest, Washington, D.C. 20423 from 8:00 a.m. to 4:30 p.m. Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Gideon Ferebee, EEO Specialist, Office of Equal Employment Opportunity, Interstate Commerce Commission, Room 3216, Washington, D.C. 20423. Voice: (202) 275-7503, TDD: (202) 275-1721.

SUPPLEMENTARY INFORMATION: As an independent Federal regulatory agency, the Commission is not an "Executive agency" under 5 U.S.C. 105 and therefore we conclude that it is not directly subject to Section 504. The Commission's participation in the implementing regulation therefore is voluntary.

List of Subjects in 49 CFR Part 1014

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 49 of the Code of Federal Regulations be amended by adding Part 1014 as set forth at the end of this document.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

PART 1014—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INTERSTATE COMMERCE COMMISSION

Sec.

- 1014.101 Purpose.
- 1014.102 Application.
- 1014.103 Definitions.
- 1014.104-1014.109 [Reserved]
- 1014.110 Self-evaluation.
- 1014.111-1014.129 [Reserved]
- 1014.130 General prohibitions against discrimination.
- 1014.131-1014.139 [Reserved]
- 1014.140 Employment.
- 1014.141-1014.148 [Reserved]
- 1014.149 Program accessibility: Discrimination prohibited.
- 1014.150 Program accessibility: Existing facilities.
- 1014.151 Program accessibility: New construction and alterations.
- 1014.152-1014.159 [Reserved]
- 1014.160 Communications.
- 1014.161-1014.169 [Reserved]
- 1014.170 Compliance procedures.

1014.171-1014.999 [Reserved].
Authority: 29 U.S.C. 794.

**PART—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY —**

- Sec.
—101 Purpose.
—102 Application.
—103 Definitions.
—104—109 [Reserved].
—110 Self-evaluation.
—111 Notice.
—112—129 [Reserved].
—130 General prohibitions against discrimination.
—14.131—139 [Reserved].
—140 Employment.
—141—148 [Reserved].
—149 Program accessibility: Discrimination prohibited.
—150 Program accessibility: Existing facilities.
—151 Program accessibility: New construction and alterations.
—152—159 [Reserved].
—160 Communications.
—161—169 [Reserved].
—170 Compliance procedures.
—171—999 [Reserved].
Authority: 29 U.S.C. 794.

§ —101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ —102 Application.

This part applies to all programs or activities conducted by the agency.

§ —103 Definitions.

For purposes of this part, the term—
"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for

deaf persons, (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:
(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially

limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places.

"Qualified handicapped person" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; and

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ —.104— .109 [Reserved]

§§ —.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

- (1) a list of the interested persons consulted,
- (2) a description of areas examined any any problems identified, and
- (3) a description of any modifications made.

§ —.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ —.112— .129 [Reserved]

§ —.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service

that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the

programs or activities of entities that are licensed or certified by the agency are not, themselves covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ —.131— .139 [Reserved]

§ —.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ —.141— .148 [Reserved]

§ —.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ —.150 and —.151, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ —.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative

burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § —.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.*

(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § —.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § —.150 (a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an

historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligation established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ —.151 **Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR §§ 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ —.152 —.159 [Reserved]

§ —.160 **Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § —.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and

operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ —.161— .109 [Reserved]

§ —.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

- (1) findings of fact and conclusions of law;
 - (2) A description of a remedy for each violation found; and
 - (3) A notice of the right to appeal.
- (h) Appeals of the findings of fact and conclusions of law or remedies must be

filed by the complainant within 90 days of receipt from the agency of the letter required by § —.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed for the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ —.171— .999 [Reserved]

[FR Doc. 84-22682 Filed 8-27-84; 8:45 am]

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NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 720

Enforcement of Nondiscrimination on the Basis of Handicap in Navajo and Hopi Indian Relocation Commission Programs

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Navajo and Hopi Indian Relocation Commission is today participating in the joint publication, elsewhere in this issue, of a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the participating agencies. Because the majority of agencies participating in that publication do not conduct housing programs, that NPRM does not include a provision applying to such programs. The Navajo and Hopi Indian Relocation Commission, however, does conduct a housing program. This proposed regulation would amend the proposed regulation published elsewhere today to

add a provision applying to such programs.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 26, 1984.

ADDRESSES: Comments should be sent to: Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

Comments received will be available for public inspection in the offices of the Navajo and Hopi Indian Relocation Commission, 201 East Birch, Flagstaff, Arizona, between 7:30 A.M. and 4:30 P.M. Monday through Friday, except legal holidays. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT:

Paul Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona, 86002, Telephone (602) 779-2721 (Voice) or (202) 724-6768 (TDD).

SUPPLEMENTARY INFORMATION: As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) prohibits discrimination on the basis of handicap in programs and activities conducted by Federal Executive agencies or by the United States Postal Service. The Navajo and Hopi Indian Relocation Commission is today participating in the joint publication of a Notice of Proposed Rulemaking (NPRM) to implement this 1978 amendment with respect to the programs and activities it conducts. It joined the other agencies participating in the joint publication in order to expedite issuance of the required regulations and to minimize costs, in view of the identity in proposed standards among the agencies.

Because the majority of participating agencies do not conduct housing programs, the jointly published regulation does not include a provision specifically applicable to such programs. The Navajo and Hopi Indian Relocation Commission does, however, conduct a housing program and therefore its regulation must include guidance on how its requirements affect such programs.

This proposed rule would amend sections 720.150 and 720.151 of the proposed rule published elsewhere in this issue by adding new paragraphs (e) and (b), respectively, requiring that any home provided by the agency must be

readily accessible to and usable by any handicapped person who is a member of the household for which the home is being acquired or constructed.

This regulation has been reviewed by the Department of Justice. It is an adaption of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies on April 15, 1983.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13183, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not,

therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 25 CFR Part 720

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

PART 720—[AMENDED]

For the reasons set forth in the preamble, Chapter IV of title 25 of the Code of Federal Regulations is proposed to be amended as follows:

(1) In § 720.150, paragraph (e) is added to read as follows:

§ 720.150 Program accessibility: Existing facilities.

(e) *Housing.* The agency shall ensure that any dwelling purchased for a

relocatee household is readily accessible to and usable by any handicapped person who is a member of that household.

(2) Section 720.151 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

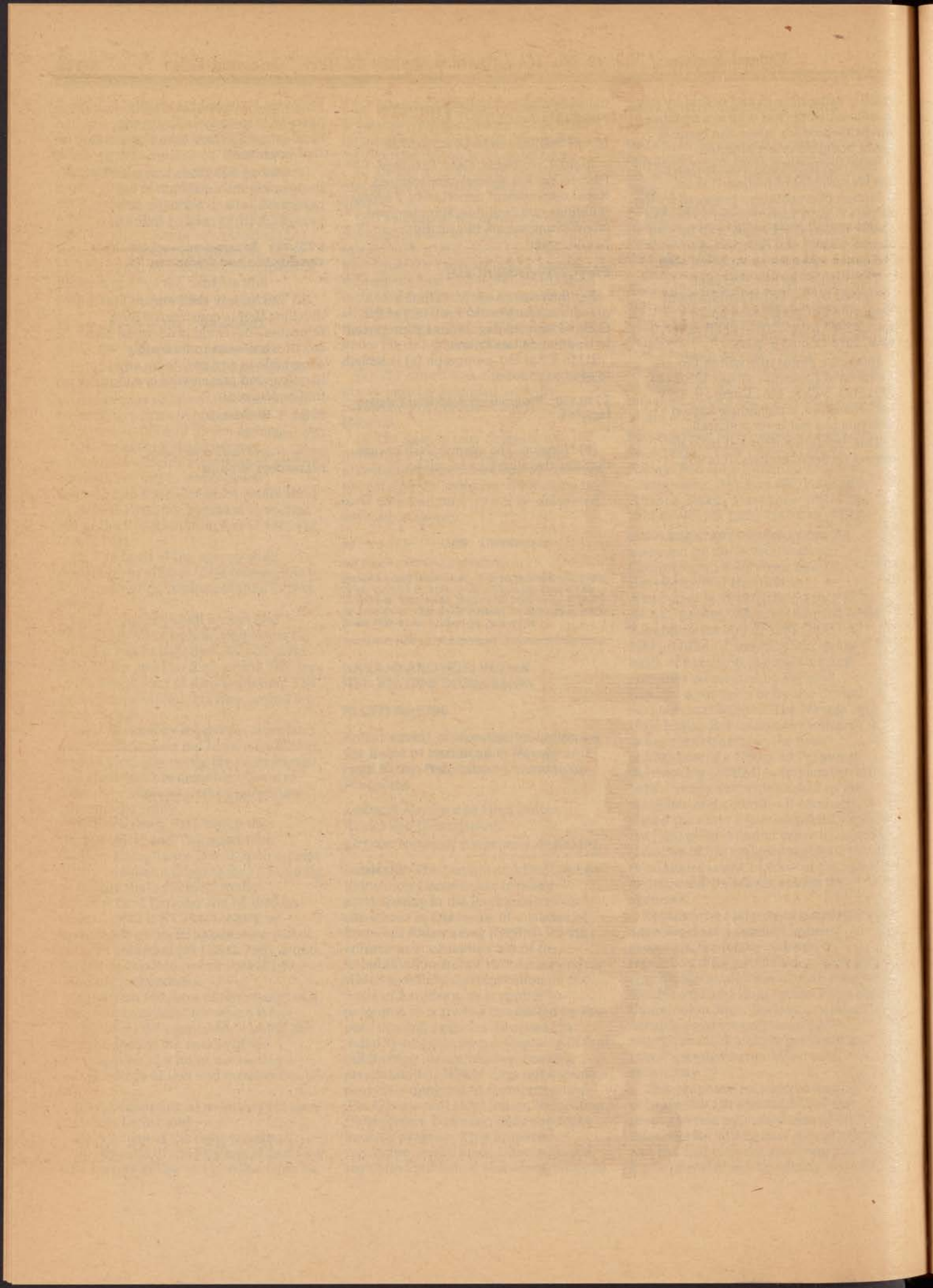
§ 720.151 Program accessibility: New construction and alterations.

(b) The agency shall ensure that any dwelling that is constructed for a relocatee household is designed and constructed so as to be readily accessible to and usable by any handicapped person who is a member of that household.

Ralph A. Watkins, Jr.,
Chairman.

[FR Doc. 84-22683 Filed 8-27-84; 8:45 am]

BILLING CODE 7550-01-M



Environmental Protection Agency

Tuesday
August 28, 1984

Part III

**Environmental
Protection Agency**

40 CFR Part 419

Petroleum Refining Point Source
Category; Effluent Limitations Guidelines
and Pretreatment Standards; Proposed
Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 419

[OW-FRL-2606-1]

Petroleum Refining Point Source Category; Effluent Limitations Guidelines and Pretreatment Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA proposes modifications to the regulation which limits effluent discharges to waters of the United States from facilities engaged in the refining and processing of petroleum. EPA agreed to propose these modifications in a settlement agreement which resolved the lawsuit brought against EPA by the Natural Resources Defense Council, Inc., challenging the final petroleum refining regulation promulgated by EPA on October 18, 1982.

The proposed modifications include: (1) Amendments to the "best available technology" (BAT) effluent limitations for process wastewater for the pollutants phenolic compounds, total chromium, and hexavalent chromium; (2) "best conventional pollutant technology" (BCT) effluent limitations for process wastewater; and (3) "best practicable technology" (BPT), BCT, and BAT effluent limitations for contaminated storm water runoff.

DATE: Comments on this proposal must be submitted on or before September 27, 1984.

ADDRESSES: Send comments to: Mr. Dennis Ruddy, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: EGD Docket Clerk, Proposed Petroleum Refining Rules (WH-552).

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library). The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Ruddy, Effluent Guidelines Division, at (202) 382-7131.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

II. Background

A. Prior Regulation

B. Challenges to the Prior Regulation

C. Settlement Agreement

III. Proposed Amendments to the Petroleum Refining Point Source Category Regulation

- A. Best Available Technology Effluent Limitations Guidelines
- B. Best Conventional Pollutant Technology Effluent Limitations
- C. Effluent Limitations Guidelines for Contaminated Storm Water Runoff
- IV. Environmental Impact of the Proposed Modifications to the Petroleum Refining Industry Regulation
- V. Solicitation of Comments
- VI. Executive Order 12291
- VII. Regulatory Flexibility Analysis
- VIII. OMB Review
- IX. List of Subjects: 40 CFR Part 419

I. Legal Authority

The amendments to the regulation described in this notice are proposed under the authority of sections 301, 304, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251, et seq., as amended by the Clean Water Act of 1977, Pub. L. 92517). These changes are also proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, No. 83-1122 (D.C. Cir.).

II. Background

A. Prior Regulation

On October 18, 1982, EPA published final effluent limitations guidelines and standards for the petroleum refining point source category. That regulation provided final effluent limitations for "best available technology economically achievable" (BAT) and established final pretreatment standards for existing sources (PSES) and for new sources (PSNS). The Agency retained its previously promulgated "new source performance standards" (NSPS) and also did not modify its effluent limitations guidelines for "best practicable control technology currently available" (BPT). The Agency reserved coverage of "best conventional pollutant control technology" (BCT) effluent limitations guidelines. The preamble to the final regulation describes the history of the rulemaking. 47 FR 46434.

B. Challenges to the Prior Regulation

The Natural Resources Defense Council, Inc. ("NRDC") filed a petition to review the final petroleum refining regulation. *Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, No. 83-1122 (D.C. Cir.). The American Petroleum Institute ("API") and seven individual oil companies (hereinafter referred to as "Intervenors") intervened in the litigation.

C. Settlement Agreement

On April 17, 1984, EPA, NRDC, API and all other intervenors to the litigation entered into a comprehensive Settlement Agreement which resolved all of the issues raised by the petitioner and all intervenors. In the Settlement Agreement, EPA agreed to publish a notice of proposed rulemaking and to solicit comments regarding certain modifications to the final petroleum refining BAT effluent limitations guidelines. In addition, EPA agreed to propose BCT effluent limitations guidelines for four conventional pollutants and BPT, BAT and BCT effluent limitations guidelines for contaminated storm water runoff. Petitioner NRDC agreed that if EPA takes final action pursuant to and consistent with the Settlement Agreement that it will dismiss its lawsuit challenging the final petroleum refining regulation.

As part of the Settlement Agreement, the parties agreed to seek a judicial stay of the regulatory provisions to be modified. On July 24, 1984, the Court entered a stay of the effluent limitations for phenolic compounds, total chromium and hexavalent chromium for the following portions of the regulation pending the rulemaking: 40 CFR 419.13(a), 419.23(a), 419.33(a), 419.43(a), and 419.53(a).

III. Proposed Amendments to the Petroleum Refining Point Source Category Regulation

The following are the changes to the petroleum industry regulation that EPA is proposing:

A. Best Available Technology Effluent Limitations Guidelines

On October 18, 1982 EPA published final effluent limitations guidelines for best available technology economically achievable (BAT) and final pretreatment standards for existing sources (PSES) and for new sources (PSNS) for the petroleum refining industry. 47 FR 46434. The Natural Resources Defense Council ("NRDC") filed a petition to review the October 18, 1982 regulation in the United States Court of Appeals for the District of Columbia Circuit. The American Petroleum Institute (API) and seven companies which own and operate petroleum refineries intervened in that proceeding. A number of issues were raised in settlement discussions among the parties in the lawsuit pertaining to the BAT effluent limitations guidelines. After extensive discussions, the petitioner, intervenors and EPA entered a Settlement Agreement, which provides for specified revisions to the BAT

effluent limitations guidelines. Those revisions are set forth in today's proposal.

In October 1982 EPA promulgated BAT effluent limitations for the following pollutants: (1) Non-conventional pollutants; chemical oxygen demand (COD), phenolic compounds (4AAP), ammonia (as N) and sulfide; and (2) toxic pollutants: total chromium and hexavalent chromium. The model technology for these regulations was flow equalization, initial oil and solids removal, advanced oil and solids removal, biological treatment and filtration or other final "polishing steps."

The Agency is now proposing to amend the BAT effluent limitations guidelines for total chromium, hexavalent chromium and phenolic compounds (4AAP). EPA is proposing to add flow reduction to the model treatment technology for the BAT effluent limitations guidelines and to base the effluent limitations for each of these three pollutants on a more recent data base, rather than the one it relied upon in the October 18, 1982 BAT promulgation. That rulemaking utilized the same data base used by the Agency when it established best practicable control technology currently available (BPT) effluent limitation guidelines for the petroleum refining point source category. BPT level of control for this industry was promulgated on May 9, 1974 (39 FR 16560) and subsequently amended on May 20, 1975 (40 FR 21939). The BAT effluent limitation guidelines for other pollutants would remain unchanged.

The BAT effluent limitations guidelines for total chromium being proposed today are based upon the revised 1979 flow model developed by the Agency to predict refinery flows, rather than the BPT 1974 flow model used in the October 1982 BAT promulgation. The effluent limitations for total chromium proposed today were derived by applying this updated flow model to concentrations for total chromium observed from plant sampling in 1976-1977.

BAT effluent limitations guidelines for hexavalent chromium and phenolic compounds being proposed today were derived using the 1982 Development Document concentrations and the revised 1979 flow model to more accurately represent effluent reductions for these pollutants which the industry was generally achieving in 1979 or could technologically be generally achieving in 1979 or could technologically achieve by the final BAT compliance date. BAT for hexavalent chromium being proposed today is based upon Option 7 (discharge flow reduction of 37.5 percent

from the revised 1979 model flow). BAT for phenolic compounds (4AAP) being proposed today is based upon option 8 (a reduction of 20 percent from the revised 1979 model flow).

Under today's proposal the BAT effluent limitations guidelines for each of these three pollutants would be substantially more stringent than the BAT effluent limitations guidelines promulgated in 1982. The total allowable discharge of total chromium to the nation's navigable waters would be reduced by approximately 286,000 pounds per year, a 66% annual reduction beyond discharge levels allowable under the existing BAT effluent limitations guidelines; the total allowable discharge of hexavalent chromium would be reduced by approximately 19,300 pounds per year, a 56% annual reduction beyond discharge levels allowable under existing BAT; the total allowable discharge of phenolic compounds (4AAP), would be reduced by approximately 75,000 pounds per year, a 43% annual reduction beyond discharge levels allowable under existing BAT. These reductions are based on data in the Agency's refined BAT model. The refined flow model is included in the record for this rulemaking proposal in a report entitled "Petroleum Refining Industry, Refinements to 1979 Proposed Flow Model."

EPA believes that approximately one half of refineries which directly discharge pollutants to navigable waters already are complying with the effluent limitations being proposed today. Further, EPA believes that these effluent limitations are economically achievable for the industry.

In the preamble to the October 18, 1982 promulgated regulations for this industry, EPA estimated that capital costs of \$112 million and \$37 million (1979 dollars) in annualized costs would be required in order for petroleum refiners to comply with option 7, one of the BAT control treatment options considered by the Agency (47 FR 46438). Likewise, EPA estimated that capital costs of \$77 million and annualized costs of \$25 million (1979 dollars) would be required in order for petroleum refiners to comply with option 8, another of the BAT control treatment options considered by the Agency (47 FR 46438).

The revised limitations being proposed today for phenolic compounds, hexavalent chromium and total chromium are not based on either option 7 or option 8 alone. The effluent limitations for phenolic compounds are based upon option 8. The effluent limitations for hexavalent chromium are based upon option 7. The effluent

limitations for total chromium, while somewhat more stringent than the BPT effluent limitations for total chromium, are less stringent than those based upon option 8.

The Agency has reevaluated the costs of compliance for today's proposed changes to the BAT effluent limitations and estimates that the total industry costs of compliance would not exceed those previously calculated for option 8. EPA estimates that no more than 61 petroleum refineries will have to incur aggregate capital costs no greater than \$77 million and annualized costs no greater than \$25 million (1979 dollars). These costs translate to an average increase of no greater than one half cent per gallon of refinery product. No refinery closures are anticipated by the Agency. Refinery capacity and consumption would remain unaffected. Given these factors, the Agency believes that its earlier heavy reliance on costs as the basis for rejecting more stringent effluent controls in this industry was inappropriate, and that the effluent limitations guidelines for total chromium, hexavalent chromium and phenolic compounds (4AAP) being proposed today, rather than the effluent limitations guidelines promulgated in 1982, are appropriate for this industry as the BAT level of control. The revised proposed BAT numerical limitations are contained in the proposed regulation.

B. Best Conventional Pollutant Technology Effluent Limitations Guidelines

As part of the Settlement Agreement EPA agreed to propose best conventional pollutant control technology ("BCT") effluent limitations guidelines for the petroleum refining industry. The 1977 Amendments to the Clean Water Act ("CWA") added section 301(b)(2)(E) of the Act establishing BCT for discharge of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) [biochemical oxygen demanding pollutants (BOD₅), total suspended solids (TSS), fecal coliform and pH], and any additional pollutants defined by the Administrator as "conventional". The Administrator designated oil and grease as a conventional pollutant on July 30, 1979, 44 FR 44501.

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B) the Act requires the BCT limitations be assessed in light of a two part "cost reasonableness" test.

American Paper Institute v. EPA, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond best practicable control technology currently available (BPT). EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published a proposed BCT methodology on October 29, 1982. (47 FR 49176). This proposed BCT methodology explains the details of the two part cost-reasonableness test, i.e., the "POTW test" and the "industry cost test". Today's proposed BCT effluent limitations guidelines for the petroleum refining industry are based on the proposed BCT methodology. EPA is proposing that BCT be set equal to BPT for the petroleum refining industry.

EPA considered two levels of technology for incremental control beyond BPT of total suspended solids (TSS) and oil and grease. These technology levels are recycle/reuse and recycle/reuse followed by granular media filtration. These technologies are already in use at certain sites in the petroleum refining industry. These technologies were selected as candidate BCT technologies because the Agency believes they represent the first levels of control beyond BPT which could effect reductions in conventional pollutant loadings in this industry. Filtration alone was not selected as a candidate BCT technology because it is one of the existing BPT treatment technologies. However, the Agency decided to consider the combination of recycle/reuse plus filtration as a candidate BCT technology. This is because the decreased hydraulic loading resulting from recycle/reuse results in the need for smaller and less costly filtration equipment than that included in the BPT treatment model. The BCT cost test was then performed on the combination of recycle/reuse and filtration as a double-check on the effects of the less costly filtration step.

In order to determine whether these candidate technologies are "cost-reasonable", EPA developed one model plant representative of a typical plant in each of the five BPT subcategories. The five BPT subcategories are:

- A—Topping
- B—Cracking
- C—Petrochemical
- D—Lube

E—Integrated

Then EPA calculated the incremental (beyond BPT) conventional pollutant removals and the incremental costs associated with these technologies for each model plant. Based on this information, cost-per-pound ratios were calculated for each of the five BPT subcategories.

EPA evaluated reductions in total suspended solids (TSS), biochemical oxygen demand (BOD₅), and oil and grease for each of these technology levels. However, oil and grease was not considered for the BCT calculations for recycle/reuse for this industry. Additionally, BOD₅ was not considered for the BCT calculations for filtration for this industry. This is in accordance with the proposed BCT methodology in order to avoid "double counting" of the amount of pollutants removed by a candidate BCT technology.

The recycle/reuse technology option identified for BCT was evaluated in the range of from 20 to 40 percent reduction in discharge flow. The cost per pound ranges from \$41.00 to \$0.77 (1977 dollars) in the first part of the proposed BCT cost reasonableness test (the "POTW test"). Accordingly, the Agency found that the addition of recycle/reuse technology fails the first part of the proposed BCT cost reasonableness test in all five subcategories (\$0.30 per pound in 1977 dollars).

The Agency also found that the addition of recycle/reuse plus filtration fails the first part of the proposed BCT cost reasonableness test in all five subcategories. The recycle/reuse portion of this option was evaluated in the range of from 20 to 40 percent reduction in discharge flow. The cost per pound (1977 dollars) ranges from \$21.00 to \$0.58, compared to the benchmark of \$0.30 per pound (1977 dollars).

Therefore, the Agency is proposing that BCT be set equal to BPT for the five subcategories in this industry.

A more complete discussion of the selection of the candidate BCT technologies, the details of the first part of the proposed BCT cost reasonableness test ("POTW test"), and the basis for decision on this proposal are contained in the administrative record of this rulemaking.

C. Effluent Limitations Guidelines for Contaminated Storm Water Runoff

In the October 18, 1982 rulemaking the Agency withdrew storm water effluent limitations guidelines for BPT, BAT and NSPS, because they were remanded by the U.S. Court of Appeals in *American Petroleum Institute v. EPA*, 540 F.2d 1023 (10th Cir. 1976).

Since that remand there has been some confusion on the part of permit writers and others as to whether storm water runoff ("runoff") effluent limitations should be contained in permits. There are two kinds of such runoff, i.e., contaminated and uncontaminated. The purpose of this rulemaking is to establish BPT, BCT and BAT effluent limitations guidelines for contaminated storm water runoff. These proposed contaminated runoff effluent limitations would be included in petroleum refinery permits in addition to process wastewater effluent limitations. NSPS for contaminated runoff is being reserved for future rulemaking.

In today's proposal EPA is defining contaminated runoff, for purposes of these regulations only, to be runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property. Any other storm water runoff at a refinery is considered uncontaminated. In today's proposal, EPA also is proposing to amend the definition of the term "runoff" currently found in 40 CFR 419.11(b) to clarify that it means the flow of storm water resulting from precipitation coming into contact with petroleum refinery property. Contaminated runoff constitutes an additional source of pollution which must be managed during periods of precipitation along with process wastewater from refinery operations. The regulations being proposed today do not establish numerical effluent limitations for uncontaminated runoff. Effluent limitations, including but not limited to allocations, for uncontaminated runoff may be established by the permit writer based on his/her best professional judgment.

The Agency believes that the best practicable control technology currently available, the best conventional pollutant control technology and the best available technology economically achievable for treatment of contaminated runoff are the same as the technologies identified for treatment of process wastewater. The Agency has not identified any feasible technologies capable of achieving pollutant reductions for contaminated runoff from refineries to any greater degree than those which are achievable by the process wastewater treatment facility.

The Agency believes that the conventional pollutant oil and grease and the nonconventional pollutant parameter total organic carbon (TOC) are appropriate measures to determine whether pollutant loadings in contaminated runoff would be

measurably reduced by the model treatment technologies used to develop these proposed regulations. Under today's proposal for BPT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment if it does not exceed 15 mg/l oil and grease and 110 mg/l TOC, based upon an analysis of any single grab or composite sample. Under today's proposal for BCT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment, if it does not exceed 15 mg/l oil and grease and under today's proposal for BAT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment if it does not exceed 110 mg/l TOC. If contaminated runoff (whether or not it exceeds 15 mg/l oil and grease or 110 mg/l TOC) is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease or 110 mg/l TOC is not commingled or treated with any other type of wastewater, then such runoff would be subject to the alternative BPT/BCT/BAT effluent limitations guidelines for contaminated runoff being proposed today, as appropriate. These oil and grease and TOC numerical effluent limitations are based on the concentrations expected from the properly designed and operated model treatment facilities.

The effluent limitations guidelines in today's BPT proposal for contaminated runoff are based on the same concentrations and variability factors used to develop the Agency's existing BPT process wastewater effluent limitations guidelines.

Today's BAT proposal for contaminated runoff is based upon the same concentrations and variability factors used to develop the Agency's existing BAT process wastewater effluent limitations guidelines, except those for total chromium, which are based upon the same concentrations and variability factors used for today's proposed BAT effluent limitations guidelines for process wastewater.

Today's proposed BAT effluent guidelines for phenolic compounds (4AAP) for contaminated runoff are based on the same concentrations used for today's existing BAT effluent limitations guidelines for process wastewater and the same variability factors used for the Agency's existing BAT effluent limitations guidelines. EPA has determined that this approach is appropriate in this proposal because of the specifics of each data base available to the Agency. If EPA used the variability factors from today's

proposed BAT effluent limitations guidelines, less stringent BAT contaminated runoff numerical effluent limitations for phenolic compounds (4AAP) would be derived than under today's proposed BPT contaminated runoff numerical effluent limitations for phenolic compounds (4AAP). The more stringent effluent limitations clearly are achievable and as a matter of law BAT cannot be less stringent than BPT.

Today's BCT proposal for contaminated runoff is based on the same concentrations and variability factors used for today's proposed BCT process wastewater effluent limitations guidelines.

The Agency believes that the costs attributable to today's proposal will be minimal, while providing for reductions in refinery pollutant discharges. This is because the Agency believes the industry as a whole already is (a) treating contaminated runoff with process wastewater or (b) is discharging contaminated runoff below today's proposed threshold for treatment. This proposal does not cover contaminated runoff which is commingled with non-process wastewater streams. EPA believes that such instances are infrequent, and accordingly, they are left to the permit writer's discretion.

Unlike the effluent limitations guidelines for process wastewater for this industry which are mass-based, today's proposed effluent limitations guidelines for contaminated runoff are concentration-based. This is because storm water volumes are not related to any measurement of refinery production. However, under today's proposal permit effluent limitations for contaminated runoff are to be established on a mass basis. The mass-based effluent limitations for each regulated pollutant for contaminated runoff in a petroleum refining permit are the product of (1) the respective effluent guideline concentration for that pollutant; and (2) the measured or calculated contaminated runoff volume.

Under today's proposal permit writers are given flexibility in determining refinery storm water volumes on a case by case basis. The following factors are among those appropriate for permit writers to consider in determining what contaminated runoff volume to use in calculating mass-based effluent limitations for refinery permits: (a) Measured difference between dry weather and wet weather discharge flow from the treatment facility where contaminated runoff is the only runoff present in the treatment facility; and (b) volume of contaminated runoff water calculated from the product of (1)

measurement of land area where precipitation would become contaminated, and (2) an historical measure of precipitation for the particular refinery location.

Once the mass based effluent limitation is derived, it may be incorporated into a refinery permit in one of three ways. The proper choice depends on site-specific factors, such as local rainfall patterns and the design of runoff holding facilities.

The first method is a continuous allocation. This presents the problem of providing an allocation when no runoff is present and is appropriate only where precipitation patterns are relatively constant through the year or when holding facilities are used to bleed runoff into the treatment facility over most or all of the year. The second method is a variable allocation based on measurement or calculation of actual contaminated runoff volume. While this is the most ideal method, it may present compliance measurement and enforcement complexities. The third method is dual wet weather/dry weather limitations triggered by either time of year, precipitation events, or actual contaminated runoff volume. The method of determining contaminated runoff volume used to calculate the effluent limitations will vary depending on the method used and the design of any runoff holding facilities. Therefore, it is left to the permit writer to select an appropriate method under today's proposal.

These proposed regulations do not address uncontaminated runoff which is discharged through the process wastewater treatment facility. This is because the Agency believes that introducing uncontaminated runoff to the process wastewater treatment system may result in the discharge of an increased mass of pollutants to the environment compared to the mass of pollutants discharged if no uncontaminated runoff were present in the process wastewater treatment system. Therefore, the Agency does not want to encourage this practice on a national basis.

In the case of BPT, the effluent limitations guidelines being proposed today are for the following pollutants: (1) conventional pollutants total suspended solids (TSS), oil and grease, five-day biochemical oxygen demand (BOD₅) and pH; (2) nonconventional pollutants phenolic compounds (4AAP), chemical oxygen demand (COD) and total organic carbon (TOC); and (3) toxic pollutants total chromium and hexavalent chromium. In the case of BAT, the effluent limitations guidelines

being proposed today are for: (1) Nonconventional pollutants phenolic compounds (4AAP), chemical oxygen demand (COD) and total organic carbon (TOC); and (2) toxic pollutants total chromium and hexavalent chromium. In the case of BCT, the effluent limitations guidelines being proposed today are for the conventional pollutants TSS, oil and grease, BOD₅ and pH. In the case of COD, there may be instances where extremely high chloride levels (greater than 1,000 mg/l) will interfere with the COD analytical method. In this event, the Agency believes that TOC is an acceptable substitute parameter for COD. A TOC limitation shall be based upon effluent data from the particular refinery which correlates TOC to BOD₅. Where adequate correlation data are not available, the permitting authority may establish a TOC limitation on a ratio of 2.2 to 1 to the applicable BPT/BCT effluent limitations for BOD₅. This ratio is based upon effluent data analyzed by the Agency.

No effluent limitations guidelines for contaminated runoff are being proposed for the nonconventional pollutants ammonia (as N) and sulfide regulated under existing BPT and BAT levels of control.

IV. Environmental Impact of the Proposed Modifications to the Petroleum Refining Industry Regulation

EPA's estimates of the reduction in industry-wide direct discharges of phenolic compounds, hexavalent chromium, and total chromium for process wastewater from those allowed under the final petroleum industry regulation to those allowed by this proposed modification are presented below.

REDUCTIONS IN ALLOWABLE DISCHARGE
(Pounds per year)

Pollutant	Reduction
Total chromium.....	286,000
Hexavalent chromium.....	19,300
Phenolic compounds.....	75,000

V. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposals discussed or set out in this notice. The Agency asks that any deficiencies in the record of this proposal be pointed to with specificity and that suggested revisions or corrections be supported by data.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it does not fall within the criteria for major regulations established in Executive Order 12291

VII. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. The Agency does not believe that today's proposed amendments will have a significant impact on any segment of the petroleum refining industry, large or small. The Agency is not, therefore, preparing a formal analysis for this regulation.

VIII. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

IX. List of Subjects in 40 CFR Part 419

Petroleum, Water pollution control, Wastewater treatment and disposal.

Dated: August 13, 1984.

William D. Ruckelshaus,
Administrator.

For the reasons set out in the preamble, EPA is proposing to amend 40 CFR Part 419 as follows:

PART 419—[AMENDED]

1. The authority citation for Part 419 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308, and 501, Federal Water Pollution Control Act as amended (the Act); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), 1318, and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

2. Section 419.11 is amended by revising paragraph (b) and adding paragraph (g) to read as follows:

§ 419.11 Specialized definitions.

(b) The term "runoff" shall mean the flow of storm water resulting from precipitation coming into contact with petroleum refinery property.

(g) The term "contaminated runoff" shall mean runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property.

3. Sections 419.12, 419.22, 419.32, 419.42, and 419.52 are amended by removing the paragraph heading and the

word "reserved" in paragraph (e) and adding the following text:

§ 419.— Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(e) Effluent Limitations for Contaminated Runoff.

The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff, which may be discharged after the application of the best practicable control technology currently available by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease and 110 mg/l total organic carbon (TOC) based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease or 110 mg/l TOC is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of flow)		
BOD ₅	48.	26.
TSS.....	33.	21.
COD ^a	360.	180.
Oil and grease.....	15.	8.
Phenolic compounds (4AAP).....	0.35	0.17
Total chromium.....	0.73	0.43
Hexavalent chromium.....	0.062	0.028
pH.....	(¹)	(¹)
English units (pounds per 1,000 gallons of flow)		
BOD ₅	0.40	0.22
TSS.....	0.28	0.18
COD ^a	3.0	1.5
Oil and grease.....	0.13	0.067
Phenolic compounds (4AAP).....	0.0029	0.0014
Total chromium.....	0.0060	0.0035
Hexavalent chromium.....	0.00052	0.00023
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

^a In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/L (1,000 ppm), the permitting authority may substitute TOC as a parameter in lieu of COD. A TOC effluent limitation

shall be based on effluent data from the particular refinery which correlates TOC to BOD. If in the judgment of the permitting authority, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations for BOD.

4. Sections 419.13, 419.23, 419.33, 419.43, and 419.53 are amended by removing the entries and effluent limitations for phenolic compounds, total chromium, and hexavalent chromium from the tables in paragraph (a).

5. Sections 419.13, 419.23, 419.33, 419.43, and 419.53 are amended by redesignating paragraph (e) as (f), redesignating paragraph (d) as (e), redesignating paragraph (c) as (d), and revising the redesignated paragraph (f) to read as follows:

§ 419.— Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(f) Effluent Limitations for Contaminated Runoff. The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff, which may be discharged after the application of the best available technology economically achievable by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 110 mg/l total organic carbon (TOC) based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceed 110 mg/l TOC is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of flow)		
Phenolic compounds (4AAP)	0.35	0.17

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of flow)		
Total chromium	0.60	0.21
Hexavalent chromium	0.062	0.028
COD ¹	360	180
English units (pounds per 1,000 gallons of flow)		
Phenolic compounds (4AAP)	.0029	.0014
Total chromium	.0050	.0018
Hexavalent chromium	.00052	.00023
COD ¹	3.0	1.5

¹ In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1000 mg/l (1000 ppm), the permitting authority may substitute TOC as a parameter in lieu of COD. A TOC effluent limitation shall be based on effluent data from the particular refinery which correlates TOC to BOD. If in the judgment of the permitting authority, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations for BOD.

6. Sections 419.13, 419.23, 419.33, and 419.53 are amended by adding a new paragraph (c) to read as follows:

§ 419.— Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(c)(1) In addition to the provisions contained above pertaining to COD, ammonia and sulfide any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

For each of the regulated pollutant parameters listed below, the effluent limitation for a given refinery is the sum of the products of each effluent limitation factor times the applicable refinery process feedstock rate, calculated as provided in 40 CFR 122.45(b). Applicable production processes are presented in Appendix A, by process type. The process identification numbers presented in this Appendix A are for the convenience of the reader. They can be cross-referenced in the *Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Petroleum Refining Point Source Category* (EPA 440/1-82/014), Table III-7, pp. 49-54.

Pollutant or pollutant property and process type	BAT effluent limitation factor	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m ³ of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.037	0.009
Cracking and coking	0.419	0.102
Asphalt	0.226	0.055
Lube	1.055	0.257
Reforming and alkylation	0.377	0.092
Total chromium:		
Crude	0.030	0.011
Cracking and coking	0.340	0.118
Asphalt	0.183	0.064
Lube	0.855	0.297
Reforming and alkylation	0.305	0.106
Hexavalent chromium:		
Crude	0.0019	0.0009
Cracking and coking	0.0218	0.0098
Asphalt	0.0117	0.0053
Lube	0.0549	0.0248
Reforming and alkylation	0.0196	0.0088
English units (pounds per 1,000 bbl of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.013	0.003
Cracking and coking	0.147	0.036
Asphalt	0.079	0.019
Lube	0.369	0.090
Reforming and alkylation	0.132	0.032
Total chromium:		
Crude	0.011	0.004
Cracking and coking	0.119	0.041
Asphalt	0.064	0.022
Lube	0.299	0.104
Reforming and alkylation	0.107	0.037
Hexavalent chromium:		
Crude	0.0007	0.0003
Cracking and coking	0.0076	0.0034
Asphalt	0.0041	0.0019
Lube	0.0192	0.0087
Reforming and alkylation	0.0069	0.0031

(2) See the comprehensive example in Subpart D, § 419.43(c)(2).

7. Section 419.43 is amended by adding a new paragraph (c) to read as follows:

§ 419.43 Effluent limitation guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(c)(1) In addition to the provisions contained above pertaining to COD, ammonia and sulfide any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

For each of the regulated pollutant parameters listed below, the effluent limitation for a given refinery is the sum of the products of each effluent limitation factor times the applicable

refinery process feedstock rate, calculated as provided in 40 CFR 122.45(b). Applicable production processes are presented in Appendix A, by process type. The process identification numbers presented in this Appendix A are for the convenience of the reader. They can be cross referenced in the *Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Petroleum Refining Point Source Category* (EPA 440/1-82/014), Table III-7, pp. 49-54.

Pollutant or pollutant property and process type	BAT effluent limitation factor	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed

Metric units (kilograms per 1,000 m³ of feedstock)

Phenolic compounds (4AAP):		
Crude	0.037	0.009
Cracking and coking	0.419	0.102
Asphalt	0.226	0.055
Lube	1.055	0.257
Reforming and alkylation	0.377	0.092
Total chromium:		
Crude	0.030	0.011
Cracking and coking	0.340	0.118
Asphalt	0.183	0.064
Lube	0.855	0.297
Reforming and alkylation	0.305	0.106
Hexavalent chromium:		
Crude	0.0019	0.0009
Cracking and coking	0.0218	0.0098
Asphalt	0.0117	0.0053
Lube	0.0549	0.0248
Reforming and alkylation	0.0198	0.0088

English units (pounds per 1,000 bbl of feedstock)

Phenolic compounds (4AAP):		
Crude	0.013	0.003
Cracking and coking	0.147	0.036
Asphalt	0.079	0.019
Lube	0.369	0.090
Reforming and alkylation	0.132	0.032
Total chromium:		
Crude	0.011	0.004
Cracking and coking	0.119	0.041
Asphalt	0.064	0.022
Lube	0.299	0.104
Reforming and alkylation	0.107	0.037
Hexavalent chromium:		
Crude	0.0007	0.0003
Cracking and coking	0.0076	0.0034
Asphalt	0.0041	0.0019
Lube	0.0192	0.0087
Reforming and alkylation	0.0069	0.0031

(2) Example Application of Effluent Limitations Guidelines as Applicable to Phenolic Compounds, Hexavalent Chromium, and Total Chromium.

The following example presents the derivation of a BAT phenolic compounds (4AAP) effluent limitation (30 day average) for a petroleum refinery permit. This methodology is also applicable to hexavalent chromium and total chromium.

Refinery process	Process feedstock rate 1,000 bbl/day
1. Atmospheric crude distillation	100
2. Crude desalting	50
3. Vacuum crude distillation	75
Total crude processes (C)	225
6. Fluid catalytic cracking	25
10. Hydrocracking	20
Total cracking and coking processes (K)	45
18. Asphalt production: Total asphalt processes (A)	5
21. Hydrofining: Total lube processes (L)	3
6. Catalytic reforming: Total reforming and alkylation processes (R)	10

Note.—30-day average phenolic compounds (4AAP) discharge, lb/day: (0.003)(225) + (0.036)(45) + (0.019)(5) + (0.090)(3) + (0.032)(10) + 2.98 lb/day.

8. Section 419.14 is revised to read as follows:

§ 419.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

BCT effluent limitations	Pollutant or pollutant property	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m ³ of feedstock)		
BOD ₅	22.7	12.0
TSS	15.8	10.1
Oil and grease	6.9	3.7
pH	(¹)	(¹)
English units (pounds per 1,000 bbl of feedstock)		
BOD ₅	8.0	4.25
TSS	5.6	3.6
Oil and grease	2.5	1.3
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 24.9	1.02
25.0 to 49.9	1.06
50.0 to 74.9	1.16
75.0 to 99.9	1.26
100 to 124.9	1.38
125.0 to 149.9	1.50
150.0 or greater	1.57

(2) Process factor.

Process configuration	Process factor
Less than 2.49	0.62
2.5 to 3.49	0.67
3.5 to 4.49	0.80
4.5 to 5.49	0.95
5.5 to 6.49	1.07
6.5 to 7.49	1.17
7.5 to 8.49	1.27
8.5 to 9.49	1.39
9.5 to 10.49	1.51
10.5 to 11.49	1.64
11.5 to 12.49	1.79
12.5 to 13.49	1.95
13.5 to 14.49	2.12
14.5 to 15.49	2.31
15.5 to 16.49	2.51
16.5 to 17.49	2.73
17.5 to 18.49	2.98
18.5 to 19.49	3.24
19.5 to 20.49	3.53
20.5 to 21.49	3.84
21.5 to 22.49	4.18
22.5 or greater	4.36

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The following allocations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to ballast, which may be discharged after the application of best conventional pollutant control technology by a point source subject to this subpart, in addition to the discharge allowed by paragraph (b) of this section. The allocation allowed for ballast water flow, as kg/cu m (lb/1000 gal), shall be based on those ballast waters treated at the refinery.

Pollutant or pollutant property	BCT effluent limitations for ballast water	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per cubic meter of flow)		
BOD ₅	0.048	0.026
TSS	0.033	0.021
Oil and grease	0.015	0.008
pH	(¹)	(¹)
English units (pounds per 1,000 gal of flow)		
BOD ₅	0.40	0.21
TSS	0.26	0.17
Oil and grease	0.126	0.067
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) Effluent Limitations for Contaminated Runoff. The following effluent limitations constitute the quantity and quality of pollutants or

pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of flow)		
BOD-5.....	48.	26.
TSS.....	33.	21.
Oil and grease.....	15.	8.
pH.....	(¹)	(¹)
English units (pounds per 1,000 gallons of flow)		
BOD-5.....	0.40	0.22
TSS.....	0.28	0.18
Oil and grease.....	0.13	0.067
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

9. Section 419.24 is revised to read as follows:

§ 419.24 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m ³ of feedstock)		
BOD ₅	26.2	15.6
TSS.....	19.5	12.8
Oil and grease.....	8.4	4.5
pH.....	(¹)	(¹)
English units (pounds per 1,000 bbl feedstock)		
BOD ₅	9.9	5.5
TSS.....	6.9	4.4
Oil and grease.....	3.0	1.6
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 barrels of feedstock per stream day	Size factor
Less than 24.9.....	0.91
25.0 to 49.9.....	0.95
50.0 to 74.9.....	1.04
75.0 to 99.9.....	1.13
100.0 to 124.9.....	1.23
125.0 to 149.9.....	1.35
150.0 or greater.....	1.41

(2) Process factor.

Process configuration	Process factor
Less than 2.49.....	0.58
2.5 to 3.49.....	0.63
3.5 to 4.49.....	0.74
4.5 to 5.49.....	0.88
5.5 to 6.49.....	1.00
6.5 to 7.49.....	1.09
7.5 to 8.49.....	1.19
8.5 to 9.49.....	1.29
9.5 to 10.49.....	1.41
10.5 to 11.49.....	1.53
11.5 to 12.49.....	1.67
12.5 to 13.49.....	1.82
13.5 or greater.....	1.89

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) Effluent Limitations for Contaminated Runoff.

The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of flow)		
BOD-5.....	48.	26.
TSS.....	33.	21.
Oil and grease.....	15.	8.
pH.....	(¹)	(¹)
English units (pounds per 1,000 gallons of flow)		
BOD-5.....	0.40	0.22
TSS.....	0.28	0.18
Oil and grease.....	0.13	0.067
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

10. Section 419.34 is revised to read as follows:

§ 419.34 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m ³ of feedstock)		
BOD ₅	34.6	18.4
TSS.....	23.4	14.8
Oil and grease.....	11.1	5.9
pH.....	(¹)	(¹)
English units (pounds per 1,000 bbl of feedstock)		
BOD ₅	12.1	6.5
TSS.....	8.3	5.25
Oil and grease.....	3.9	2.1
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 barrels of feedstock per stream day	Size factor
Less than 24.9.....	0.73
25.0 to 49.9.....	0.76
50.0 to 74.9.....	0.83
75.0 to 99.9.....	0.99
100.0 to 124.9.....	0.99
125.0 to 149.9.....	1.08
150.0 or greater.....	1.13

(2) Process factor.

Process configuration	Process factor
Less than 4.49.....	0.73
4.5 to 5.49.....	0.80
5.5 to 5.99.....	0.91
6.0 to 6.49.....	0.99
6.5 to 6.99.....	1.08
7.0 to 7.49.....	1.17
7.5 to 7.99.....	1.28
8.0 to 8.49.....	1.39
8.5 to 8.99.....	1.51
9.0 to 9.49.....	1.65
9.5 or greater.....	1.72

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) Effluent Limitations for Contaminated Runoff.

The following effluent limitations

constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of flow)		
BOD ₅	48.	26.
TSS.....	33.	21.
Oil and grease.....	15.	8.
pH.....	(¹)	(¹)
English units (pounds per 1,000 gallons of flow)		
BOD ₅	0.40	0.22
TSS.....	0.28	0.18
Oil and grease.....	0.13	0.067
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

11. Section 419.44 is revised to read as follows:

§ 419.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m ³ of feedstock)		
BOD ₅	50.6	25.8
TSS.....	35.6	22.7
Oil and grease.....	16.2	8.5
pH.....	(¹)	(¹)
English units (pounds per 1,000 bbl of feedstock)		
BOD ₅	17.9	9.1
TSS.....	12.5	8.0
Oil and grease.....	5.7	3.0
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 barrels of feedstock per stream day	Size factor
Less than 49.9.....	0.71
50.0 to 74.9.....	0.74
75.0 to 99.9.....	0.81
100.0 to 124.9.....	0.88
125.0 to 149.9.....	0.97
150.0 to 174.9.....	1.05
175.0 to 199.9.....	1.14
200.0 or greater.....	1.19

(2) Process factor.

Process configuration	Process factor
Less than 6.49.....	0.81
6.5 to 7.49.....	0.88
7.5 to 7.99.....	1.00
8.0 to 8.49.....	1.09
8.5 to 8.99.....	1.19
9.0 to 9.49.....	1.29
9.5 to 9.99.....	1.41
10.0 to 10.49.....	1.53
10.5 to 10.99.....	1.67
11.0 to 11.49.....	1.82
11.5 to 11.99.....	1.98
12.0 to 12.49.....	2.15
12.5 to 12.99.....	2.34
13.0 or greater.....	2.44

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) Effluent Limitations for Contaminated Runoff.

The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of flow)		
BOD ₅	48	26
TSS	33	21
Oil and grease	15	8
pH	(¹)	(¹)
English units (pounds per 1,000 gallons of flow)		
BOD ₅	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

12. Section 419.54 is revised to read as follows:

§ 419.54 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m ³ of feedstock)		
BOD ₅	54.4	28.9
TSS	37.3	23.7
Oil and grease	17.1	9.1
pH	(¹)	(¹)
English units (pounds per 1,000 bbl of feedstock)		
BOD ₅	19.2	10.2
TSS	13.2	8.4
Oil and grease	6.0	3.2
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 barrels of feedstock per stream day	Size factor
Less than 124.9	0.73
125.0 to 149.9	0.76
150.0 to 174.9	0.83
175.0 to 199.9	0.91
200.0 to 224.9	0.99
225.0 or greater	1.04

(2) Process factor.

Process configuration	Process factor
Less than 6.49	0.75
6.5 to 7.49	0.82
7.5 to 7.99	0.92
8.0 to 8.49	1.00
8.5 to 8.99	1.10
9.0 to 9.49	1.20
9.5 to 9.99	1.30
10.0 to 10.49	1.42
10.5 to 10.99	1.54
11.0 to 11.49	1.68
11.5 to 11.99	1.83
12.0 to 12.49	1.99
12.5 to 12.99	2.17
13.0 or greater	2.26

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) Effluent Limitations for Contaminated Runoff. The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this

paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of flow)		
BOD ₅	48	26
TSS	33	21
Oil and grease	15	8
pH	(¹)	(¹)
English units (pounds per 1,000 gallons of flow)		
BOD ₅	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

13. 40 CFR Part 419 is amended by adding the following appendix:

Appendix A—Processes Included in the Determination of BAT Effluent Limitations for Total Chromium, Hexavalent Chromium, and Phenolic Compounds (4AAP)

Crude Processes:

1. Atmospheric Crude Distillation
2. Crude Desalting
3. Vacuum Crude Distillation

Cracking and Coking Processes:

4. Visbreaking
5. Thermal Cracking
6. Fluid Catalytic Cracking
7. Moving Bed Catalytic Cracking
10. Hydrocracking
15. Delayed Coking
16. Fluid Coking
54. Hydrotreating

Asphalt Processes:

- 18. Asphalt Production
- 32. 200°F Softening Point Unfluxed Asphalt
- 43. Asphalt Oxidizing
- 89. Asphalt Emulsifying

Lube Processes:

- 21. Hydrofining, Hydrofinishing, Lube Hydrofining
- 22. White Oil Manufacture
- 23. Propane Dewaxing, Propane Deasphalting, Propane Fractioning, Propane Deresining

- 24. Duo Sol, Solvent Treating, Solvent Extraction, Duotreating, Solvent Dewaxing, Solvent Deasphalting
- 25. Lube Vac Twr, Oil Fractionation, Batch Still (Naphtha Strip), Bright Stock Treating
- 26. Centrifuge & Chilling
- 27. MEK Dewaxing, Ketone Dewaxing, MEK-Toluene Dewaxing
- 28. Deoiling (wax)
- 29. Naphthenic Lubes Production
- 30. SO₂ Extraction
- 34. Wax Pressing

- 35. Wax Plant (with Neutral Separation)

- 36. Furfural Extraction
- 37. Clay Contracting—Percolation
- 38. Wax Sweating
- 39. Acid Treating
- 40. Phenol Extraction

Reforming and Alkylation Processes:

- 8. H₂SO₄ Alkylation
- 12. Catalytic Reforming

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Tuesday
August 28, 1984

Part IV

**Department of
Energy**

Office of Conservation and Renewable
Energy

10 CFR Part 455

Grant Programs for Schools and
Hospitals and for Buildings Owned by
Units of Local Government and Public
Care Institutions; Proposed Rulemaking
and Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 455

[Docket No. CAS-RM-78-503]

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

AGENCY: Conservation and Renewable Energy Office.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes to amend the regulations for the operation of its Grant Program for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions. The principal changes proposed in this action are: Clarifying the definition of "energy conservation measure" to eliminate measures required primarily because existing measures have been poorly maintained; ceasing to allow grant funds to be used for some costs associated with leasing equipment; permitting the States to establish criteria for, and accept, alternatives to energy audits; allowing demand charges for electricity to be included in energy prices; changing the paycheck limits on projects eligible for funding; establishing more detailed requirements for applications for State administration grants; adding the quality of technical assistance programs to the factors considered in ranking grant applications; and adding a requirement for DOE approval before changes in scope of work of a grant can be made. In addition, in this notice, DOE is explaining its interpretation of how the program regulation is applied to an institution's use of savings-based financing agreements as matching contributions for ICP grants. DOE is not now proposing any changes to the regulation regarding savings-based financing agreements.

The purpose of the changes is to simplify the management of the program by providing the States with clearer, more specific guidance in a number of areas and greater flexibility in other areas. The changes also improve the program's ability to assist institutions in conserving energy and reducing energy costs.

DATES: Written comments must be received on or before October 12, 1984. Public hearings will be held in Washington, D.C., on September 14, 1984, at 9:30 a.m.; in San Francisco,

California, on September 10, 1984, at 9:30 a.m.; and in Chicago, Illinois, on September 12, 1984, at 9:30 a.m. See Section III, Opportunity for Public Comment, for Further Information.

ADDRESSES: Public hearing locations:

Washington, D.C.: U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, S.W., Washington, D.C. 20585

San Francisco, California: Tishman Building, 525 Market Street, Room 2575, San Francisco, CA 94104.

Chicago, Illinois: Everett Dirksen Federal Building, Room 2502, 219 South Dearborn Street, Chicago, IL 60604.

All written comments and requests to speak at the hearings should be addressed to Conservation and Renewable Energy, Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9319 (five copies).

FOR FURTHER INFORMATION CONTACT:

Thomas Stapp, Institutional Conservation Programs Division, Conservation and Renewable Energy, Department of Energy Mail Stop 5G-070, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2198.

Edward H. Pulliam, Office of General Counsel, Department of Energy, Mail Stop 6B-144, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9507.

SUPPLEMENTARY INFORMATION:

- I. Introduction and Description of the Program
- II. Savings-Based Financing Agreements as Matching Contributions for ICP Grants
- III. Proposed Rule Changes
- IV. Opportunity for Public Comment
- V. Environmental, Regulatory Impact, Small Entity Impact and Paperwork Reduction Act Reviews

I. Introduction and Description of the Program

The Department of Energy (DOE) is proposing to amend the regulation for the Grant Program for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, also known as the Institutional Conservation Program (program, Institutional Conservation Program, or ICP), 10 CFR Part 455, issued under Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238, (42 U.S.C. 6371 *et seq.*) (the Act).

The purpose of today's action is to improve the operation of the Institutional Conservation Program. The Department is taking these actions based in part on the response to a Notice of Inquiry (NOI) published by DOE in the Federal Register on January 23, 1984 (49 FR 2846). The NOI solicited public comments about a number of specific areas of program policy and management and about the program generally.

Description of the Program

The Act established the program's basic goal as to reduce energy use and costs in institutional buildings. To accomplish this goal it authorizes DOE to establish cost sharing energy conservation grant programs to fund detailed energy audits, called technical assistance programs, of public and private non-profit schools, hospitals, and buildings owned by units of local government and public care institutions, and to fund the purchase and installation of most energy conservation improvements, called energy conservation measures, in schools and hospitals.

The technical assistance analyses identify changes in maintenance and operating procedures and identify new equipment or materials which would conserve energy in an institution's buildings. Implementation of the maintenance and operating procedures and installation of the new energy conservation equipment contribute to energy conservation not only in the building concerned, but also, by extension, in other buildings, by demonstrating the validity of energy conservation efficiency and management.

II. Savings-Based Financing Agreements as Matching Contributions for ICP Grants

The NOI asked several questions concerning savings-based financing agreements and their relationship to the ICP. Savings-based financing agreements are agreements which provide financing for the purchase and installation of energy conservation equipment or measures (ECM's) based on the savings produced by the ECM. For example, an institution may contract with another party to install an ECM in return for paying that party a share of the resultant savings over a period of years or may otherwise agree to pay for the ECM based on savings achieved through improved energy efficiency. Under some of these types of agreements the other party, or parties, may be a contractor, third party

investor, or both and may or may not retain the ownership of the ECM.

The comments received in response to the NOI were almost evenly divided between those in favor of and those against allowing such agreements to be used to finance an institution's matching portion of ICP projects, with those favoring their use having a slight majority. Most of those favoring their use, however, favored it only under certain conditions.

Taking these comments and the purposes of the ICP as mentioned previously into consideration, DOE has decided not to change the regulations because of the savings-based financing agreements but to explain how it plans to interpret the current regulations as they apply to these types of agreements. DOE believes that such agreements could aid institutions to reduce their energy use and costs and thus further the goals of the ICP. The current regulations seem to provide both sufficient flexibility and sufficient control to permit such agreements to be used effectively. Since these financing arrangements are relatively new, changes to the regulations may be warranted in the future. For the present, however, the current regulations appear sufficient.

In general, this approach means that as long as the requirements of the program regulations are met, savings-based financing agreements may be used to meet the matching requirement for an ECM or ECM's receiving an ICP grant and ECM's financed by savings-based agreements may be used as a credit towards a match under § 455.82(e). For example, as is now the case with ECM's financed by the program, the institution must have clear title to the equipment to which the savings-based agreement applies, or have it clearly established in the agreement that at some point during the project period of the grant award the institution will obtain clear title, in order for the equipment to be eligible for an ICP grant. Leased equipment (i.e., equipment where the institution does not obtain clear title) will be treated as leased equipment in the regulations. (A change is proposed later in this document to eliminate the funding by ICP of any costs of leased equipment).

There are also other areas where questions might be raised concerning the relationship of savings-based agreements and the ICP. The cost of an ECM to be used as the basis of an ICP grant or as the basis for determining a cost overrun or underrun would initially be the cost specified in the technical assistance analysis (TA). These would be supplemented later by vendor

invoices and similar documents as is presently the case for other ECM's. In calculating the costs of equipment financed by a savings-based agreement, DOE will be careful to ensure that no costs related to furnishing operation and maintenance services are included because the program is not allowed to pay for these costs.

The TA's must be completed by a technical assistance analyst who is free from financial interests which may conflict with the proper performance of the analyst's duties. This requirement means that TA's funded by ICP could be completed by companies offering savings-based financing agreements only in cases where that TA was not going to be used later as the basis for an ECM grant application: (1) Using a savings-based agreement (or other services) provided by that same company as a matching contribution or (2) otherwise involving that company in the installation of the ECM.

In reviewing a grant application, DOE would have access to a savings-based financing agreement if the institution is proposing to use such an agreement as a match or credit. Also, in monitoring a grant which is completed with financing under a savings-based agreement, even though this method of financing was not contemplated when the grant was made, DOE would expect to have access to the agreement.

Section 455.71(e) indicates that it is the responsibility of each State to define hardship. Thus, under this section an institution using a savings-based agreement to finance the match for an ECM could be eligible for hardship funding if it qualifies under the State plan.

Using ICP grants to fund ECM's partially financed by savings-based agreements is not considered using Federal funds to supplant other funds unless it would normally be considered supplanting under the State plan.

The grantee's matching contribution, whether in the form of cash, donations, or a savings-based financing agreement, is, in general, subject to the same rules of allowability, documentation, and accountability as the DOE share of the grant. Therefore, for example, to the extent that savings-based agreement used to meet the matching requirement includes the purchase and installation of energy conservation equipment, the property and procurement standards of the DOE Financial Assistance Rules (10 CFR Part 600), and the Davis-Bacon Act would apply. (The Davis-Bacon Act does not apply to ECM's offered for credit toward a match under § 455.82(e). See the discussion later in this document.)

Although DOE does not require that a vendor of savings-based agreements be bonded or insured when such agreements are proposed as matching contributions, DOE recommends that an institution carefully consider bonding or insurance. DOE also has decided not to require that the savings an institution shares with a vendor be limited to a certain percentage.

DOE believes that a project is completed when the improvements have been made, the equipment has been installed, and all activities specified in the grant award have been completed. Close out of the grant should occur at that time. Close out need not be delayed until the end of the period during which the savings are to be shared under a savings-based agreement.

This explanation indicates how the regulations will be interpreted in certain instances concerning savings-based agreements. In general, ECM's funded with savings-based agreements will be treated in the same manner as other ECM's under the regulations. If questions arise in instances not specifically discussed here, the regulations should provide the answers. DOE invites comments on the interpretation presented here and on other matters relating to savings-based agreements which may not have been covered.

III. Proposed Rule Changes

In this document DOE is proposing several changes to the regulation which will give the States clearer guidance as to the direction of the program and more flexibility in the operation of the program. These changes will better enable the program to achieve its purposes of reducing energy use and costs in institutional buildings and demonstrating the validity of energy conservation efficiency and management in actual situations. The principal changes proposed are: Clarifying the definition of "energy conservation measure" to eliminate measures required primarily because existing measures have been poorly maintained; ceasing to allow grant funds to be used for some costs associated with leasing equipment; permitting the States to establish criteria for, and accept, alternatives to energy audits; allowing demand charges for electricity to be included in energy prices; changing the payback limits on projects eligible for funding; establishing more detailed requirements for applications for State administrative grants; adding the quality of technical assistance program reports to the factors considered in ranking grant applications; and adding a

requirement for DOE approval before changes in scope of work of a grant can be made. In addition, technical changes are being proposed, including clarification of Davis-Bacon requirements, adding the Northern Mariana Islands to the areas where institutions are eligible to receive grants, and simplifying the references to renewable resource reviews. Also, a number of grammatical and typographical errors from earlier printings of the regulations are being corrected. The changes are a response both to experience obtained in administering the program, and to comments submitted in response to the NOI.

Also, a series of Program Directive Memoranda (PDM) have been issued over the years to interpret ICP rules. These memoranda are currently being reviewed for consistency with 10 CFR Part 600 (Financial Assistance Rules), DOE Order 4600.1 (Financial Assistance Procedures Manual of June 10, 1982), and the ICP proposed rule.

In the NOI, DOE invited comments regarding both certain specific areas and any other aspects of the program which members of the public believed needed to be addressed. DOE received 68 comment letters in response to the NOI. Nearly two-thirds of the letters commented upon the issue of using savings-based agreements as matching contributions for ICP grants, which has already been discussed. Over half of the letters included suggestions about the definition of ECM's, the requirements for energy audits and TA's and changing the payback limits, 20 letters had comments about the leasing provisions, and 10 letters included comments on demand charges.

The following discussion indicates the changes DOE is proposing and the reasons for the changes. It is important to note that several changes will require revisions to State plans. DOE invites comments regarding these changes and other aspects of the program.

Section 455.1 Purpose and scope.

DOE proposes to amend this section (and all subsequent sections where the same phrase exists) by changing "solar energy or other renewable resource measures" to simply "renewable resource measures." One commenter indicated that the existing wording throughout the regulation implies that solar measures must always be considered, and that other renewables may, consequently, be neglected. However, DOE did not intend that the regulation require separate solar analyses everywhere that solar and renewable resource measures are

mentioned. DOE intended only that any appropriate renewable resource measure be considered. The language of the regulation is therefore being changed to eliminate any possible ambiguity on this point.

Section 394(a)(5) of the Act (42 U.S.C. 6371c(a)(5)) requires States to emphasize solar energy in their State plans by including "a statement of the extent to which, and by which methods, such State will encourage utilization of solar space heating, cooling, and electric systems and solar water heating systems where appropriate." Section 455.90(h) of the regulations covers this requirement, and is not being changed. It continues to be up to each State to decide how, and to what extent, it will encourage solar measures.

Section 455.2 Definitions.

DOE proposes to amend the definition of "Energy conservation measure" in order to make it clear that DOE does not consider as an ECM, and consequently will not fund, measures which are primarily necessary because equipment or material has been poorly maintained, or not maintained at all. Several questions in the NOI addressed aspects of this issue, and most commenters felt that DOE should not pay for the replacement of poorly maintained ECM's, or for items normally considered part of prudent routine maintenance, because paying for them would constitute a disincentive to proper maintenance.

A related NOI question concerned whether ECM's should be required to increase the energy efficiency of the building beyond its condition when new. A number of commenters pointed out that in some cases it would be difficult, if not impossible, to determine a building's original efficiency. DOE has decided not to make increasing the energy efficiency of a building beyond its original efficiency a requirement.

A number of commenters indicated that in any case DOE should not consider permitting grant funds to be used to pay for replacements of ECM's which were originally paid for with earlier ICP grants. DOE agrees with this view and has in the past interpreted Section 455.80(e) to prohibit funding such replacement ECM's. DOE reiterates here that grant funds cannot be used to replace ECM's earlier funded by ICP grants.

DOE also proposes dropping, under the definition of "Energy conservation measure", subsection (1) "Costs of installation and connection of such leased equipment as would otherwise be an eligible energy conservation measure", and adding at the beginning

of the definition a clause indicating that DOE does not consider installing leased equipment to be an eligible ECM. DOE is also proposing to eliminate § 455.42(d)(5)(vii)(C), which addresses costs associated with leasing. These changes will have the effect of eliminating the allowability of any costs associated with leases.

DOE proposes thus eliminating using grant funds for installation and connection of leased equipment (grant funds have never been permitted to be used for actual lease payments) because they no longer serve their intended purpose. When the regulation was originally drafted, computer controlled energy management systems were far more expensive than they are today, and, in some cases, were only available through leases. DOE is unaware of any type of equipment or energy management system which might qualify for funding with an ICP grant which would not currently be available for purchase. Therefore, it appears unnecessary to continue to provide for costs associated with the installation and connection of leased equipment.

Subsection (m) and (n) under "Energy conservation measure" have been redesignated (l) and (m), respectively, to reflect the dropping of subsection (l). New subsection (m) has been amended to make more flexible the types of ECM's that may be funded.

DOE proposes to add a definition for "Energy use evaluation" to conform to newly added § 455.20 which permits alternatives to energy audits to be used in cases where energy audits have not been performed.

DOE also proposes to amend the definition of "heating or cooling system" by eliminating the word "conditioned". One commenter thought that including the word would mean that some mechanical systems could not be considered a cooling system. DOE does not mean to exclude any mechanical systems which do cool or ventilate from being considered a cooling system and is proposing to eliminate that word to clarify the definition.

DOE proposes to amend the definition of "State" to include the Northern Mariana Islands. Section 502(a) of Article V of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. 1681 note, indicates that under certain circumstances, the Northern Mariana Islands will be eligible for Federal grant programs. Those circumstances exist in relation to the ICP. DOE is proposing to amend the regulation to reflect this applicability, although the Northern

Mariana Islands will not be eligible to participate in the ICP program until fiscal year 1985. Other sections of the regulation are also being proposed for amendment in order to incorporate the Northern Mariana Islands into the program in the same way as States and territories.

DOE proposes to amend the definition of "unit of local government" by eliminating the listing of the District of Columbia, the territories, possessions, and insular areas because they are already included in the definition of the word "State". The use of the word "State" in the definition is sufficient without the need to list these entities.

DOE proposes amending the definition of "Technical assistance" by removing the word "States" from the second sentence, in order to eliminate any possible ambiguity—as presently worded, the sentence could be construed to mean that State governments might be eligible for ECM grants, which is not the case. This change does not mean that State owned schools and hospitals cannot receive grants.

Section 455.3 Administration of grants.

DOE proposes to amend this section to delete references to the circulars pertaining to this program which are published by the Office of Management and Budget and other Departments and Agencies of the Executive Branch and which are implemented by the DOE Financial Assistance Rules, CFR Part 600. Reference to OMB circulars in other parts of the regulation have also been changed to refer to the DOE Financial Assistance Rules. Except as otherwise provided in this rule, the DOE Financial Assistance Rules will apply. (The DOE Financial Assistance Rules were formerly known as the DOE Assistance Regulations, and all references in Part 455 are being changed to reflect the new title).

Section 455.4 Recordkeeping.

DOE proposes amending this section to refer to the DOE Financial Assistance Rules, 10 CFR Part 600, which now specify all the recordkeeping requirements for the program.

Section 455.5 Suspension and termination of grants.

DOE proposes amending this section to refer to the DOE Financial Assistance Rules, 10 CFR Part 600 which now specify the procedures to be applied in cases of suspension and termination of grants.

Section 455.20 Contents of an energy use evaluation.

DOE proposes to add this section to describe the information required to be submitted in lieu of an energy audit in cases where an energy audit has not been performed on a building, and where the State has elected to accept an alternative energy use evaluation (in accordance with new § 455.90(1)). DOE is no longer funding grants for preliminary energy audits (PEA's) or energy audits (EA's). In the NOI, a question was raised about requiring updated EA's, and a number of commenters responded that updated EA's were not needed, largely because most of the information they contained is duplicated in the TA. Some commenters felt that DOE should drop the EA requirement altogether. DOE believes that the EA's have served a useful purpose in helping to determine which buildings are the most promising candidates for the more complete TA's. However, since DOE no longer funds EA grants, the practical effect of the current EA requirement has been to preclude from TA grants buildings which have not had EA's or their equivalent.

DOE believes that this may not be fair to institutions which, for one reason or another, happened not to go through the EA process. Therefore, this section is being added to allow the States to permit the use of an alternative energy use evaluation where an EA or its equivalent has not been done, and to list the basic information that should be included. Sections 455.41 (c) and (d), 455.42(d)(1)(i), 455.60(b)(2), 455.61(c), and 455.71(a) have been changed to reflect this new section; in addition, § 455.90 has been amended to add a section on the information each State will require in cases where the State elects to accept an energy use evaluation in lieu of an EA. The primary purpose of an energy use evaluation is to obtain sufficient information about a building to make an informed decision about whether a TA would be a worthwhile next step.

Section 455.42 Contents of program.

DOE proposes amending subsection (a) of this section to make it clear that a TA report should be acceptable with regard to both DOE's requirements (set forth in § 455.42) and the State's procedures for implementing those DOE requirements. The quality of TA reports is extremely important to the effectiveness of the ICP, and this change is being proposed to emphasize the necessity for all TA reports to meet all relevant program requirements.

DOE proposes amending subsection (b) of this section to add a sentence at

the end of the subsection to require that the technical assistance analyst identify any energy conservation improvement in the TA which is necessary primarily because the existing energy conservation equipment or material it would replace has been poorly maintained, or not maintained at all. As was mentioned earlier under "Definitions", such energy conservation improvements would not qualify for funding under an ICP grant and need to be identified in the TA.

DOE proposes amending subsections (c)(1) and (d)(5) (vi) of this section to drop the exclusion of demand charges for electricity from current prices, and permit those demand charges to be included in calculating energy cost savings. (Demand charges are additional charges imposed by utilities for the use of power which exceeds a predetermined level of peak usage.) A number of commenters pointed out that demand charges are not always billed separately by utilities, so the present exclusion has the effect of penalizing institutions which are able to identify these charges in their utility bills. DOE's original concern about demand charges was that they did not affect energy usage, and therefore they were not appropriately addressed in a conservation program. However, DOE did not intend to penalize institutions which are separately billed for demand charges, while indirectly benefitting those which aren't separately billed. Because it is evidently not always possible to identify demand charges, DOE will now permit them to be included in current prices even when they can be identified. However, DOE hopes that TA analysts and institutions will continue their efforts to direct energy usage away from the peak periods wherever possible. As was more fully discussed under § 455.2, DOE is proposing to drop from this Section paragraph 455.42(d) (5) (vii) (C) regarding costs associated with leased equipment.

Section 455.51 Eligibility.

DOE proposes to amend paragraph (b) to change the permissible payback period range to "not be less than 2 years nor greater than 10 years." Many commenters addressed this issue, with responses ranging all the way from dropping the minimum to zero (if a measure saves energy, it should be eligible whatever its payback), to raising the maximum to 20 years. On the other hand, one commenter thought the minimum should be raised to 5 years and the maximum lowered to 8 years. More commenters suggested changing

the minimum to 2 years than any other option, and DOE is agreeing with these commenters in proposing this change. DOE believes the present low limit of one year allows too many measures to be funded which really should be operating and maintenance procedures, and that institutions should be able to fund relatively short (less than 2 years) payback items through means other than grants. Since the program is a 50/50 matching program, a hypothetical project with a 2 year payback would result in an institution's recovering its half of the investment in one year. A number of commenters thought the 10 year maximum payback was sensible, and DOE agrees, largely because it is difficult, if not impossible, to accurately forecast paybacks (or even to predict whether a technology will still be current, or a piece of equipment still functioning) more than 10 years in the future. Relatively few ECM's with over 10-year paybacks are currently being funded by ICP (approximately 2 percent and 5 percent of the ECM's funded in Cycles IV and V, respectively). A considerable number of ECM's with under 2-year paybacks have been funded by ICP (approximately 30 percent and 20 percent of the ECM's funded in Cycles IV and V, respectively). A wide range of different types of measures has been funded at both the high and low ends of the payback limits.

DOE hopes, by limiting the payback range, to concentrate its grant funds in the area most in need of assistance—those items with paybacks longer than many institutions find possible to fund internally, yet with paybacks short enough for realistic estimates of savings and useful life.

Section 455.62 Grant applications for State administrative expenses.

It is its operation of the program, it has come to DOE's attention that the current regulations do not clearly spell out the responsibilities of the State offices which administer ICP grants. This has led to a certain amount of inconsistency in the management of the program from State to State. DOE is thus proposing to amend subparagraph (b) (2) of this section to require more specific plans from the States concerning how they propose to administer the program and how they propose to use their administrative grants. This change is consistent with the DOE Financial Assistance Rules, 10 CFR Part 600. The current § 455.62 (b)(2) simply requires the States to identify the use of Federal and non-Federal funds and to list the sources and amounts of matching non-Federal funds. The proposed new

section requires an annualized plan, which is separate from the State Plan required under Subpart H, for the use of the funds together with a budget, and a list of problems encountered in prior budget periods and remedial actions planned.

Section 455.63 Grantee records and reports.

The ICP regulations have always required recipients of grants for ECM's to report on a semi-annual basis (with reports covering the 6-month periods ending December 31 and June 30, respectively, submitted by the grantees to the States no later than the end of July and January, and submitted by the States to DOE by the end of February and August). This procedure has benefitted the grantees by allowing them to submit all reports as of the same date and at the same time, and has benefitted the States and DOE by allowing them to plan for the receipt and review of the reports on a regular, predictable basis. It has also provided the program with data for all grants for certain periods of time which are significant in responding to Congressional and other inquiries and in preparing such reports as the annual report.

DOE is proposing to continue the ICP requirement for semi-annual progress reports filed on a calendar half-year basis, although the DOE Financial Assistance Rules, 10 CFR Part 600, now generally require reports based on budget periods. DOE believes it would cause undue confusion to change the reporting periods and would serve no useful purpose.

DOE proposes amending subsection (b)(3) to require the reports concerning State administrative grants to discuss the State's progress toward accomplishing the State responsibilities set forth in the annualized plans submitted in accordance with proposed new § 455.62(b)(2), rather than discussing the administrative activities referred to in § 455.83(b)(455.83(c) in the proposed regulation), as the current regulation does. In order to better track the progress of expenditures on the State administrative grants, DOE proposes to require financial status reports for these grants on a quarterly basis, rather than on a semi-annual basis. DOE would be interested in hearing if this change would constitute an undue burden for any State. The program reports concerning the State administrative grants (which include summaries of the reports from grantees) would continue to be required on a semi-annual basis to coincide with the semi-annual reports submitted to the

States by grantees. As with reports for ECM grants already discussed, DOE is proposing to continue to require the reports on State administrative grants to be filed on the basis of calendar periods rather than budget periods for the reasons already stated.

Section 455.71 State ranking of grant applications.

DOE proposes amending this section to add a new § 455.71(b)(4) concerning the quality of the TA report (the current paragraph (b)(4) under this section would then be designated (b)(5)). This change would add TA report quality to the ranking factors used to determine which applications are accepted for grants. A number of commenters mentioned that TA report quality varied much more than it should, and DOE has been aware that TA reports have sometimes failed to properly reflect a building's condition, or to accurately estimate the costs and/or energy savings associated with proposed ECM's. By making TA report quality a ranking factor, DOE hopes to encourage the States to (1) set realistic, but firm, standards for TA reports, and (2) judge the TA reports based on those standards. Among the criteria which States might want to consider using in this regard would be the thoroughness of the building survey; the number and variety of maintenance and operating procedures pointed out as needing implementation; the number and complexity of ECM's considered and analyzed, and their appropriateness to the buildings being analyzed; how long ago the TA was done; and the amount and quality of the data provided to support the TA report's assumptions, proposals and estimates. A TA report should be as accurate as possible a reflection of what ought to be done in a building to improve its energy uses and management.

Section 455.81 Grant awards for units of local government and public care institutions.

DOE proposes to amend this section and §§ 455.82 and 455.83 to eliminate the 50 percent matching requirement for the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. As indicated in a notice published in the Federal Register on November 1, 1983 (48 FR 50396), DOE has the authority to waive this requirement under Section 501(d) of the Omnibus Territories Act of 1977, as amended, Pub. L. 95-134, 91 Stat. 1159 (48 U.S.C. 1469a(d)) and believes such a waiver is justified because of the scarce revenues of these areas and their

location in places remote from fuel sources. Under the Omnibus Territories Act, the waiver extends not only to the grant to the island areas for administrative expenses but also to a grant to any institution within the jurisdiction of these areas which receives a majority of its operating and capital funds from the government of one of the areas.

Section 455.82 Grant awards for schools and hospitals

DOE proposes amending subsection (e) to make it clear that DOE does not intend for the Davis-Bacon Act to apply to projects credited toward meeting the matching non-Federal funds requirement. This is not a change in policy, but is, rather, just a clarification of existing policy.

A subsection (f) is being proposed as an addition to this Section. This new subsection would provide that a grantee must request approval from DOE before (1) transferring grant or matching funds between buildings when the State ranks applications by buildings, or (2) transferring grant or matching funds between measures when the State ranks applications by measure. This requirement for approval will apply only when the transfer of funds would increase the payback of the measure or measures for which the transferred funds are to be used. (The payback calculation is described in § 455.42(d)(5)(vii).)

The requirement is necessary to ensure the integrity of the ranking process that has been established by the Act and by regulation. The Act (42 U.S.C. 6371a(b)(1)) requires DOE to describe the factors States will use in ranking ECM's to determine which ECM's will have funding priority so that those ECM's which will best serve the purposes of the program are the ones funded. The regulation (§ 455.71(b)(1)) has established those factors and has given the payback of the ECM the greatest weight of all the factors. Changing funds from one building to another, or from one ECM to another within a building when the State ranks on an ECM-by-ECM basis, can increase the payback of the building or ECM to such an extent that if the ECM had been originally submitted at that payback, it would not have been funded. Allowing such changes without review could damage the effectiveness of the ranking system. Therefore, it is crucial for DOE to know when a transfer of funds increases an ECM's payback in order for DOE to determine whether the revised project would have ranked highly enough to have been funded in the cycle in which the grant application was

initially submitted. DOE plans to consult with one Office of Management and Budget (OMB) to determine whether this requirement is more restrictive than the prior approval and rebudgeting requirements of OMB Circulars A-102 and A-110 and, if necessary, to seek an appropriate deviation.

As discussed earlier, subsection (b) is proposed for amendment to waive the requirement for matching funds for certain insular areas.

Section 455.83—Grant awards for State administrative expenses

DOE proposes amending subsection (c)(3) to change the threshold amount from \$300 to \$500, to bring the program regulations into agreement with the DOE Financial Assistance Rules.

Section 455.90—Contents of State plan

DOE proposes to change this section to allow each State to decide under what circumstances it will accept a briefer alternative to the EA, and what information it will require in lieu of an EA. This question has been more fully discussed in the context of new § 455.20, but the primary purpose of this change is to allow the States the flexibility to devise alternatives to the EA requirement for buildings in which EA's were never done. Section 455.90(j) has been amended to add a reference to the alternative to the EA, and a new paragraph (l) has been added asking the States to set forth their criteria for EA alternatives in their State Plans. Current paragraph (l) has been redesignated (m) and amended to include a reference to the EA alternative also. Current paragraphs (m), (n), (o), (p), and (q) are redesignated (n), (o), (p), (q), and (r), respectively.

Response to Additional Comments

DOE received a number of comments in response to the NOI which indicated that the commenters misunderstood the current program requirements. DOE would therefore like to take this opportunity to clarify these issues, and invites further comment concerning these issues.

One commenter suggested that DOE not require that the same information be sent to DOE on one form and to the State on another form. This is not a DOE requirement; in cases where the State and DOE require the same information, it would be up to the State to decide whether to accept the information in the DOE format.

Another commenter asked that DOE permit a single application for an ECM grant for a school complex (for instance, a group of several buildings served by a central heating system). Under

§ 455.71(b), DOE now permits a State to allow single applications for several buildings if the application proposes a single ECM which directly involves all the buildings and the State provides for these single applications in its State plan. Each building must be described on a separate page of the application. (It should be noted that the definition of the word "complex" in § 455.2 relates only to preliminary energy audits, for the most part. The term is not used in the body of the regulation in reference to TA's or ECM's and does not affect applications for them).

Another commenter suggested that DOE allow the States to decertify TA analysts whose work is consistently unacceptable. The States now have this authority under present § 455.90(o) (proposed to become § 455.90(p)) if applicable procedures are included in the State plan.

Another commenter wanted DOE to change the definition of "school" to include "special education buildings." Such buildings are not excluded as long as they meet the criteria set forth in § 455.2. A commenter also asked that food preparation buildings and maintenance facilities that are part of school complexes be eligible for grants. Such buildings are now eligible under the definition of "school facilities" in Section 455.2 (administrative office buildings connected with some schools are not eligible under §§ 455.41(a)(2) and 455.51(a)(1), however).

Several commenters suggested that all fuels or energy sources being saved be treated equally (including coal, electricity and gas). Under § 455.71(b) it is up to each State to decide whether any special weight be given to one or more of the various energy sources saved, depending upon the State's particular needs. Another commenter suggested that there be a set standard for converting a kilowatt hour to Btu's of one to 3,413 (representing consumption at the consumer's end). Although for its own internal data system DOE uses 11,600 as its standard (representing consumption at the producer's end), DOE believes that the State should be the entity to make that decision as far as ICP grantees are concerned. The current regulations permit a State to decide this in § 455.90(q) (changed to 455.90(r) in the proposed regulation). Another commenter asked that alternative sources of energy such as wood or garbage be treated like conversions to coal. DOE now not only permits this type of conversion, but favors those types of alternative sources which are renewable over conversion to coal under § 455.71(b)(2).

There were also a number of comments which DOE was not able to incorporate into this rulemaking, including: (1) Develop a model TA for all States to use; (2) revisit sites where TA's have been completed but ECM's haven't been applied for, to see whether the TA recommendations remain undone (and if so, why). DOE is not addressing this issue in the regulations, but is looking into the issue as a separate initiative; (3) include exterior lighting improvements in the definition of ECM; (4) allow funds from a deleted ECM to be used to pay for a cost overrun on another ECM; (5) establish a special setaside for non-public schools; (6) allow States to reallocate deobligated funds from one grantee to another; and (7) use life-cycle costing. These ideas have been considered (many have been suggested in response to earlier rulemakings) and have been determined not to be workable or consistent with the program's goals and objectives at this time.

A number of commenters also suggested changes which DOE is unable to consider because of statutory requirements: (1) Eliminate hardship grants; (2) allow post-1977 buildings to qualify for grants; (3) put alternative energy in another program; (4) drop the Davis-Bacon requirement; (5) allow local governments to qualify for ECM grants; and (6) changing the definition of TA to allow for follow-up visits by TA analysts to assure that maintenance and operating procedures have been implemented.

IV. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposal set forth in this notice to: Conservation and Renewable Energy, Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 100 Independence Avenue, SW., Washington, D.C. 20585. ATTN: Docket Number: CAS-RM-78-503.

Comments should be identified on the outside of the envelope, and on the documents themselves, with the designation: "Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, Notice of Proposed Rulemaking, Docket Number CAS-RM-78-503." five copies should be submitted.

All comments received on or before October 12, 1984, and all other relevant information, will be considered by DOE before taking action on a final rule.

All comments received will be available for public inspection in the

DOE Reading Room, Room 1E-090, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as five copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim. This procedure is set forth in 10 CFR 1004.11 (44 FR 1980, January 8, 1979).

DOE will hold several public hearings on this proposed rule. The hearings will be held: In Washington, D.C., San Francisco, California, and Chicago, Illinois on the dates and at the addresses stated in the Dates and Addresses section of the preamble.

Any person who has an interest in the proposed regulation, or who is a representative of a group or class of persons which has an interest in it may make a written request for an opportunity to make an oral presentation. Such a request to speak at a hearing should be addressed to Hearings and Dockets, Conservation and Renewable Energy, Mail Stop 6B-025, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9319, and must be received by 4:30 p.m., local time on September 5, 1984. A request may also be hand delivered between the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments, with the additional notation, "With Request to Speak".

The person making the request should describe briefly his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation, and should provide a phone number where the person may be reached. Each person selected to be heard at a public hearing will be notified. Those persons selected to be heard should bring five copies of their statement to the hearing. If a person cannot provide five copies, alternate arrangements can be made in advance of the hearings. Requests for alternative arrangements should be made in the letter requesting to speak.

DOE reserves the right to select persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to

twenty minutes, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. These will not be judicial or evidentiary-type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to give advance notice of such cancellation to interested parties. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be cancelled in the event no public testimony has been scheduled in advance.

V. Environmental, Regulatory Impact, Small Entity Impact, and Paperwork Reduction Reviews

A. Environmental Review

Pursuant to the Requirements of the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852 (42 U.S.C. 4321 *et seq.*), DOE published a Notice of Availability of an Environmental Assessment (EA) of the entire Title III program on March 12, 1979 in the Federal Register, 44 FR 13554. Based on this assessment DOE determined that the NECPA Title III program did not constitute a major Federal action significantly affecting the quality of the human environment, and that therefore, no Environmental Impact Statement (EIS) was required.

DOE has reviewed the environmental impacts of the program amendment proposed today. It is DOE's judgment that the proposed amendments will result in no environmental impacts in addition to those previously analyzed for this program. It is, accordingly, DOE's determination that the environmental impacts of the program as modified by today's proposed amendment have been adequately analyzed in the March 1979 EA, and that these impacts are not significant. Hence, the previous negative determination is still applicable, and no additional EA or EIS is required.

B. Review Under Executive Order 12291

Today's issuance was reviewed under Executive Order 12291, 46 FR 13193, February 27, 1981. DOE had concluded that the rule is not a "major rule" under the Executive Order, because it will not result in: (1) An annual effect in the economy of \$100 million or more; (2) A major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to Section 3(c)(3) of Executive Order 12291, this rule was submitted to the Director of OMB for a 10-day review. The Director has concluded his review under that Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare a final regulatory flexibility analysis for any final rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the Federal Register. The changes proposed in this action primarily add flexibility to the existing program. Thus, these changes have a minimal effect on small entities. Accordingly, pursuant to Section 695(b) of the Regulatory Flexibility Act, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements proposed in this Notice have been submitted to OMB in

accordance with section 3504(b) of the Paperwork Reduction Act, Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*), and procedures implementing that Act, 5 CFR 1320.1 *et seq.*

E. Catalogue of Federal Domestic Assistance

The catalogue of Federal Domestic Assistance number for the Grant Programs for Schools and Hospitals is 81.052.

List of Subjects in 10 CFR Part 455

Buildings, Community facilities, Energy audits, Energy conservation, Grant programs—energy, Health facilities, Hospitals, Reporting requirements, Schools, Solar energy, Technical assistance.

In consideration of the foregoing, DOE hereby proposes to revise Chapter II, Title 10, Part 455, Code of Federal Regulations, as set forth below:

Issued in Washington, D.C., August 18, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

Subpart A—General Provisions

- Sec.
- 455.1 Purpose and scope.
- 455.2 Definitions.
- 455.3 Administration of grants.
- 455.4 Recordkeeping.
- 455.5 Suspension and termination of grants.

Subpart B—Preliminary Energy Audits and Energy Audit Grant Procedures

- 455.10 Purpose and scope.
- 455.11 Financial assistance.
- 455.12 Cost sharing.
- 455.13 Allocation of funds.
- 455.14 Submission and review of applications.
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- 455.16 Use of funds.
- 455.17 Reporting requirements.
- 455.18 Contents of a preliminary energy audit.
- 455.19 Contents of an energy audit.
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Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

- 455.40 Purpose and scope.
- 455.41 Eligibility.
- 455.42 Contents of program.

Subpart D—Energy Conservation Measures for Schools and Hospitals

- 455.50 Purpose and scope.
- 455.51 Eligibility.
- 455.52 Contents of program.

Subpart E—Applicant Responsibilities

- Sec.
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- 455.61 Applicant certifications.
- 455.62 Grant applications for State administrative expenses.
- 455.63 Grantee records and reports.

Subpart F—State Responsibilities

- 455.70 State evaluation of grant applications.
- 455.71 State ranking of grant applications.
- 455.72 Forwarding of applications.
- 455.73 State liaison, monitoring and reporting.

Subpart G—Grant Awards

- 455.80 Approval of grant applications.
- 455.81 Grant awards for units of local government and public care institutions.
- 455.82 Grant awards for schools and hospitals.
- 455.83 Grant awards for State administrative expenses.

Subpart H—State Plan Development and Approval

- 455.90 Contents of State plan.
- 455.91 Submission and approval of State plans.
- 455.92 State plans developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States

- 455.100 Allocation of funds.
- 455.101 Allocation formulas.
- 455.102 Reallocation of funds.

Authority: Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371); and Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101).

For the reasons set out in the Preamble, 10 CFR Part 455 is revised to read as follows:

Subpart A—General Provisions

§ 455.1 Purpose and scope.

(a) This part establishes programs of financial assistance pursuant to Parts 1 and 2 of Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371) which adds Parts G and H, respectively, to Title III of the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 901 (42 U.S.C. 6291).

(b) This subpart authorizes grants to States or to public or non-profit schools and hospitals to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures, and in evaluating, acquiring and installing energy conservation measures, including renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by schools and hospitals.

(c) This subpart also authorizes grants to States or units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures, and evaluating energy conservation measures, including renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions.

§ 455.2 Definitions.

"Act," as used in this part, means the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871 (42 U.S.C. 6201) as amended by Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371).

"Auditor" means any person who is qualified in accordance with 10 CFR 450.44 to conduct an energy audit.

"Building" means any structure, the construction of which was completed on or before April 20, 1977, which includes a heating or cooling system, or both.

"Civil rights requirements" means civil rights responsibilities of applicants and grantees pursuant to the Nondiscrimination in Federally Assisted Programs regulation of the Department of Energy (10 CFR Part 1040).

"Complex" means a closely situated group of buildings on a contiguous site, or a closely situated group of buildings served by a central utility plant, such as a college campus or a multibuilding hospital.

"Construction completion" means the date of issuance of an occupancy permit for a building or the date the building is ready for occupancy as determined by DOE.

"Cooling degree days" means the annual sum of the number of Fahrenheit degrees of each day's mean temperature above 65° for a given locality.

"Coordinating agency" means any public or non-profit organization legally constituted within a State for either administrative control or services for a group of institutions within a State and which acts, and is authorized by eligible institutions to so act, as the agent for such institutions with respect to their participation in the program.

"DOE" means the Department of Energy.

"Energy audit" means any survey of a building or complex conducted in accordance with the requirements of Subpart E of 10 CFR Part 450.

"Energy conservation maintenance and operating procedures" means modifications in the maintenance and

operations of a building, and any installation therein, which are designed to reduce the energy use in such building and which require no significant expenditure of funds.

"Energy conservation measure" means an installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source and which may contain integral control and measurement devices, but which is not an installation of leased equipment or is not necessitated primarily by deferred maintenance or neglect, including, but not limited to—

(a) Insulation of the building structure and systems within the building;

(b) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door systems modifications;

(c) Automatic energy control systems which would reduce energy consumption;

(d) Equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

(e) Active or passive solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(f) Active or passive solar water heating systems;

(g) Furnace or utility plant and distribution system modifications including—

(1) Replacement burners, furnaces, boilers, or any combination thereof, which substantially increase the energy efficiency of the heating system;

(2) Devices for modifying flue openings which will increase the energy efficiency of the heating system;

(3) Electrical or mechanical furnace ignition system which replace standing gas pilot lights; and

(4) Utility plant system conversion measures including conversion of existing oil and gas-fired boiler installations to alternative energy sources, including coal;

(h) Addition of caulking and weatherstripping;

(i) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary;

(j) Energy recovery systems;

(k) Congeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by an eligible institution and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

(l) Such other measures as the Secretary identifies by rule for purposes of this part, as set forth in Subpart D of 10 CFR Part 450; and

(m) Such other measures as a grant application show will save a substantial amount of energy and are identified in an energy audit in accordance with Subpart E of 10 CFR Part 450, its equivalent, an energy use evaluation, or a technical assistance report.

"Energy use evaluation" means an evaluation of the energy use characteristics of a building, which may be used in place of an energy audit when a State has made provision for such use in its State plan and must contain the information set forth in Section 455.20.

"Fuel" means any commercial source of energy used within the building or complex being surveyed such as natural gas, fuel oil, electricity, or coal.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act on her or his behalf.

"Grantee" means the entity or organization named in the Notice of Financial Assistance Award as the recipient of the grant.

"Grant program cycle" means the period of time specified by DOE which relates to the fiscal year or years for which monies are appropriated for grants under this part, during which one complete cycle of DOE grant activity occurs, including fund allocations to the States; applications receipt, review, approval or disapproval; and award of grants by DOE, but which does not include the grantee's performance period.

"Gross square feet" means the sum of all heated or cooled floor areas enclosed in a building, calculated from the outside dimensions, or from the centerline of common walls.

"Heating or cooling system" means any mechanical system for heating, cooling or ventilating areas of a building, including a system of through-the-wall air conditioning units.

"Heating degree days" means the annual sum of the number of Fahrenheit degrees of each day's mean temperature below 65° for a given locality.

"Hospital" means a public or non-profit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and which is duly authorized to provide hospital services under the laws of the State in which it is situated.

"Hospital facilities" means buildings housing a hospital and related facilities, including laboratories, laundries, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

"Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203; 85 Stat. 688, which (a) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (b) is located on, or in proximity to, a Federal or State reservation or rancheria.

"Local educational agency" means a public board of education or other public authority or a non-profit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direction of, or to perform administrative services for, a group of schools within a State.

"Maintenance" means activities undertaken in a building to assure that equipment and energy-using systems operate effectively and efficiently.

"Native American" means a person who is a member of an Indian tribe.

"Operating" means the operation of equipment and energy-using systems in a building to achieve or maintain specified levels of environmental conditions or service.

"Owned" or "Owns" means a property interest, including without limitation a leasehold interest, which is, or shall become, a fee simple title in a building or complex.

"Preliminary energy audit" means any survey of a building or complex conducted in accordance with the requirements of Subpart E of 19 CFR Part 450.

"Primarily occupied" means that in excess of 50 percent of a building's square footage or time of occupancy is occupied by a public care institution or an office or agency of a unit of local government.

"Public care institution" means a public or non-profit institution which owns—

(a) A facility for long-term care, rehabilitation facility, or public health center, as described in Section 1633 of the Public Health Service Act (42 U.S.C. 300s-3; 88 Stat. 2270); or

(b) A residential child care center, which is an institution, other than a foster home, operated by a public or non-profit institution and is primarily intended to provide full-time residential care with an average length of stay of at least 30 days for at least 10 minor persons who are in the care of such institution as a result of a finding of abandonment or neglect or of being persons in need of treatment or supervision.

"Public or non-profit institution" means an institution owned and operated by—

(a) A State, a political subdivision of a State or an agency or instrumentality of either; or

(b) A school or hospital which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954; or

(c) A unit of local government or public care institution which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, exempt from income tax under Section 510(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954.

"School" means a public or non-profit institution which—

(a) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(b)(1) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

(2) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) Is accredited by a nationally recognized accrediting agency or association; and

(4) Provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program;

(c) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in subdivisions (1), (2), and (3) of subparagraph (b) above; or

(d) Is a local educational agency.

"School facilities" means buildings housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

"Secretary" means the Secretary of the Department of Energy.

"State" means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Virgin Islands.

"State energy agency" means the State agency responsible for developing State energy conservation plans pursuant to Section 362 of the Energy Policy and Conservation Act, or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit the State Plan required under Section 394 of the Energy Policy and Conservation Act, as amended by the Energy Conservation and Production Act.

"State hospital facilities agency" means an existing agency which is broadly representative of the public hospitals and the non-profit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this definition.

"State school facilities agency" means an existing agency which is broadly representative of public institutions of higher education, non-profit institutions of higher education, public elementary and secondary schools, non-profit elementary and secondary schools, public vocational education institutions, non-profit vocational education institutions and the interests of handicapped persons in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this definition.

"Technical assistance" means a program or activity for (a) the conduct of specialized studies to identify and specify energy savings and related cost savings that are likely to be realized as a result of modifying maintenance and operating procedures in a building, acquiring and installing one or more specified energy conservation measures in a building, or both; and (b) the planning or administration of such specialized studies. For schools and hospitals which are eligible to receive

grants to carry out energy conservation measures, the term also means the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation, or renewable resources measures in building.

"Unit of local government" means the government of a county, municipality, parish, borough, or township, which is a unit of general purpose government below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized governing body of an Indian tribe which governing body performs substantial governmental functions and includes libraries owned by any of the foregoing and public libraries which serve all residents of a political subdivision below the State level (such as a community, district or region) free of charge and which derive at least 40 percent of their operating funds from tax revenues of a taxing authority below the State level.

§ 455.3 Administration of Grants.

Grants provided under this part shall comply with applicable law, regulation or procedure including, without limitation, the requirements of:

(a) The DOE Financial Assistance Rules (10 CFR Part 600 as amended), except as otherwise provided in this rule;

(b) Executive Order 12372 entitled "Intergovernmental Review of Federal Programs," 48 FR 3130, and the DOE regulation implementing this Executive Order entitled "Intergovernmental Review of Department of Energy Programs and Activities" (10 CFR Part 1005);

(c) Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specified or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968";

(d) DOE regulation entitled "Non-discrimination in Federally Assisted Programs" (10 CFR Part 1040) which implements the following public laws: Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974; Section 401 of the Energy Reorganization Act of 1974; Title IX of the Education Amendments of 1972; The Age Discrimination Act of 1975; and section 504 of the Rehabilitation Act of 1973; and

(e) Such other procedures applicable to this part as DOE may from time to time prescribe for the administration of financial assistance.

§ 455.4 Recordkeeping

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required and specified by the DOE Financial Assistance Rules, 10 CFR Part 600.

§ 455.5 Suspension and Termination of Grants.

Suspension and termination procedures shall be as set forth in the DOE Financial Assistance Rules, 10 CFR Part 600.

Subpart B—Preliminary Energy Audits and Energy Audit Grant Procedures

§ 455.10 Purpose and scope.

(a) This subpart contains the regulations whereby the Federal Government shall provide financial assistance for preliminary energy audits and energy audits.

(b) Preliminary energy audits are to be performed by States for the purpose of—

(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Establishing a data base from which reasonably accurate estimates can be made of the number of eligible institutions, the number of qualifying buildings, and patterns of energy conservation needs including an indication of the opportunities for use of renewable energy sources; and

(3) Assisting States in development of a sound and complete State Plan which is a prerequisite to receipt of financial assistance for technical assistance or energy conservation measures, including renewable resource measures.

(c) Energy audits are to be performed by States or eligible schools, hospitals, units of local government and public care institutions for the purpose of—

(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Identifying and encouraging adoption of energy conservation maintenance and operating procedures;

(3) Indicating potential, if any, for acquiring and installing energy conservation measures, including possible use of renewable resources; and

(4) Providing, to the greatest extent practical, consistent information necessary to identify those buildings to receive priority for additional financial assistance.

§ 455.11 Financial assistance.

(a) DOE shall provide financial assistance from sums appropriated only upon application in accordance with the provisions of this subpart.

(b) The Secretary may make grants for purposes of conducting preliminary energy audits and energy audits of school facilities and hospital facilities.

(c) The Secretary may make grants for purposes of conducting preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions.

§ 455.12 Cost sharing.

(a) Amounts made available under this subpart, together with any other amounts made available from other Federal sources, may not be used to pay more than 50 percent of the costs of a preliminary energy audit or an energy audit, except as provided in paragraph (b) of this section.

(b) The Governor of a State may request a grant of up to 100 percent of the costs of any preliminary energy audit or energy audit for schools or hospitals. When financial assistance in excess of the 50 percent cost share limitation is provided to a State, the sum allocated to that State for technical assistance and energy conservation measures, including solar or other renewable resource measures shall be reduced by an equal amount. Such funds shall be reallocated among all other States on the same basis as the initial allocation. The Secretary may make such a grant if the State has demonstrated that—

(1) The State would otherwise be unable to participate in the program; and

(2) The amount of the additional financial assistance requested is the minimum necessary to allow the State to participate.

(c) Where a State has expended funds without financial assistance under this subpart for the conduct of preliminary energy audits or energy audits commenced on or after November 9, 1978, the Secretary may, upon application and approval under this subpart, accept all or any portion of

such expenditures as constituting State matching funds.

(d) To the extent that funds allocated to a State for preliminary energy audits and energy audits are not needed because all potentially eligible buildings have had or will have an energy audit or its equivalent conducted, such funds may be made available for technical assistance or energy conservation measures. DOE shall, upon request by the State, redistribute funds not needed for preliminary energy audits and energy audits to the State allocation for technical assistance or energy conservation measures, as appropriate, and such funds shall be in addition to those which would otherwise be available for such purposes.

(e) Amounts made available from other than Federal sources shall come from State, local, or private sources and shall not be derived from revenue-sharing or any other Federal source, as determined by the Secretary.

§ 455.13 Allocation of funds.

(a) Financial assistance for conducting preliminary energy audits and energy audits of school facilities and hospital facilities shall be allocated among the States by multiplying the sum available by the allocation factor (F).

(b) Financial assistance for conducting preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor (F).

(c) The allocation factor (F) shall be determined by the formula—

$$F = \frac{(.1)}{(n)} + \frac{(.75P)}{(NP)} + \frac{(.25C)}{(NC)}$$

where, as determined by DOE—

(1) n is the total number of States;
(2) SP is the population of the State, as determined from 1976 census estimates, "Current Population Reports" Series p-25, number 642, or territory as determined from 1973 census estimates, "Current Population Reports", Series p-25, number 603;

(3) NP is 217,820,000, the total population of all States;

(4) SC is the sum of the State's heating and cooling degree days, as determined from National Oceanic and Atmospheric Administration data for the thirty year period, 1941 through 1970; and

(5) NC is 347,729, the sum of all States' heating and cooling degree days.

(d) Financial assistance allocated to a State pursuant to this subpart for a grant program cycle which remains unobligated at the end of the grant

program cycle shall, if available, be reallocated under paragraph (a) or (b) of this section, as appropriate, in the subsequent grant program cycle.

§ 455.14 Submission and review of applications.

(a) To be eligible to receive financial assistance, a State shall complete and submit an original copy of the application to the Secretary. Such application shall be signed by the Governor or his designee.

(b) The first State application shall be submitted not later than 30 days after the effective date of this subpart. Subsequent State applications shall be submitted for each grant program cycle on or before the date established by the Secretary for—

- (1) Schools and hospitals;
- (2) Buildings owned by units of local government and public care institutions;
- or
- (3) Both.

(c) The State shall consult with representatives of schools, hospitals, units of local government and public care institutions during the preparation of applications for financial assistance for preliminary energy audits and energy audits.

(d) The Governor may request an extension of the submission date for a State's application by sending a written request to the Secretary prior to the date upon which it is due. An extension will only be provided for good cause shown. Such a request shall include a brief discussion of work remaining to be done on the application and time required for its completion. An extension shall not exceed 60 days except where additional time may be required by a State to enact enabling legislation, or where the Secretary finds an additional extension to be consistent with the overall objectives of the Act and the requirements of this subpart.

(e) The Secretary shall review each timely State application and provide financial assistance if the Secretary determines that the application meets the objectives of the Act and the requirements of this subpart.

(f) All or any portion of an application under this section may be disapproved to the extent that funds are not available under this subpart to carry out such application or portion thereof.

(g) The Secretary shall state in writing the reasons any application is disapproved. Applications not approved by the Secretary may be resubmitted by the applicant at any time within the grant program cycle in the same manner as the original application, and the Secretary shall approve such resubmitted application if it is found to

be in compliance with the requirements of this subpart. Amendments of an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the original application.

§ 455.15 Content of applications.

(a) An application shall contain—

(1) The name and mailing address of the proposed State grantee;

(2) A budget which shall include identification of the sources, amounts, and intended use of non-Federal funds required to meet the cost-sharing provisions of § 455.12; and

(3) Assurance that audit procedures to be employed will meet the requirements of Subpart E of 10 CFR Part 450.

(b) For each program for which financial assistance is sought, a State application shall also contain—

(1) A timetable, including a listing of milestones for the activities to be carried out by calendar quarters for each program for which financial assistance will be provided;

(2) A description of materials to be developed and adopted, or an identification of existing materials to be used, to meet the requirements for conducting preliminary energy audits and energy audits set forth in Subpart E of 10 CFR Part 450, including provision of data concerning heating degree days, cooling degree days, insulation, and wind speed for regions within the State;

(3) A description of the training to be provided those persons who will conduct energy audits. Such training shall, at a minimum, use as instructors architects or engineers who have had practical experience in performing energy audits. The minimum qualifications of those attending the training course, and the minimum qualifications of those who will be permitted to perform energy audits without having attended the training course, shall also be described.

(4) An explanation of how the size of the sample and the selection of sample buildings will be determined in those instances where a sampling methodology is used in the conduct of preliminary energy audits.

(5) A description of the method which will be used to advise eligible institutions of the availability of assistance under this subpart, and the amounts available by categories of institutions as determined under paragraphs (c)(3) and (d)(2) of this section.

(c) A State application for financial assistance to conduct preliminary energy audits and energy audits of

school and hospital facilities shall contain—

(1) A description of the procedures the State will use to provide funding or services to those schools and hospitals which are willing and able to conduct their own energy audits;

(2) A justification for any funding applied for in excess of the 50 percent limit provided in paragraph (a) of § 455.12;

(3) A description of the method by which funds will be apportioned between school facilities and hospital facilities, including a justification for the apportionment if fewer than all such facilities will be audited;

(4) An explanation of the manner in which activities to be conducted shall be consistent with—

(i) Related State programs for educational facilities in such State; and

(ii) State health plans under Sections 1524(c)(2) (42 U.S.C. 300m-3; 88 Stat. 2247) and 1603 (42 U.S.C. 300a-2; 88 Stat. 2259) of the Public Health Service Act; and

(5) A description of the actions taken by the State to solicit and consider the views of representatives of schools and hospitals during the preparation of the State's application.

(d) A State application for financial assistance to conduct preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions shall contain a description of—

(1) The procedures the State will use to provide funding or services to those units of local government and public care institutions which are willing and able to conduct their own energy audits;

(2) The method by which funds will be apportioned between buildings owned by units of local government and public care institutions including a justification for the apportionment if fewer than all these buildings will be audited; and

(3) The action taken by the State to solicit and consider the views of representatives of units of local government and public care institutions during the preparation of the State's application.

(e) A State application shall set forth procedures—

(1) By which buildings or complexes eligible for preliminary energy audits and energy audits will be identified, and a listing thereof prepared and maintained;

(2) For the State to participate, on a selective sampling basis, in the performance of on-site energy audits to assure that the findings present a reasonably thorough and accurate assessment of the buildings surveyed; and

(3) For the State to conduct followup visits, on a selective sampling basis, to ascertain the degree of implementation of energy audit results.

§ 455.16 Use of funds.

(a) A State shall either carry out preliminary energy audits and energy audits of schools and hospitals, or provide for the conduct of such audits by schools and hospitals, through use of funds which the State has received pursuant to paragraph (b) of § 455.11.

(b) A State shall either carry out preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions, or provide for the conduct of such audits by units of local government and public care institutions, through the use of funds which the State has received pursuant to paragraph (c) of § 455.11.

(c) No financial assistance provided under this subpart shall be expended for—

(1) The audit of—

(i) A vacant, unused or condemned building;

(ii) A stadium which is part of a school facility used primarily for exhibitions for which admission is charged and which is not also generally used for intramural sports and physical fitness programs generally available to all students; or

(iii) A building or complex owned by a unit of local government or a public care institution—

(A) Not primarily occupied by such institution; or

(B) Which is intended for seasonal use; and

(2) The purchase or acquisition of any single piece of equipment or personal or personal property costing more than \$300 to be used in conducting preliminary energy audits or energy audits, unless prior written approval has been obtained from DOE.

(d) Of the financial assistance provided to a State under this subpart, not more than 25 percent shall be expended for—

(1) Administrative expenses;

(2) Development of materials for the conduct of preliminary energy audits and energy audits;

(3) Training of personnel to conduct energy audits;

(4) For conducting preliminary energy audits and sample energy audits; and

(5) For monitoring and evaluation.

(e) At least 75 percent of the financial assistance provided under this part shall be used in conducting energy audits of buildings, including costs of personnel attending training sessions conducted

by the State preparatory to performing energy audits.

(f) A State may request, and the Secretary may approve, a waiver of the limitations required under paragraphs (d) and (e) of this section, provided the State demonstrates that such a waiver would permit the conduct of more energy audits than would otherwise be conducted under the provisions of this section.

§ 455.17 Reporting requirements.

(a) Each State receiving financial assistance under this part shall submit to DOE a quarterly program performance report and a quarterly financial statement. The reports shall be submitted to DOE within 15 days following the end of each calendar quarter.

(b) The quarterly program performance report shall include—

(1) For those buildings which have received a preliminary energy audit or an energy audit, a summary of the categories, types of ownership, functional uses, gross square feet and energy use levels; and

(2) For those buildings which have received an energy audit—

(A) An estimate of the savings anticipated from energy conservation operation and maintenance procedure changes identified; and

(B) An approximation of the energy savings indicated from applicable energy conservation measures if the procedure used by the State results in such information or a summary of the number of buildings for which the energy audit indicates potential for energy conservation measures, including solar energy and renewable resource measures.

(c) The second quarterly report shall also include—

The total sum required for energy audits of buildings whose owners have been advised of selection to receive an energy audit;

(2) A copy of the materials adopted by the State for conducting energy audits;

(3) The apportionment of funds pursuant to paragraphs (c)(3) and (d)(2) of § 455.15 and the data on which such apportionment was based;

(4) The listing of institutions and their buildings compiled pursuant to the provisions of paragraph (e)(1) § 455.15, summarized by category, types of ownership, and functional use;

(5) Any necessary revisions to the estimate of the characteristics and energy conservation potential of buildings owned by eligible institutions resulting from the sample preliminary

energy audits, if a sampling approach was used.

(d) Copies of preliminary energy audit and energy audit reports made by or furnished to the State under § 450.45 of 10 CFR Part 450 shall be submitted to DOE together with the quarterly report.

(e) Reports shall contain such other information as may be required by DOE.

§ 455.18 Contents of a preliminary energy audit.

(a) A preliminary energy audit shall provide a description of the building or complex audited and determine its energy-using characteristics, including—

(1) The name or other identification, and address of the building;

(2) A statement that the building meets the requirements of one of the following categories—

(i) A school facility;

(ii) A hospital facility; or

(iii) A building owned and primarily occupied either by offices or agencies of a unit of local government or by a public care institution, neither of which shall include any building intended for seasonal use or any building used primarily by a school or hospital;

(3) A description of the functional use made of the building identifying whether it is a—

(i) School—

(A) Elementary;

(B) Secondary;

(C) College or university;

(D) Vocational;

(E) Other;

(ii) Hospital—

(A) General;

(B) Tuberculosis; or

(C) Other;

(iii) Local government building—

(A) Office;

(B) Storage;

(C) Service;

(D) Library;

(E) Police station;

(F) Fire station; or

(G) Other; or

(iv) Public care building—

(A) Nursing home;

(B) Long term care other than a

nursing home;

(C) Rehabilitation facility;

(D) Public health center; or

(E) Residential child care center;

(4) The name and address of the owner of record, indicating whether owned by a public institution, private nonprofit institution or an Indian tribe;

(5) The size of the building, expressed in gross square feet;

(6) The age of the building;

(7) Approximate daily hours of operation, including periods of partial use if applicable;

(8) An indication of whether the building is partially used during

vacation periods or other times when the building is not fully utilized, for periods of a week or more, by quarter;

(9) An identification of major energy-using systems, including—

(i) Type of heating system or cooling system or both;

(ii) Fuel used for heating system, cooling system;

(iii) Fuel used for domestic hot water, such as electric or natural gas;

(iv) Special energy using systems, such as food service or laundry; and

(v) Lighting, such as incandescent or fluorescent;

(10) Fuel use in physical units and cost data by type for a preceding 12 month period, by month if practicable, using actual data or an estimate if actual figures are unavailable;

(11) Total annual energy use expressed in Btu's per gross square foot and energy cost per gross square foot.

(b) A preliminary energy audit shall provide a brief description of activities which have been undertaken to conserve energy in the building or complex being audited, including whether—

(1) A person has been designated to monitor and evaluate energy use;

(2) Work partially or fully satisfying the requirements of an energy audit has been performed;

(3) Detailed studies have been conducted by architects, engineers or architect-engineer teams of energy use and energy conservation; and

(4) Any major energy conservation measures have been implemented, together with a listing of such measures, and estimates of their costs and energy savings if available.

(c) A preliminary energy audit shall provide information regarding site, building, and heating and hot water systems related to renewable resource potential including—

(1) An indication of whether open land, such as fields, yards and parking areas, is available within the immediate vicinity of the building which is not heavily shaded by tall buildings, trees or other obstructions;

(2) A statement of whether the building is located generally within an urban, suburban or rural area;

(3) An approximation of whether more than half the building's roof area or southern oriented wall surface is heavily shaded by shrubs, trees, buildings or other obstructions for more than about four hours per day;

(4) The number of stories;

(5) A general description of the building's shape, such as square, rectangular, E-shaped, H-shaped or L-shaped;

(6) An indication of whether the roof is flat or pitched, and if pitched whether it has a southern orientation;

(7) Whether there are existing roof-top obstructions, such as chimneys, space conditioning equipment, water towers, mechanical rooms, stairwells or other permanent structures;

(8) An indication of the exterior material of the southern facing wall, such as masonry, wood, aluminum;

(9) An approximation of the proportion of glass area of the southern facing wall, such as less than 25 percent, 25-75 percent, more than 75 percent;

(10) Location of primary space heating and water heating systems—

(i) Whether outside of or within the building;

(ii) If within the building, whether on the ground floor, in the basement, or on the roof; and

(iii) If within the building, whether centrally located, in multiple units, or a combination thereof.

§ 455.19 Contents of an energy audit.

(a) An energy audit shall contain the information required for a preliminary energy audit, in accordance with § 455.18, and shall also include a description of—

(1) Major changes in functional use or mode of operation planned in the next fifteen years, such as demolition, disposal, rehabilitation, or conversion from office to warehouse;

(2) For a building in excess of 200,000 gross square feet, if available—

(i) Peak electric demand for both daily and annual cycles; and

(ii) Annual energy use by fuel type of the major mechanical or electrical systems if the information is available or can be reasonably estimated;

(3) Terminal heating or cooling, or both, such as radiators, unit ventilators, fancoil units, or double-duct reheat systems;

(4) Building site and structural characteristics related to renewable resource potential, including but not limited to—

(i) Climatic factors, specifically—

(A) Average annual heating degree days and cooling degree days;

(B) Average solar insulation by month;

(C) Average monthly wind speed; and

(ii) Roof characteristics, including—

(A) An identification of primary structural component such as steel, wood, concrete; and

(5) A description of general building conditions.

(b) An energy audit shall—

(1) Indicate that appropriate energy conservation maintenance and operating procedures have been

implemented for the building, supported by a demonstration based on actual records, that energy use has been reduced in a given year through changes in maintenance and operating procedures, by not less than 20 percent from a corresponding based period having a degree day variance of less than 10 percent; or

(2) Recommended appropriate energy conservation maintenance and operating procedures, on the basis of an on-site inspection and review of any scheduled preventive maintenance plan, together with a general estimate or range of energy and cost savings if practical, which may result from—

(i) Effective operation of ventilation systems and control of infiltration conditions, including—

(A) Repair of caulking or weatherstripping around windows and doors;

(B) Reduction of outside air intake, shutting down ventilation systems in unoccupied areas, and shutting down ventilation systems when the building is not occupied; and

(C) Assuring central or unitary ventilation controls, or both, are operating properly;

(ii) Changes in the operation of heating or cooling systems through—

(A) Lowering or raising indoor temperatures;

(B) Locking thermostats;

(C) Adjusting supply or heat transfer medium temperatures; and

(D) Reducing or eliminating heating or cooling at night or at times when a building or complex is unoccupied;

(iii) Changes in the operation of lighting systems through—

(A) Reducing illumination levels;

(B) Maximizing use of daylight;

(C) Using higher efficiency lamps; and

(D) Reducing or eliminating evening cleaning of buildings;

(iv) Changes in the operation of water systems through—

(A) Repairing leaks;

(B) Reducing the quantity of water used, e.g., flow restrictors;

(C) Lowering settings for hot water temperatures;

(D) Raising settings for chilled water temperatures; and

(v) Changes in the maintenance and operating procedures of the utility plant and distribution system through—

(A) Cleaning equipment;

(B) Adjusting air/fuel ratio;

(C) Monitoring combustion;

(D) Adjusting fan, motor, or belt drive systems;

(E) Maintaining steam traps; and

(F) Repairing distribution pipe insulation; and

(vi) Such other actions as the State may determine useful or necessary, consistent with the purposes of the energy audit and acceptable cost constraints of § 455.46.

(c) Based on information gathered under paragraphs (a) and (b) of § 455.18, and paragraphs (a)(1) and (2) of this section, an energy audit shall indicate the need, if any, for the acquisition and installation of energy conservation measures and shall include an evaluation of the need and potential for retrofit based on consideration of one or more of the following—

(1) An energy use index or indices, for example, Btu's per gross square foot per year;

(2) An energy cost index or indices, for example, annual energy costs per gross square foot; or

(3) The physical characteristics of the building envelope and major energy-using systems.

(d) Based on information gathered under paragraph (c) of § 455.18 and paragraph (a)(4) of this section, an energy audit shall include an indication of whether building conditions or characteristics present an opportunity for use of solar heating and cooling systems or solar hot water systems.

(e) An energy audit may include an assessment of the estimated costs and energy and cost savings likely to result from the purchase and installation of one or more energy conservation measures.

§ 455.20 Contents of an energy use evaluation.

(a) An energy use evaluation may be used in lieu of an energy audit in cases where no energy audit has been performed, in accordance with § 455.19, and where the State has made provision for such use in its State plan, in accordance with § 455.90(1).

(b) An energy use evaluation shall contain the information required in § 455.18(a) through 455.18(b)(4), and shall also include a description of—

(1) The building's potential suitability for renewable resource applications;

(2) Major changes in functional use or mode of operation planned in the next fifteen years, such as demolition, disposal, rehabilitation, or conversion from office to warehouse;

(3) Appropriate energy conservation maintenance and operating procedures which have been implemented for the building;

(4) The need, if any, for the acquisition and installation of energy conservation measures, including an assessment of the estimated costs and energy and cost savings likely to result from the purchase and installation of one or more

energy conservation measures and an evaluation of the need and potential for retrofit based on consideration of one or more of the following—

(i) An energy use index or indices, for example, Btu's per gross square foot per year;

(ii) An energy cost index or indices, for example, annual energy costs per gross square foot; or

(iii) The physical characteristics of the building envelope and major energy-using system;

(5) Such other information as the State has determined useful or necessary, in accordance with § 455.90(1).

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

§ 455.40 Purpose and scope.

This subpart specifies what constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government and public care institutions to receive grants for technical assistance to be performed in buildings owned by such institutions.

§ 455.41 Eligibility.

To be eligible to receive financial assistance for a technical assistance program, an applicant must—

(a) Be a school, hospital, unit of local government, public care institution or coordinating agency, all as defined in § 455.2, except that—

(1) Financial assistance for units of local government and public care institutions will be provided only for buildings which are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and which are not intended for seasonal use and not utilized primarily as a school or hospital eligible for assistance under this program;

(2) Financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for a technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration.

(b) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(c) Have conducted an energy audit, its equivalent or an energy use evaluation for the building for which financial assistance is to be requested, subsequent to the most recent

construction, reconfiguration or utilization change which significantly modified energy use within the building;

(d) Give assurance that it has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit or its equivalent, identified in the energy use evaluation, or provide a written justification satisfactory to the Secretary, pursuant to § 455.90(j).

(e) Submit an application in accordance with the provisions of this part and the approved State plan.

§ 455.42 Contents of program.

(a) The purpose of a technical assistance program is to provide a report acceptable with regard to this section and the State's procedures for implementing this section. A technical assistance program should be designed—

(1) To identify and document energy conservation maintenance and operating procedure changes and energy conservation measures in sufficient detail to support possible application for financial assistance, and to provide reviewers and decisionmakers handling such applications sufficient information upon which to base judgments as to their reasonableness; and

(2) To provide the institution with a description of its current characteristics, procedures, operating and maintenance procedure changes and potential for cost-effective capital improvements such that the report can be used to guide those responsible for the energy and financial management of the institution in implementing energy conservation actions without regard to possible financial assistance under this program.

(b) A technical assistance program shall be conducted by a technical assistance analyst, who has the qualifications established in the State Plan in accordance with § 455.90(p) and who shall consider all feasible energy conservation operating and maintenance procedure changes and energy conservation measures for a building, including renewable resource measures. A technical assistance program shall identify the estimated costs of, and the energy and cost savings likely to be realized from, implementing energy conservation maintenance and operating procedures. A technical assistance program shall also provide a detailed engineering analysis to specify the estimated cost of, and the energy and cost savings likely to be realized from, acquiring and installing each energy conservation measure, including renewable resource measures, that indicate a significant potential for saving energy based upon

the technical assistance analyst's initial consideration. Any energy conservation improvement which is needed primarily to replace an existing measure which has been poorly maintained should be clearly identified as such.

(c) The technical assistance analyst shall use the following factors in calculating costs—

(1) Current prices,

(2) Marginal prices where incremental prices apply

(d) At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a report which shall include—

(1) A description of building characteristics and energy data including—

(i) The results of the energy audit, its equivalent, or energy use evaluation of the building, together with a statement as to the accuracy of the energy audit data as required in § 455.42 (d) (7), and completeness of the energy audit recommendations;

(ii) The operating characteristics of energy using systems; and

(iii) The estimated remaining useful life of the building;

(2) An analysis of the estimated energy consumption of the building, by fuel type in total Btu's and Btu/sq. ft./yr using conversion factors prescribed by the State, at optimum efficiency (assuming implementation of all energy conservation maintenance and operating procedures);

(3) An evaluation of the building's potential for renewable resource conversions; including water heating systems;

(4) A listing of any known local zoning ordinances and building codes which may restrict the installation of solar or renewable resource systems;

(5) A description and analysis of all identified operating and maintenance procedure changes, if any, and energy conservation measures, including renewable resource measures, setting forth—

(i) A description of each operating and maintenance procedure change and an estimate of the costs of adopting such operating and maintenance procedure changes;

(ii) An estimate of the cost of design, acquisition and installation of each energy conservation measure, discussing pertinent assumptions as necessary;

(iii) Estimated useful life of each energy conservation measure;

(iv) An estimate of increases or decreases in maintenance and operating costs that would result from each conservation measure if any;

(v) An estimate of the salvage value or disposal cost of each energy

conservation measure at the end of its useful life, if any;

(vi) An estimate supported by all data and assumptions used in arriving at the estimate, of the annual energy and energy cost savings (using current energy prices) expected from each operating and maintenance procedure change and the acquisition and installation of each energy conservation measure. In calculating the potential energy cost savings or energy savings of each energy conservation measure, including renewable resource measures, the technical assistance analyst shall—

(A) Assume that all energy savings obtained from energy conservation maintenance and operating procedure have been realized;

(B) Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of all feasible energy conservation measures, taking into account the interaction among the various measures;

(C) Calculate that portion of the total energy and energy costs savings, as determined in paragraph (C)(5)(vi) (B), of this section, attributable to each individual energy conservation measure; and

(D) Consider climate and other variables.

(vii) The simple payback period of each energy conservation measure, taking into account the interactions among the various measures. The simple payback period is calculated by dividing the estimated total cost of the measure, as determined pursuant to § 455.42(d)(5)(ii), by the estimated annual cost saving accruing from the measure, as determined pursuant to § 455.42(d)(5)(vi). For purposes of ranking applications, the simple payback period shall be calculated using the cost savings resulting from energy savings only, determined on the basis of current energy prices except:

(A) For energy conservation measures which result in conversion from oil, natural gas, other petroleum products or electricity to coal, the simple payback period shall be calculated based on the annual cost savings (using current energy prices) associated with the change in fuels; or

(B) For renewable resource energy conservation measures, the simple payback period shall be calculated using the cost of the fuels displaced (using current energy prices) as the annual cost savings.

(viii) The estimated cost of the measure which shall be the total cost for design and other professional service (excluding cost of a technical assistance

program), if any, and acquisition and installation costs. At the request of the applicant, the technical assistance report shall provide a life cycle cost analysis, which considers all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure for use by the institution;

(6) Energy use and cost data, actual or estimated, for each fuel type used for the prior 12-month period, by month if possible.

(7) A signed and dated certification that the technical assistance program has been conducted in accordance with the requirements of this section and that the data presented is accurate to the best of the technical assistance analyst's knowledge.

Subpart D—Energy Conservation Measures for Schools and Hospitals

§ 455.50 Purpose and scope.

This subpart indicates what constitutes an energy conservation measure that may receive financial assistance under this part and sets forth the eligibility criteria for schools and hospitals to receive grants for energy conservation measures, including renewable resource measures.

§ 455.51 Eligibility.

(a) To be eligible to receive financial assistance for an energy conservation measure, including renewable resource measures, an applicant must—

(1) Be a school, hospital or coordinating agency as defined in § 455.2, provided that financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for a technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration;

(2) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use within the building;

(4) Have implemented all energy conservation maintenance and operating procedures which are identified as the result of a technical assistance program, or have provided a satisfactory written justification for not

implementing any specific maintenance and operating procedures so identified, as described in § 455.90(j).

(5) Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period of any energy conservation measure recommended for that building; and

(6) Submit an application in accordance with the provisions of this part and the approved State Plan.

(b) To be eligible for financial assistance, the simple payback period of each energy conservation measure for which financial assistance is requested shall not be less than 2 years nor greater than 10 years, and the estimated useful life of the measure shall be greater than its simple payback period.

§ 455.52 Contents of program.

The programs to be funded under this part will be for the design acquisition and installation of energy conservation measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources for schools and hospitals. Such measures include, but are not necessarily limited to those included in the definition of "energy conservation measures" in § 455.2.

Subpart E—Applicant Responsibilities

§ 455.60 Grant application submittals.

(a) Each eligible applicant desiring to receive financial assistance shall file an application in accordance with the provisions of this subpart and the approved State Plan of the State in which such building is located. The application, which may be amended in accordance with applicable State procedures at any time prior to the State's final determination thereon, shall be filed with the State energy agency designated in the State Plan.

(b) Applications from schools, hospitals, units of local government, public care institutions and coordinating agencies for financial assistance for technical assistance programs shall include the certifications contained in § 455.61 and—

(1) The applicant's name and mailing address;

(2) The energy audit, its equivalent, or an energy use evaluation (as determined by the State) for each building for which financial assistance is requested;

(3) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds; including in-kind contributions (valued in accordance with the guidelines in 10 CFR 600.107(e)), to be used to meet the

cost-sharing requirements described in Subpart G;

(4) A brief description, by building, of the proposed technical assistance program, including a schedule, with appropriate milestone dates, for completing the technical assistance program; and

(5) Additional information required by the applicable State Plan, and any other information which the applicant desires to have considered, such as information to support an application from a school or hospital for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

(c) Applications from schools and hospitals and coordinating agencies for financial assistance for energy conservation measures, including renewable resource measures, shall include the certifications contained in § 455.61 and—

(1) The applicant's name and mailing address;

(2) Identification of each building pursuant to § 455.18(a) (1) through (5), or an equivalent identification if no preliminary energy audit was performed, for which financial assistance is requested, including—

(i) Name or other identification of each building and its address;

(ii) Building category;

(iii) Description of functional use;

(iv) Ownership; and

(v) Size of building expressed in gross square feet.

(3) A project budget, by measure or by building as provided in the State Plan, which stipulates the intended use of all Federal and non-Federal funds, and identifies the sources and amounts of non-Federal funds, including in-kind contributions (valued in accordance with the guidelines in 10 CFR 600.017) to be used to meet the cost sharing requirements described in Subpart G;

(4) A schedule, including appropriate milestone dates, for the completion of the design, acquisition and installation of the proposed energy conservation measures for each building;

(5) For each energy conservation measure proposed for funding, the projected cost, and the projected simple payback period as contained in § 455.42(d)(5)(vii). Applications with more than one energy conservation measure per building shall include projected costs and paybacks for each measure, and the average simple

payback period for all measures proposed for the building;

(6) Unless waived by DOE, the report of the technical assistance analyst. This report must have been completed since the most recent construction, reconfiguration or utilization change to the building, which significantly modified energy use, for each building.

(7) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact; and

(8) Additional information required by the applicable State Plan, and any additional information which the applicant desires to have considered, such as information to support an application for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship, or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

§ 455.61 Applicant certifications.

Applications for financial assistance for technical assistance programs and energy conservation measures, including renewable resource measures, shall include certification that the applicant—

(a) Is eligible under § 455.41 for technical assistance or § 455.51 for energy conservation measures;

(b) Has satisfied the requirements set forth in § 455.60;

(c) For applications for technical assistance, has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit, its equivalent, or identified in the energy use evaluation, and for applications for energy conservation measures, those recommended in the report obtained under a technical assistance program. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure as prescribed pursuant to § 455.90(j);

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of technical assistance analyst in accordance with the standards and criteria established in the approved State Plan;

(e) For a project under this Part having a total estimated cost of more than \$5,000, any construction contract or subcontract in excess of \$2,000 using any grant funds awarded under this Part must include those contract labor standards provisions set forth in 29 CFR 5.5 and a provision for payment of laborers and mechanics at the minimum wage rates determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a) as set forth in 29 CFR Part 1. For the purpose of this section "project" means an undertaking to acquire and install one or more energy conservation measures in a building which is eligible under this part; and

(f) Will comply with all reporting requirements contained in § 455.63.

§ 455.62 Grant applications for State administrative expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file an application in accordance with the provisions of this section. At any time after notice by DOE of the amounts allocated to each State for a grant program cycle, each State may apply to the Secretary for an amount for administrative expenses not exceeding \$30,000 or 2 percent of its total allocation for technical assistance and energy conservation measures, whichever is higher. In addition, each State, after it makes the submittal to DOE required under § 455.72, may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle. In the event that a State cannot or decides not to use the amount available to it for an administrative grant under this section for administrative purposes, these funds may, at the discretion of the State, be used for technical assistance and energy conservation grants to eligible institutions within that State, in accordance with this part.

(b) Applications for financial assistance to defray State administrative expenses shall include—

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part;

(2) An annualized plan and budget for accomplishing the State responsibilities of Subpart F of this part, as limited by § 455.83(c), during the budget period for which assistance will be awarded, including:

(i) A list of the sources and amounts of the non-Federal funds to be used to meet the cost sharing requirements of § 455.83(a);

(ii) A list of activities planned during the budget period with milestones and projected expenditures for each;

(iii) Problems encountered in past budget periods through oversight and monitoring under § 455.73(c) and remedial actions planned; and

(3) Any other information required by DOE.

§ 455.63 Grantee records and reports.

(a) Each State, school, hospital, unit of local government, public care institution and coordinating agency which receives a grant for a technical assistance program, energy conservation measure, including renewable resource measures, or State administrative expenses shall keep all the records required by § 455.4 in accordance with DOE Financial Assistance Rules.

(b) Each grantee shall submit reports as follows—

(1) For technical assistance projects, two copies of a final report of the analysis completed on each building for which financial assistance was provided shall be submitted to the State energy agency no later than 90 days following completion of the analysis. These reports shall contain—

(i) The report submitted to the institution by the technical assistance analyst, and

(ii) The institution's plan to implement energy conservation maintenance and operating procedures.

(2) For energy conservation measure projects—

(i) Grantees shall submit semi-annual progress reports. Two copies shall be submitted to the State energy agency no later than the end of July and January and shall detail and discuss milestones accomplished, those not accomplished, status of in-progress activities, and remedial actions if needed to achieve project objectives. A final report may be submitted in lieu of the last semi-annual report if it satisfies the semi-annual progress report and final report designated time frames;

(ii) Grantees shall submit a final report. Two copies shall be submitted to the State within 90 days of the completion of the project and shall list and describe the energy conservation measures acquired and installed, contain a final estimated simple payback period for each measure and the project as a whole, and include a statement that the completed energy conservation measures conform to the approved grant application.

(iii) Grantees shall submit annual energy use reports. Two copies shall be submitted to the State within 60 days of the close of each 12-month period following project completion for a period of three years, or for the life of this Federal program, whichever is shorter, and shall identify each building and provide data on energy use for that building for the preceding 12-month period.

(3) For State administrative grants, each State shall submit a semi-annual program performance report to DOE by the close of each February and August. The report will provide:

(i) A discussion of progress toward accomplishing the State responsibilities as set forth in the budget period plan required by § 455.62(b)(2), problems encountered, and resolution thereof;

(ii) A summary of grantee reports received by the State during the report period pursuant to subparagraphs (b)(1) and (b)(2) of this section; and

(iii) For the report due to be submitted to DOE by the close of each August, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation of energy conservation maintenance and operating procedures and installation of energy conservation measures under this program. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the reports submitted to the State pursuant to § 455.63(b)(2)(iii).

(4) Such other information as the Secretary may, from time to time request.

(5) Each copy of any technical assistance, energy conservation measures, or State administrative report shall be accompanied by a financial status report completed in accordance with the documents listed in § 455.3. A financial status report shall not be required for annual reports submitted pursuant to subparagraph (b)(2)(iii) of this section. In addition, States file quarterly financial status reports for the quarters which occur between the semi-annual report periods covered in their program performance reports.

(6) Grantee technical assistance, energy conservation measure, and financial status reports submitted to the State shall be submitted by the State to DOE as required by the Secretary.

Subpart F—State Responsibilities

§ 455.70 State evaluation of grant applications.

(a) If an application received by a State is reviewed and evaluated by that State and determined to be in

compliance with Subparts C, D and E of this part, § 455.70(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for financial assistance.

(b) Concurrently with its evaluation and ranking of grant applications pursuant to § 455.71, the State will forward applications for technical assistance or for energy conservation measures for a school or hospital to the State school facilities agency or the State hospital facilities agency, as the case may be, for review and certification that each school application is consistent with related State programs for educational facilities, and each hospital application is consistent with State health plans under sections 1524(c)(2) and 1603 of the Public Health Service Act (42 U.S.C. 300m-3 and 300m-2, respectively), and that each has been coordinated through abbreviated review mechanisms under Section 1523 of the Public Health Service Act (42 U.S.C. 300m-2) and Section 1122 of the Social Security Act. No application from a school or hospital shall be eligible for funding until such certification has been issued.

§ 455.71 State ranking of grant applications.

All eligible applications received by the State will be ranked by the State in accordance with its approved State Plan.

(a) For technical assistance programs, buildings shall be ranked in descending priority based upon the energy conservation potential of the building as determined from an energy audit, its equivalent, or an energy use evaluation if an energy audit has not been performed, in accordance with the procedures established in the State Plan and one or more of the methods indicated in § 455.19(c) or § 455.20(d). In the case of buildings having equivalent energy conservation potential, preference shall be given to those buildings which have completed an energy audit or evaluation without the use of Federal funds. Each State shall develop separate rankings for all buildings covered by eligible applications for—

(1) Technical assistance programs for units of local government and public care institutions, and

(2) Technical assistance programs for schools and hospitals.

(b) All eligible applications for energy conservation measures received will be ranked by the State on an individual building-by-building or a measure-by-measure basis. Several buildings may be

ranked as a single building if the application proposes a single energy conservation measure which directly involves all of the buildings. Buildings or measures shall be ranked in accordance with the procedures established by the State Plan, on the basis of the information developed during a technical assistance program (or its equivalent) for the building and the criteria for ranking applications, which are listed below in the descending order in which weights for each criterion are to be applied by the State—

(1) Payback, calculated in accordance with § 455.42(d)(5)(vii);

(2) The types of energy sources to which conversion is proposed, including in descending priority—

(i) Renewable; and

(ii) Coal;

(3) The types and quantities of energy to be saved, including oil, natural gas, or electricity, in a priority as established in the approved State Plan;

(4) The quality of the technical assistance program report; and

(5) Other factors as determined by the State.

(c) A State is exempt from the ranking requirements of this section when—

(1) The total amount requested by all applications for schools and hospitals for technical assistance and energy conservation measures in a given grant program cycle for grants up to 50 percent is less than or equal to the funds available to the State for such grants and the total amount recommended for hardship funding is less than or equal to the amounts available to the State for such grants.

(2) The total amount requested by all applications for buildings owned by units of local government and public care institutions in a given grant program cycle is less than or equal to the total amount allocated to the State for technical assistance program grants in the State.

(d) Within the rankings of school and hospital buildings for technical assistance and energy conservation measures, including renewable resource measures, to the extent that approvable applications are submitted, a State shall initially assure that—

(1) Schools receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle; and

(2) Hospitals receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(e) To the extent provided in § 455.100(d), financial assistance will be initially available for schools and

hospitals experiencing severe hardship based upon an applicant's long-term need or inability to provide the 50 percent non-Federal share. This financial assistance will be available only to the extent necessary to enable such institutions to participate in the program.

(1) The State shall recommend funds for severe hardship applications wholly or partially from the funds reserved in accordance with § 455.100(d) and as stated in an approved State Plan.

(2) Applications for Federal funding in excess of 50 percent based on claims of severe hardship shall be given an additional evaluation by the State to assess on a quantifiable basis, to the maximum extent practicable, the relative need among eligible institutions. The minimum amount of additional Federal funding necessary for the applicant to participate in the program will be determined by the State in accordance with the procedures established in the State Plan and will be based upon one or more of the following—

(i) The ratio of the cost of the proposed technical assistance programs or energy conservation measures to the institution's total annual budget;

(ii) The borrowing capacity of the institution;

(iii) The average unemployment rate for the institution's locality at the time the application is submitted;

(iv) The ratio of the amount expended annually by the institution for energy to the institution's total annual operating budget;

(v) The median annual family income of the institution's locality; and

(vi) Other special conditions of the institution or its locality as determined by the State.

(3) A State shall indicate, for those schools and hospitals with the highest rankings, determined pursuant to subparagraphs (a) and (b) of this section—

(i) The amount of additional hardship funding requested by each eligible applicant for each building determined to be in a class of severe hardship; and

(ii) The amount of hardship funding recommended by the State based upon relative need as determined in accordance with the State Plan, to the limit of the hardship funds available.

(f) Only schools, hospitals, and hardship applicants shall be recommended for funding from the appropriate allocation specified in paragraphs (d) and (e) of this section, unless after the State deadline for submitting applications has passed, there are insufficient applications meeting the requirements of paragraphs

(d) and (e) of this section and otherwise qualifying for funding under this part, in which case the State may recommend use of the remaining funds in those allocations to fund applications under this part without regard to the limitations of paragraphs (d) and (e) of this section.

§ 455.72 Forwarding of applications.

(a) Each State shall forward all applications recommended for funding within its allocation to the Secretary once each grant program cycle along with a listing of buildings or measures covered by eligible applications for schools, hospitals, units of local government and public care institutions, and ranked by the State pursuant to the provisions of § 455.71. If ranking has been employed the list shall include the standings of buildings or measures.

(1) Measure by measure rankings will be recombined for the respective building with more than one recommended measure.

(2) Buildings will be consolidated under one grantee application.

(b) The State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings recommended for funding within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation.

(c) States shall certify applications submitted are eligible pursuant to § 455.70(a).

§ 455.73 State liaison, monitoring and reporting.

Each State shall be responsible for—

(a) Consulting with eligible institutions and coordinating agencies representing such institutions in the development of its State Plan;

(b) Notifying eligible institutions and coordinating agencies of the content of the approved State Plan and any amendment to a State Plan;

(c) Notifying each applicant how the applicant's building or measure ranked among other applications, and whether and to what extent its application will be recommended for funding or, if not to be recommended for funding, the specific reason(s) therefor;

(d) Certifying that each institution has given its assurance that it is willing and able to participate on the basis of any changes in amounts recommended for that institution in the State ranking pursuant to § 455.71;

(e) Reporting requirements pursuant to § 456.63(b)(3); and

(f) Direct program oversight and monitoring of the activities for which grants are awarded as defined in the State Plan. States shall immediately notify the Secretary of any non-compliance or indication thereof.

Subpart G—Grant Awards

§ 455.80 Approval of grant applications.

(a) The Secretary shall review and approve applications submitted by a State in accordance with § 455.72 if the Secretary determines that the applications meet the objectives of the Act, and comply with the applicable State Plan and the requirements of this part. The Secretary may disapprove all or any portion of an application to the extent funds are not available to carry out a program or measure (or portion thereof) contained in the application, or for such other reason as the Secretary may deem appropriate.

(b) The Secretary shall notify a State and the applicant of the final approval or disapproval or an application at the earliest practicable date after the Secretary's receipt of the application, and, in the event of disapproval, shall include a statement of the reasons therefor.

(c) An application which has been disapproved for reasons other than lack of funds may be amended to correct the cause of its disapproval and resubmitted in the same manner as the original application at any time within the same grant program cycle. Such an application will be considered to the extent funds have not already been designated for institutions by the ranking process at the time of resubmittal. However, nothing in this provision shall obligate either the State or the Secretary to take final action regarding a resubmitted application within the grant program cycle. An application not acted upon may be resubmitted in a subsequent grant program cycle.

(d) The Secretary shall not provide supplemental funds beyond those awarded for technical assistance projects and shall fund only one technical assistance project per building.

(e) The Secretary shall not provide supplemental funds beyond those awarded for all energy conservation measures funded under a grant in a given grant program cycle. An institution may apply for, and the Secretary may make, grant awards in another grant program cycle for energy conservation measures for which financial assistance was not previously and specifically provided, even though the measures relate to a building which

previously received grants for other energy conservation measures.

(f) The Secretary may fund costs incurred by an institution for technical assistance and energy conservation measure projects after the date of the grant application, so long as that date is no earlier than the close of the preceding grant program cycle. Such costs may be funded when, in the judgment of the Secretary, the institution has complied with program requirements and the costs incurred are allowable under applicable cost principles in the approved project budget. The applicant bears the responsibility for the entire project cost unless the application is approved by the Secretary in accordance with this Part.

§ 455.81 Grant awards for units of local government and public care institutions.

(a) The Secretary may make grants to units of local governments, public care institutions and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80; except that in the case of units of local government and public care institutions a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, a grant may be made for up to 100 percent of such costs.

(b) Total grant awards within any State to units of local government and public care institutions are limited to funds allocated to each State in accordance with Subpart I of this part.

(c) Units of local government and public care institutions are not eligible for financial assistance for severe hardship.

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or tangible personal property having an acquisition cost in excess of \$500.

§ 455.82 Grant awards for schools and hospitals.

(a) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80; except that in the case of schools and hospitals a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern

Mariana Islands a grant may be made for up to 100 percent of such costs. Grant awards for technical assistance programs in any State within any grant program cycle shall be limited to a portion of the total allocation as specified in the Subpart I.

(b) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of acquiring and installing energy conservation measures, including renewable resource measures, for buildings covered by an application approved in accordance with § 455.80; except that in the case of schools and hospitals a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, a grant may be made for up to 100 percent of such costs.

(c) The Secretary may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a case of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended and in amounts determined by the State pursuant to § 455.71(e).

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or other tangible personal property having an acquisition cost in excess of \$500.

(e) Applicant expenditures for a technical assistance program or installation of one or more energy conservation measures commenced after November 8, 1978 for a building may be wholly or partially credited, in the discretion of the Secretary, toward meeting the matching non-Federal funds requirement for a grant for additional energy conservation measures in the same building. Credit will be considered only when the projects for which credit is sought meet the requirements for this Part, except that the project need not comply with the Davis-Bacon Act regarding labor standards or wage rates. Credit for energy conservation measures will be considered only when supported by a technical assistance analysis performed prior to the installation of the energy conservation measures. Applications for credit for completed or partially completed energy conservation measures will be considered in conjunction with applications for additional energy conservation measures. The application shall reflect both the work done and the work to be done and will be reviewed and ranked on that basis. In no case shall the credit exceed an amount equal to the non-

Federal share of the proposed additional energy conservation measures.

(f) Unless the proposed transfer of funds will not increase the payback (as calculated pursuant to § 455.42(d)(5)(vii)) of the energy conservation measure, or measures to be funded with the energy conservation measure, or measures to be funded with the transferred funds a grantee shall request approval from DOE before—

(1) Transferring grant or matching funds between buildings included in an approved application when the State ranks applications on a building-by-building basis, and

(2) Transferring grant or matching funds between energy conservation measures included in an approved application when the State ranks on a measure-by-measure basis.

§ 455.83 Grant awards for State administrative expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs in accordance with Subpart C and energy conservation measures in accordance with Subpart D, the Secretary may make grant awards to a State—

(1) Immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the application for administrative costs, in an amount not exceeding \$30,000 or 2 percent of that State's allocation for a given grant program cycle for technical assistance and energy conservation measures, whichever is higher. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, or in the case of grants to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, for up to 100 percent of the projected administrative expenses, as approved by the Secretary; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to paragraph (a)(1) of this section and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses or in the case of grants to the Virgin Islands, Guam, American Samoa,

and the Commonwealth of the Northern Mariana Islands, for up to 100 percent of the projected administrative expenses, as approved by the Secretary. The total of all grants for State administrative costs, technical assistance programs and energy conservation measures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) In the event that a State cannot or decides not to use the amount available to it for an administrative grant under this section for administrative purposes, these funds may, at the discretion of the State, be used for technical assistance and energy conservation grants to eligible institutions within that State in accordance with this Part.

(c) A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs and energy conservation measures including costs associated with—

(1) Personnel, whose time is expended directly in support of such administration;

(2) Supplies, and services, expended directly in support of such administration;

(3) Equipment purchased or acquired solely for, and utilized directly in support of such administration, provided that no single item of equipment or other tangible personal property costing more than \$500 shall be acquired without the express consent of DOE;

(4) Printing, directly in support of such administration; and

(5) Travel, directly related to such administration.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of State plan.

Each State shall develop a State Plan for technical assistance programs and energy conservation measures, including renewable resource measures. The State Plan shall include—

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan, and any amendment to a State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan, or any approved amendment to a State Plan;

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part)

which have been conducted in the State including, but not limited to—

(1) In the case of a State which has completed preliminary energy audits of all potentially eligible buildings, a summary of the data gathered pursuant to § 455.18 for all such buildings;

(2) In the case of a State which has completed preliminary energy audits of a sample of all potentially eligible buildings within the State—

(i) Reasonably accurate estimates of the preliminary energy audit data required by § 455.18 for all potentially eligible buildings within the State; and

(ii) A plan which describes further actions to be taken to complete preliminary energy audits of all potentially eligible buildings;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.71, including the weights assigned to each criterion set forth in § 455.71(b). In addition, the State shall determine the order of priority given to fuel types that include oil, natural gas, and electricity, under § 455.71(b)(3);

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not be allocated on the basis of size or type of institution but rather on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, in accordance with § 455.71;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a case of severe hardship. Such policies and procedures shall be in accordance with § 455.71(e);

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part. At a minimum, the plan shall provide

that all maintenance and operating procedure changes recommended in an energy audit report, the equivalent of an energy audit report, an energy use evaluation, a technical assistance report, or a combination of these have been implemented as provided under this part. An assurance that the maintenance and operating procedures will be implemented in the future, or a justification for not implementing such a procedure, as appropriate, may be acceptable in lieu of implementation if it is shown that—

(1) The recommendation is infeasible because of factors not considered by the auditor or analyst;

(2) There is a cost involved which exceeds the institution's limit on operating expenditures, provided it is shown a budget request has been made to implement the recommendation and assurance is given that the change will be effected at some specified future date;

(3) The implementation of the change requires some item of supply or material which is not presently available; or

(4) Other factors subject to approval by the Secretary on a case-by-case basis;

(k) The procedures designed to insure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds;

(l) The circumstances under which the State will accept an energy use evaluation in lieu of an energy audit, and the information the State will require to be contained in that evaluation;

(m) The procedures for determining that energy audits performed without the use of Federal funds have been performed in substantial compliance with the eligibility requirements contained in § 455.41(c);

(n) The procedures for determining that technical assistance programs performed without the use of Federal funds have been performed in compliance with the requirements of § 455.42, for the purposes of satisfying the eligibility requirements contained in § 455.51(a)(3);

(o) The procedures for State management, monitoring and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(p) A description of the State's program for establishing an insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts have experience in energy conservation and—

(1) Be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems. Such policies shall also require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties;

(g) A statement setting forth:

(1) An estimate of energy savings which may result from the modification of maintenance and operating procedures and installation of energy conservation measures;

(2) A recommendation as to the types of energy conservation measures considered appropriate within the State; and

(3) An estimate of the costs of carrying out technical assistance and energy conservation measures programs.

(r) For purposes of the technical assistance program, § 455.42, a statement setting forth uniform conversion factors to be used in the technical assistance analysis for conversion of fuels to Btu equivalents.

§ 455.91 Submission and approval of State plans.

(a) Proposed State Plans or amendments necessitated by a change in regulations shall be submitted to the Secretary within 90 days of the effective date of this subpart or any amended regulations. The Secretary, upon request and for good cause shown, may grant an extension of time.

(b) The Secretary shall, within 60 days of receipt of a proposed State Plan, review each plan and, if it is found to conform to the requirements of this part, approve the State Plan. If the Secretary does not disapprove a State Plan within the 60-day period, the Secretary will be deemed to have approved the State Plan.

(c) If the Secretary determines that a proposed State Plan fails to comply with the requirements of this part the Secretary shall return the Plan to the State with a statement setting forth the reasons for disapproval.

(d) The Secretary shall review each amendment submitted by the State and, if it is found to conform to the requirements of this part, approve the

amendment. If the Secretary determines that a proposed State Plan amendment fails to comply with the requirement of this part, the Secretary shall return the amendment to the State with a statement setting forth the reasons for disapproval. With the consent of the Secretary, the State may submit a new or amended plan at any time.

§ 455.92 State plans developed by the Secretary.

(a) If a State Plan has not been approved by February 7, 1981, or with 90 days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals in the State.

(b) Subsequent to the development of a State Plan by the Secretary, the State may submit its own State Plan and the Secretary shall approve or disapprove such plan within 60 days after receipt by the Secretary. If the proposed plan meets the requirements of this part, and is not inconsistent with any plan developed and implemented by the Secretary, the Secretary shall approve the State Plan which shall automatically replace the plan developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States

§ 455.100 Allocation of funds.

(a) The Secretary will allocate available funds among the States for the purpose of awarding grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies to implement technical assistance and energy conservation measures grant programs in accordance with this part.

(b) The Secretary shall notify each Governor of the total amount allocated for grants within the State for any grant program cycle—

(i) For schools and hospitals, the allocation amount shall be for technical assistance programs, together with any limitation placed on technical assistance, and energy conservation measures; and

(ii) For units of local government and public care institutions, the allocation amount shall be solely for technical assistance programs.

(c) The Secretary shall notify each Governor of the period for which funds allocated for a grant program cycle will be made available for grants within the State.

(d) Each State shall make available up to ten percent of its allocation for schools and hospitals in each grant program cycle to provide financial

assistance, not to exceed a 90 percent Federal share, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.71(e).

§ 455.101 Allocation formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures, including renewable resource measures, shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(c) The allocation factor (K) shall be determined by the formula—

$$K = \frac{0.07}{N} + 0.1 \frac{(Sfc)}{(Nfc)} + 0.83 \frac{(SP)(SC)}{(NPC)}$$

where, as determined by DOE—

(1) Sfc is the projected average retail cost per million Btu's of energy consumed within the region in which the State is located, as contained in current regional energy cost projections obtained from the Energy Information Administration.

(2) Nfc is the summation of the Sfc numerators for all States;

(3) N is the total number of eligible States;

(4) SP is the population of the State, as contained in the most recent Bureau of the Census, Department of Commerce, official Census documents;

(5) SC is the sum of the State's heating and cooling degree days, as contained in the National Oceanic and Atmospheric Administration's most recent editions of "State, Regional and National Monthly and Seasonal Heating Degree Days, Weighted by Population;" and "State, Regional and National Monthly and Seasonal Cooling Degree Days, Weighted by Population;"

(6) NPC is the summation of the (SP)(SC) numerators for all States.

(d) Except for the District of Columbia, Puerto Rico, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, no allocation available to any State may be less than 0.5 percent of all amounts allocated in any grant program cycle. No State will be

allocated more than 10 percent of the funds allocated in any grant program cycle.

§ 455.102 Reallocation of funds.

(a) If a State Plan has not been approved and implemented by a State by the close of the period for which allocated funds are available as set forth in the notice issued by the Secretary pursuant to § 455.100(c), funds allocated to that State for technical assistance and energy conservation

measures will be reallocated among all States for the next grant program cycle, if available.

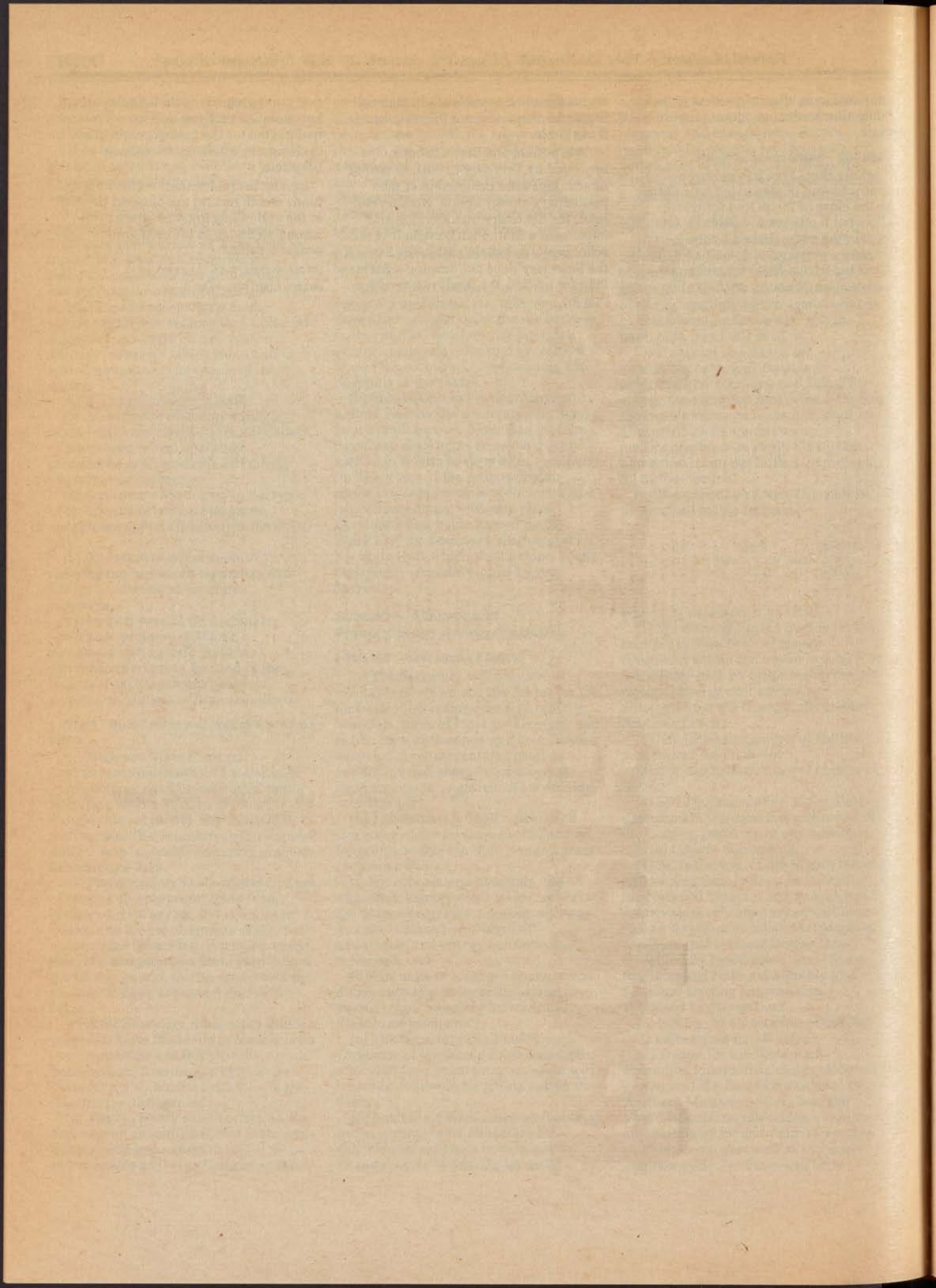
(b) If a State Plan has not been approved by February 7, 1981, or within ninety days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals within the State. If the Secretary does not develop a State Plan for a State, the funds reserved for

that grant program cycle for schools and hospitals in that State will be reallocated for the next grant program cycle among all States for schools and hospitals.

(c) The Secretary shall reallocate the funds which remain unobligated by DOE at the end of any grant program cycle among all States in the next grant program cycle.

[FR Doc. 84-22804 Filed 8-27-84; 8:45 am]

BILLING CODE 6450-01-M



Federal Register

Tuesday
August 28, 1984

Part V

Legal Services Corporation

45 CFR Part 1630

Requirements for National and State
Support Centers; Proposed Rule

LEGAL SERVICES CORPORATION**45 CFR Part 1630****Requirements for National and State Support Centers****AGENCY:** Legal Services Corporation.**ACTION:** Proposed rule.

SUMMARY: This proposed rule would adopt as a Corporation regulation the requirements included in Instruction 83-9—Grant Conditions for National and State Support concerning the expenditure of funds granted by the Corporation to National and State support centers. The rule would require that at least ninety (90) percent of funds received from the Corporation be devoted to actual support for legal services programs. It would further require that no more than ten (10) percent of Corporation funding be spent for networking, direct or co-counsel representation, etc. Certain recordkeeping requirements, which were included in the Instruction, are retained in the proposed rule.

DATE: Comments must be received on or before September 27, 1984.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, Office of the General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: This proposed regulation sets forth the policy of the Corporation as previously stated in Instruction 83-9, which established grant conditions for national and state support centers.

The national and state support projects have four principal functions: (1) To support legal services program staff and clients through individual service work, library and resource material, training, communications, the development of manuals and material, technical assistance and development of strategies for use by local program staff; (2) to undertake litigation, including serving as counsel for eligible clients and as co-counsel with local program staff; (3) to undertake legislative and administrative representation on behalf of eligible clients, including legislative representation before Congress; and (4) to coordinate and establish networks with local program staff, other support projects, other advocates and advocate organizations representing the poor.

The corporation has not required that each project undertake every function to

the same degree, although all functions were to be undertaken to some degree by all national support centers. State support center activities have included everything that basic field programs are funded for (with some restrictions applicable to everyone), including direct representation (i.e., sole counsel, co-counsel, amicus counsel, and of counsel in judicial, administrative and legislative forums). Past Corporation policy has therefore blurred the distinction between basic field programs and support center programs.

Furthermore, there has been nothing to prevent state and national support centers from emphasizing direct representation, networking and written or oral legislative or administrative testimony not on behalf of an eligible client, regardless of the local legal services program capacity to meet those needs. The requirements set forth in the proposed rule are meant to provide clarity about the actual use of national and state support funding such that the primary obligations to act in support of the most important needs of legal services programs are met and to set the stage for development of long term policy. Information obtained through the national study of support conducted in 1983 and input from the field will be utilized to assist in developing longterm policies concerning the proper direction and use of national and state support funding. It is appropriate and timely that the Corporation review past policies and articulate current policy that addresses the impact of support and responsiveness to the field. The Corporation is committed to providing adequate support to both staff and private attorneys in the provision of quality, efficient, and effective access to justice.

The branch office prohibition for national support centers is not meant to prohibit the establishment or continuation of Washington, D.C. offices. The sole reason for the restriction is that support centers funded to serve all legal services programs with LSC funding of \$500,000 or less cannot justify the additional overhead expenses of branch offices. Nothing in the proposed rule would prohibit the establishment or continuation of branch offices through the utilization of non-LSC funding.

List of Subjects in 45 CFR Part 1630

Legal services, National and state support.

For the reasons set out above, a new 45 CFR Part 1630 is proposed to be added as follows:

PART 1630—REQUIREMENTS FOR NATIONAL AND STATE SUPPORT CENTERS

Sec.

- 1630.1 Purpose.
- 1630.2 National Support Centers.
- 1630.3 State Support Centers.
- 1630.4 Procedure.
- 1630.5 Waivers.

Authority: Section 1008 (a) and (e) of the Legal Services Act of 1974, as amended 1977; 42 U.S.C. 2996g (a) and (e).

§ 1630.1 Purpose.

This part is designed to provide direction to national and state support center recipients of Legal Services Corporation funding regarding categories of activities to be emphasized. Such direction shall ensure that overlap with local program functions is prevented to the greatest extent possible, and to ensure that the primary activity of the support centers is the actual support of local program activities in the representation of eligible clients.

§ 1630.2 National Support Centers.

(a) At least ninety (90) percent of LSC funds shall be allocated for support to legal services program staff and clients through individual service work, library and resource material, training, communications, the development of manuals and material, technical assistance and development of strategies for use by local program staff. Out of this amount, an amount equal to at least twenty (20) percent of the total award shall be allocated for training of field staff (including the development of manuals and material).

(b) No more than ten (10) percent of LSC funds shall be allocated for networking, direct representation (i.e., sole counsel, co-counsel, amicus counsel, and of counsel in judicial, administrative, and legislative forums) and written or oral legislative or administrative testimony.

(c) No LSC funds shall be used for national support center branch offices.

§ 1630.3 State Support Centers.

(a) At least ninety (90) percent of LSC funds shall be allocated for support to legal services program staff and clients through individual service work, library and resource material, training, communications, the development of manuals and material, technical assistance, and development of strategies for use by local program staff. Out of this amount, an amount equal to at least twenty (20) percent of the total award shall be allocated for training of

field staff (including the development of manuals and material).

(b) No more than ten (10) percent of LSC funds shall be allocated for networking, direct representation (i.e., sole counsel, co-counsel, amicus counsel, and of counsel in judicial, administrative, and legislative forums), and written or oral legislative or administrative testimony.

(c) All state support recipients shall submit detailed functional workplans and semi-annual reports to the Corporation and to the governing body members of all LSC-funded programs in their state.

(d) All state support recipients shall adopt procedures to ensure that input from all LSC-funded programs in their state is considered in the annual priority-setting process.

§ 1630.4 Procedure.

(a) Each support center program shall affirm its agreement to the requirements

stated in this part by signing a confirmation of grant conditions imposed pursuant to this part.

(b) Executed forms affirming agreement with these requirements shall be returned to the Corporation within a reasonable time after receipt of the contract or grant award letter so that funds may be released by the Office of the Comptroller.

§ 1630.5 Waivers.

(a) The President may waive one or more of the requirements set forth in this part upon application of a recipient which demonstrates, to the satisfaction of the Corporation, that it cannot comply with it.

(b) Any waiver of the limitations set forth in §§ 1630.2(b) and 1630.3(b) shall not exceed twenty-five (25) percent of LSC funds and only upon application of a recipient which demonstrates that the following funds, when added together,

will not exceed the twenty-five (25) percent level:

(1) Non-LSC funds available for networking, direct representation, and written or oral legislative or administrative testimony;

(2) LSC carryover funds (annualized, special needs, attorney's fees awards, and any other LSC funds from prior years) available for networking, direct representation, and written or oral legislative or administrative testimony; and,

(3) Any LSC funds utilized for networking, direct representation, and written or oral legislative or administrative testimony.

Dated: August 27, 1984.

Robert D. Frank,

General Counsel, Legal Services Corporation.

[FR Doc. 84-23014 Filed 8-27-84; 10:53 pm]

BILLING CODE 6820-35-M

The first part of the paper discusses the importance of maintaining accurate records of all transactions. It is essential for the business to have a clear and concise record of all income and expenses. This will allow the business to track its financial performance over time and identify areas for improvement. The second part of the paper discusses the importance of maintaining accurate records of all assets and liabilities. This will allow the business to track its net worth over time and identify areas for improvement. The third part of the paper discusses the importance of maintaining accurate records of all debts and obligations. This will allow the business to track its financial obligations over time and identify areas for improvement. The fourth part of the paper discusses the importance of maintaining accurate records of all taxes and other legal obligations. This will allow the business to track its financial obligations over time and identify areas for improvement. The fifth part of the paper discusses the importance of maintaining accurate records of all other financial information. This will allow the business to track its financial performance over time and identify areas for improvement.

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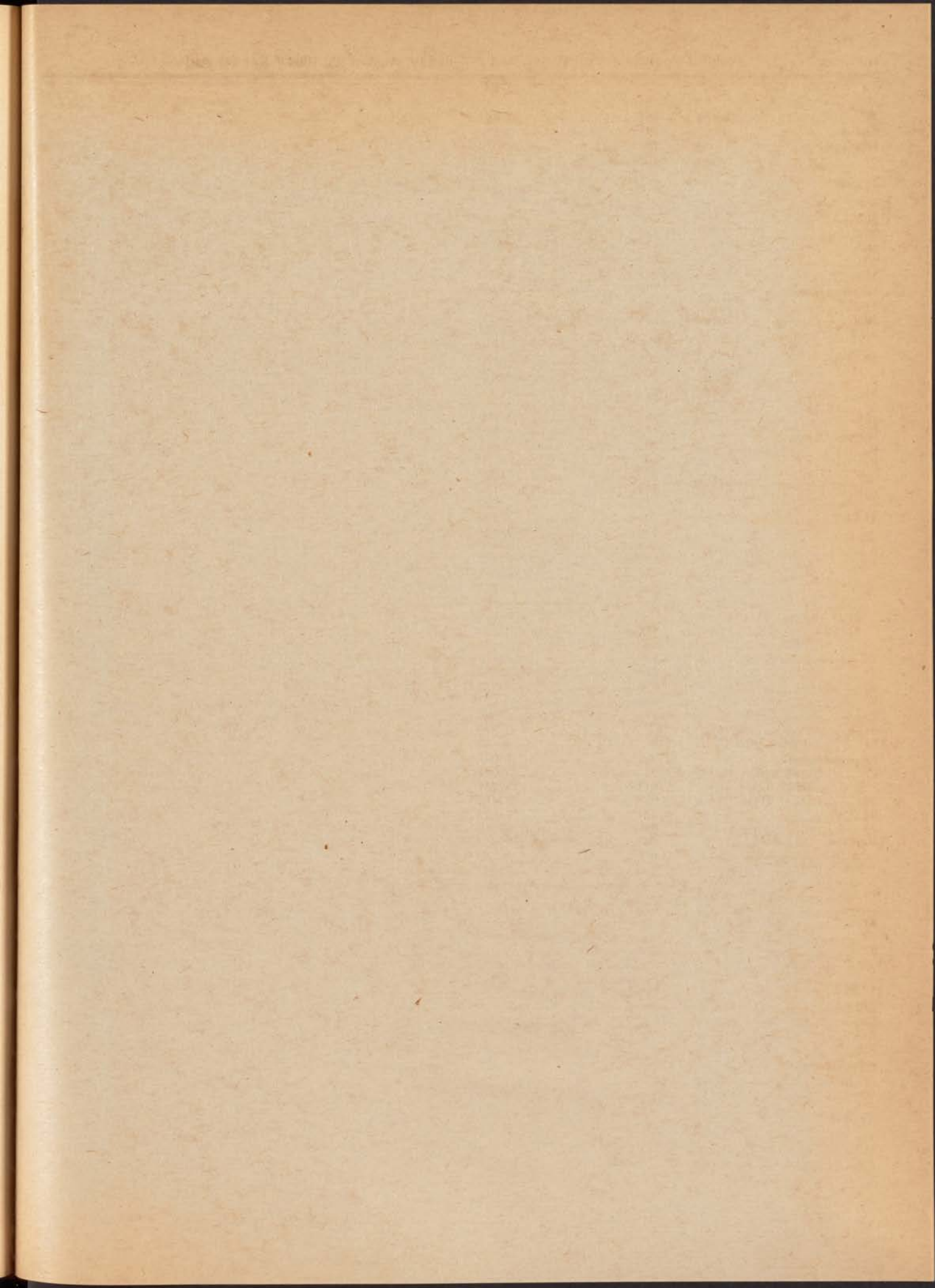
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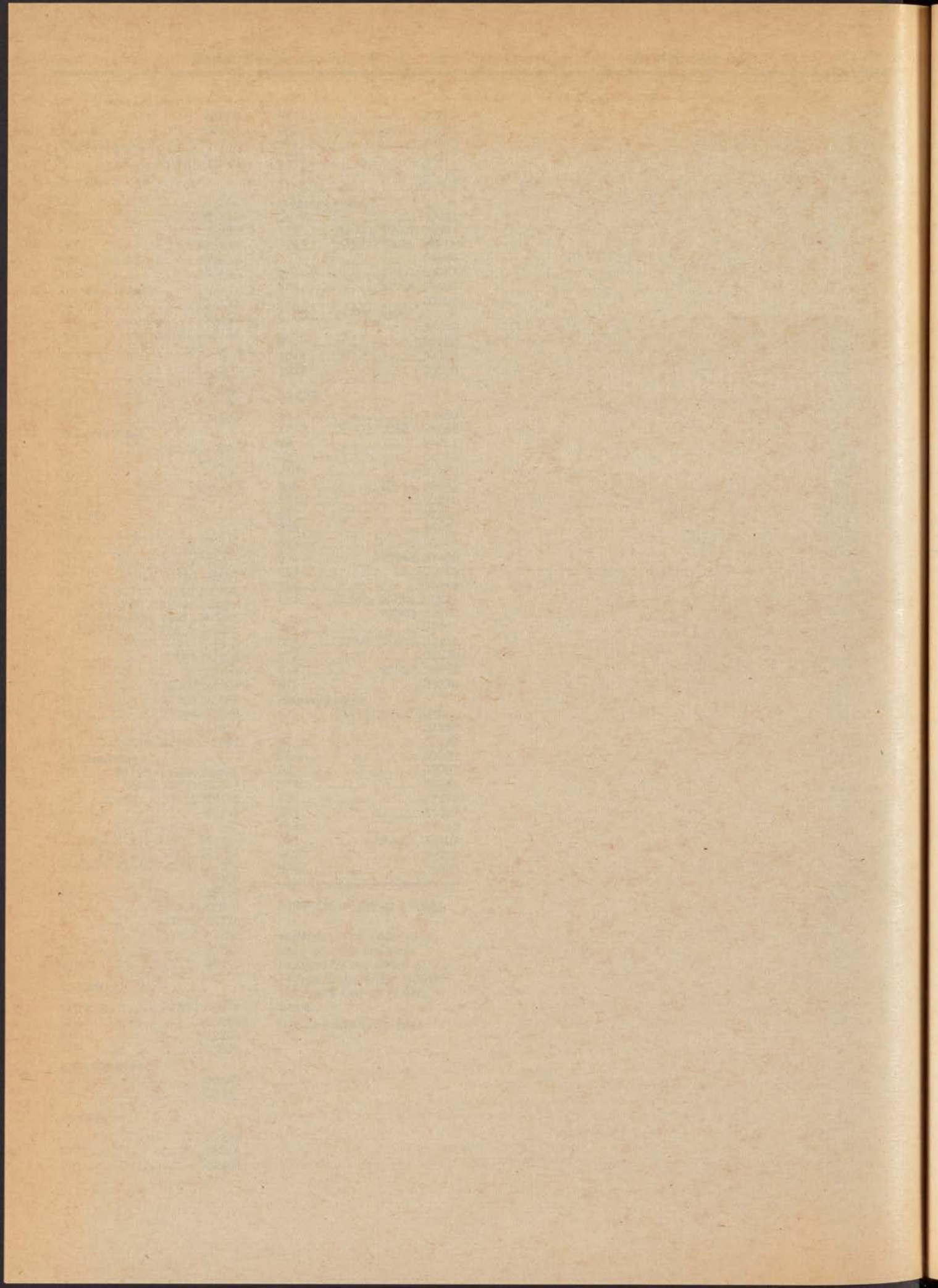
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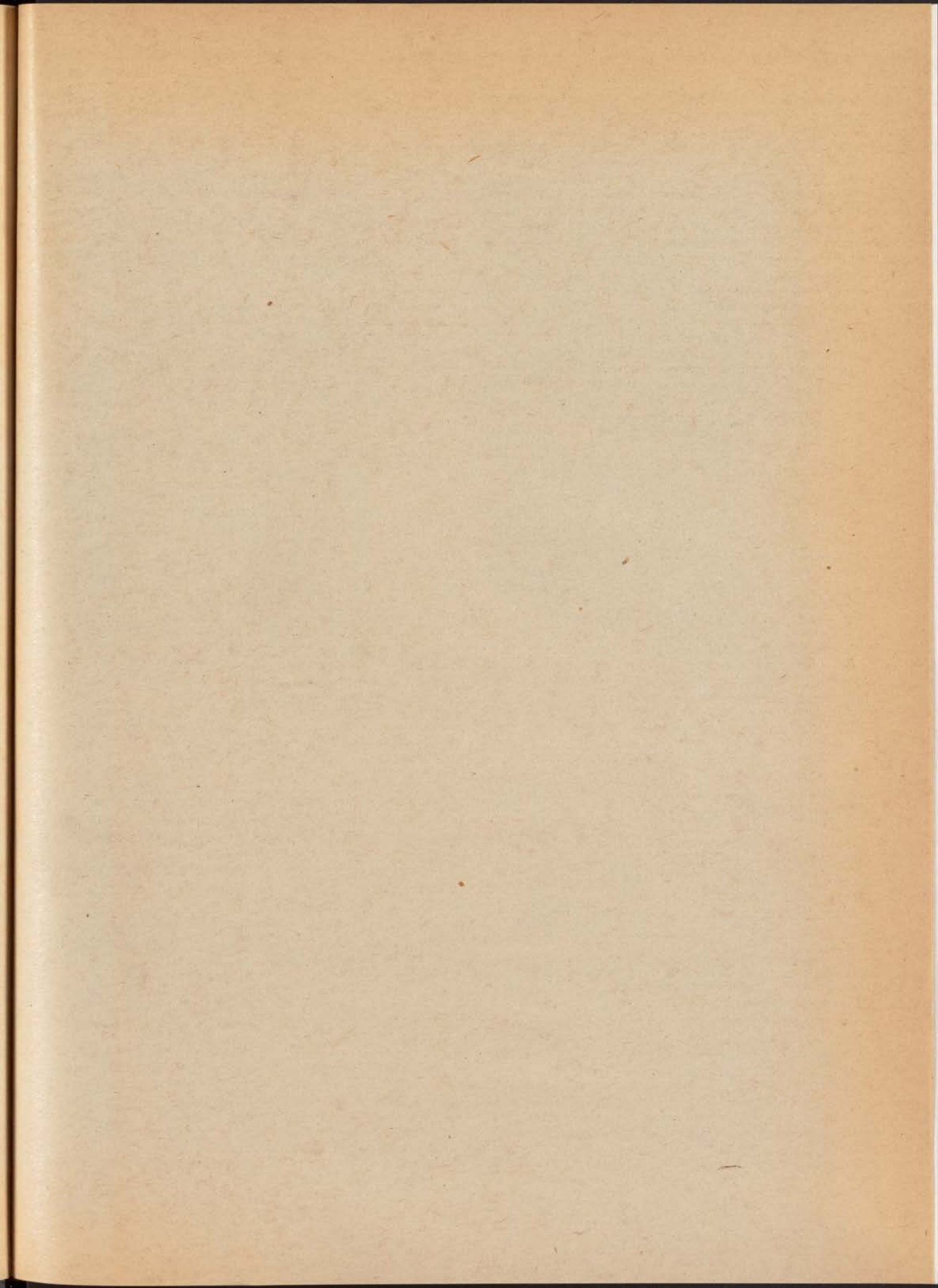
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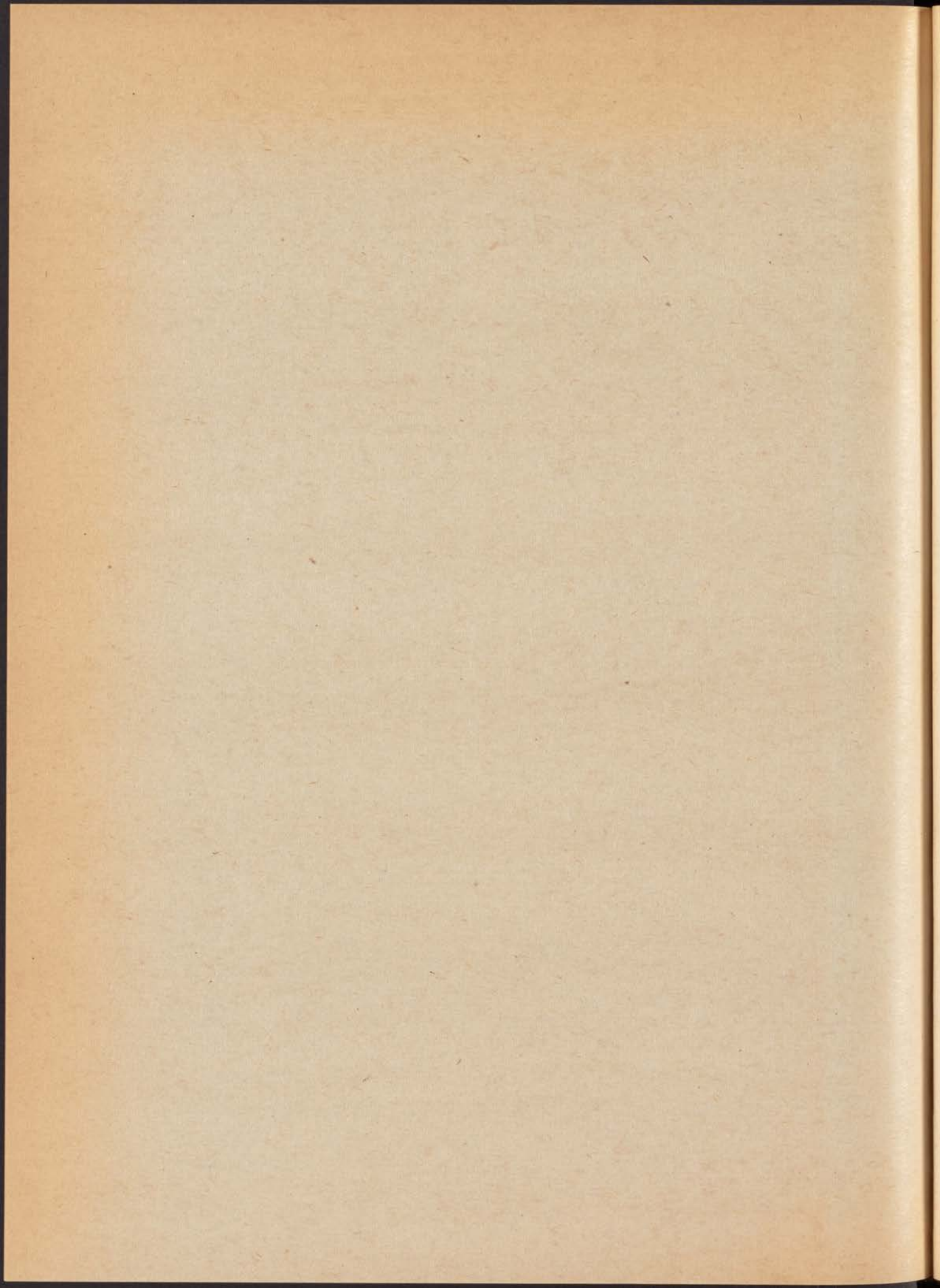
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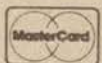
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