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Thursday
September 6, 1984

Selected Subjects

Administrative Practice and Procedure
Federal Labor Relations Authority
Land Management Bureau

Air Pollution Control
Environmental Protection Agency

Aircraft
Federal Aviation Administration

Aviation Safety
Federal Aviation Administration

Claims
Defense Department

Crop Insurance
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Agricultural Stabilization and Conservation Service

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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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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

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 1323S]

General Administrative Regulations; Late Planting Agreement Option Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final a revision and reissuance of the Late Planting Agreement Option (7 CFR Part 400, Subpart A), effective for the 1984 crop year. The revision and reissuance was implemented by the Federal Crop Insurance Corporation (FCIC) on an interim basis to relieve a restriction by broadening the cause of late planting which had been limited to excess moisture, to cover adverse weather conditions and expand the list of crops to which this option applies. The intended effect of this action is to confirm the interim rule as amended by expanding the list of crops to which this rule is applicable.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Tuesday, February 21, 1984, FCIC published a final rule at 49 FR 6319, prescribing procedures for the implementation of a Late Planting Agreement Option for insurance on certain crops. The cause of late planting in the option was listed as "excess moisture." On Friday June 1, 1984, FCIC published an interim rule revising and reissuing the Late Planting Agreement Option at 49 FR 22757 to broaden the cause of late planting, for the 1984 and succeeding crop years, to cover "adverse weather conditions." This action permitted producers whose concerns over the conditions contributing to late planting were adverse weather conditions other than excess moisture, also to participate under the Late Planting Agreement Option.

Merritt W. Sprague, Manager, FCIC, determined that an emergency situation existed which warranted publication of this rule without a period for prior public comment because the producers who wished to participate under the Late Planting Agreement Option for the 1984 crop year were concerned with lack of moisture and other adverse weather conditions as well as excess moisture. In order to relieve this restriction, it was determined to broaden the reference of the cause of planting delay from "excess moisture" to "adverse weather conditions". This action relieved the restriction and provided a needed benefit. Public comment was solicited after publication of the interim rule and the rule was scheduled for review in order to provide any amendments made necessary by public comment. No comments were received. Therefore, the interim rule as amended is hereby adopted as final.

The interim rule also contained an expanded list of crops to which the Late Planting Agreement Option may be applicable. The Corporation has determined after further review that Hybrid Seed and Potatoes should be added to the list.

Since the added provisions represent changes which are either less restrictive with respect to producers or are only administrative in nature, it has been determined that no further public rulemaking is required.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined in Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) does not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action to promulgate regulations for the implementation of FCIC's Late Planting Agreement constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Departmental Regulation 1512-1 (December 15, 1983). The sunset review date established for these regulations is May 21, 1989.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 7 CFR Part 400

Crop insurance, Late planting agreement option.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revised and reissues the Late Planting Agreement Option, Subpart A to Part 400 of Title 7 of the Code of Federal Regulations, effective for the 1984 and succeeding crop years, as set forth below.

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart A—Late Planting Agreement Option; Regulations for the 1984 and Succeeding Crop Years

Sec.
400.1 Availability of the Late Planting Agreement Option.
400.2 Definitions.
400.3 Responsibilities of the insured.
400.4 Applicability to crops insured.
400.5 The Late Planting Agreement Option.

Authority: Sec 508, Pub. L. 75–430, 52 Stat. 73, as amended (7 U.S.C. 1508).

§ 400.1 Availability of the Late Planting Agreement Option.

The Late Planting Agreement Option shall be offered under the provisions contained in 7 CFR Parts 402 through 499 within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops indentified in § 400.4 of this subpart. All provisions of the applicable contract for the insured crop apply, except those provisions which are in conflict with this subpart.

§ 400.2 Definitions.

For the purposes of the Late Planting Agreement Option:

(a) "Final planting date" means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(b) "Late Planting Agreement Option" means that agreement between the FCIC and the insured whereby the insured elects and FCIC provides insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days or part thereof that the acreage is planted after the final planting date.

(c) "Production guarantee" means the guaranteed level of production under the provisions of the applicable contract for crop insurance (sometimes expressed in amounts of insurance).

§ 400.3 Responsibilities of the insured.

The insured is solely responsible for the completion of the Late Planting Agreement Option Form and for the accuracy of the data provided on that form. The provisions of this subsection shall not relieve the insured of any responsibilities under the provisions of the insurance contract.

§ 400.4 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops.

7 CFR Part 418 Wheat
7 CFR Part 419 Barley
7 CFR Part 420 Grain Sorghum
7 CFR Part 421 Cotton
7 CFR Part 422 Potatoes
7 CFR Part 423 Flax
7 CFR Part 424 Rice
7 CFR Part 425 Peanuts
7 CFR Part 427 Oats
7 CFR Part 428 Sunflowers
7 CFR Part 429 Rye
7 CFR Part 430 Sugar Beets
7 CFR Part 431 Soybeans
7 CFR Part 432 Corn
7 CFR Part 433 Dry Beans
7 CFR Part 434 Tobacco (Dollar Plan)
7 CFR Part 435 Tobacco (Quota Plan)
7 CFR Part 436 Tobacco (Guaranteed Production Plan)
7 CFR Part 438 Tomatoes
7 CFR Part 443 Hybrid Seed
7 CFR Part 447 Popcorn

The Late Planting Option shall be available in all counties listed in Appendix A to each of the regulations referenced in this section.

§ 400.5 The Late Planting Agreement Option.

The provisions of the Late Planting Agreement Option are as follows:

FCI–9

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Late Planting Agreement Option

Insured's Name ———————
Address ———————

———————

Contract No. ———————
Crop Year ———————
Corp ———————

Notwithstanding the provisions of Section 2 of the policy regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted for 20 days after such date which delay in planting was caused by adverse weather conditions. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced 10 percent for each five days or portion thereof that the acreage is planted after the final planting date. Each 10 percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date. The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option. If planting continues under this Agreement after the acreage reporting date on file in the service office, the acreage reporting date will be extended to 5 days after the completion of planting the acreage to which insurance will attach under this option.

Insured's Signature ———————
Date ———————
Corporation Representative's Signature and Code Number ———————
Date ———————

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)).

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and regulations promulgated thereunder (7 CFR 400 *et seq.*). The information requested is necessary for FCIC to institute the Late Planting Agreement Option. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, processors, other U.S. Department of Agriculture agencies, the Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, magistrate, or administrative tribunal. Furnishing the information requested on this form is voluntary. However, failure to furnish the complete requested information may result in the Late Planting Agreement Option not being accepted by the Corporation.

Done in Washington, D.C., on August 1, 1984.

Dated: August 29, 1984.

Diana Moslak,

Acting Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 84–23537 Filed 9–5–84; 8:45 am]
BILLING CODE 3410–08–M

Agricultural Stabilization and Conservation Service

7 CFR Part 781

Disclosure of Foreign Investment in Agricultural Land

AGENCY: Agricultural Stabilization and Conservation Service, Agriculture.

ACTION: Final rule.

SUMMARY: This final rule revises certain sections of the regulations implementing the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) (7 U.S.C. 3105 *et seq.*). The changes made by this

final rule will make the regulations easier to understand and administer. The final rule contains three principal changes: (1) It revises the definitions of "agricultural land" and "significant interest or substantial control." (2) It modifies the provisions regarding assessments of a penalty when a person contests a notice of apparent liability to make it clear that any final penalty imposed may not exceed the amount of the penalty stated in the notice of apparent liability. (3) It adds several new items to the information that must be included in the reports required by the regulations and imposes a requirement that certain information in the reports be kept current. The final rule also incorporates most of the interpretive material appearing in the regulation into substantive provisions of the regulations. There are also certain minor editorial changes in the definitions section of the regulations.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT: William A. Brown, Emergency Operations and Livestock Programs Division, ASCS, USDA, Room 4095 South Building, P.O. Box 2415, Washington, D.C. 20013, telephone (202) 447-6833.

SUPPLEMENTARY INFORMATION: This final rule has been issued in accordance with procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified "non-major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

The final rule has also been reviewed with regard to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354). Pursuant to that review, Everett Rank, Administrator, Agricultural Stabilization and Conservation Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities because the rule merely requires reports to be filed by foreign persons owning U.S. agricultural land.

The Department has prepared a Final Regulatory Impact Analysis of this regulation. Copies of the analysis are available to the public by contacting the person named above.

This final rule will revise the regulation concerning the Disclosure of Foreign Investment in Agricultural Land published on February 6, 1979, as amended (44 FR 7115; 44 FR 29029; 45 FR 7775).

A notice of proposed rulemaking relating to this final rule was published in the **Federal Register** on October 11, 1983 (48 FR 46065). A 69-day comment period ending December 12, 1983, followed during which a total of six comments were received which included comments from a law firm, coal company, realtor association, farm organization, and the general public. Changes were made in the final rule based on comments received on the proposed rule and additional changes developed by the Department.

A. Section 781.2(b). Definition of Agricultural Land

No comments were received concerning the proposed replacement of the word "agricultural" in the definition of agricultural land with the words "farming" and "ranching". The definition of "agricultural land" in the final rule has been revised to include the interpretive material appearing in the proposed rule regarding certain agricultural activities set forth in the Standard Industrial Classification Manual issued by the Office of Management and Budget as illustrative of the types of activities which may cause the land used for the activity to be classified as agricultural land. The Manual is available at most public libraries and in State and County offices or from the ASCS office in Washington, D.C. at the address indicated herein.

The proposed rule also required a foreign person to report all land used for farming, ranching, forestry, and timber production which exceeds 10 acres in the aggregated unless the farming, ranching, forestry, and timber products grown on the land are sold and return more than $1,000 in annual gross sales receipts. Previously, only land in excess of one acre had to be reported. The change in the minimum reportable acreage was made because the Department believed that information about small amounts of land used for growing trees or agricultural products is not of significant value.

One commentor suggested that the 10 acre requirement in the proposed rule be increased to 50 acres. The commentor felt that a holding of less than 50 acres would not be a viable agricultural holding. This suggestion was rejected because there are numerous foreign investors who hold small acreages of agricultural land which are very valuable and would be a viable agricultural holding. Citrus, truck gardening, almonds, and vineyards are examples of concentrated, high priced, and intensive agricultural enterprises which can occur on small acreage plots.

B. Section 781.2(k). Significant Interest or Substantial Control

The proposed rule amended the definition of "significant interest or substantial control" to require an agricultural landowning person to file a report if a single foreign individual, or foreign individuals, persons, or governments acting in concert, hold a ten percent or greater interest in the landowning person and if foreign individuals, persons, or governments, even though not acting in concert, hold in the aggregate a 50 percent or greater interest in the landowning person. The AFIDA regulation previously required five percent or more as the level of interest constituting "significant interest or substantial control." The percentage was increased because the previous definition required business entities not normally considered foreign-dominated to file reports. This resulted in a serious distortion of the total figures on agricultural foreign investment by including land not normally considered foreign-owned or subject to foreign control. The Department believes that the use of these percentages will provide a more accurate indication of the amount of agricultural land over which foreign persons can exert influence.

One commentor suggested that the 10 percent or more interest requirement for significant interest or substantial control for single individuals, persons, or governments, or individuals, persons, or governments acting in concert be changed to 25 percent. The commentor felt that 10 percent does not represent a significant interest. This suggestion was rejected because in large corporations, a 10 percent ownership interest could be the largest stockholding of all stock owners. Therefore, one single foreign stockholders with a 10 percent interest or a number of foreign stockholders with a 10 percent interest or a number of foreign stockholders with a total of 10 percent interest, acting in concert, could control a corporation.

The interpretive material concerning the word "combination" appearing after § 781.2(g)(4)(ii)(D) in the proposed rule has been incorporated as part of § 781.2(g)(4)(ii)(D). The interpretative material concerning intervening persons has been deleted because it appears unnecessary.

C. Section 781.3. Reporting Requirements

Section 781.3(e) of the final rule adds the following items to the information that must be included in the reports of foreign ownership of agricultural land: (i) The date the land was acquired or transferred, (ii) the amount of value of the purchase price yet to be paid, and (iii) the estimated value of the land.

The three paragraphs of interpretive material appearing after § 781.3(g)(2)(iii) in the proposed rule have been incorporated as substantive provisions in the final rule and appear as new § 781.3(h) (1), (2), and (3).

Section 781.3(h) of the proposed rule contained a new requirement that a foreign person must report to USDA when such person ceases to be a foreign person or if the agricultural land reported ceases to be agricultural. In the final rule these provisions have been divided into two subsections (§ 781.3 (i) and (j)). A new § 781.3(k) also has been added in the final rule to require that other changes in information in the report filed must be reported. The Department has found in the administration of AFIDA that changes in the names and addresses listed on the report forms are often not reported. These additional provisions are necessary in order for USDA to maintain accurate up-to-date information on foreign ownership of U.S. agricultural land as required by AFIDA.

Several commentors questioned the necessity of having a keep-current requirement. We agree that all of the information submitted on the ASCS–153 report form need not be updated, but we believe certain information must be kept current to enable the Department to prepare accurate periodic reports to Congress and the President as required by AFIDA, which reveal the effect of such holdings upon family farms and rural communities.

One commentor suggested that current investor information is available from other existing sources (e.g., real estate records, State corporation records, etc.). However, it would not be feasible or practical for the U.S. government to try to track down company stock transfers or changes of addresses.

One commentor noted that the keep-current requirement was discussed in the "Supplementary Information" of the proposed rule but not discussed in the formal part of the proposed rule. This perception is essentially correct. As a result, a new provision (§ 781.3(k)) was added to the final rule which requires specific information be kept current.

D. Section 781.5. Penalty Review Procedures

No comments were received regarding changes in the penalty review procedures. Section 781.5(f) was amended to provide that, if a foreign person contests the notice of apparent liability and the Administrator of ASCS ultimately determines that the foreign person is liable, the penalty finally imposed may not be greater than the amount stated in the notice of apparent liability.

E. Interpretations

Due to new **Federal Register** requirements, most of the interpretive material which previously appeared in the regulation has not been incorporated into substantive provisions of the regulations. The other has been deleted as unnecessary.

List of Subjects in 7 CFR Part 781

Administrative practice and procedure, Agriculture, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements.

Title 7 of the Code of Federal Regulations is amended by revising Part 781 to read as follows:

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.
781.1 General
781.2 Definitions.
781.3 Reporting requirements.
781.4 Assessment of penalties.
781.5 Penalty review procedure.
781.6 Paperwork Reduction Act assigned number.

Authority: Sec. 1–10, 92 Stat. 1266 (7 U.S.C. 3501 *et seq.*).

§ 781.1 General.

The purpose of these regulations is to set forth the requirements designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The regulations require that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the regulations establish a system for the collection of information by the Agricultural Stablization and Conservation Service (ASCS) pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and the President by the Economic Research Service (ERS) concerning the effect of such holdings upon family farms and rural communities.

§ 781.2 Definitions.

In determining the meaning of the provisions of this Part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *AFIDA.* AFIDA means the Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural Land.* Agricultural land means land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, forestry, or timber production, except land not exceeding ten acres in the aggregate if the annual gross receipts from the sale of the farm, ranch, forestry, or timber products produced thereon do not exceed $1,000. Farming, ranching, forestry, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1972), Division A, exclusive of industry numbers 0711–0783, 0851, and 0912–0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise and wildlife management.

(c) *Any Interest.* Any interest means all interest acquired, transferred or held in agricultural lands by a foreign person, except:

(1) Security interests;

(2) Leaseholds of less than 10 years;

(3) Contingent future interests;

(4) Noncontingent future interests which do not become possessory upon the termination of the present possessory estate;

(5) Surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production; and

(6) An interest solely in mineral rights.

(d) *County.* County means a political subdivision of a State identified as a County or parish. In Alaska, the term means an area so designated by the State Agricultural Stabilization and Conservation committee.

(e) *Foreign Government.* Foreign government means any government other than the United States government, the government of a State, or a political subdivision of a State.

(f) *Foreign Individual.* Foreign individual means foreign person as defined in paragraph (g)(1) of this section.

(g) *Foreign Person.* Foreign person means:

(1) Any individual:

(i) Who is not a citizen or national of the United States; or

(ii) Who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) Who is not lawfully admitted to the United States for permanent residence or paroled into the United States under the Immigration and Nationality Act;

(2) Any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(3) Any foreign government;

(4) Any person, other than an individual or a government:

(i) Which is created or organized under the laws of any State; and

(ii) In which a significant interest or substantial control is directly or indirectly held:

(A) By any individual referred to in paragraph (g)(1) of this section; or

(B) By any person referred to in paragraph (g)(2) of this section; or

(C) By any foreign government referred to in paragraph (g)(3) of this section; or

(D) By any numerical combination of such individuals, persons, or governments, which combination need not have a common objective.

(h) *Person.* Person means any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity.

(i) *Secretary.* Secretary means the Secretary of Agriculture.

(j) *Security Interest.* Security interest means a mortgage or other debt securing instrument.

(k) *Significant Interest of Substantial Control.* Significant interest or substantial control means:

(1) An interest of 10 percent or more held by a person referred to in paragraph (g)(4), by a single individual referred to in paragraph (g)(1), by a single person referred to in paragraph (g)(2), by a single government referred to in paragraph (g)(3); or

(2) An interest of 10 percent or more held by persons referred to in paragraph (g)(4), by individuals referred to in paragraph (g)(1), by persons referred to in paragraph (g)(2), or by governments referred to in paragraph (g)(3), whenever such persons, individuals, or governments are acting in concert with respect to such interest even though no single individual, person, or government holds an interest of 10 percent or more; or

(3) An interest of 50 percent or more, in the aggregate, held by persons referred to in paragraph (g)(4), by individuals referred to in paragraph (g)(1), by persons referred to in paragraph (g)(2), or by governments referred to in paragraph (g)(3), even though such individuals, persons, or governments may not be acting in concert.

(l) *State.* State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

§ 781.3 Reporting requirements.

(a) All reports required to be filed pursuant to this part shall be filed with the ASCS County office in the County where the land with respect to which such report must be filed is located or where the ASCS County office administering programs carried out on such land is located.

(b) Any foreign person who held, holds, acquires, or transfers any interest in United States agricultural land is subject to the requirement of filing a report on form ASCS–153 by the following dates:

(1) August 1, 1979, if the interest in the agricultural land was held on the day before February 2, 1979, or

(2) Ninety days after the date of acquisition or transfer of the interest in the agricultural land, if the interest was acquired or transferred on or after February 2, 1979.

(c) Any person who holds or acquires any interest in United States agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person must submit, not later than 90 days after the date on which such person becomes a foreign person, a report containing the information required to be submitted under paragraph (e) of this section.

(d) Any foreign person who holds or acquires any interest in United States land at a time when such land is not agricultural land and such land subsequently becomes agricultural land must submit, not later than 90 days after the date on which such land becomes agricultural, a report containing the information required to be submitted under paragraph (e) of this section.

(e) Any foreign person required to submit a report under this regulation, except under paragraph (g) of this section, shall file an ASCS–153 report containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature and name of the person holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest held by a foreign person who acquired or transferred an interest in agricultural land;

(5) The legal description and acreage of such agricultural land;

(6) The purchase price paid for, or any other consideration given for, such interest; the amount of the purchase price or the value of the consideration yet to be given; the current estimated value of the land reported;

(7) In any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred; and

(i) In any case in which such transferee is an individual, the citizenship of such transferee; and

(ii) In any case in which such transferee is not an individual, or a government, the nature of the person holding the interest, the country in which such transferee is created or organized, and the principal place of business;

(8) The agricultural purposes for which such foreign person intends, on the date on which such report is submitted, to use such agricultural land;

(9) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS–153 form for the foreign person;

(10) How the tract of land was acquired or transferred, the relationship of the foreign person to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement; and

(11) The date the interest in the land was acquired or transferred.

(f)(1) Any foreign person, other than an individual or government, required to submit a report under paragraphs (b), (c), and (d) of this Section, must submit, in addition to the report required under paragraph (e) of this Section, a report containing the following information:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of significant interest or substantial control in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(2) In addition, any such foreign person required to submit a report under paragraph (f)(1) of this Section may also be required, upon request, to submit a report containing:

(i) The legal name and the address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (f)(1) of this Section, if such individual or government holds any interest in such foreign person:

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or a government, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(g) Any foreign person, other than an individual or a government, whose legal name is contained on any report submitted in satisfaction of paragraph (f) of this Section may also be required, upon request, to:

(1) Submit a report containing:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which each holder is created or organized, and the principal place of business of such holder.

(2) Submit a report containing:

(i) The legal name and address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (g)(1) of this section if such individual or government holds any interest in such foreign person and, except in the case of a request which involves a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section, disclosing information relating to nonforeign interest holders;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government and, except in a situation where the information is requested from a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this Section disclosing information relating to nonforeign interest holders, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(h)(1) Any person which has issued fewer than 100,000 shares of common and preferred stock and instruments convertible into equivalents thereof shall be considered to have satisfactorily determined that it has no obligation to file a report pursuant to § 781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that persons with foreign mailing addresses hold significant interest or substantial control in such person.

(2) Any person which has issued 100,000 or more shares of common and preferred stock and instruments convertible into equivalents thereof shall be considerd to have satisfactorily determined that it has no obligation to file a report pursuant to § 781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that the percentage of shares held in such person both by persons with foreign mailing addresses and investment institutions which manage shares does not equal or exceed significant interest or substantial control in such person.

(3) If the person in paragraph 2 above determines that the percentage of shares, which is held in it both by persons with foreign mailing addresses and investment institutions which manage shares, equals or exceeds significant interest or substantial control in such persons, then such person shall be considered to have satisfactorily attempted to determine whether it has an obligation to file a report pursuant to § 781.3 if it sends questionnaires to each such investment institution holding an interest in it inquiring as to whether the persons for which they are investing are foreign persons and the percentage of shares reflected by the affirmative responses from each such investment institution plus the percentage of shares held by persons listed on the business records with foreign mailing addresses does not reveal that foreign persons hold significant interest or substantial control in such person.

(i) Any foreign person, who submitted a report under paragraphs (b), (c), or (d) of this section at a time when such land was agricultural, and such agricultural land later ceases to be agricultural, must submit, not later than 90 days after the date on which such land ceases being agricultural, a revised report from ASCS–153 or a written notification of the change of status of the land to the ASCS office where the report form was originally filed. The report form and notification must contain the following information:

(1) The legal name and the address of such foreign person;

(2) The legal description, which includes the State and county where the land is located, and the acreage of such land;

(3) The date the land ceases to be agricultural;

(4) The use of the land while agricultural.

(j) If any foreign person who submitted a report under paragraphs (b), (c), or (d) of this section ceases to be a foreign person, such person must submit, not later than 90 days after the date such person ceases being a foreign person, a written notification of the change of status of the person to the ASCS office where the report form ASCS–153 was originally filed. The notification must contain the following information:

(1) The legal name of such person;

(2) The legal description and acreage of such land;

(3) The date such person ceases to be foreign.

(k) Any foreign person who submitted a report under paragraphs (b), (c), or (d) of this section must submit, not later than 90 days after the change of information contained on the report, a written notification of the change to the ASCS office where the report form ASCS–153 was originally filed. The following information must be kept current on the report:

(1) The legal address of such foreign person;

(2) The legal name and the address required to be submitted under (f)(1);

(3) The legal name and the address required to be submitted under (g)(1).

§ 781.4 Assessment of penalties.

(a) Violation of the reporting obligations will consist of:

(1) Failure to submit any report in accordance with § 781.3;

(2) Failure to maintain any submitted report with accurate information; or

(3) Submission of a report which the foreign person knows:

(i) Does not contain, initially or within thirty days from the date of a letter returning for completion such incomplete report, all the information required to be in such report; or

(ii) Contains misleading or false information.

(b) Any foreign person who violates the reporting obligation as described in paragraph (a) of this section shall be subject to the following penalties:

(1) Late-filed reports: One-tenth of one percent of the fair market value, as determined by the Agricultural Stabilization and Conservation Service, of the foreign person's interest in the agricultural land, with respect to which such violation occurred, for each week or portion thereof that such violation continues, but the total penalty imposed shall not exceed 25 percent of the fair market value of the foreign person's interest in such land.

(2) Submission of an incomplete report or a report containing misleading or false information, failure to submit a report or failure to maintain a submitted report with accurate information: 25 percent of the fair market value, as determined by the Agricultural Stabilization and Conservation Service, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(3) Penalties prescribed above are subject to downward adjustments based on factors including:

(i) Total time the violation existed.

(ii) Method of discovery of the violation.

(iii) Extenuating circumstances concerning the violation.

(iv) Nature of the information misstated or not reported.

(c) The fair market value for the land, with respect to which such violation occurred, shall be such value on the date the penalty is assessed, or if the land is no longer agricultural, on the date it was last used as agricultural land. The price or current estimated value reported by the foreign person, as verified and/or adjusted by the County Agricultural Stabilization and Conservation Committee for the County where the land is located, will be considered to be the fair market value.

§ 781.5 Penalty review procedure.

(a) Whenever it appears that a foreign person has violated the reporting obligation as described in paragraph (a) of § 781.4, a written notice of apparent liability will be sent to the foreign person's last known address by the Agricultural Stabilization and Conservation Service. This notice will set forth the facts which indicate apparent liability, identify the type of violation listed in paragraph (a) of § 781.4 which is involved, state the amount of the penalty to be imposed, include a statement of fair market value of the foreign person's interest in the subject land, and summarize the courses of action available to the foreign person.

(b) The foreign person involved shall respond to a notice of apparent liability within 60 days after the notice is mailed. If a foreign person fails to respond to the notice of apparent liability, the proposed penalty shall become final. Any of the following actions by the foreign person shall constitute a response meeting the requirements of this paragraph.

(1) Payment of the proposed penalty in the amount specified in the notice of apparent liability and filing of a report, if required, in compliance with § 781.3. The amount shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(2) Submission of a written statement denying liability for the penalty in whole or in part. Allegations made in any such statement must be supported by detailed factual data. The statement should be mailed to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(3) Submission of a written request for a Hearing with the Administrator or with the Administrator's designee. The request should be submitted to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Submission of such a request does not preclude submission of the statement described in paragraph (b)(2) of this section; either or both may be submitted.

(c)(1) If a Hearing is requested, it will be held in Washington, D.C. at a place determined by the Administrator of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture or the Administrator's designee. The Administrator or the Administrator's designee will preside at the Hearing The appellant shall bear all personal costs connected with such a Hearing.

(2) The Hearing will be scheduled for any mutually convenient time within 30 days after the request is filed with the Administrator, or at a time designated by the Administrator or the Administrator's designee.

(3) At the Hearing, the foreign person may appear personally or be represented by a person of the foreign person's choice and will be afforded an opportunity to state a position and question the factual basis for the notice of apparent liability and the amount of the penalty to be imposed.

(4) A summary of the Hearing will be prepared by the presiding official and transmitted to the Administrator.

(5) The failure of the foreign person to appear at the time and place appointed for the Hearing shall constitute a waiver of the foreign person's right to such a Hearing.

(d) After the submission of a written statement and/or after the Hearing, as prescribed in paragraph (b) and (c) of this section, the Administrator will make a determination based on all relevant information available.

(e) Notice of the Administrator's determination, stating whether a report must be filed or amended in compliance with § 781.3, the amount of the penalty (if any), and the date by which it must be paid, will thereupon be mailed to the foreign person by the Administrator or the Administrator's designee. The foreign person shall file or amend the report as required by the Administrator. The penalty in the amount stated shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(f) If the foreign person contests the notice of apparent liability by submitting a written statement or a request for a hearing thereon, the foreign person may elect either to pay the penalty or decline to pay the penalty pending resolution of the matter by the Administrator. If the Administrator determines that the foreign person is not liable for the penalty or is liable for less than the amount paid, the payment will be wholly or proportionally refunded. If the Administrator ultimately determines that the foreign person is liable, the penalty finally imposed shall not exceed the amount imposed in the notice of apparent liability.

(g) If a foreign person fails to respond to the notice of apparent liability as required by paragraph (b) of this section, or fails to pay the penalty imposed by the Administrator under paragraph (d) of this section, the case will, without further notice, be referred by the Department to the Department of Justice for prosecution in the appropriate District Court to recover the amount of the penalty.

(h) Any amounts approved by the U.S. Department of Agriculture for disbursement to a foreign person under the programs administered by the Department may be setoff against penalties assessed hereunder against such person, in accordance with the provisions of 7 CFR Part 13.

§ 781.6 Paper Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR Part 781) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0097.

Signed at Washington, D.C. on August 28, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-23542 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Parts 1062, 1007, 1011, 1030, 1032, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1094, 1096, 1097, 1098, 1099, 1102, 1106, 1108, 1120, 1126, 1131, 1132, and 1138

Milk in the St. Louis-Ozarks Marketing Area, et al.; Determination of a Change in the Data Used for Computing the Basic Class II Formula Prices

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides for the use of selected monthly data instead of quarterly data in computing the basic Class II formula prices of the milk orders listed above. The change is necessary because the USDA Statistical Reporting Service, which altered selected portions of its crop and livestock estimating programs in 1982, has now reverted back of its previous estimating programs with respect to those data used in these milk orders.

In the matter of:

7 CFR Part and Marketing Area

1062—St. Louis-Ozarks
1007—Georgia
1011—Tennessee Valley
1030—Chicago Regional
1032—Southern Illinois
1046—Louisville-Lexington-Evansville
1049—Indiana
1050—Central Illinois
1064—Greater Kansas City
1065—Nebraska-Western Iowa
1068—Upper Midwest
1076—Eastern South Dakota
1079—Iowa
1094—New Orleans-Mississippi
1096—Greater Louisiana
1097—Memphis, Tennessee
1098—Nashville, Tennessee
1099—Paducah, Kentucky
1102—Fort Smith, Arkansas
1106—Southwest Plains
1108—Central Arkansas
1120—Lubbock-Plainview, Texas
1126—Texas
1131—Central Arizona
1132—Texas Panhandle
1138—Rio Grande Valley

DATE: The change set forth herein becomes effective September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6274.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable provisions of the respective orders, as amended, regulating the handling of milk in the aforesaid marketing areas, it is hereby found and determined with respect to these orders that:

(1) In a decision issued on July 8, 1981 (46 FR 36151) the Assistant Secretary found that the total American cheese production and nonfat dry milk production for the States of Minnesota and Wisconsin as reported by the USDA Statistical Reporting Service (SRS) for the third preceding month should be used in computing the basic Class II formula price for a month in the aforesaid milk orders. Accordingly, on August 25, 1981 (46 FR 43371), the Assistant Secretary amended each of the orders, effective September 1, 1981, to contain such a provision. For example, the basic Class II formula price for October would utilize the reported production data for July.

(2) In 1982 SRS announced to the public that it was cutting back or otherwise altering selected portions of its crop and livestock estimating programs. One of the reports affected was the *Dairy Products* report which previously had been issued monthly and in the future was to be issued quarterly. To accommodate these orders to this quarterly reporting of the total American cheese production and nonfat dry milk production for the States of Minnesota and Wisconsin a determination was issued on May 24, 1982 (47 FR 23417) substituting the use of the quarterly data for the monthly data in the computation of the basic Class II formula price. For example, the same production data for April, May and June combined would be used in computing the basic Class II formula prices for September, October and November.

(3) Now the SRS is again publishing the *Dairy Products* report on a monthly basis. Since the order provisions adopted on the basis of a hearing proceeding specify the use of monthly data, it is preferable to use such data in computing the basic Class II formula price.

(4) Notice of proposed rulemaking and public procedure thereon are impracticable, unnecessary, and contrary to the public interest in that:

(a) The production data of American cheese and nonfat dry milk on a monthly basis in available again for use in computing the basic Class II formula prices under the above listed orders. Thus, the use of quarterly data is no longer necessary;

(b) The above listed orders provide for the use of the monthly data; and

(c) This action does not require substantial or extensive preparation by any person.

Effective Date: The procedure set forth herein becomes effective upon publication of this determination in the **Federal Register.**

List of Subjects in 7 CFR Parts 1062 et al.

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on August 30, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Add the following note to each of the paragraphs listed below:

Note.—The computation of the basic Class II formula price is affected by a determination document published on [1] at 49 FR [2].

7 CFR Section and Marketing Area

1062.51a(c) (1) and (2)—St. Louis-Ozarks
1007.51a(c) (1) and (2)—Georgia
1011.51a(c) (1) and (2)—Tennessee Valley
1030.51a(c) (1) and (2)—Chicago Regional
1032.51a(c) (1) and (2)—Southern Illinois
1046.51a(c) (1) and (2)—Louisville-Lexington-Evansville
1049.51a(c) (1) and (2)—Indiana
1050.51a(c) (1) and (2)—Central Illinois

[1] The date this document is published in the **Federal Register.**

[2] The **Federal Register** page number.

1064.51a(c) (1) and (2)—Greater Kansas City
1065.51a(c) (1) and (2)—Nebraska-Western Iowa
1068.51a(c) (1) and (2)—Upper Midwest
1076.51a(c) (1) and (2)—Eastern South Dakota
1079.51a(c) (1) and (2)—Iowa
1094.51a(c) (1) and (2)—New Orleans-Mississippi
1096.51a(c) (1) and (2)—Greater Louisiana
1097.51a(c) (1) and (2)—Memphis, Tennessee
1098.51a(c) (1) and (2)—Nashville, Tennessee
1099.51a(c) (1) and (2)—Paducah, Kentucky
1102.51a(c) (1) and (2)—Fort Smith, Arkansas
1106.51a(c) (1) and (2)—Southwest Plains
1108.51a(c) (1) and (2)—Central Arkansas
1120.51a(c) (1) and (2)—Lubbock-Plainview, Texas
1126.51a(c) (1) and (2)—Texas
1131.51a(c) (1) and (2)—Central Arizona
1132.51a(c) (1) and (2)—Texas Panhandle
1138.51a(c) (1) and (2)—Rio Grande Valley

[FR Doc. 84-23530 Filed 9-5-84; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-121-AD; Amdt. 39-4902]

Airworthiness Directives; Gates Learjet Models 24 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Gates Learjet Model 24 airplanes which requires the hardware changes to correct safety of flight conditions identified by a Special Certification Review (SCR), and relieves certain limitations imposed by a prior AD. Specifically, this AD requires the installation of an improved pitch trim actuator, trim-in-motion warning, pitch axis master interrupt, autopilot roll rate limiter, autopilot roll monitor, autopilot G-limiter and several other associated alterations found necessary to prevent the hazard created by certain failures of these components in conjunction with the high response rate of the airplane. Airplanes which have complied with AD 81-16-08, Amendment 39-4546, to permit operation at 51,000 feet have met the requirements of this AD.

DATES: Effective October 5, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information and modification kits may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 269-7008.

SUPPLEMENTARY INFORMATION: The Gates Learjet Special Certification Review (SCR) was initiated in June 1980, after several unexplained accidents occurred on the Model 25 series airplanes earlier that year. The SCR identified deficiencies in certain Model 20 series airplane systems and revealed inadequate operational procedures which could result in unsafe conditions in the event of system malfunction or aiplane upset. Airworthiness Directive (AD) 80-19-11, Amendment 39-3932 (45 FR 65999; October 6, 1980), provided an interim solution to the major deficiencies outlined in the SCR. To provide an acceptable interim level of safety, AD 80-19-11, through AFM operational limitations changes, shifted a large burden of responsibility to the pilot to assure that flight critical systems were properly preflighted and operated within an acceptable flight envelope. Since operational changes tend to lose their effectiveness if relied on for extended periods, these changes were envisioned to be used only until the manufacturer developed hardward changes that would provide the permanent improved level of safety required on the affected Learjet models. The initial effort in providing hardware changes was concentrated on the Model 25 series airplanes. Gates Learjet has now developed similar kits for the Model 24 series and this AD requires installation of these kits.

Since the issuance of AD 80-19-11, a high altitude accident has occurred on a Model 24 series airplane. The exact cause of this accident has not been determined; however, the accident profile was similar to accidents which have previously occurred on Model 25 airplanes. Other elements, such as pilot training and proficiency could have been contributing factors in this particular accident. Additionally, an incident occurred on a Model 24 involving an autopilot pitch synchronizer malfunction which the crew was able to overpower. The SCR modification would not have prevented the pitch synchronizer malfunction from occurring, but the addition of aural trim-in-motion and pitch axis interrupt could have resulted in earlier recognition and quicker pilot reaction to the malfunction.

The airplane modification kits, prescribed in the body of this AD, incorporate an improved pitch trim actuator, trim-in-motion warning, redesigned pitch axis master interrupt, autopilot roll rate limiter, autopilot roll monitor, G-limiter, and stick puller/Mach warning changes for all Gates Learjet Model 24 airplanes. The Airplane Flight Manual (AFM) changes, provided with the kits, remove the requirements imposed in paragraphs A.2., A.5., and A.6. of AD 80-19-11.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airwortiness directive requiring the above listed modification was published in the **Federal Register** on June 13, 1983 (48 FR 27087). The comment period closed August 1, 1983.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Twelve responses were received concerning the Notice of Proposed Rulemaking (NPRM). Eight responses opposed the proposed AD on the basis that proper pilot training and proficiency should be the thrust of FAA rulemaking. The FAA concurs with the responses which advocate proper pilot training and proficiency as mandatory for the operation of high performance airplanes; however, this training approach does not resolve the fact that SCR has identified safety of flight conditions which must be corrected by hardware modifications. Further, the FAA believes unsafe conditions may still exist on Gates Learjet Model 24 airplanes where there is not strict adherence to the procedural changes required by AD 80-19-11 and/or maintenance programs.

One of these eight responses stated that there was no conclusive proof that the system which the FAA proposes to modify are causal factors in the investigated Learjet accidents. This subject was discussed in previous rulemaking action, Amendment 39-3932 (45 FR 65999; October 6, 1980), AD 80-19-11, which imposed limitations on the affected systems. Two of the eight responses recommended that hardware should be provided as product improvement only (optional kits). The FAA disagrees for the reason given above. One respondent did not feel that

parts of the SCR modification are necessary or desirable. This was covered in Amendment 39-3932 also. One respondent opposed the NPRM since he felt he was well aware of the effect of overspeed and underspeed as well as the need for continuous monitoring of stabilizer trim during flight. Our previous comments regarding pilot training apply to this comment also. One respondent supported the proposed AD.

The Gates Learjet Corporation disagreed with the SCR finding, stating that if an AD was issued, they recommended: (1) A mandatory kit consisting of trim-in-motion, pitch axis master interrupt, and autopilot roll and G-limiter, and (2) an optional kit consisting of the two-speed trim actuator modification be provided. The FAA advised Gates Learjet Corporation that this proposal had some possible merits and further advised them to provide a firm proposal on their recommendation. Gates Learjet Corporation subsequently investigated this "kit separation" approach for approximately six months and then notified the FAA that their recommended approach was not feasible. As a result, the FAA finds it necessary, in the interest of safety, to issue an AD which requires installation of a single kit that includes two-speed trim actuator, trim-in-motion indication, pitch axis master interrupt, and autopilot roll and G-limiters.

Approximately 243 U.S. registered airplanes will be affected by this AD. It will take approximately 400 manhours per airplane to accomplish the required action, and the average labor cost will be $37 per hour. Modification kit cost is estimated at $28,375 per airplane. The loss associated with three weeks of down time is estimated to be $7,000. Based on these figures, the total cost impact of this AD is estimated to be $12,192,525. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

After a careful review of all available data, including the comments above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Gates, Learjet: Applies to Gates Learjet Model 24 series airplanes certificated in all categories. Compliance required within eighteen (18) months after effective date unless previously accomplished or prior compliance with AD 81-16-08, Amendment 39-4546.

Accomplish the requirements of this AD at an FAA approved repair station. The modification and inspection of the horizontal stabilizer trim actuator must be performed by an FAA certificated repair agency authorized to overhaul and test the Gates Learjet Horizontal Stabilizer Trim Actuator. The necessary shop equipment or the equivalent, as referenced in Learjet Repair Manual Number 1711-9, is listed in Attachment I hereto.

A. Modify Learjet Model 24 airplane flight control systems, stall warning, and control wheel by incorporating the airplane modification kit listed in Table I.

TABLE I

Modification kit	Model
AMK 82-5	24, 24A
AMK 82-1	24B, 24B-A
AMK 81-18	24D, 24D-A
AMK 81-13	24E, 24F, 24F-A

Note.—Modification of JET Autopilot Controllers and Computers as required by the instructions in the above kits must be performed in an FAA approved facility for maintenance of the JET FC-110 autopilot.

B. Required Airplane Maintenance Record entry must be accomplished by the facility performing its portion of the AD as prescribed in paragraph A. of this AD.

C. After airplane modification, verify that the Airplane Flight Manual (AFM) contains the revision/change listed in Table II, below, or later FAA approved revision/change. Upon completion of the modifications required by paragraph A. of this AD, the more restrictive paragraphs A.2., A.5., and A.6. of AD 80-19-11 are no longer applicable.

TABLE II

Gates Learjet airplane flight manual/supplement	Revision/change	Modification kit
1. 24 AFM, FM-004	Revision 32	AMK82-5
2. 24 RAS AFM, WO159	Revision 4	AMK82-5
3. 24A AFM, FM-005	Revision 18	AMK82-5
4. 24ECR 736 AFM, FM-008	Revision 7	AMK82-5
5. FC-110 Autopilot, W1037	New	AMK82-5
6. 24B AFM, FM-006	Revision 21	AMK82-1
7. 24B-A AFM, FM-007	Revision 21 to 24B	AMK82-1
8. 24B RAS AFM, WO157	Revision 3	AMK82-1
9. FC-110 Autopilot, W1041	New	AMK82-1
10. 24D AFM, FM-009	Change 18	AMK81-18
11. 24D-A AFM, FM-010	Change 18 to 24D.	AMK81-18
12. 24D RAS AFM, W-0119	Change 3	AMK81-18
13. FC-110 Autopilot, W1030	New	AMK81-18
14. 24E AFM, FM-011	Change 9	AMK81-13
15. 24F AFM, FM-012	Change 7	AMK81-13
16. FC-110 Autopilot, W1018	New	AMK81-13

D. Prior to accomplishing the modification required by paragraph A. of this AD, contact the Wichita Aircraft Certification Office, FAA, Central Region, telephone (316) 269-7008, if any modification or alteration has been performed on the affected airplane systems, for further instruction relative to the compatibility of the modification and this AD.

E. Alternate methods of compliance with this AD may be used if they are approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

This amendment becomes effective October 5, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, small entities operate Learjet Model 24 airplanes. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on August 22, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

Attachment I

The stabilizer actuator test stand (P/N ST-00463) is used to functionally test the stabilizer actuator after overhaul. The physical structure of the test stand must be capable of withstanding a minimum load of 2500 lbs. without any bending or deformation.

The stabilizer actuator is vertically mounted on the test stand with one end stationary and the other end movable through a hydraulic actuator. The test stand consists of the following components:

a. *Hydraulic Actuator*—The hydraulic actuator is capable of applying a regulated load of 0 to 2500 lbs. on the stabilizer actuator during the entire extend or retract cycles.

b. *Hydraulic Pressure Regulator*—The pressure regulator is used to select hydraulic pressures applied to the stabilizer actuator during the functional test.

c. *Hydraulic Pressure Gauge*—The hydraulic pressure gauge is used to monitor hydraulic pressure applied to the stabilizer actuator. The gauge must be certified at least monthly.

d. *Digital Position Readout*—The digital position readout indicator is used to monitor the travel of the stabilizer actuator. Signals to the indicator are picked up from a rigid mounted linear potentiometer and movable

wiper attached to the hydraulic actuator. The digital readout is accurate to 1/1000th of an inch.

e. *Linear Scale*—A linear scale, graduated in 100th of an inch, is permanently mounted on the test stand to verify the digital readout. A tool of known length is used to verify the linear scale and digital readout before the stabilizer actuator functional test is performed. The tool length must be certified at least yearly.

f. *Lapse Timer*—A lapse timer is coupled to the control switches and the stabilizer actuator to monitor travel time during the extend and retract cycles. The lapse timer must measure seconds to be accurate to 1/100th of a second.

g. *Trim Controller*—The trim controller is used to simulate two-speed input to the stabilizer actuator primary motor. The trim controller part number is EM 2079-6.

h. *Pre-Select Timer*—The pre-select timer is used to check stabilizer actuator travel vs. time, voltage, and amperage inputs in accordance with the functional test.

i. *Power Supply*—The power supply is variable through 0-30 volts DC and 0-30 amperes DC.

j. *DC Voltmeter*—The DC voltmeter must be capable of measuring 0-30 volts DC and must be certified at least yearly. The voltmeter is used to monitor the voltage inputs to the stabilizer actuator in accordance with the functional test.

k. *DC Ammeter*—The DC ammeter must be capable of measuring 0-30 amperes DC and must be certified at least yearly. The ammeter is used to monitor the amperes inputs to the stabilizer actuator in accordance with the functional test.

l. *Millivolt Meter*—The millivolt meter is used to monitor the stabilizer actuator linear potentiometer for a smooth and steady signal output. The meter is 0-50 volts graduated in 100 mv increments.

m. *Switches*—Necessary switches installed to operate the stabilizer actuator primary and secondary motors to extend or retract.

n. A digital or Simpson 260 meter, not a part of the test stand, is used to verify the resistance of the stabilizer actuator linear potentiometer. The digital or Simpson 260 meter must be certified at least every 90 working days.

[FR Doc. 84-23461 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-42-AD; Amdt. 39-4903]

Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On April 19, 1984, the FAA issued a telegraphic airworthiness directive (AD), T84-09-51, to all known operators of Lockheed-California Company Model L-1011-385 series airplanes. This action was prompted by a report of a rapid depressurization incident at 35,000 feet resulting from a fracture of the negative pressure relief valve adapter. This AD requires inspection and replacement or repair, if necessary, of the negative pressure relief valve adapter. This AD is hereby published in the **Federal Register** to make it effective to all persons.

EFFECTIVE DATES: September 11, 1984.

This AD was effective earlier to all recipients of Telegraphic AD T84-09-51, dated April 19, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: A depressurization incident was reported by an operator which occurred shortly after the aircraft leveled off at FL350. The cabin altitude climbed rapidly and reached FL230 during the emergency descent. The passenger oxygen masks deployed and the aircraft was leveled at FL100 and returned to the point of departure where a normal landing was carried out. Subsequent investigation revealed that one of the two negative pressure relief valves, together with portions of its attachment adapter, had separated from the rear pressure bulkhead. The failure was due to an undersized wall thickness in the flange radius. It has been determined that all flanges, P/N 672870-117, manufactured by the spinning technique are suspect of having similar problems.

Since a situation existed and still exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent depressurization of the aircraft due to the failure of the negative pressure relief valve, accomplish the following:

A. Within 100 flight hours after the receipt of this AD, unless previously accomplished, inspect the negative pressure relief valve mounting adapters on each aircraft identified as follows:

1. Lockheed Serial Numbers 1175 through 1250.

2. Lockheed Serial Numbers 1001 through 1174. Aircraft which have had either of the two negative pressure relief valve adapters replaced by the operator.

B. Inspection and repair procedures:

1. After instituting all the preliminary safety precautions, gain access to aft side of the pressure bulkhead through fire bottle inspection panel 317 BB (see Lockheed Maintenance Manual MM6-40-00), and determine type of adapter installed. If adapter does not have circumferential spin marks and the serial number is 229 or lower, no further inspection is required. If serial number is 230 or higher, or spin marks are found, then additional inspection must be performed.

Note.—Adapter serial numbers are identified by the last three digits in the serial number block on the decal located at the 12 o'clock position aft of the pressure bulkhead. Spin marks are best determined by shining indirect light, such as flash light, on the adapter side wall.

2. On aircraft requiring further inspection:

a. Gain access to the forward side of the negative pressure relief valve, (see Lockheed Maintenance Manual MM25-42-00).

b. On the forward side of the pressure bulkhead, LBL/RBL20, WL300, visually inspect the adapter part of each negative pressure relief valve in the area of the flange radius. Clean the area with solvent prior to inspection.

3. If a crack is found, replace or repair the adapter before the next flight. Replacement adapter must be inspected prior to installation and is subject to the requirements of this AD.

4. Installation of repair or reinforcement clips for adapter: Install 300 series stainless steel clips, either 0.50 1/4 hard or 0.040 1/2 hard material. Dimensions are 0.95-inch wide with 0.89 and 1.50-inch flanges, and 85° bend, with 0.12-inch bend radius. Install clips using existing fastener holes through the aft pressure bulkhead and two additional fasteners through the side of the adapter, install one at minimum of 0.34 inches and the other at minimum of 0.95 inches from end of long leg of clip. Fasteners are to be

MS20470AD5 rivets, or NAS1398M5 rivets, or structural equivalent.

a. For repair of a cracked adapter, stop-drill crack ¼-inch diameter, and install a minimum quantity of 40 clips per adapter, using 2 of each 3 attachments through the pressure bulkhead.

b. For reinforcement of uncracked adapters, install a minimum quantity of 20 clips per adapter. Using 1 of each 3 attachments through pressure bulkhead.

5. If no cracks are found, repeat the inspection per B.1. through B.4., above, at intervals not to exceed 25 landings.

6. Replace or reinforce the adapter within 350 flight hours after the last inspection or after the receipt of this AD, whichever is later.

7. With adapter reinforced with the 20 clips per paragraph B.4.b., above, the reinspection intervals may be extended from 25 landings to 1000 landings.

8. For adapters repaired with the 40 clips per paragraph B.4.a., above, reinspect from the aft side for cracks at the aft fastener, common to the clip and adapter, every 500 landings.

9. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

This Amendment becomes effective September 11, 1984 and was effective earlier to those recipients of telegraphic AD T84-09-51, dated April 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington on August 22, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-23482 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-ASW-36; Amdt. 39-4899]

Airworthiness Directives; Garlick Helicopters, Hawkins & Powers Aviation, Inc., Wilco Aviation (Bell) UH-1 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an inspection, and replacement if necessary, of each main rotor blade pitch change link clevis on military (Bell) UH-1 series helicopters. The AD is needed to detect an improperly repaired or cracked clevis. Failure of the clevis may result in loss of main rotor control.

DATES: Effective September 6, 1984.

Compliance required within the next 10 hours' time in service after the effective date of this AD unless already accomplished.

ADDRESSES: A copy of the service information message is contained in the Rules Docket in the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: J. H. Major, Helicopter Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877-2549.

SUPPLEMENTARY INFORMATION: By message dated July 13, 1984, the Commander of (U.S. Army) AVSCOM, St. Louis, Missouri, issued a safety of flight message requiring an immediate inspection of each main rotor pitch change link clevis Part Number (P/N) 204-011-136-1 (FSN 5340-00-839-3934)) on UH-1 series helicopters. A fatigue fracture of the clevis reportedly occurred in a recent UH-1H helicopter accident. An analysis revealed the clevis had been replated and the fracture may be associated with the replating process. Fracture of a pitch change link clevis may result in loss of main rotor control.

Since this condition is likely to exist or develop on UH-1 series helicopters certificated in the restricted category for the civil market, an AD is being issued that requires, within 10 hours of service, a one-time inspection of each clevis for possible replating and for cracks in the threads. A replated or cracked part must be removed before further flight.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days. Each of the three restricted category type certificate owners was advised by FAA letter dated July 20, 1984, of the military safety of flight message. Only one type certificate owner responded by letter dated July 23, 1984, and he advised operators or customers of UH-1 aircraft to comply with the military message. Copies of these letters are in the docket file.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291 or significant under Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since it applies to approximately 34 helicopters for an estimated cost of $5,000 or $150 per aircraft. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Garlick Helicopters, Hawkins & Powers Aviation, Inc., Wilco Aviation (Bell Helicopter Textron, Inc.): Applies to Model UH-1 series helicopters certificated in restricted category.

Compliance is required within 10 hours' time in service after the effective date of this AD, unless already accomplished.

To detect any improperly repaired or cracked main rotor pitch change link clevis and to prevent possible failure of a clevis, accomplish the following one-time inspection of each clevis, P/N 204-011-136-1 (FSN) 5340-00-839-3934).

(a) Visually inspect the exposed surfaces of the clevis using a 5-power or higher magnifying glass. If any surface with pits has a golden or silver color within a pit, the clevis has been replated and must be removed before further flight.

(b) Visually inspect the exposed threaded area of the clevis shank, above the jam nut, for crack indications. If a crack indication is found, the part must be removed and additionally inspected for cracks using

magnetic particle or equivalent inspection method.

(c) If a clevis has been replated or has a crack, the clevis must be removed before further flight. Install a serviceable clevis as prescribed in the appropriate military model maintenance or overhaul manual.

(d) Compliance with UH-1 series aircraft military message dated July 13, 1984, from Commander AVSCOM satisfies this AD.

This amendment becomes effective September 6, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Issued in Fort Worth, Texas, on August 17 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-23480 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ANE-12; Amendment 39-4907]

Airworthiness Directives; Avco Lycoming

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain Lycoming reciprocating engines and requires replacement with a new engine cylinder assembly. The AD is necessary to prevent cracking of cylinder heads which could lead to cylinder burn through, engine failure and potential engine fire. In order to reduce these risks, cylinders are to be replaced with cylinders which have improved fatigue properties.

DATES: *Effective*—September 20, 1984. Compliance is required as set forth in the AD. Comments related to the amendment must be received on or before October 9, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Office of Regional Counsel, Attn: Rules Docket No. 84-ANE-12, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments may be inspected weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Irving Mankuta, ANE-174, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: Inspection of cylinder assemblies of an Avco Lycoming LTIO/TIO-540-V2AD engine in an airplane with 442 hours total time uncovered cracks in all intake valve seat areas. This inspection was prompted by findings of cylinder head cracks in the area of the intake valve seat during the 150-hour endurance test of a new series engine which was being tested with the same cylinder assemblies as the LTIO/TIO-540-V2AD. A second engine from the same airplane referenced above was removed and subjected to test stand operation. Total time on this engine at present is 600 hours without failure.

The inspection of the LTIO/TIO-540-V2AD engine was a precautionary measure unrelated to any service failure. Furthermore, this engine successfully passed a 150 hour endurance test during its certification. In addition, uncovering the cracks requires destructive testing since they are not detectable visually. Nevertheless, crack propagation could lead to cylinder burn through, engine failure and potential fire damage.

Since a situation exists that may result in the loss of an aircraft, immediate adoption of this regulation is required. It is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Request for Comments on the Rule

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedures, comments are invited on the rule.

When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Send comments to Federal Aviation Administration, Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

List of Subjects in 14 CFR Part 39

Engine, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Avco Lycoming: Applies to all Avco Lycoming LTIO-540-V2AD and TIO-540-V2AD model engines.

Compliance is required as indicated, unless already accomplished. Cracks have occurred in the area of the intake valve seat of the cylinder head in the above engine models.

To prevent possible failure of the engine cylinder assembly, P/N LW-18852, accomplish the following:

(a) Within the next 50 hours of time-in-service after the effective date of this AD, or prior to accumulating 550 hours time-in-service, whichever occurs later, replace all P/N LW-18852 cylinder assemblies with cylinder retrofit kit, P/N LW-19297-S. Cylinder part number identification is located on the cylinder head casting in the rocker box area.

(b) In accordance with FAR 21.197 and 21.199, the aircraft may be flown to a location where the inspections or alterations required by this AD can be performed.

This amendment becomes effective on September 20, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

Issued in Burlington, Massachusetts, on August 27, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-23524 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

Update of Location of Freedom of Information Act Reference Facilities; and Delegation of Initial Denial Authority

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce revises Appendices B and C of its Freedom of Information Act rules. Appendix B contains the names and addresses of the Department's Freedom of Information public facilities. Appendix C lists the officials authorized to make initial denials for Freedom of Information requests.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Geraldine P. LeBoo, U.S. Department of Commerce, Office of Information Resources Management, Washington, DC 20230, (202) 377-4217.

SUPPLEMENTARY INFORMATION: Appendices B and C are revised to reflect changes, due to reorganization, of officials authorized to make initial denials, and changes, due to relocation, of several Freedom of Information public facilities. Since these revisions involve internal agency procedures, the Administrative Procedure Act (5 U.S.C. 553) provisions requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are, inapplicable. Also, this regulation is not significant under Executive Order 12291. This revision does not require a change of burden or imposition of a new burden on the public as defined by the Paperwork Reduction Act of 1980, Pub. L. 96-511.

The revisions to the Department of Commerce Freedom of Information Act rules, Appendices B and C, are as follows:

All references to the Bureau of Industrial Economics are deleted as that agency was merged into another component of the Department, the International Trade Administration.

Revisions to Appendix B are: changes in address and/or telephone number of the public reference facilities of the Minority Business Development Agency, National Telecommunications and Information Administration, Patent and Trademark Office, Bureau of the Census, National Oceanic and Atmospheric Administration, Bureau of Economic Analysis, and the Economic Development Administration.

Revisions to Appendix C reflect organizational changes or the selection of different officials with initial denial authority in the following Departmental components: International Trade Administration, Minority Business Development Agency, National Telecommunications and Information Administration, United States Travel and Tourism Administration, Bureau of the Census, National Oceanic and Atmospheric Administration, and the Office of the Secretary.

List of Subjects in 15 CFR Part 4

Freedom of information.

For the reasons set out in the Preamble, 15 CFR Part 4 is amended as set forth below.

Appendix B is revised to read as follows:

Appendix B—Freedom of Information Public Facilities and Addresses for Requests for Records

The following public reference facilities have been established within the Department of Commerce (a) of the public inspection and copying of materials of particular units of the Department under 5 U.S.C. 552(a)(2), or determined to be available for response to requests made under 5 U.S.C. 552(a)(3); (b) for furnishing information and otherwise assisting the public concerning Departmental operations under the Freedom of Information Act; and (c) as addresses, in some instances, for the receipt and processing of requests for records under 5 U.S.C. 552(a)(3). Units having separate mailing addresses are noted below. Requests should be addressed to the unit which the requestor knows or has reason to believe has possession or control or has primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility.

Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, Room 6628, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, D.C. 20230. Phone (202) 377-4217. This facility serves the Office of the Secretary and all other units of the Department not identified below as explained at 15 CFR 4.4 (c) and (d).

Bureau of the Census, Freedom of Information Request Control Desk, Room 2428, Federal Building 3, Washington, DC 20233.

Bureau of Economic Analysis, Public Reference Facility, Room 1115, Tower Building, 1401 K Street, NW., Washington, DC. Mailing address: Freedom of Information Control Desk, Office of Administration, Office of Economic Affairs, Room 4079 Herbert Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC 20230. Phone 377-3037.

Economic Development Administration, Freedom of Information Records Inspection Facility, Room 7001, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-4687. Mailing address of Regional EDA offices:

Philadelphia Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Federal Reserve Bank Building, Room 600, 105 North 7th Street, Philadelphia, Pennsylvania 19106.

Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 700, 1365 Peachtree Street, NE., Atlanta, Georgia 30309.

Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 300, 333 West Colfax, Denver, Colorado 80202.

Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 175 West Jackson Boulevard, Suite A-1630, Chicago, Illinois 60604.

Seattle Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 1700 Westlake North, Suite 500, Seattle, Washington 98109.

Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, American Bank Tower, Suite 600, 221 West Sixth Street, Austin, TX 78701.

International Trade Administration, Freedom of Information Records Inspection Facility, Room 4001B, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-3031.

Minority Business Development Administration, Freedom of Information Office, Room 5089, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, D.C. 20230. Phone (202) 377-5045.

National Bureau of Standards, Freedom of Information Records Inspection Facility, Room E106, Administration Building, Gaithersburg, Maryland. Phone (301) 921-3444. Mailing address: National Bureau of Standards, Freedom of Information Request Control Desk, Room A1105, U.S. Department of Commerce, Washington, DC 20234 (Gaithersburg, Maryland).

National Oceanic and Atmospheric Administration, Public Reference Facility, Freedom of Information Office (MB/IMS33), Room 4225, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230

National Technical Information Service, Freedom of Information Request Control Desk, 5285 Port Royal Road, Springfield, Virginia 22161. Phone (703) 487-4634.

National Telecommunications and Information Administration, Freedom of Information Request Control Desk, Room 4717, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20504 Phone (202) 377-1816.

Patent and Trademark Office, Freedom of Information Records Inspection Facility, Room 12C08, Building ge a06se0.0662, Crystal Gateway, Arlington, Virginia. Phone (703) 557-4035. Mailing address: Patent and Trademark Office, Freedom of Information Request Control Desk, Box 50, Washington, DC 20231.

United States Travel and Tourism Administration, Freedom of Information

Request Control Desk, Room 1524, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-3811.

Appendix C is revised to read as follows:

Appendix C—Officials Authorized To Make Initial Denials of Requests for Records

The following officials of the Department have been delegated authority to initially deny requests for records of their respective units for which they are responsible. (The listings are subject to change because of organizational changes or new delegations. Accordingly, the Chief, Information Management Division, is specifically authorized to amend or revise this Appendix from time to time in order to reflect such changes).

Office of the Secretary:

Office of the Deputy Secretary:
Associate Deputy Secretary
Office of Business Liaison:
Director
Office of Consumer Affairs:
Director
Office of the Assistant Secretary for Congressional and Intergovernmental Affairs:
Deputy Assistant Secretary for Congressional Affairs
Office of the Inspector General:
Counsel to the Inspector General
Deputy Counsel to the Inspector General
Office of the General Counsel:
Deputy General Counsel
Assistant General Counsel for Administration
Director, Office of Intelligence Liaison
Office of Public Affairs:
Deputy Director
Office of the Under Secretary for Economic Affairs:
Administrative Officer

Office of the Assistant Secretary for Administration:

Office of the Administrative Law Judge:
Office Manager
Office of Finance and Federal Assistance:
Director
Office of Management Analysis and Control:
Director
Office of the Director for Planning, Budget and Evaluation:
Director
Office of Budget:
Director
Office of Program Planning and Evaluation:
Director
Office of the Director for Personnel and Civil Rights:
Director
Office of Personnel:
Director
Office of Personnel Operations:
Director
Office of Civil Rights:
Director
Office of the Director for Management and Information Systems:
Director
Chief, Information Management Division
Office of the Director for Procurement and Administration Services:
Director
Office of Procurement Management:
Director
Office of Procurement Operations:
Director
Office of Administrative Services Operations:
Director
Office of Buildings Management:
Director
Office of Security:
Director
Office of Small and Disadvantaged Business Utilization:
Director

Bureau of the Census:

Associate Director for Management Services

Bureau of Economic Analysis:

Deputy Director

Economic Development Administration:

Chief Counsel
Assistant Chief Counsel
Regional Counsels

International Trade Administration:

International Economic Policy:
Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Office of the European Community
Director, Office of the Non-European Community Europe
Director, Office of the USSR and Eastern Europe
Director, Office of North America
Director, Office of Mexico and the Caribbean Basin
Director, Office of South America
Director, Office of the Peoples Republic of China and Hong Kong
Director, Office of Japan
Director, Office of the Pacific Basin
Director, Office of Africa
Director, Office of the Near East
Director, Office of South Asia
Trade Administration:
Hearing Commissioner
Deputy to the Deputy Assistant Secretary for Import Administration (Policy)
Director, Office of Antiboycott Compliance
Director, Office of Export Enforcement
Director, Office of Industrial Resource Administration
Director, Office of Export Administration
Deputy Director, Office of Export Administration
Director, Foreign Trade Zones Staff
Director, Statutory Import Programs Staff
Director, Office of Investigations
Director, Office of Compliance
Director, Office of Policy
Trade Development:
Deputy Assistant Secretary for Trade Adjustment Assistance
Director, Office of Planning and Coordination
Director, Office of World Fairs and International Expositions
Director, Office of Trade Finance
Director, Office of Industrial Assessment
Director, Office of Trade and Industrial Information
Director, Office of Program and Resource Management
Director, Office of Textiles and Apparel
Director, Office of Aerospace Policy and Analysis
Director, Office of Aerospace Market Development
Director, Office of Automotive Industry Affairs
Director, Office of Consumer Goods
Director, Office of Chemicals and Allied Products
Director, Office of Energy
Director, Office of Metals, Minerals and Primary Commodities
Director, Office of Forest Products and Domestic Construction
Director, Office of General Industrial Machinery
Director, Office of Special Industrial Machinery
Director, Office of International Major Projects
Director, Office of Computers and Business Equipment
Director, Office of Components and Related Equipment
Director, Office of Telecommunications
Director, Office of Instrumentation on Medical Sciences
Director, Office of Service Industries
Director, Office of Export Trading Company Affairs
U.S. and Foreign Commercial Service:
Director, Office of Foreign Service Personnel
Director, Office of Planning and Management
Director, Office of Foreign Operations
Director, Office of Domestic Operations
Director, Office of Event Management and Support Services
Director, Office of Trade Information Services
Director, Office of Commercial Communications
Administration:
Director, Office of Organization and Management Support
Director, Office of Personnel
Director, Office of Financial Management
Director, Office of Information Resources Management
Deputy Under Secretary for International Trade:
Director, Office of Public Affairs

Minority Business Development Agency:

Freedom of Information Officer

National Bureau of Standards:

Deputy Director of Administration

National Oceanic and Atmospheric Administration:

Deputy Administrator
Associate Administrator
Director, Office of Public Affairs
Director, NOAA Corps
Assistant Administrator for Ocean Services and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Service
Assistant Administrator for Environmental Satellite, Data, and Information Service

Assistant Administrator for Oceanic and Atmospheric Research
Director, Environmental Research Laboratories
Director, Office of Administrative and Technical Services
Director, Regional Administrative Support Center Operations Office
Director, National Capital Administrative Support Center
Director, Eastern Administrative Support Center
Director, Central Administrative Support Center
Director, Mountain Administrative Support Center
Director, Western Administrative Support Center

National Technical Information Services:

Director
Chief, Management Analysis Division

National Telecommunications and Information Administration:

Deputy Assistant Secretary
Chief Counsel

Patent and Trademark Office:

Solicitor of Patents
Deputy Solicitor of Patents

United States Travel and Tourism Administration:

Under Secretary
Director, Office of Management and Administration

(5 U.S.C. 552, as amended by Pub. L. 93-502 and Pub. L. 94-409; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950)

Dated: August 30, 1984.

Marilyn S. McLennan,

Chief, Information Management Division, Office of the Information Resources Management.

[FR Doc. 84-23560 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5f

[T.D. 7975]

Temporary Regulations Relating to Elections and Miscellaneous Matters Under Section 338 of the Internal Revenue Code

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document redesignates and amends (as redesignated) temporary regulations relating to elections and miscellaneous matters under section 224 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), as amended by the Technical Corrections Act of 1982 (TCA) and the Tax Reform Act of 1984 (TRA). This document provides guidance to taxpayers primarily with respect to the amendments made by the TRA. The text of § 1.338-1T as redesignated and amended by this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATES: The amendments made by these temporary regulations to § 1.338-1T (as redesignated by this document) apply to stock acquisitions made after August 31, 1982. The amendments made by these temporary regulations to § 1.338-2T (as redesignated by this document) apply to stock acquisitions made after August 31, 1980, and before September 1, 1982. The amendment made by these temporary regulations to § 1.338-3T(a) (as redesignated by this document) applies to acquisitions subject to section 338 that occur before 1983.

FOR FURTHER INFORMATION CONTACT: Duane H. Pellervo of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document redesignates and amends temporary regulations relating to elections and miscellaneous matters under section 338 of the Internal Revenue Code of 1954 (the "Code"), as added by section 224 of TEFRA (Pub. L. No. 97-248; 96 Stat. 485) and as amended by section 306(a)(8) of the TCA (Pub. L. No. 97-448; 96 Stat. 2402) and section 712(k) of the TRA (Pub. L. No. 98-369; 98 Stat. 494). Those temporary regulations were published in the **Federal Register** on February 8, 1984 (49 FR 4722), and are contained in 26 CFR Part 5f, Temporary Income Tax Regulations under TEFRA (§§ 5f.338-1, 5f.338-2, and 5f.338-3). This document redesignates those temporary regulations as temporary regulations under Part 1 of Title 26 of the Code of Federal Regulations (§§ 1.338-1T, 1.338-2T, and 1.338-3T). All subsequent references are to the redesignated sections. The amendments made by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

Temporary Extension of Time To Make Section 338 Elections Remains in Effect

The temporary regulations as published on February 8, 1984, provide that elections under section 338 for acquisitions occurring after August 31, 1982, need not be filed until the later of the 60th day after the date of publication of the next set of temporary regulations under section 338 or the otherwise applicable due date. The 60-day period also applies to several other provisions in the temporary regulations. Section 1.338-1T(f)(7)(ii) and 1.338-2T(e)(6) (time to select taxable year of new target); §§ 1.338-1T(h) and 1.338-2T(h) (waiver of certain additions and times to act); and § 1.338-1T(j)(2) (perfecting declaration relating to elections under section 338 made notwithstanding suspension applicable to certain corporations). The 60-day extension remains in effect under the temporary regulations as amended by this document. This document clarifies that the temporary regulations referred to in the 60-day extension will be contained in a new § 1.338-4T.

Summary of Amendments to the Temporary Regulations

Due Date for Filing Section 338 Elections for Qualified Stock Purchases Occurring After August 31, 1982

The TRA amends section 338(g)(1) of the Code to require that, except as otherwise provided in regulations, an election must be made on or before the 15th day of the 9th month beginning after the month in which the acquisition date occurs. (Section 338(g)(1) previously required elections to be made within 75 days after the acquisition date, except as otherwise provided in regulations.) This document conforms the temporary regulations to this change. Section 1.338-1T (c) and (k)(1).

Statement of Section 338 Election

This document makes several changes relating to the contents of the statement of election. Under section 338(f)(2), if a purchasing corporation makes a qualified stock purchase of a corporation (first target) and, within a specified period, makes a qualified stock purchase of another corporation (second target) that is the target affiliate of the first target, then a section 338 election generally cannot be made for the second target if an election is not made for the first target. Under new § 1.338-1T(d)(1)(iv), elections filed after October 9, 1984 must include a statement that a section 338 election is not barred by section 338(f)(2).

New § 1.338-1T(d)(2) clarifies that, if the purchasing corporation is included in a consolidated return for its taxable year in which the section 338 election is made, the common parent included in the consolidated return is its sole agent

for purposes of making the section 338 election.

New section 338(h)(8) of the Code, as added by the TRA, provides for aggregation of stock purchases made by several members of an affiliated group, so that a qualified stock purchase may be made after August 31, 1982, by several corporations in the aggregate even if they do not join in a consolidated return. Accordingly, this document adds a new paragraph (d)(3) to § 1.339-1T, which provides guidance on filing the statement of election when several corporations constitute the "purchasing corporation."

Under amended § 1.338-1T(c), if a section 338(g) election for one target causes section 338(a) to apply to another target by reason of the consistency rule of section 338(f)(1), a statement of election is needed only for the first target. Under amended § 1.338-1T(e)(1), discussed in more detail below, a schedule attached to the statement of election provides information on all corporations subject to the statement of election by reason of section 338(f)(1).

Amendments to Waiver Rules

Section 1.338-1T(h)(1), as published on February 8, 1984, waives certain additions to tax that arise prior to the close of the 60th day after the date of publication of temporary regulations § 1.338-4T, provided that corrective action is taken on or before that day. In addition, those temporary regulations permit certain otherwise untimely actions to be taken before the close of that 60th day. Section 5f.338-1 (f)(7)(ii) and (h)(2). These rules were made inapplicable after the expiration of the 60-day extension because the then applicable 75-day period within which to file a section 338 election (under pre-TRA law) obviated the need for such rules. Because the TRA significantly lengthened the time within which section 338 elections may be filed, the waiver rules are made applicable to certain additions to tax arising on or before the later of the 60th day after the date of publication of temporary regulations § 1.338-4T or the last day for filing the section 338 election and to certain actions that are untimely as of the later of that 60th day or last day, provided that corrective action is taken on or before the later of that 60th day or last day.

Section 1.338-1T(h)(1) only waives additions that, by statute, are excusable upon a showing of reasonable cause. Thus, for example, the waiver does not apply to the addition for failure to pay estimated tax under section 6655. Under new section 338(h)(13) as added by the TRA, however, tax attributable to the deemed sale of assets under section 338(a) is not taken into account for purposes of section 6655.

It was called to the attention of the Treasury that § 1.338-1T(h)(2) (relating to elections made on a late-filed return) does not apply if there is no underpayment of tax with respect to a late-filed return and therefore no addition to tax for failure to file a return. This document amends § 1.338-1T(h)(2) so that it applies in such cases.

Filing of Schedule of Corporations and Related Materials; Consequence of Failure To Comply

Section 1.338-1T(e)(1), as revised by this document, requires that a schedule of corporations subject to a statement of election by reason of section 338(f)(1) must be attached to the statement of election. If an election filed on or before December 5, 1984, does not include the schedule, the requirement of this provision will be satisfied if the schedule is filed on or before [THAT DAY] (with a copy of the previously filed statement of election attached) with the Internal Revenue Service Center with which the purchasing corporation files its annual income tax return.

Section 1.338-1T(e)(2) is also revised by this document to clarify that the requirement therein under which the statement of election must be attached to the final return of old target and the first return of new target applies not only to a target for which a statement of election is expressly filed ("original target") but also to any corporation subject to that statement by reasons of section 338(f)(1). That statement, in addition, must include a schedule of corporations subject to the statement of election as of the time the return is filed. Finally, a copy of that schedule (with a copy of the statement of election attached) must be filed with the Internal Revenue Service Center with which the purchasing corporation files its annual income tax return and with which the original target's final return as "old target" is required to be filed. The schedule need not be filed with these Service Centers if they have already received the identical schedule. Special procedures for complying with these provisions apply during the period ending on December 5, 1984.

If the requirements of revised § 1.338-1T(e) (1) and (2) are not satisfied with respect to either a target for which an election is expressly made or any other corporation subject to that election by reason of section 338(f)(1), then the waiver rule of § 1.338-1T(h)(1) will apply to neither the target for which the election was expressly made nor any corporation subject to that election by reason of section 338(f)(1).

Extension of Time To File Transitional Rule Elections; Selection of Deemed Sale Date

Section 306(a)(8)(B)(i) of the TCA permits a transitional rule section 338 election under section 224(d)(2) of TEFRA to be made on or before February 28, 1983. A transitional rule election is an election with respect to an acquisition for which the acquisition date occurs after August 31, 1980, and before September 1, 1982. Section 712(k)(9)(B) of the TRA provides that such a transitional rule election may be made at any time up to the close of September 17, 1984. Accordingly, conforming changes are made to paragraphs (b) and (c)(2) of § 1.338-2T.

Several related changes are made to the rules relating to selection of a deemed sale date. Under § 1.338-2T(f)(2) as amended, a deemed sale date selected in either a statement of transitional rule election or deemed sale date statement cannot be a date later than February 28, 1983. A statement of transitional rule election filed after February 28, 1983, that does not specify a deemed sale date is deemed to specify February 28, 1983, as the deemed sale date. The time to file a deemed sale date statement under § 1.338-2T(f)(3), which expired on May 8, 1984, is extended to the close of September 17, 1984, if the previously filed statement of transitional rule election did not specify a deemed sale date.

A new paragraph (f)(2)(iii) is added by this document to require uniformity of deemed sale dates in certain cases in which, by reason of the qualified stock purchase of one corporation, the purchasing corporation is treated, under section 338(h)(3)(B) (prior to amendment by the TRA) as purchasing all or a part of the stock of another corporation with respect to which a qualified stock purchase is also made.

Applicability of Section 338 to Transitional Rule Elections

Section 1.338-2T(e)(3)(ii) is amended to reflect the fact that the amendments to section 338 made by the TRA do not apply to transitional rule elections subject to § 1.338-2T. See section 712(k)(9)(A). One of those amendments adds a new section 338(h)(3)(B), which provides that stock of a subsidiary acquired by "new" target in its deemed purchase of assets under section 338 is "purchased" stock for purposes of section 338. Thus, a target may be treated as having made a deemed qualified stock purchase of its

subsidiary. A new paragraph (e)(7) is added to § 1.338–2T to clarify that such a result cannot occur in the transitional rule context.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act of 1980

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB control number 1545–0702.

Drafting Information

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

List of Subjects in 26 CFR 1.301–1—1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

Adoption of Amendments to the Regulations

Accordingly, Parts 1 and 5f of Title 26 of the Code of Federal Regulations are amended as follows:

§§ 5f. 338–1, 5f.338–2 and 5f.338–3 [Redesignated as §§ 1.338–1T, 1.338–2T and 1.338–3T]

Paragraph 1. Sections 5f.338–1, 5f.338–2, and 5f.338–3 are redesignated as §§ 1.338–1T, 1.338–2T, and 1.338–3T, respectively.

Par. 2. Newly designated § 1.338–1T is amended as follows:

1. The section heading is revised.
2. Paragraph (a) is amended by adding to the end of the first sentence the words "and the Tax Reform Act of 1984."
3. Paragraph (b)(6) is amended by removing from the second sentence the words "§ 5f.338–1(f)(3) (i) and (ii)" and by adding in their place the words "paragraph (f)(3) (i) and (ii) of this section".
4. Paragraph (c) is revised.
5. Paragraph (d) is revised.
6. Paragraph (e) is revised.
7. Paragraph (f)(7)(ii) is revised.
8. Paragraph (h) is amended by—
   a. Revising paragraph (h) (1) and (2),
   b. Removing, from each place they appear in paragraph (h)(4) *Example (1)*, the words "the next set of temporary regulations under section 338" and by adding in their place the words "temporary regulations § 1.338–4T",
   c. Removing from the last sentence of paragraph (h)(4) *Example (1)* the words "§ 5f.338–1(h)" and by adding in their place the words "§ 1.338–1T(h)", and
   d. Removing from the third sentence of paragraph (h)(4) *Example (2)* the words "the next set of temporary regulations under section 338" and by adding in their place the words "temporary regulations § 1.338–4T".
9. Paragraph (j)(2) is amended by—
   a. Removing from the second sentence the words "§ 5f.338–(1)(j)(2)" and by adding in their place the words "§ 1.338–1T(j)(2)", and
   b. Removing from the third sentence the words "the next set of temporary regulations under section 338" and by adding in their place the words "temporary regulations § 1.338–4T".
10. Paragraph (k) is amended by—
   a. Revising paragraph (k)(1), and
   b. Removing from the third sentence of paragraph (k)(4) the words "paragraph (d)(4)" and by adding in their place the words "paragraph (d)(1)(v)".

The revised provisions read as follows:

§ 1.338–1T Elections under section 338(g) of the Internal Revenue Code of 1954 (temporary).

* * * * *

(c) Time and manner of making election. The purchasing corporation makes an election under section 338(g) only by filing, not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs (or, if later, the 60th day after the date of publication of temporary regulations § 1.338–4T), a statement of election with the Internal Revenue Service Center with which it files its annual income tax return. If the statement of election for a target will cause section 338(a) to apply to other corporations by reason of section 338(f)(1), a separate statement of election need not be filed for such other corporations. See paragraph (e)(1) of this section for an attached schedule relating to such other corporations. For a special suspension of time to elect under section 338, see paragraph (j) of this section. For special rules applicable to certain foreign corporations and DISCs, see paragraph (k) of this section.

(d) *Statement of election*—(1) *General rule.* The statement of election under section 338 must be made by the purchasing corporation on Form 8023. If the form is not available, a statement prepared by the purchasing corporation will be satisfactory. (If Form 8023 is available but does not require all of the information required by this section to be included in the statement of election, the additional information must be added to the form or contained in an attachment.) The heading of the statement should prominently identify the statement as an election under section 338. Except as provided in this paragraph (d) or in paragraphs (j)(2) and (k) (4) and (5) of this section, the statement must—

(i) Contain the name, address, and employer identification number of the purchasing corporation and the target,

(ii) Identify the election as an election under section 338(g) of the Code.

(iii) For elections filed after May 8, 1984, specify the acquisition date,

(iv) For elections filed after October 9, 1984, state that the election is not barred by reason of section 338(f)(2), and

(v) Be signed by a person who states under penalties of perjury that he or she is authorized to make the election on behalf of the purchasing corporation.

(2) *Purchasing corporation included in consolidated return.* If the purchasing corporation is included in a consolidated return for the taxable year in which the statement of election is filed, see § 1.1502–77.

(3) *Qualified stock purchase made by several corporations in the aggregate.* Under section 338(h)(8), stock purchases made by members of an affiliated group (as defined in section 338(h)(5)) are treated as if made by one corporation. If two or more corporations make a qualified stock purchase in the aggregate under this rule, a single statement of election must include the name, address, and employer identification number of each such member and must be signed in accordance with paragraph (d)(1)(v) of this section by a person authorized to act on behalf of each such member. A copy of this single statement of election must be filed within the time specified in paragraph (c) of this section with the Internal Revenue Service Center with which each such member files its annual income tax return.

(e) *Schedule of corporations; attachments to target returns*—(1)

Schedule of corporations subject to election. If applicable, a schedule must be attached to the statement of election providing the following required data: the name, address, and employer identification number of each corporation subject to the statement of election by reason of section 338(f)(1) as of the day the statement of election is filed. If a statement of election filed on or before December 5, 1984, does not include the schedule, the requirement of the preceding sentence will be satisfied if, on or before December 5, 1984, the schedule (with a copy of the previously filed statement of election attached) is filed with each Internal Revenue Service Center with which the statement of election is required to be filed under paragraphs (c) and (d) of this section. That schedule must include the required data on all corporations subject to the statement of election by reason of section 338(f)(1) as of the day that schedule is filed.

(2) *Attachments to target returns.* A copy of the statement of election (including, if applicable, the schedule described in this paragraph (e)) must be attached to old target's final return and to the first return of new target. This requirement applies both to a corporation for which a statement of election is expressly made ("original target") and to a corporation subject to such a statement by reason of section 338(f)(1). If the statement is not attached to a return filed on or before December 5, 1984, or if it is attached to such a return but does not include the schedule described in this paragraph (e) (if applicable), this requirement will be satisfied if, on or before December 5, 1984 a copy of the statement of election (inlcuding the schedule if applicable) is filed with the Internal Revenue Service Center with which old target's final return and the first return of new target are required to be filed ("corrective statement"). The statement of election attached to the return, or a subsequently filed corrective statement, must include, if applicable, a schedule containing the required data described in paragraph (e)(1) of this section for each corporation subject to the statement of election by reason of section 338(f)(1) as of the day the particular return is filed or, if a corrective statement is subsequantly filed, as of the day the corrective statement is filed. In addition, a copy of the schedule (with a copy of the statement of election attached) must be filed with each Internal Revenue Service Center with which the statement of election is required to be filed under paragraphs (c) and (d) of this section (unless the schedule is identical to the one filed under paragraph (e)(1) of this section) and with the Internal Revenue Service Center with which the original target's final return as old target is required to be filed (unless that Service Center has already received the identical schedule). The filing described in the preceding sentence must occur on or before the later of the day on which the particular return is filed or December 5, 1984. If the target is a foreign corporation not subject to United States tax (as defined in paragraph (k)(3)(iii) of this section), a copy of the statement of election must be attached to the return(s) specified in paragraph (k)(6) of this section.

(3) *Consequence of failure to comply with requirements of paragraph (e) (1) and (2) of this section.* If the requirements of paragraph (e) (1) and (2) of this section are not satisfied with respect to a target for which a statement of election is expressly made or with respect to any other corporation subject to that statement of election by reason of section 338(f)(1), then the waiver rule of paragraph (h)(1) of this section will not apply to all of the following corporations: (i) the target for which a statement of election was expressly made, and (ii) all corporations subject to that statement of election by reason of section 338(f)(1). Failure to comply with the requirements of paragraph (e) (1) and (2) of this section, however, will not invalidate a statement of election and will have no effect on the applicability of section 338(f)(1).

(f) *Certain consequences of section 338 election*—(1) * * *

* * * * *

(7) *New target's taxable year and method of accounting*—(i) * * *

(ii) *First return due on or before certain time.* Notwithstanding § 1.441-1(b)(3), a new target may adopt a taxable year for which the first return is due (not including extensions of time) on or before the date that is the later of (A) the 60th day after the date of publication of temporary regulations § 1.338-4T or (B) the last day for making the election under section 338 by filing its first return as new target for the desired taxable year on or before that date.

* * * * *

(h) *Waiver: certain additions to tax and times to act, etc.—(1) Waiver of certain additions to tax.* An addition to tax or additional amount (addition) under Subchapter A of Chapter 68 arising on or before the later of the 60th day after the date of publication of temporary regulations § 1.338-4T or the last day for making the election under section 338, by reason of circumstances that would not exist but for an election under section 338, is waived if (i) under the particular statute the addition is excusable upon a showing of reasonable cause and (ii) corrective action is taken on or before the later of such 60th day or last day. For the nonapplication of this paragraph (h)(1) for failure to file certain materials, see paragraph (e)(3) of this section. The Service should be notified at the time of correction (*e.g.*, by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (h) is being asserted.

(2) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If the addition to tax for failure to file a return is waived under paragraph (h)(1) of this section, or if that addition would have been waived had there been an underpayment of tax or had paragraph (e)(3) of this section (under which paragraph (h)(1) of this section does not apply if certain materials are not filed) not applied, then any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in that paragraph (h)(1) will be considered timely if specified on that late-filed return (filed within the time prescribed in that paragraph (h)(1) for corrective action).

* * * * *

(ii) *New target in purchasing group's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the purchasing group on or before the later of the 60th day after the date of publication of temporary regulations § 1.338-4T or the last day for making the election under section 338, then any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) will be considered timely if specified in an amended return (or, if the contents of the return itself are not affected by the election or other action, a separate statement), filed on or before the later of such 60th day or last day, with the Internal Revenue Service Center with which the consolidated return was filed. If the election is made on a separate statement, such statement must cite this provision and must include the name, address, and EIN of the parent corporation of the purchasing group.

* * * * *

(k) *Special rules for foreign corporations or DISCs—(1) Election by foreign purchasing corporation not subject to U.S. tax.* A foreign purchasing corporation not subject to United States tax for its taxable year that includes the

acquisition date must file the statement of election with the Philadelphia Service Center, Philadelphia, Pennsylvania 19255.

* * * * *

Par 3. Newly designated 1.338–2T is amended as follows:

1. The section heading is revised.
2. Paragraph (a) is amended by—
a. Adding immediately after the second sentence of paragraph (a)(1) the sentence "This section also reflects changes made by the Tax Reform Act of 1984.", and
b. Removing from paragraph (a)(2) the words "5f.338–1(b)" and by adding in their place the words "1.338–1T(b)".
3. Paragraph (b) is amended by removing the words "February 28, 1983" and by adding in their place the words "September 17, 1984".
4. Paragraph (c) is amended by—
a. Removing from paragraph (c)(2) the words "February 28, 1983" and by adding in their place the words "September 17, 1984", and
b. Adding a new paragraph (c)(3).
5. Paragraph (d) is revised.
6. Paragraph (e) is amended by—
a. Revising paragraph (e)(3)(ii),
b. Removing from the second sentence of paragraph (e)(5)(ii) the words "§ 5f.338–1(k)(7)" and by adding in their place the words "§ 1.338–1T(k)(7)",
c. Removing from paragraph (e)(6) the words "§ 5f.338–1(f)(7)" and by adding in their place the words "§ 1.338–1T(f)(7)", and
d. Adding a new paragraph (e)(7).
7. Paragraph (f) is amended by—
a. Revising paragraph (f)(2)(i)(B),
b. Revising paragraph (f)(2)(ii),
c. Redesignating paragraph (f)(2)(iii) as paragraph (f)(2)(iv) and adding a new paragraph (f)(2)(iii),
d. Removing from the first sentence of paragraph (f)(3)(i) the words "A purchasing corporation" and by adding in their place the words "Except as provided in paragraph (f)(3)(iii) of this section, a purchasing corporation", and
e. Adding a new paragraph (f)(3)(iii).
8. Paragraph (g) is amended by removing the words "§ 5f.338–1(g)" and by adding in their place the words "§ 1.338–1T(g)".
9. Paragraph (h) is amended by—
a. Removing, from each place they appear, the words "§ 5f.338–1" and by adding in their place the words "§ 1.338–1T", and
b. Adding at the end thereof the sentence "For the non-application of § 1.338–1T(h)(1) for failure to file certain materials, see paragraph (d)(2) of this section."
10. Paragraph (j) is amended by revising *Example (1)* and *Example (2)*.

The new and revised provisions read as follows:

§ 1.338–2T Transitional rule elections (temporary).

* * * * *

(c) *Statement of election*—(1) * * *

* * * * *

(3) *Purchasing corporation included in consolidated return.* If the purchasing corporation is included in a consolidated return for the taxable year in which the statement of election is filed, see § 1.1502–77.

(d) *Attachment to target returns; consequence of failure to attach*—(1) *Attachment.* A copy of the statement of transitional rule election must be attached to old target's final return and to the first return of new target. If the statement is not attached to a return filed on or before December 5, 1984, this requirement will be satisfied if, on or before December 5, 1984, a copy of the statement of transitional rule election is filed with the Internal Revenue Service Center with which old target's final return and the first return of new target are required to be filed. If the target is a foreign corporation not subject to United States tax (as defined in § 1.338–1T(k)(3)(iii)), a copy of the statement of election must be attached to the return(s) specified in § 1.338–1T(k)(6).

(2) *Consequence of failure to comply with the requirement of paragraph (d)(1) of this section.* If the requirement of paragraph (d)(1) of this section is not satisfied, then the waiver rule of § 1.338–1T)h) (1) as applied by paragraph (h) of this section will not apply. Failure to comply with the requirement of paragraph (d)(1) of this section, however, will not invalidate a statement of transitional rule election.

(e) *Certain consequences of transitional rule election*—(1) * * *

* * * * *

(3) *Rules similar to old section 334(b)(2); certain provisions of section 338 inapplicable.* * * *

(i) * * *

(ii) Section 338 has in effect on July 17, 1984, applies, except that subsections (e), (f), and (i) of section 338, and paragraphs (4), (6), (8), and (9) of section 338(h), as in effect on such date do not apply.

* * * * *

(7) *Deemed purchase of stock.* Stock acquired by "new" target in its deemed purchase of assets under section 338 (a)(2) does not constitute "purchased" stock for purposes of applying the qualified stock purchase rules of section 338(d)(3). See section 338(h)(3)(B) as in effect on July 17, 1984, and section 712(k)(9)(A) of the Tax Reform Act of 1984.

(f) *Selection of deemed sale date by purchasing corporation*—(1) *In general.* * * *

(2) *Date selected as deemed sale date*—(i) *In general.* * * *

(A) * * *

(B) Is not later than the earlier of February 28, 1983, or the date on which the statement of transitional rule election or deemed sale date statement is filed.

(ii) *Unspecified deemed sale date.* If a timely filed statement of transitional rule election does not specify a deemed sale date and a deemed sale date statement is not filed, the date of filing the election is considered the selected deemed sale date, except that February 28, 1983, will be treated as the deemed sale date if the statement of transitional rule of election is filed after that date.

(iii) *Conformity of deemed sale dates in certain cases.* If, by reason of the qualified stock purchase of one corporation, the purchasing corporation is treated, under section 338(h)(3)(B) (as in effect on July 17, 1984), as purchasing all or a part of the stock of a second corporation with respect to which a qualified stock purchase is also made, then a deemed sale date selected for the second corporation that is different from that selected for the first corporation will be disregarded and the second corporation will be assigned the first corporation's deemed sale date. This rule does not apply if the otherwise applicable rules on selection of a deemed sale would prohibit the selection of the first corporation's deemed sale date for the second corporation.

(iv) *Filing date.* * * *

(3) *Selecting deemed sale date after filing transitional rule election*—(i) * * *

* * * * *

(iii) *Limited extension of time to file deemed sale date statement.* If a timely filed statement of transitional rule election does not specify a deemed sale date, such a date may be specified in a deemed sale date statement filed on or before September 17, 1984.

* * * * *

(j) * * *

Example (1). (i) S is the common parent of an affiliated group that includes T. The S group files calendar year consolidated returns. At the close of May 31, 1982 S sells all of the stock of T to P, a calendar year corporation, and on November 10, 1982, P files a statement of transitional rule election with respect to T. The statement of election meets all the requirements of this section but does not specify a deemed sale date. P will file a separate return for the 1982 calendar

year. Unless P takes action to specify a different date, the date of filing the statement of transitional rule election will be considered the selected deemed sale date. Thus, T's deemed sale occurs and its taxable year ends at the close of November 10, 1982. T's income from January 1, 1982, through May 31, 1982, is included in the consolidated return of the S group. Any income tax liability resulting from the deemed sale under section 338 is reported in old T's return for its final taxable period which begins on June 1, 1982, and ends on November 10, 1982. Under paragraph (e)(5)(i) of this section, this return is due on February 15, 1983. Assuming new T adopts the calendar year, another return will be required for the period from November 11, 1982, through December 31, 1982, which is T's first taxable period as "new target." Under paragraph (e)(6) of this section, new T may adopt the calendar year on its first income tax return if that return in filed on or before the 60th day after the date of publication of temporary regulations § 1.338-4T.

(ii) Because a return would not be due on February 15, 1983, but for the transitional rule election under section 338, additions to tax under section 6651(a) (1) and (2) are waived if that return is filed and the tax shown thereon paid on or before the 60th day after the date of publication of temporary regulations § 1.338-4T. See paragraph (h) of this section. If new T adopts the calendar year in accordance with paragraph (e)(6) of this section, these additions to tax are also waived with respect to the return of new T due on March 15, 1983. Interest on any underpayment of tax, however, runs from the due date of these returns.

(iii) If P files a consolidated return for the 1982 calendar year, T's income for its final taxable period as old target and for its first taxable period as new target will be included in P's consolidated return, to which a copy of the statement of transitional rule election must be attached. See paragraph (d) of this section. The waiver rule applies only to additions that would not arise but for the section 338 election.

Example (2). Assume the same facts as in Example (1)(i), except that P wishes to select a deemed sale date other than November 10, 1982. If P files a proper deemed sale date statement under paragraph (f) of this section after February 28, 1983, and on or before September 17, 1984 P may select as the deemed sale date any date after June 30, 1982, and before March 1, 1983. If July 1, 1982, is selected as the deemed sale date and P does not join with T in filing a consolidated return for 1982, any income tax liability resulting from the deemed sale of assets (occurring at the close of July 1, 1982) is reported in old T's final return for its taxable period beginning on June 1, 1982, and ending on July 1, 1982. Under paragraph (e)(5)(i) of this section, that return is due on October 15, 1982. If that return is filed on or before the 60th day after the date of publication of temporary regulations § 1.338-4T, additions to tax for failure to file a return and to pay tax shown on a return will be waived. Similarly, if new T adopts the calendar year in accordance with paragraph (e)(6) of this section, those additions will be waived with respect to its return due on March 15, 1983 (for its taxable period beginning on July 2, 1982, and ending on December 31, 1982). The return of old T which, had an election not been made, would have been due on March 15, 1983 (for the period from June 1, 1982, to December 31, 1982) need not be filed. See paragraph (h) of this section. If P acquired all of the stock of T at the close of June 30, 1982, and selected July 1, 1982, as the deemed sale date, old T's final return would consist of July 1, 1982 (*i.e.*, only one day).

Par. 4. Section 1.338-3T is amended by removing from the last sentence of paragraph (a)(2)(ii) the words "5f.338.2(f)", by adding in their place the words "§ 1.338-2T(f)", and by revising the heading to read as follows:

§ 1.338-3T Miscellaneous rules under section 224 of TEFRA (temporary).

* * * * *

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

This Treasury decision is issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 324, 26 U.S.C. 338, 68A Stat. 917, 26 U.S.C. 7805, respectively). Approved by the Office of Management and Budget under Control Number 1545-0702.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 31, 1984.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 84-23813 Filed 9-4-84; 9:12 am]

BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

Editorial Amendment of the Commission's Rules for the Aviation Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action editorially amends the rules for the Aviation Services to delete unused terms, align rules with licensing practices, delete redundant rules, and correct errors. The purpose of this action is to improve the usefulness of the rules to the user.

EFFECTIVE DATE: August 14, 1984.

FOR FURTHER INFORMATION CONTACT: Charles D. Fisher, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 87

Aeronautical stations, Communications equipment, General aviation, Radio.

Order

In the matter of editorial amendment of Part 87 of the rules.

Adopted: August 14, 1984.
Released: August 21, 1984.

1. This order editorially amends a number of sections of Part 87, Aviation Services, of the Commission's rules. By this action unused terms are deleted, rules dealing with licensing practices in the aeronautical public service are brought in line with current aircraft station licensing practice, the rules for aeronautical metropolitan stations are deleted since those stations are one form of aeronautical enroute stations and do not warrant separate identification, typographic and other errors are corrected and out-of-date material is deleted. The affected sections are: 87.5, 87.123, 87.183, 87.195, 87.201, 87.235, 87.237, 87.239, 87.241, 87.277, 87.321, 87.323, 87.325, 87.327, 87.329, 87.331, 87.401, 87.432, 87.441, 87.455, 87.463, 87.467 and 87.501.

2. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 0.231(d) of the Commission's rules. Since the amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

3. Regarding questions on matters covered in this document contact Charles D. Fisher, telephone (202) 632-7175.

4. In view of the above, it is ordered, That the rule amendments set forth in the attached Appendix are adopted effective August 14, 1984.

Federal Communications Commission.

Thomas P. Campbell,

Associate Managing Director for Operations.

Appendix

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 87—[AMENDED]

§ 87.5 [Amended]

1. In § 87.5 the definitions for "Aeronautical metropolitan station", "Aeronautical public service station",

"Operational land station" and "Operational mobile station" are removed; in the definition of "Aeronautical public communications service" the words "land radio stations" are replaced with "maritime mobile public coast stations".

2. Section 87.123 is revised to read as follows:

§ 87.123 Permissible communications.

Ground stations in the Aviation Services shall transmit communications for the safe, expeditious, and economic operation of aircraft and the protection of life and property in the air. Each class of aeronautical station and Civil Air Patrol land stations may communicate additionally in accordance with the particular sections of this part which govern these classes. Ground stations in the Aviation Services in Alaska may transmit messages concerning sickness, death, weather, ice conditions or other matters relating to safety of life and property if there is no other established means of communication between the points in question and no charge is made for the communications service.

§ 87.183 [Amended]

3. In § 87.183 paragraph (g)(3) is removed.

4. Section 87.195 is amended by revising paragraph (i) to read as follows:

§ 87.195 Frequencies available.

* * * * *

(i) The frequencies available to aeronautical enroute stations are listed in §§ 87.293, 87.295, 87.297, 87.299, and 87.301.

§ 87.201 [Amended]

5. In § 87.201 paragraph (d) is amended by changing the first sentence to read as follows: "Private aircraft stations may utilize 122.850 and 122.900 MHz for communications with aeronautical multicom stations, and 122.925 MHz for communications with Federal and State natural resource agencies in accordance with Subpart D of this part."

6. In § 87.235 paragraph (a) is revised to read as follows:

§ 87.235 Frequencies available.

(a) The frequencies available for aeronautical public service are those maritime mobile and maritime mobile-satellite frequencies available for public correspondence radiotelephony or radiotelegraphy between ship and public coast stations. No maritime mobile frequencies in the band 156 MHz to 174 MHz are available for aeronautical public service. The aeronautical public service must not cause interference to maritime mobile communications.

* * * * *

7. Section 87.237 and its heading are revised to read as follows:

§ 87.237 Stations authorized for aeronautical public service.

Only those aircraft stations licensed for appropriate maritime mobile or maritime mobile-satellite frequencies may carry on an aeronautical public service. The rules applicable to the aeronautical public service are the same as for public correspondence between stations of the maritime mobile or maritime mobile-satellite service in Part 83 of this chapter. Transmitters used for aeronautical public service by aircraft stations must be type accepted or type approved by the Commission in conformity with Part 83 of this part for use in ship stations.

8. Section 87.239 is revised to read as follows:

§ 87.239 Scope of service.

(a) An aircraft station which provides an aeronautical public service must exchange radio communications without discrimination with any maritime mobile public coast station or maritime mobile-satellite earth station whenever necessary for the handling of traffic.

(b) An aircraft station which provides an aeronautical public service must make such service available to all persons without discrimination and on reasonable demand.

9. Section 87.241 and its heading are revised to read as follows:

§ 87.241 Requirement for aeronautical public service aircraft equipment.

A continuous effective listening watch must be maintained on the frequencies used for flight safety and flight regularity while aeronautical public service communications are being handled. The aircraft installation and system of operation must permit instantaneous interruption of aeronautical public service communications to transmit or receive flight safety and flight regularity messages.

§ 87.277 [Amended]

10. In § 87.277 paragraph (b)(1)(iii) is corrected by removing the figure "1" following the word "by".

Subpart F—[Removed]

§ 87.321 [Removed]

§ 87.323 [Removed]

§ 87.325 [Removed]

§ 87.327 [Removed]

§ 87.329 [Removed]

11. Subpart F and §§ 87.321, 87.323, 87.325, 87.327 and 87.329 are removed.

§ 87.331 [Amended]

12. In § 87.331 paragraph (c) is amended by correcting the spelling of "propagation" at the end of the first sentence, by removing the last sentence just before the table, and by removing the left and middle columns of the table, changing the heading over the remaining right column to read, "Frequencies available (carrier) kHz."

§ 87.401 [Amended]

13. In § 87.401 paragraph (a) the table is amended by replacing 123.000 with 123.600.

14. Section 87.432 is amended by combining the introductory paragraph and paragraph (a) to read as follows:

§ 87.432 Eligibility.

(a) Authorization to operate an aeronautical utility mobile station on the frequencies in § 87.431(c) will be issued only for operation at landing areas having an airdrome control tower or an FAA Flight service station.

* * * * *

§ 87.441 [Amended]

15. In § 87.441 paragraph (d) is amended by revising the last sentence to read, "Ship stations communicating with aircraft stations shall employ 2.8A3J emission."

§ 87.455 [Amended]

16. In § 87.455 paragraph (b)(1) is amended by removing from the first sentence, ". . . as defined by the Civil Aeronautics Board."

§ 87.463 [Amended]

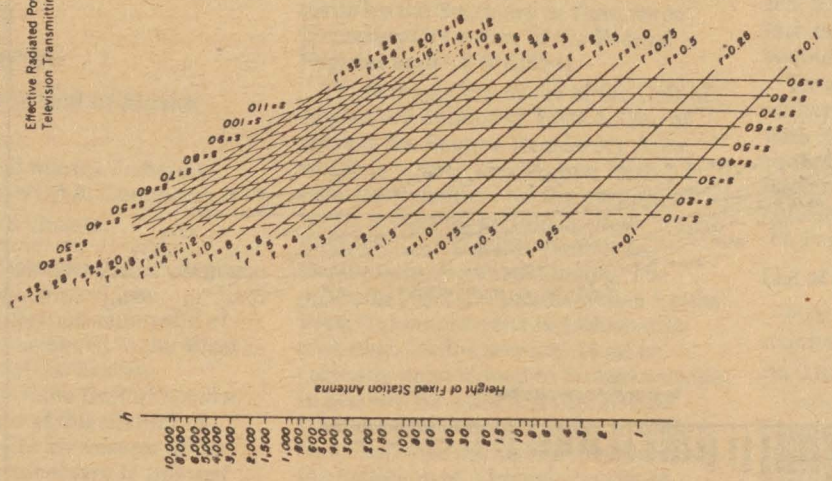
17. In § 87.463 paragraph (a) the footnote is revised to read "[1] These frequencies are shared on a secondary basis, by the Radio Control Service until December 20, 1987, at which time authorization for that service is withdrawn," and charts referenced in paragraph (a)(5) are added to follow paragraph (b) to read as follows:

BILLING CODE 6712-01-M

FOR CHANNEL 4

CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72–76 MHz BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED

Effective Radiated Power of TV Station ..... 100 kw.
Television Transmitting Antenna Height ..... 500 ft.



EXPLANATION OF SCALE HEADINGS:

P—effective radiated power of fixed 72–76 MHz station in watts and equals the power output of the transmitter adjusted for transmission line loss and antenna gain. In symbols

$$P = P_o L G$$

where P_o = output of transmitter in watts
L = transmission line efficiency, %
G = power gain of the antenna with respect to a half wave dipole in free space.

For a directional antenna use the power in the main lobe.

h—height in feet of the center of the transmitting antenna array of the fixed 72–76 MHz station with respect to the average level of the terrain between 2 and 10 miles from such antenna in the direction of the TV station. (The method for determining this height is explained in detail in the TV Broadcast Rules.)

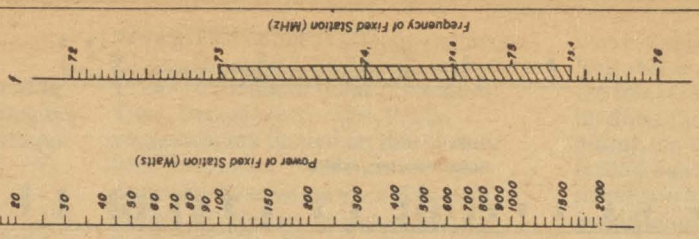
s—separation in miles between the television station antenna and the 72–76 MHz fixed station antenna.

r—distance in miles from the 72–76 MHz fixed station antenna to the contour at which the TV service area is reduced by 10%. This distance is measured from the 72–76 MHz antenna in the direction of the TV antenna.

f—frequency in MHz of 72–76 MHz fixed stations.
NOTE: frequencies included in cross hatched area are not available for assignment.

DIRECTIONS FOR USING THIS CHART:

1. Draw a straight line connecting P and h for the 72–76 MHz fixed station and continue to the Q axis.
2. From the intersection of the P–h line and the Q axis, draw another straight line to f.
3. Where the second line intersects the S–r curves, read the value of r for the appropriate value of S.

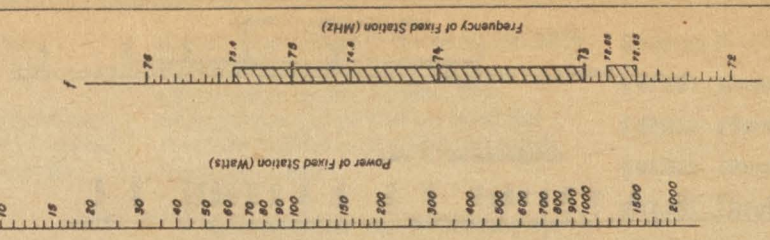


REVISED JANUARY 1963

FOR CHANNEL 5

CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72–76 MHz BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED

Effective Radiated Power of TV Station: 100 kw.
Television Transmitting Antenna Height: 500 ft.



EXPLANATION OF SCALE HEADINGS:

P—effective radiated power of fixed 72–76 MHz station in watts and equals the power output of the transmitter, adjusted for transmission line loss and antenna gain. In symbols

$P = P_o L G$

where P_o = output of transmitter in watts
L = transmission line efficiency, %
G = power gain of the antenna with respect to a half wave dipole in free space.

For a directional antenna use the power in the main lobe

h—height in feet of the center of the transmitting antenna array of the fixed 72–76 MHz station with respect to the average level of the terrain between 2 and 10 miles from such antenna in the direction of the TV station. (The method for determining this height is explained in detail in the TV Broadcast Rules.)

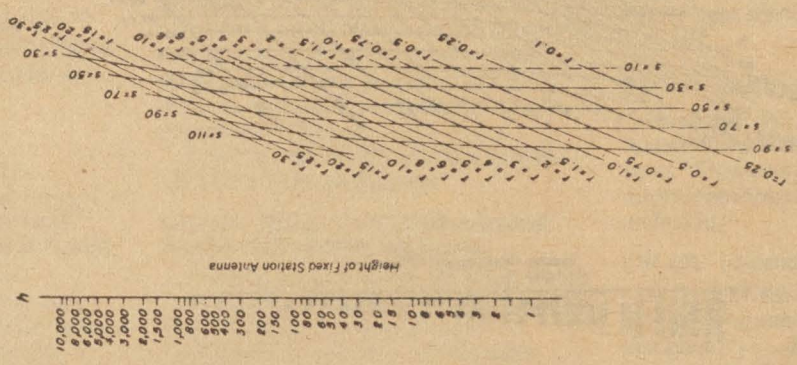
s—separation in miles between the television station antenna and the 72–76 MHz fixed station antenna

r—distance in miles from the 72–76 MHz fixed station antenna to the contour at which the TV service area is reduced by 10% r. This distance is measured from the 72–76 MHz antenna in the direction of the TV antenna.

f—frequency in MHz of 72–76 MHz fixed stations.
NOTE: frequencies included in cross hatched area are not available for assignment.

DIRECTIONS FOR USING THIS CHART

1. Draw a straight line connecting P and h for the 72–76 MHz fixed station and continue to the Q axis.
2. From the intersection of the P h line and the Q axis, draw another straight line to f.
3. Where the second line intersects the S–r curves, read the value of r for the appropriate value of S.



REVISED JANUARY 1983

BILLING CODE 6712-01-C

§ 87.467 [Amended]

18. In § 87.467 paragraph (a) is amended by removing the comma after "operational fixed" and by removing the words "operational land, or operational mobile".

§ 87.501 [Amended]

19. In § 87.501 paragraph (h)(3) note 2 and paragraph (h)(5) note 3 are revised to read as follows:

[2] Radio altimeters are permitted to use the band 1600–1660 kHz only until such time as international standardization of other aeronautical radionavigation systems or devices requires the discontinuance of radio altimeters in this band. No new authorizations or applications for type acceptance of altimeters will be accepted.

[3] The band 5.0–5.25 GHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. The requirements of this system shall take precedence over other uses of this band.

[FR Doc. 84-23028 Filed 9-5-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 4030 2-21]

Groundfish of the Gulf of Alaska; Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum yield of sablefish will be achieved in the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska, and that a closure of this district to fishing for sablefish by vessels of the United States is necessary to prevent overfishing of sablefish. This action is intended to promote the conservation of sablefish.

DATES: This notice is effective at noon, Alaska Daylight Time (ADT), September 1, 1984, until noon, Alaska Standard Time, December 31, 1984. Public comments are invited on this closure until September 16, 1984.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. ADT weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP), which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of fishing seasons and areas. Implementing rules at § 672.20 specify that these adjustments will be made by the Secretary of Commerce (Secretary) by notice in the **Federal Register** under § 672.22(a).

Three regulatory areas of the Gulf of Alaska are defined in § 672.2. One of these is the Eastern Regulatory Area, which is further divided into four regulatory districts for the purpose of better managing sablefish: West Yakutat, East Yakutat, Southeast Outside, and Southeast Inside. The optimum yield (OY) for sablefish for the West Yakutat District is 1,680 metric tons (mt). Of this amount, 15 mt is currently apportioned to foreign nations to account for sablefish that will be taken as operational bycatch in their trawl fisheries during the remainder of the fishing year. Through August 16, 1984, U.S. fishermen harvested 1,186 mt. The balance of the OY available to domestic fishermen, or 479 mt, will be harvested by September 1, 1984. The Regional Director has determined that the total OY for sablefish will be taken by domestic and foreign fishermen during the 1984 fishing year and that further fishing for sablefish by U.S. fishermen beyond September 1, 1984, would cause the OY to be exceeded.

Therefore, the Secretary issues this notice prohibiting further fishing for sablefish by vessels of the United States in the West Yakutat District after noon on September 1, 1984. This closure will be effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

The sablefish stock in the affected area will be subject to harm unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order is contrary to the public interest and that the effective date should not be delayed.

This action is taken under the authority of § 672.22(a), and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It requires no collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 31, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23545 Filed 8-31-84; 2:42 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 174
Thursday, September 6, 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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Processing of Cases

AGENCY: Federal Labor Relations Authority.

ACTION: Request for comments; extension of comment period.

SUMMARY: In order to assure agencies, unions and interested persons ample opportunity to submit written proposals concerning possible modifications to the Federal Labor Relations Authority's case processing procedures, it has been decided to extend to September 21, 1984 the period for written comments.

COMMENT DATE: Written comments must be received by the Authority on or before September 21, 1984..

ADDRESS: Comments should be submitted to Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street SW., Washington, D.C. 20424

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street SW., Washington, D.C. 20424; (202) 382-0711.

SUPPLEMENTARY INFORMATION: Questions raised relating to the immediacy of the review of case processing procedures and subsequent open meetings in view of recent Authority changes at the Member level prompt us to reiterate our June 20, 1984 notice published in the proposed rules section of the **Federal Register** (49 FR 25243). The Authority fully intends to move forward on the review of case processing procedures. Accordingly, in order to assure that all parties have ample opportunity to submit written proposals concerning possible modifications to the Authority's case processing procedures, it has been decided to extend to September 21, 1984 the period for written comments.

List of Subjects in 5 CFR Ch. XIV

Administrative practice and procedure, Government employees, Labor-management relations.

Dated: August 31, 1984.

Barbara J. Mahone,
Chairman.
Ronald W. Haughton,
Member.
Henry B. Frazier III,
Member.
Federal Labor Relations Authority.

[FR Doc. 84-23623 Filed 9-5-84; 8:45 am]
BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO-99-A4]

Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California; Decision on Proposed Further Amendment of Marketing Agreement and Order 927, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule and Referendum Order.

SUMMARY: This decision would amend the Federal marketing agreement and order, which covers Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears (winter pears) grown in Oregon, Washington, and California. The amendment would authorize marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears.

DATE: The voting period for the purposes of the referendum herein ordered is September 17 through September 29, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued April 20, 1984, and published in the April 26, 1984, issue of the **Federal Register** (49 FR 17950); and Notice of Recommended Decision issued July 19, 1984, and published in the July 25, 1984, issue of the **Federal Register** (49 FR 29960).

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

Small Businesses. The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons were invited to present evidence at a hearing on the probable regulatory and informational impact of the proposed rule on small business.

During the fiscal year ending June 30, 1983, 92 handlers regulated under M.O. 927 handled winter pears for fresh market with an estimated crop value of $70.9 million. The average value per handler was approximately $770,000. Given the applicable definition of a small business concern (i.e., for purposes of qualifying for a Small Business Administration loan, a small business has average annual receipts which do not exceed $2,000,000), almost all of the handlers of winter pears would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 927 are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses.

Further, while the amendment recommended herein would impose some requirements on affected small businesses and the number of such may be substantial, any added burden should not be significant in light of the potential benefits that should be derived by such small businesses.

The testimony presented at the hearing on the proposed amendment indicated that the burden of financing and implementing the amendment—should it be ratified by growers in a referendum—would be less than the burden of the current voluntary promotion program. Rather than reporting and sending assessments to

two organizations, under the amendment handlers would report and send assessments only to the Winter Pear Control Committee which operates under the marketing order. This economy of operation would be equally advantageous to large and small businesses, with small business perhaps benefitting to a greater degree in that their operating margins may be smaller.

Additionally, the concept of the amendment itself is particularly beneficial to small businesses. It would authorize large numbers of small businesses to pool their resources to mount a promotional campaign to benefit all growers and handlers of winter pears. Small businesses are the least likely to be in a position to initiate and maintain the magnitude of a marketing expansion program as foreseen by the proponents of the amendment.

With respect to small businesses that are not winter pear growers or handlers, the impact of the proposed amendment would be different. Some such businesses, including retail food stores, restaurants, and others that sell winter pears to the public in various forms, could experience increased costs due to the proposed amendments. However, the magnitude of such added costs is difficult to quantify and is speculative. Moreover, these hypothetical added costs would be counterbalanced by the advantages to small businesses that are winter pear growers who will benefit from the proposed amendment and by the likelihood that small businesses that are not winter pear growers will benefit from the proposal due to increased public awareness and demand for winter pears as the result of promotion and paid advertising projects conducted by the Control Committee.

Preliminary Statement

A public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 927, as amended (7 CFR Part 927), regulating the handling of winter pears grown in Oregon, Washington, and California. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), in Portland, Oregon, on May 30, 1984, pursuant to notice thereof.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on July 19, 1984, filed with the Hearing Clerk, U.S. Department of Agriculture, the recommended decision containing the notice of the opportunity to file written exceptions thereto. An exception was received from the Washington Fruit and Produce Company, Yakima, Washington.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision set forth in the July 25, 1984, issue of the Federal Register (49 FR 29960) are hereby approved and adopted and are hereby set forth in full herein.

Material Issues

The material issues presented on the record of the hearing are: (1) Whether under Marketing Order 927 authority should be added for the Winter Pear Control Committee to engage in marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears; and (2) whether conforming changes to the order would be necessary if this program were to go into effect.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and record thereof, are as follows:

(1) It is recommended that the order be amended, as hereinafter set forth, to include authority for marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears. Such authority is authorized under section 608c(6) of the act.

Marketing promotion and paid advertising to promote winter pears has been conducted for approximately 50 years by the Washington-Oregon-California Pear Bureau. This is an organization of pear handlers who administer a voluntary promotional program. Winter pear handlers voluntarily pay an assessment to the Bureau to finance this activity. The hearing record indicates that such assessments are customarily deducted from payments to growers at the time of the financial settlement between growers and handlers. Historically, about 92 percent of the industry has participated.

Promotion programs to date have been highly successful in increasing the marketing, distribution, and consumption of winter pears. For example, between the 1970–71 season and the 1981–82 season, per capita consumption of D'Anjou variety pears increased 61 percent. During the same period, the number of cities in the U.S. receiving 5,000 boxes or more annually increased by 61 percent. Testimony presented at the hearing attributes a large portion of this market expansion to the promotion program.

However, a significant number of new handlers are not electing to participate in the voluntary program, and some handlers are offering inducements to encourage growers to deliver to them by not deducting the voluntary assessment at the time of settlement. Income lost last season on the D'Anjou variety in one of the largest production districts alone amounted to approximately $146,000.

Continued promotion activities are imperative for this $70 million industry. Competition from other products has increased in recent years. At one time, winter pears were among the few fresh fruits available between summer harvests. Now, winter pears face substantial competition from early and late season shipments of plums, peaches, and nectarines, from increased fresh shipments of Bartlett pears that are being diverted from processing, and from increasing quantities of fresh fruits from South America. Thus, maintaining an effective promotion program is essential not only to preserve the markets that exist, but to continue the industry's current aggressive marketing activities to facilitate the expansion of existing markets and the development of new markets to assure outlets for the even larger winter pear crops expected in the future.

Permitting the industry to administer the promotion program with funds collected under the authority of the marketing order would insure full and proportionate participation by all handlers in the industry. It would also eliminate the disruptive practice of undercutting the market by the amount paid in assessments to the voluntary program.

If the authority to collect assessments and conduct promotion activities is not made available to the committee under the Federal marketing order for the 1984 crop, lost assessment revenue under the voluntary program threatens to seriously undermine the existing promotion program and the foothold the industry now has in the marketplace as well. Testimony indicated that if the mandatory assessment is not implemented, it is expected that participation in the voluntary programs will continue to decline and within two or three years could likely be as low as 60 percent.

It was also pointed out at the hearing that the committee has the experience and the administrative machinery necessary to collect assessments. The committee has recommended research projects for 10 years using procedures similar to those that would be necessary

to administer promotion and paid advertising projects.

The evidence of record indicates a desire on the part of some segments of the industry to have assessment levels vary by pear variety and assessments and advertising programs voted on by variety. For example, if the Bosc industry desires additional promotion to market an unusually large crop, the assessment for Bosc pears could be raised without raising the assessment for the other varieties. By the same token, the assessment for any variety could be lowered without lowering the assessment of any other variety. Assessment rates would be recommended at the beginning of each season by a vote of the Control Committee, at the same time decisions would be made for the season's promotion efforts. Varied assessment rates, however, would not be permissable under current order authority. Section 927.41 of the order requires each handler to pay a pro rata share of the expenses incurred by the Control Committee for the maintenance and function of the Control Committee during each fiscal period.

Under the current order, voting on the assessment rate must be conducted in conformance with § 927.33. That section requires that a quorum of nine (9) out of the 12 members must be present in order for a vote to be valid, and that no fewer than seven (7) affirmative votes must be cast for the committee to take action on an issue. This procedure is required for voting on all matters except those with respect to issuing, modifying, suspending, or terminating grade and size regulations. Section 927.52 prescribes the manner in which voting on grade and size regulations must occur. Under this section, each member has one vote as an individual and, in addition, one vote for each 25,000 boxes of the average quantity of each variety of pears produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods to destinations outside the state in which produced. Members vote on grade and size regulations by varieties, and an affirmative vote of not less than 80 percent of the applicable total number of votes is required to recommend that the Secretary put a regulation into effect.

Testimony presented at the hearing demonstrated some value in voting on promotion assessments and projects by variety in that the marketing conditions could vary by variety. However, the notice of hearing did not contain a proposal to authorize such a method of voting. Therefore, voting procedures cannot be amended in the course of this rulemaking proceeding.

In the event that the Control Committee determines that voting on promotion assessments and projects would be more equitably or effectively accomplished utilizing the procedures outlined in § 927.52, the Control Committee may conduct preliminary voting in that manner for a period of time sufficient to evaluate its effectiveness. It is stipulated, however, that any recommendation to the Secretary would be arrived at in accordance with § 927.33. After a sufficient evaluation period, a hearing may be requested on the issue of amending the voting procedures.

Spending promotion assessment revenues was another administrative issue raised at the hearing. The record indicates that the committee intends to spend the money to the extent practicable in proportion to the amount of funds generated by each variety. For example, roughly the dollar amount collected on the Comice variety would be allocated to promote Comice pears. However, this would not preclude the committee from sponsoring promotions covering all varieties of winter pears in the same program. In fact, in the peak season, the industry has found it to be appropriate and economical to promote every available variety in a combined campaign.

In formulating promotion and paid advertising projects, the Control Committee should be authorized to secure the advice and service of persons or organizations knowledgeable in this type of activity. The committee may establish subcommittees to assist it in the efficient and expeditious planning of promotion projects or programs. Such subcommittees could develop preliminary projects and programs and make recommendations to the Control Committee with respect to any such activities. Subcommittees could also perform evaluations of activities at any stage of completion. Final decisions on any such recommendations would be the perogative of the committee subject to approval of the Secretary. In carrying out the order provision for promotion and paid advertising for pears, the committee should be authorized to conduct promotion of paid advertising projects directly, or to contract for the conduct of such projects with persons or organizations that specialize in this field of activity.

Promotion and paid advertising projects could be local, regional, national, or international in scope. They could be oriented toward the wholesale, or retail trade or toward the consuming public. The projects could be accomplished through the electronic or print media or by a field staff making direct contacts with retail, wholesale, or institutional purchasing agents.

In submitting projects to the Secretary for approval, the committee should include recommendations as to the funds expected to be obtained from assessments under the order. The committee should fully consider the cost of any such activities when developing its budget, both as to additional items of expense and the applicable assessment rate. Committee expenditures for the costs of planning such programs should be authorized on the basis of budgetary approval since planning and project development necessarily precede recommendation of a project to the Secretary for his approval. The committee should review its promotion program annually to appraise its effectiveness.

Based on the foregoing, the order should be amended, as hereinafter set forth, to include authority for marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears. The expense of any promotion or paid advertising projects are to be paid from funds collected under the order. All Control Committee votes regarding assessment and expenditures are to be conducted in compliance with § 927.33 of the order.

(2) No conforming changes are necessary.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed June 15, 1984, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing.

Briefs and proposed findings and conclusions were filed by: The Washington Fruit and Produce Company; Dan Hull, pear handler and five proponent witnesses and the Pear Bureau. The three briefs supported the inclusion of authority to conduct marketing promotion and paid advertising under the marketing order.

These briefs, proposed findings, and conclusions and the evidence in the record were considered in making the findings and conclusions set forth herein. To the extent that any suggested findings or conclusions by interested persons are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied.

A peripheral issue introduced at the hearing related to redistricting the production area covered under the marketing order. The committee or any person may request a hearing on that issue if it finds merit in this suggestion. Any change in designated districts would mean a substantive change in the order and could not procedurally be discussed at this hearing because such a change was not included in the issues set forth in the notice of hearing.

Ruling on Exception

The Washington Fruit and Produce Company filed an exception supporting adoption of the proposed amendment with modifications. The exception recommended that assessment rates and recommendations for market promotion projects be determined on a varietal type basis and that these modifications be made as conforming changes. The exception was accompanied by a petition signed by a number of winter pear growers supporting the conclusions expressed in the exception.

However, as indicated in the recommended decision, voting on promotion assessments based on varietal considerations was not within the scope of the hearing as set forth in the notice of hearing, and it would be inconsistent with the evidence to mandate such a change in voting procedures. In addition, as stated earlier, the Winter Pear Control Committee may conduct preliminary voting on a varietal basis in order to evaluate the effectiveness of this voting method as long as any recommendation to the Secretary is arrived at in accordance with the provisions of § 927.33 of the order. Also as indicated, promotional funds can be expended on a varietal basis at the discretion of the committee. However, there should be no order-imposed requirement to do so. Provisions of the marketing order regarding assessment rates and voting procedures cannot be amended in this rulemaking proceeding as conforming changes.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Further Amended, Regulating the Handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California" and "Order Amending the Order, as Amended, Regulating the Handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California." These documents 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 annexed marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum order

It is hereby directed that a referendum be conducted from September 17 through 29, 1984, in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order as amended, and as hereby proposed to be further amended, regulating the handling of winter pears grown in Oregon, Washington, and California, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production area in the production of the regulated commodity for market.

The representative period is hereby determined to be July 1, 1983, through June 30, 1984.

If the proposed amendment is not favored by two-thirds of the growers voting or by growers of two-thirds of the tonnage of pears represented in the referendum, the existing order will continue in effect.

The agent of the Secretary to conduct such referendum is hereby designated to be Joseph C. Perrin, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Room 369 Green/Wyatt Federal Building, 1220 SW. Third Avenue, Portland, Oregon 97204.

List of Subjects in 7 CFR Part 927

Marketing agreement and order, Oregon, Washington, California, pears, Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, Beurre Clairgeau.

Signed at Washington, D.C., on August 30, 1984.

C.W. McMillan

Assistant Secretary, Marketing and Inspection Services.

Order amending the order, as amended, regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears (winter pears) grown in Oregon, Washington, and California.[1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. 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 governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement as amended, and Order No. 927, as amended (7 CFR Part 927) regulating the handling of winter pears grown in Oregon, Washington, and California.

Upon the basis of the record, it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California in the same manner as, and is applicable only to persons in the respective classes of commercial and industry activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

[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.

(4) There are no differences in the production and marketing of said varieties of pears grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of said varieties of pears grown inthe production area defined in the order, as amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator on July 19, 1984, and published in the **Federal Register** on July 25, 1984, (49 FR 29960), shall be and are the terms and provisions of this order amending the order, and are set forth in full herein.

Section 927.47 is revised to read as follows:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to § 927.41.

[FR Doc. 84-23529 Filed 9-5-84; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Part 1004

[Docket No. AO-160-A62-RO3]

Milk in the Middle Atlantic Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider two industry proposals to amend the Middle Atlantic Federal milk marketing order. One proposal would allow a producer's milk, which is normally associated with the market, to shift to other Federal order markets without adversely affecting the dairy farmer's base during the August–December, 1984 base-forming period. The other proposal would relax the pool qualification requirements of a reserve processing plant operated by a federation of cooperatives. Proponents contend that these changes are needed to reflect current marketing conditions and promote efficient milk handling practices. It has been requested that the proposals be considered for adoption on an expedited basis.

DATE: The hearing will convene at 10:00 a.m. on September 13, 1984.

ADDRESS: The hearing will be held the TransPotomac Plaza Conference Center, 1199 North Fairfax Street, Alexandria, Virginia 22314, (703) 549–1160.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

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

Notice is hereby given of a public hearing to be held at the TransPotomac Plaza Conference Center, 1199 North Fairfax Street, Alexandria, Virginia 22314, beginning at 10:00 a.m., on September 13, 1984, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area.

Since the 1984 base-forming period (August–December) has already begun, dairy farmers should be informed as soon as possible as to which deliveries will count toward the establishment of their bases in such period. For that reasons, the Department has concluded that less than 15 days' notice of the hearing is warranted in this proceeding.

The hearing is called 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 governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

This hearing is a reopening of a hearing held July 19–October 26, 1983, which principally involved consideration of the expansion of the marketing area. The hearing is reopened for the limited purpose of receiving evidence with respect to the economic and marketing conditions which relate to the computation of base for each producer and the pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small business. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy products.

PART 1004—[AMENDED]

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Maryland and Virginia Milk Producers Association, Inc.: Proposal No. 1

Revise paragraph (a) of § 1004.92 to read as follows:

§ 1004.92 Computation of base for each producer.

* * * * *

(a) For any producer, except as provided in paragraphs (b) through (f) of

this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the preceding months of August through December. However, during the August–December, 1984 base-forming period only, the quantity of milk receipts shall include the total pounds of milk received from such producer: (1) As producer milk by pool handlers; and (2) as dairy farmer milk pooled on some other Federal order(s), which was reported and eligible to be diverted as producer milk pursuant to § 1004.12(d) but is subject to the classification and pricing provisions of such other order(s) issued pursuant to the Act and § 1004.12(f)(4).

* * * * *

Proposed by Atlantic Processing, Inc.: Proposal No. 2

Revise paragraph (d)(2) of § 1004.7 to read as follows:

§ 1004.7 Pool plant.

* * * * *

(d) * * *

(2) A reserve processing plant operated by a federation of cooperative associations at which milk of member producers of the cooperatives is received if the total of fluid milk products (except filled milk) transferred from such federation plant(s) to, and the milk of member producers of the cooperatives physically received at, pool plants pursuant to § 1004.7(a) is not less than 30 percent of the combined milk of member producers of the cooperatives during the month: *Provided*, That if a pipeline is maintained between the pool plant and the nonpool plant, the market administrator shall determine such plant's eligibility for pool status on the basis of receipts and disposition of milk at the plant. If the market administrator determines that the pipeline was used to transfer producer milk to the nonpool plant, the plant shall not be a pool plant.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 3

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Joseph D. Shine, P.O. Box 710, Alexandria, Virginia 22313, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Middle Atlantic Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

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

Signed at Washington, D.C., on August 30, 1984.

William T. Manley,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 84-23576 Filed 9-5-84; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Part 1033

[Docket No. AO-166-A52]

Milk in the Ohio Valley Marketing Area; Partial Decision on Proposed Amendments to Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts several changes in the Ohio Valley milk marketing order based on proposals considered at a public hearing held in October 1983. The changes adopted herein will: (1) Eliminate minus location adjustments at plants located outside the marketing area and generally to the south and east of such area; (2) impose a charge on handler payment obligations that are overdue; (3) reduce the qualification requirements for pool plants; (4) adopt less-restrictive diversion provisions; and (5) revise certain handler reporting requirements. Also, the decision revises the method of payment for bulk fluid milk products received from a pool plant operated by a cooperative association. These amendments are necessary to reflect current marketing conditions and to assure orderly marketing in the area.

Cooperation associations supplying milk for the market during June 1984 will be polled to determine whether producers favor the issuance of the proposed amended order. The amended order must be approved by at least two-thirds of the producers supplying the milk for the marketing area or by producers supplying at least two-thirds of the volume produced for the market to become effective.

FOR FURTHER INFORMATIN CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

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

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 amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued September 26, 1983; published September 29, 1983 (48 FR 44565).

Suspension Order: Issued December 6, 1983; published December 12, 1983 (48 FR 55275).

Suspension Order: Issued December 12, 1983; published December 16, 1983 (48 FR 55829).

Suspension Order: Issued January 12, 1984; published January 17, 1984 (49 FR 1980).

Termination Order: Issued February 24, 1984; published February 29, 1984 (49 FR 7353).

Suspension Order: Issued March 16, 1984; published March 22, 1984 (49 FR 10656).

Partial Recommended Decision: Issued July 11, 1984; published July 16, 1984 (49 FR 28721).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Ohio Valley marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act

of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Columbus, Ohio, on October 12–13, 1983. Notice of such hearing was issued on September 26, 1983 and published September 29, 1983 (48 FR 44565).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on July 11, 1983 filed with the Hearing Clerk, United States Department of Agriculture, his partial recommended decision containing notice of the opportunity to file writtern exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the partial recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under issue 1—*Pool plant qualification requirements.*

(a) *Distributing plant.* Three new paragraphs are added at the end of the discussion.

(b) *Supply plant.* Two new paragraphs are added after paragraph 10.

2. Under issue 3—*Location adjustments.* Two new paragraphs are added after paragraph 19; and one new paragraph is added after paragraph 22.

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

1. Pool plant qualification requirements.

(a) Distributing plant.

(b) Supply plant.

(c) Balancing plant operated by a cooperative association.

2. Diversion of producer milk.

(a) Diversions between pool plants.

(b) Producer delivery requirement.

(c) Diversions from a pool plant to a nonpool plant

(d) Limitation on diversions to nonpool plant

3. Location adjustments.

4. Elimination of the "take out/pay back" producer payment plan.

5. Adoption of an advertising and promotion program.

6. Administrative provisions.

(a) Charges on overdue accounts.

(b) Payments by handlers for milk received from a pool plant operated by a cooperative association.

(c) Other reports.

This decision deals with all of the aforementioned issues except issues 4 and 5. A prior action dealt with issue 4 in which a termination order was issued on February 24, 1984 (49 FR 7353). The remaining issue 5 is reserved for a later decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pool plant qualification requirements.* In connection with the issue of pool plant qualification requirements, several proposals were considered at the hearing. The pool plant qualification requirements for distributing plants, supply plants, and balancing plants operated by cooperatives are discussed in the following findings.

(a) *Distributing plant.* The total route disposition requirement, which varies seasonally and must be met by distributing plants to qualify for pool status under the order, should be reduced by ten percentage points each month. The minimum requirement should be lowered from 50 to 40 percent of a plant's receipts for the months of September through February and from 45 to 35 percent of such receipts in the months of March through August.

Beatrice Foods Company (Beatrice) and Defiance Milk Products Company (Defiance) proposed that the minimum route disposition requirement be reduced by 10 percentage points each month. Beatrice operates four distributing plants that are fully regulated under the order. Defiance operates a nonpool manufacturing plant at Defiance, Ohio. Until September 1983, this plant had been a pool supply plant under the order for many years.

The Beatrice witness testified that it qualifies its four distributing plants as a unit. Under this pooling arrangement, the receipts and disposition of each distributing plant in the unit are combined and treated as a single plant for the purpose of meeting the total route disposition requirement. However, he indicated that it has been extremely difficult for the handler to meet this requirement even on a unit basis in certain months without depooling some of the milk of dairy farmers and/or making uneconomic milk movements. This is evidenced by the numerous requests by the handler that the requirements be suspended.

For instance, these requirements were suspended for certain spring and summer months of 1982 and 1983 at the request of the handler. Also, since the hearing, these requirements were further suspended, for December 1983 through August 1984 at the request of Beatrice.[1]

[1] Official notice is taken of the issuance of three suspension orders by the Department on December 12, 1983, January 12, 1984, and March 19, 1984, respectively.

The witness for Beatrice testified that the supply-demand conditions justifying his company's past suspension requests can no longer be considered temporary. He stated that the market's producer receipts have risen gradually over the past few years, while at the same time Class I sales have declined dramatically. This trend has been even more pronounced lately and a year-round reduction in the route disposition standards is warranted now, in the handler's opinion.

A witness for the other proponent, Defiance, also testified in support of reducing the minimum route disposition requirement. He testified that adoption of a lower pooling standard for a distributing plant would assist him in maintaining a supply arrangement that has existed for many years between his supply plant and the local pool distributing plant of Arps Jersey Farms (Arps) during the period that his supply plant is not a fully regulated pool plant under the order.

A witness for Arps also testified in support of the proposal to lower the route disposition requirement. The handler witness testified that additional flexibility is needed to accommodate the recent changes in marketing conditions. Since the distributing plant's source of supplemental supplies (the former pool supply plant of Defiance) is no longer a pool plant, the only practical means for such handler to continue his relationship with such plant is for him to associate the milk of producers who were formerly shipping to the Defiance supply plant with his distributing plant and divert any excess seasonal supplies to the nonpool manufacturing plant of Defiance. In view of these circumstances, the distributing plant operator contends that the lower minimum pooling requirements will be needed to safely assure pool status for all of the milk supplies associated with his distributing plant. He further testified that since the Defiance supply plant is no longer a pool plant, supplemental milk received at his pool distributing plant from such supply plant is considered a receipt from an unregulated supply plant under the order and any such milk assigned to Class I at his pool distributing plant is subject to a compensatory charge.

The National Farmers Organization (NFO) also supported the joint proposal of Beatrice and Defiance to lower the route disposition requirements for distributing plants. NFO took the position that the proposed change is warranted to accommodate the pooling of milk of producers who have been

historically associated with the market in the most efficient manner.

The Ohio Valley order became effective with the merger of five Federal milk orders in 1970. The current total route disposition precentages for distributing plants were adopted at that time.

Record data indicate that Class I use of the market's producer milk averaged 68 percent during 1971, which was the first full year's operation of the order. In contrast, fluid use represented only 58 percent (10 percentage points lower) of producer milk during 1982. Moreover, the relationship between producer receipts and Class I sales has deteriorated further. For instance, producer receipts in the first eight months of 1983 were up nine percent from the same months a year earlier while producer milk used in Class I was down five percent during the period. Class I use represented less than 50 percent of the market's producer milk during the first eight months of 1983. With a supply-demand balance considerably different now from when the minimum route disposition requirement was adopted, it is appropriate that the requirement be adjusted downward to reflect current marketing conditions.

Milk Marketing Inc. (MMI), the market's principal cooperative, opposed the proposal at the hearing primarily on the basis that, if the lower requirements are adopted, milk which is eligible for pool status could be pre-committed to manufacturing uses and not be available to meet the market's fluid needs. The association was also concerned that additional milk supplies could be attached to the Ohio Valley market.

The cooperative's opposition is purely speculation. There is no evidence on this record that the marketing practices which concern the association are likely to take place. Furthermore, there is no basis to conclude that the lower pooling requirements for distributing plants would jeopardize the milk supply for bottling plants in this market.

Also, the change should not result in additional milk becoming associated with this market, because essentially all of the milk eligible for fluid uses in this general area is already pooled under this or another order. Rather, this change should enable more efficient pooling of the market's current milk supplies under existing marketing conditions. Accordingly, the objections of MMI of the adoption of the proposal must be overruled.

In its exception, MMI repeated its opposition to the proposed lower route disposition requirements for distributing plants. In the cooperative's opinion, the adoption of such lower standards would make less milk available for fluid needs. Further, exceptor stated that the market's supply-demand situation has tightened since the hearing.

We are aware that the relationship between the market's producer supplies and Class I use has improved somewhat in recent months. However, the change has not been dramatic. There is no basis to conclude that the lower pooling requirements for distributing plants adopted herein will jeopardize the availability of milk at such plants in light of the market's slightly improved supply-demand balance. Also, if the present downward trend in milk production continues this issue could be explored at another hearing.

Accordingly, for the reasons set forth previously there should be no departure from the recommended decision with respect to lower route disposition requirements for distributing plants.

(b) *Supply Plant.* The minimum delivery requirement to qualify a supply plant for pool status under the order each month should be reduced 15 percentage points from 50 percent to 35 percent of such plant's receipts. Also, the order should provide that a supply plant may qualify for pool status on the basis of both transfers and diversions of milk from the supply plant to pool distributing plants. However, such qualification credit for diversions should be limited to not more than one-half of the required deliveries.

A proposal to lower the monthly delivery requirement for supply plants from 50 percent to 35 percent was made by Defiance Milk Products Company. Beatrice supported the proposal. Arps, the Defiance, Ohio, pool distributing plant operator who has relied on the former pool supply plant of Defiance to furnish it with milk in the past, also supported the lower pooling requirement for supply plants.

Proponent stated that the lower delivery requirement is warranted because of changes in marketing conditions. In this connection, proponent cited several changes in marketing conditions that justify a downward adjustment in the order's supply plant performance requirement. He testified that generally the market's milk production is up and fluid sales are down.

He also testified about how the closing of the Babcock Dairy Company (Babcock) pool distributing plant located at Toledo, Ohio in April 1983 impacted on his operations. Proponent pointed out that his supply plant had been pooled under the orders for many years, based in large part on its shipments to this distributing plant. Consequently, when that handler ceased fluid milk operations, the supply plant lost a significant outlet for its milk. He was unable to make arrangements with other distributing plants to buy his milk. Hence, when the new qualifying period for supply plants began on September 1, 1983, his supply plant could not meet the 50-percent requirement to qualify as a pool plant. Thus, the producers who had shipped their milk to the Defiance supply plant for may years had to find another outlet for their milk because the nonpool plant operator was not in a position to pay a competitive price to such dairy farmers when their milk was not pooled.

As was the case with the minimum route disposition requirement for distributing plants, the minimum shipping requirements (50 percent) for supply plants was adopted for this market when the merged Ohio Valley order became effective in 1970. This market's supply-demand balance has changed significantly since that time.

For instance, during 1971 producer milk used in Class I represented 68 percent of producer deliveries. In contrast, Class I utilization of producer milk for the market was more than 18 percentage points lower and averaged less than 50 percent during the first eight months of 1983.

It should be noted that the trend to fewer and larger milk processing plants in addition to the increase in milk production and decrease of fluid milk sales has had a significant impact on the method of marketing milk under the Ohio Valley order. For instance, the record shows that nineteen distributing plants that were pooled under the order in January 1978 were not pool plants for August 1983.

In view of the foregoing, supply plant operators should be afforded as much flexibility as is prudent and practical under the order to deal with these changes in marketing conditions. Accordingly, it is appropriate that the delivery requirement for supply plants be reduced at this time to more nearly reflect prevailing marketing conditions. The 35-percent delivery requirement adopted herein effectively places such minimum requirement at about the same level of performance now with respect to the marketwide Class I utilization as it was when the 50-percent requirement was adopted.

The 35-percent delivery requirement is a reasonable and realistic standard for supply plants. It will continue to insure a substantial association of a plant's milk supplies with the market's fluid needs but at a level that will not impede the pooling of plants regularly supplying the

marketing area. At the same time, it will tend to avoid the possibility of supply plant operators engaging in unnecessary and uneconomic milk movements simply for pool qualification purposes as has been the case in some instances.

MMI opposed the proposal to lower the delivery requirement for supply plants for the same reasons that the cooperative opposed the proposal to reduce the route disposition requirements for distributing plants. It would burden this decision to reiterate the same positions and rulings in connection with this issue since those arguments have already been dealt with in earlier findings of this decision. Accordingly, the cooperative's objections are overruled for the same reasons they were with respect to the lower requirements for distributing plants.

In its exceptions, MMI claimed that the lower pooling requirements for distributing plants and supply plants adopted herein would allow the distributing plant of Arps and the supply plant of Defiance to operate in concert, if they wish, and thereby qualify considerably more milk for pool status under the order. In the cooperative's opinion, under the lower pooling standards these two plant operators could attach significantly more milk with their plants and could dispose of the excess supplies for manufacturing purposes rather than making it available to the fluid market. For that reason, the cooperative contended that the pooling requirements for distributing plants and supply plants should be maintained at the current levels.

It is true that the lower pooling requirements for such plants theoretically would permit the same amount of route disposition by a distributing plant to qualify more milk for pool status under the order. However, there is no evidence on this record that the hypothetical pyramiding effects posed by MMI at the hearing and in its exceptions will in fact actually take place in this market. As a matter of fact, it should be noted that the Defiance supply plant has not been able to meet the present 50-percent shipping standard to qualify as a pool plant. Accordingly, the position of the exceptor is not supportable and there is no basis for reaching a different conclusion on this issue.

In connection with the issue of appropriate pooling requirements for supply plants, MMI proposed that a supply plant operator be permitted to deliver milk directly from the farms of producers and count such deliveries for qualification purposes. The witness for the cooperative testified that the adoption of this proposal would encourage efficiency in moving milk supplies to distributing plants when needed. In this regard, he indicated that while supply plants may be needed to meet daily variations in demand for fluid milk at distributing plants, much of the milk that goes through supply plants in this market could be moved more efficiently directly from the farm to such processing plants. In such cases, he claimed, it would be appropriate to accommodate such direct movements of milk under the order by crediting the supply plant with the delivery for qualification purposes.

As the proposal appeared in the hearing notice, a supply plant could qualify entirely on diversions of milk from the supply plant to pool distributing plants. However, MMI modified its proposal at the hearing to allow only up to one-half of the required deliveries to be met by diversion from the farms of producers. The cooperative considered such a limit necessary to insure that any supply plant qualified under the order has a "bona fide" association with this market.

A witness for MMI testified that the cooperative operates a supply plant located at Sardinia, Ohio. Some of the farms of producers associated with this plant are situated between Sardinia and Cincinnati where the pool distributing plants serviced by the Sardinia operation are located. Under the MMI proposal, milk could be moved directly from the farms of producers to a distributing plant in Cincinnati and be counted as a qualifying delivery from the Sardinia supply plant.

Under current order provisions, only the milk received at a supply plant and then transferred to a distributing plant counts toward a supply plant's qualification as a pool plant. This requirement, however, in some cases results in milk movements and milk handling practices that are other than the most economical and efficient. Allowing up to one-half of the required deliveries to be made by diversion, will give supply plant operators more flexibility in moving their milk supplies.

Defiance supported the proposal of MMI as contained in the hearing notice allowing all qualifying deliveries from supply plants to be diverted to pool distributing plants. The handler spokeman considered MMI's modification of its initial proposal to be unnecessary. However, the spokesman for Defiance recognized that some limit on using diversions for the purpose of qualifying supply plants may be needed to prevent a distant plant having no association with this market from becoming pooled under the order.

To the extent possible, the order should promote efficient milk handling practices. By permitting a supply plant operator to move at least part of the milk supplies associated with such plant directly from farms to distributing plants and to count such movements as part of the supply plant's qualifying deliveries promotes economic and efficient milk movements. As indicated, there are obvious savings in hauling costs that could be achieved in this market under such an arrangement. In addition, extra pumping of milk in reloading operations could be avoided, which would help preserve the high quality of the milk that distributors demand.

Allowing the milk to move directly from the farm and recieve partial credit toward pool plant qualification would not lessen in any way the effectiveness of the delivery requirement. A supply plant would still have to make available to pool distributing plants not less than 35 percent of the milk received from dairy farmers that is associated with the supply plant. It should, however, promote less costly milk handling practices by supplying plant operators in certain cases.

Although the order should recognize a supply plant operator's deliveries of milk directly from producers' farms to pool distributing plants, a supply plant should not be able to qualify for pooling solely on the basis of such deliveries. Otherwise, there would be little discernable difference from an operational standpoint between a supply plant and a balancing plant operated by a cooperative association. Yet, the pooling standards for the two types of plants would be considerably different.

Adoption of this concept without any limitation on diversions would enable a supply plant to qualify as a pool plant without being required to transfer any milk from the supply plant to distributing plants. Pooling status could be achieved as long as the supply plant operator delivered at least 35 percent of its milk supply to pool distributing plants, which could be entirely by deliveries directly from the farms of producers. A similar method of pooling is now available to a cooperative association in the case of its balancing plant. However, the cooperative must deliver ar least 50 percent each month (or 50 percent during the most recent 12-month period) of its member producer milk to pool distributing plants. No automatic pooling is provided for such plants during the heavy production months, as is the case for supply plants.

Since there presumably would be little difference in the supply arrangements of

the two types of handlers, the question arises as to whether any difference in the method of qualification for a cooperative's balancing plant and for a handler's supply plant can be justified. The record does not totally support the use of the pooling concept for balancing plants in connection with the pooling standards applicable to supply plants.

Accordingly, to maintain some distinction between the two types of plant operations, the order should not permit more than one-half of the required milk deliveries by a supply plant operator to be in the form of diversions to distributing plants. Under the current operating situation, this would allow more flexibility to supply plant operators serving the market. At the same time, the order would continue to base a supply plant's eligibility for pooling to a significant degree on transfers of milk from the supply plant to distributing plants.

(c) *Balancing plant operated by a cooperative association.* The order should continue to afford pool status to a plant operated by a cooperative on the basis of the association's overall marketwide performance. However, pool status for such plants should not be limited to plants that manufacture dairy products.

The current order limits the pooling of a so-called "balancing plant" to plants operated by a cooperative association at which dairy products are manufactured. Hence, the lack of manufacturing operations at a cooperative's plant precludes the plant from qualifying as a balancing plant under the order even though the association meets the other performance requirements.

NFO proposed that a cooperative's supply plant that is not involved in manufacturing be permitted to qualify on the same basis as a balancing plant operated by a cooperative that manufactures dairy products. Proponent contended that the additional flexibility is needed to accommodate plants without manufacturing facilities that perform a comparable supply function for the market. There was no opposition to the proposal either at the hearing or in briefs.

Pool status should be afforded to a cooperative's plant even though manufacturing operations are not conducted at the plant, if the association otherwise meets the requirements for pool status. The most important consideration concerning such a plant's pool status is the cooperative's overall supply function for the market rather than whether the plant is manufacturing dairy products. Hence, the manufacturing requirement most appropriately should be eliminated.

The order would continue the monthly 50-percent delivery requirement presently imposed on a cooperative to qualify its balancing plant(s). However, the percentage could be met on the basis of the cooperative's deliveries to pool distributing plants during the current month or it could be met on the basis of such deliveries during the preceding 12-month period ending with the current month. The 12-month rolling average concept was proposed by NFO. This modification is needed to temper the effect of a dramatic change in marketing conditions from one month to the next, many of which are beyond the control of the cooperative. For instance, if a major fluid milk outlet of the cooperative unexpectedly goes out of business, the cooperative's balancing plant might lose its pool status. Allowing the association the flexibility to use a rolling average of its deliveries to distributing plants over the preceding 12 months, would lessen the impact of any dramatic change in marketing conditions.

As proposed by NFO and adopted herein, pool status for a balancing plant would be conditioned on a request by the association that its plant be so considered. Under the present order provisions, the cooperative must file a written request for nonpool status for its balancing plant. The positive and more straightforward approach whereby the cooperative requests pool rather than nonpool status for its plant is more appropriate and accomplishes the same intent. Accordingly, that procedure is adopted herein.

As the order currently provides, a balancing plant must be approved by the appropriate authorities to handle milk for fluid consumption. Such approval would be vested in the duly constituted regulatory agency having jurisdiction over the health standards for such milk and plants supplying the marketing area. Such a condition is needed because part of the justification for providing pool status to such plants is that they are available to make spot shipments on request to the market's pool distributing plants when the milk is needed there. If such approval is not included as a condition for pool status, the plant might let its approval lapse. In that event, the plant could not be called upon as a source of supplemental milk for the market's distributing plants.

The final condition imposed on the cooperative to pool its balancing plant would be that such plant does not qualify as a pool distributing plant or a pool supply plant under this or any other Federal milk marketing order. Any plant which meets the pool plant qualification requirements on the basis of performance as a distributing plant or a supply plant of any Federal order should not be afforded pool status on a request basis as a balancing plant pursuant to the provisions of this order. Such pooling procedures will insure the integrity of regulation under Federal milk orders in that plants will be pooled on the basis of their performance in the markets involved rather than on the basis of their request.

In connection with its proposal to provide pool status to a cooperative's supply plant as a balancing plant, the NFO representative testified that the delivery requirement for balancing plants be set at no higher level than the delivery requirement for supply plants. As already indicated, there are basic differences in the marketing operations of supply plants and balancing plants of cooperatives. For example, a cooperative's total milk deliveries (by transfer, diversion or as a bulk tank handler) to the market's pool distributing plants may count to qualify its balancing plant and all such deliveries may be made directly from the farms of producers. On the other hand, a supply plant qualifies as a pool plant on the basis of deliveries from such a plant either by transfer or diversion and, as is recommended herein at least one-half of the required deliveries must be by transfer. Thus, the differences in the pooling requirements for these two types of pool plants (supply and balancing) were designed specifically to accommodate the operational differences of these handlers in supplying the market's distributing plants.

In certain respects, it may seem that a supply plant operator will have an advantage in qualifying such a plant for pool status under the order over a cooperative in qualifying its balancing plant in that the cooperative must deliver 50 percent of its member producer milk to distributing plants each month while a supply plant must furnish only 35 percent of its receipts to distributing plants during the month. However, if any cooperative considers that to be the case, there is nothing in the order to prevent the association from modifying its operations to the extent necessary to qualify such plant as a supply plant.

2. *Diversions of producer milk.* Several proposals to change the rules pertaining to the diversion of producer milk were considered at the hearing. They relate to the following material issues: (a) Diversions between pool plants; (b) producer delivery requirement; (c) diversions from a pool plant to a nonpool plant; and (d) limitation on diversions to nonpool

plants. The ensuing discussion covers each of these issues.

(a) *Diversions between pool plants.* The order should be amended to allow milk to be diverted from any pool plant (by the plant operator) to another pool plant. Such movements should not be limited.

Under the current order provisions, milk may be diverted from a pool distributing plant to another pool plant. However, milk may not be diverted from a pool supply plant or from a cooperative's pool balancing plant to another pool plant. In certain instances, such limits do not encourage the most efficient movement of the market's milk supplies.

MMI proposed that the order be revised to allow diversions from any pool plant (distributing, supply or balancing) to another pool plant. NFO supported the proposal. There was no opposition to it.

In support of its proposal, a witness for the association testified that the order provisions should facilitate efficient milk marketing practices. He indicated that the association has experienced marketing problems in certain instances because the order does not permit the association to divert milk from its balancing plants to other pool plants.

The MMI witness testified that certain of its producers are assigned to its balancing plant at Goshen, Indiana and, thus, their milk is received at such plant on a regular basis. Occasionally, such milk is needed at a distributing plant. However, the milk may not be diverted from the Goshen plant to the pool distributing plant because the current order does not accommodate such movements. The only way for the cooperative to maintain pool accountability for such milk at the Goshen plant is to physically receive the milk at such plant and then transfer it to the distributing plant. These milk handling practices are costly.

As an alternative pooling arrangement, the cooperative could deliver the milk to the distributing plant directly from the farms of producers and pool it as a bulk tank handler under § 1033.16(c). However, in such cases, the milk of certain producers would be included on two reports (the report for the Goshen plant and the report for the cooperative as a bulk tank handler). Proponent insisted that including part of an individual producer's milk on two different handler reports for the same month is cumbersome.

The proposal should be adopted. The order should recognize the need for occasional movements of milk associated with balancing plants of cooperatives to other pool plants. As adopted herein, a cooperative could divert milk from its balancing plant to other pool plants when the milk is needed there and maintain pool accountability for the milk at the balancing plant. This change will allow the milk to move to the pool plant where it is needed directly from the farm rather than through an intermediate plant.

There is no reason to limit diversions between pool plants. Since any milk of a producer that is received at a pool is eligible to be pooled, limiting diversions between such plants would serve no purpose.

Allowing diversions between pool plants, also provides the technical means under the order for milk to be delivered by a supply plant operator directly from producers' farms to pool distributing plants and to be counted as qualifying delivery from the supply plant. Also, it will allow the operator of any pool to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk.

(b) *Producer delivery requirement.* The order's producer delivery requirement, commonly referred to as a "touch-base" requirement, should be relaxed. In this regard, only one day's milk production rather than two days' as now, of an individual dairy farmer should be required to be physically received at a pool plant during the month to qualify such producer's milk for diversion to nonpool plants in such month. Also, the touch-base requirement should apply only during the three months of September through November rather than in each month of the year as the order now provides.

NFO proposed the changes adopted herein with respect to the touch-base requirement. Proponent's witness testified that requiring a producer's milk to be physically received at a pool plant in each of three months when the market's fluid needs are greatest adequately demonstrates a dairy farmer's association with the market and the farmer's eligibility to share in the marketwide pool. The witness also suggested that one day's production instead of two days' milk production of a dairy farmer be required to be received at pool plants during such months to demonstrate a producer's association with the market. He argued that this change is needed because many of its producers are picked up every day. In some instances, the milk of such farmers is picked up on routes with other producers whose milk is picked up every other day. This results in four days' milk production of certain dairy farmers being received at pool plants solely to insure that all of NFO's producers meet the minimum touch-base requirement for the month.

In its brief, MMI supported NFO's proposal to relax the touch-base requirement. The cooperative agreed with the arguments presented by proponent at the hearing. In the association's opinion, these two changes are needed to give handlers greater flexibility to accommodate the efficient pooling of the market's milk supplies that are in excess of fluid needed. It claimed that the less stringent requirement should be adequate to assure that each dairy farmer's milk has a bona fide association with the market.

Following the October hearing, the touch-base provisions were suspended at the request of MMI.[2] The action was taken on the basis of the record and applied to the months of December 1983 through August 1984. The suspension was granted to assist handlers with the efficient and orderly disposition of the market's reserve milk supplies pending completion of the rule-making proceeding on this issue.

As noted previously, the requirements to qualify distributing plants, supply plants and cooperative balancing plants for pool status under the order are relaxed in this decision. Also, less-restrictive diversion provisions are adopted. These changes make it easier to qualify milk for pool status under the order. They also promote efficient milk marketing practices by handlers. To be consistent with such changes, the producer touch-base requirement should be relaxed also.

Requiring one day's production of a dairy farmer to be received at a pool plant during each of the months of September–November is sufficient to demonstrate that a producer is genuinely associated with the fluid market. The September–November period represents a time when the market's fluid needs are greatest. The minimum requirement adopted herein should adequately serve this market because it will continue to assure that the milk of each individual producer is available for the fluid needs of the market and yet it will recognize the changes that have resulted in the relationship between milk production and fluid demand.

Also, it will allow a handler who diverts on an aggregate basis greater flexibility in that he may pick and choose which producers to divert. By so doing, the handler may divert the milk of

[2] Official notice is taken of the issuance of a suspension order by the Department on December 6, 1983 (48 FR 55275).

those dairy farmers that can most efficiently be diverted. Although this change would not increase the total amount a handler may divert, it would allow such person to divert the milk of those producers whose farms are so located in relation to the nonpool plant that their milk is the least costly to divert.

In connection with its touch-base proposal, NFO requested that a pool plant operator be permitted to divert the milk of a producer who is a member of a cooperative. The current order accommodates this situation. Accordingly, the order should continue to permit the operator of a pool plant to divert the milk of any member-producer during the month unless the cooperative is diverting such person's milk.

(c) *Diversions from a pool plant to a nonpool plant.* The order also should be amended to allow milk to be diverted from any pool plant to a nonpool plant.

Under the current order provisions, milk may be diverted from a pool distributing plant or a pool supply plant to a nonpool plant. However, milk may not be diverted from a cooperative's pool balancing plant to a nonpool plant.

MMI proposed that the order he revised to allow milk to be diverted from any pool plant to a nonpool plant. NFO supported the proposal. No one opposed it.

The witness for the proponent association testified that this change is needed to promote efficient milk handling practices. He contended that not permitting milk to be diverted from a balancing plant to a nonpool plant has resulted in inefficient movements of reserve milk supplies to manufacturing outlets. In support of that contention, the witness for the proponent cooperative testified that processing capacity at its balancing plants has not kept pace with the market's milk production increases. Thus, the cooperative at times must move reserve milk that is regularly assigned to these plants to other manufacturing outlets. The cooperative's witness indicated that such milk could be moved more efficiently directly from the farms of the producers involved to a nonpool manufacturing plant. However, the current order does not permit milk to be diverted from a balancing plant to a nonpool plant.

The record shows that the milk moving to MMI's balancing plant at Goshen, Indiana, incurs high hauling costs because of the plant's location outside the marketing area. Because of its location, certain producers are assigned to such plant on a regular basis. At times, there are alternative manufacturing outlets closer to where the milk is produced. However, dairy farmers whose milk is regularly associated with the Goshen plant could not be delivered to the nonpool plant directly from the farm and be pooled as diverted producer milk from the balancing plant under the current order provisions.

MMI could maintain pool status for milk of such producers by receiving the milk at Goshen and transferring it to the nonpool plant. However, such milk handling practices are costly. This is an example where the order provisions do not provide adequate flexibility for handlers to market the order's reserve milk supplies in the most efficient manner

The order should facilitate the movement of milk in excess of the market's fluid needs by permitting the milk to move directly from the farms of producers to a nonpool plant to the extent possible. No purpose is served when milk is moved to and received at an intermediate plant simply to qualify it for pool status under the order.

Allowing milk to be diverted from any pool plant to a nonpool plant is consistent with the other pooling changes adopted in this decision which makes it easier to qualify milk for pool status under the order. Accordingly, the orders should be modified to allow milk to be diverted from the balancing plant of a cooperative to a nonpool plant. This change provides a cooperative more flexibility to move its milk more freely among various outlets in balancing supplies for the fluid market.

(d) *Limitation on diversions to nonpool plants.* The limit on the quantity of milk that may be diverted to nonpool plants by handlers during the months of September through February should be increased by 10 percentage points from 40 to 50 percent. Also, the quantity of milk to which the limit applies should be expanded to include all of the handler's producer milk, i.e., the amount physically received at or diverted from the pool plant(s) rather than only the quantity physically received at such pool plant(s).

The current order limits the total amount of milk that a handler (cooperative or pool plant opertor) may divert to nonpool plants to 40 percent of the producer milk physically received at the pool plant(s) during the month. Under the 40-percent limit, handlers, in effect, may divert only about 29 percent of their producer milk.

NFO proposed that the limitation on the amount of milk a cooperative may divert to nonpool plants be increased. The witness for proponent maintained that the order's present limit on such diversions no longer reflects prevailing marketing conditions. There was no opposition to the proposal either at the hearing or in post-hearing briefs.

Proponent cited numerous changes in marketing conditions that have occurred since the present limitation was adopted. For example, the number of pool plants has decreased (19 less than in 1978) and those remaining are located at or near the major population centers. Also, the number of nonpool plants available for surplus disposal has decreased (18 less than in 1978) and most of those remaining are located at great distances from the pool plants. Transportation costs have risen substantially. In addition, the portion of the market's producer receipts needed to meet its fluid requirements has declined dramatically.

The witness for NFO argued that these changes indicate that a higher diversion allowance for handlers is now warranted. Such changes, he pointed out, have resulted in uneconomic milk movements solely for the purpose of qualifying milk for pool status under the order. These movements also have resulted in a loss of income to dairy farmers, he added.

The present limit is too stringent in view of the market's Class I use of producer milk. For instance, during the first eight months of 1983, such utilization ranged from a high of 54 percent to a low of 44 percent and averaged below 50 percent.

The record shows that during September 1982-February 1983, NFO moved substantial quantities of milk to pool plants solely for the purpose of qualifying its milk that has been historically associated with this market. In this regard, the milk was moved to a pool plant, where is was unloaded, then reloaded, and moved to a nonpool manufacturing plant. The milk was delivered to such pool plant rather than directly to the nonpool plant simply to increase the handler's deliveries to pool plants, because the diversion allowance is based on such deliveries, i.e., the more the handler delivers to pool plants the more it may divert. By following this procedure the handler increased the amount of milk it could qualify for pool status under the order. However, such milk handling practices are costly and should be eliminated to the extent possible. Also, the quality of the milk deteriorates when such handling procedures are followed.

The record also indicates that the NFO used the same procedures to pool its milk in September and October, 1983. Most likely, if the supply-sales balance does not improve considerably, more uneconomic movements will need to be made by handlers to maintain pool

status for their milk supplies in the future.

In view of these changes in marketing conditions, the current allowance on diversions to nonpool plants should be increased. The higher allowance should enable handlers to pool their available milk supplies without the need to move milk back and forth between plants solely for the purpose of maintaining its pool status under the order.

As noted previously, in computing a handler's diversion allowance, the base to which the diversion percentage applies should include the amount of producer milk delivered to the pool plants plus the amount diverted from such plants. This change together with increasing the amount of milk that may be diverted by 10 percentage points will increase the amount of milk a handler may divert to nonpool plants from about 29 to 50 percent of a handler's total receipts of producer milk. Such an increase should permit handlers adequate flexibility to operate more efficiently. They will be able to move milk which is not needed for fluid purposes directly from the farm to a nonpool manufacturing plant rather than delivering the milk to an intermediate pool plant and then transferring it to the manufacturing plant. Allowing the market's milk supplies that are in excess of the needs at distributing plants to be moved in the most efficient manner possible promotes orderly marketing. Accordingly, the two changes to allow increased diversions are adopted.

NFO proposed that the limit be raised for cooperatives only. However, it is appropriate to relax the corresponding diversion limit for pool plant operations also. In view of the market's supply-sales situation, it would appear that proprietary operators may have a similar need for less-restrictive diversion provisions. Under the provisions adopted herein, pool plant operators will continue to be subject to the same limitation on diversions to nonpool plants as cooperatives. Hence, both handlers (pool plant operators and cooperatives) would be treated equally with respect to the amount of milk they may divert to nonpool plants under the order.

The present provisions allow a handler to divert milk on an individual producer basis. Although proponent acknowledged that it is generally more efficient to divert on an aggregate percentage basis, the witness testified that the order should continue to provide both methods. However, with the higher aggregate diversion allowances for handler adopted herein, which are equal to those currently provided on an individual producer basis, there is no longer a need to allow for handlers to divert milk on an individual basis. Accordingly, these provisions are removed.

3. *Location adjustments.* The application of location adjustments at plants situated outside the marketing area should be revised. In this regard, no minus adjustments should apply at plants located in the Louisville-Lexington-Evansville (Order 46) marketing area or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia. At other unspecified plant locations outside the marketing area, the present application of such adjustments would be retained. Presently, the order provides that minus location adjustments apply at plants located outside the marketing area and 60 miles or more in any direction from the nearest of 10 basing points specified in the order.

MMI proposed that the application of minus location adjustments at plants outside the marketing area be change. Under the cooperative's proposal, a plant so situated would be subject to such an adjustment only if it was 130 miles or more from the nearest of the 10 basing points.

MMI operates a pool balancing plant a Goshen, Indiana and moves substantial quantities of milk to this facility for manufacturing. As proposed, this would be the only pool plant that would be affected by the cooperative's proposal. Consequently, most of the discussion at the hearing in connection with this issue focused on the appropriate prices (Class I and uniform) at the Goshen location.

Goshen is located in Elkhart County, Indiana. This county is part of the Indiana marketing area. It is in the minus 8-cent location adjustment area under that order.

In applying the current location adjustment provisions of the order to the Goshen plant, the nearest basing point is Lima, Ohio. Lima is in the Northwestern Zone where minus 5-cent location adjustment applies. Also, since Goshen is more than 60 miles from Lima, an additional minus location adjustment applies. In total, a location adjustment of minus 23.5 cents applies at Goshen.

Under the cooperative's proposal, the additional minus location adjustment, of 18.5 cents would not apply since Goshen is less than 130 miles from Lima. Thus, the same location adjustment applicable at plants in the Northwestern Zone (minus 5 cents) would apply at Goshen. The cooperative contended that milk diverted to the Goshen plant should not be priced lower than producer milk deliverd to Northwestern Zone distributing plants since such milk is a part of the fluid market's total supply.

In support of its position, proponent's witness testified that the trend to fewer and larger processing plants in addition to changes in the market's supply-sales balance has had a significant impact on the way milk is marketed under this order. He pointed out that nineteen distributing plants that were listed as pool handlers for January 1978 did not appear on such list for August 1983. Also, the amount of milk pooled under the order during the January-August 1983 period increased by more than 300 million pounds from the same eight-month period in 1978. On the other hand, the quantity used in Class I during those comparable periods decreased by almost 60 million pounds.

The spokesman for MMI, also pointed out that milk manufacturing plants have become fewer and larger. He indicated that in the past, most of the milk in excess of the market's fluid requirements was processed in nearby plants, primarily located in the marketing area. Now it must be transported longer distances as manufacturing facilities in the marketing area have closed. He further indicated that several manufacturing plants located in Ohio that were outlets for surplus milk in 1978 did not serve that purpose in 1983.

Because of these changes, the cooperative's witness stated that the MMI plant at Goshen, Indiana, now processes more of the market's reserve milk than any other manufacturing facility. Due to plant closing, the Goshen plant was expended recently to provide a market for producers whose milk is pooled under this order. Milk of producers located throughout central and western Ohio now is regularly received at Goshen for manufacturing purposes. Nearly three times the amount of milk was processed at that plant during January-August 1983 compared with the same eight months of 1978.

Proponent's witness, also, testified that most of the milk that is associated with the Goshen plant comes from the farms of producers located in the marketing area or from producers who formerly shipped to plants located in the marketing area. Also cited by the spokesman for MMI was that in April 1983, a major distributing plant located in Toledo, Ohio, which handled about 10 million pounds of milk each month, ceased operation. Such plant's Class I sales accounts were taken over by a handler regulated under the Southern Michigan order. However, the milk of producers who were associated with the

plant now is being moved to Goshen for processing.

Proponent maintained that it is inequitable and unfair for producers to be paid a lower price for milk delivered to the Goshen plant than when it is delivered to distributing plants in the northwestern segment of the marketing area. Since all producers in a marketwide pool share in the higher-valued Class I sales, it is only fair that the cost of disposing of the market's reserve milk supplies be distributed equally among all of the market's producers, in the cooperative's opinion. For that reason the cooperative submitted the proposal.

In addition, the spokesman for MMI testified that the minus location adjustment applicable at Goshen should be reduced to cover a portion of the cooperative's transportation costs involved in hauling milk historically associated with the market to its Goshen plant for surplus disposal. By disposing of the market's reserve milk supplies, proponent's spokesman argued, the cooperative is performing a marketwide service which benefits all producers supplying the market. In the association's opinion, it should be compensated for providing this service.

Further MMI's witness indicated that during May 1983, milk marketings priced under the order from farms located in Indiana, Michigan and the Northwestern Zone of the marketing area were about 10 percent higher than in May 1978. Yet, the amount of milk priced at Goshen under the Ohio Valley order was up about 400 percent over a comparable time period.

It was MMI's contention that these data indicate that Goshen is a primary reserve processing plant for the milk of all producers on the market, not just those located outside the marketing area. During May 1983, MMI spent an additional $80,000 hauling milk that is normally delivered to nearby plants in the marketing area to its Goshen facility for manufacturing. In addition to the extra transportation cost, producers were penalized further because the uniform price for milk of producers received at Goshen was reduced by 23½ cents. MMI believes that from an equity standpoint some of the cost of disposing of the market's reserve supplies should be borne by all producers on the market rather than only those producers whose milk is priced at the reserve plant.

Proponent's witness also testified that a majority of the milk associated with the Goshen plant is obtained from farms of producers who are located in the marketing area in close proximity to distributing plants or who formerly shipped to pool plants that are so located. In either case, such milk is part of the market's reserve supply and must be moved to the more-distant Goshen plant for processing. There simply is not an alternative market for all of the milk produced within the marketing area. Because of this, the witness maintained that the normal justification for minus location adjustments does not fit the marketing situation. Hence, in proponent's opinion, the location adjustment provisions should be revised to more appropriately recognize how milk is marketed under the Ohio Valley order. The witness contended that adoption of its proposal will offset in part the costs involved in performing the balancing function for the market.

A representative of the Indiana Division of Associated Milk Producers, Inc. (AMPI), opposed the higher Class I and uniform prices at Goshen, Indiana as proposed by MMI. AMPI supplies two distributing plants near Goshen and it also operates a pool supply plant at Warsaw, Indiana. These plants, which are pool plants under the Indiana order, are located in the minus 8-cent location pricing area of that order. The spokesman for AMPI contended that adoption of higher prices at Goshen would cause procurement problems for the cooperative he represents in northcentral Indiana. For this reason, AMPI asked that the proposal be denied.

The Milk Foundation of Indiana (MFI) also opposed higher prices at Goshen. The handler group is made up of 13 members, each of which operates a pool distributing plant under the Indiana order. The group accounts for about 40 percent of the market's total fluid disposition.

The representative of MFI testified that the major production area for the Indiana market is located in northeast and northcentral Indiana where the Goshen plant is located. He contended that the price change that would be applicable at the Goshen plant under the proposal would result in serious misalignment of prices between the Ohio Valley and Indiana orders at that location.

A representative of the Kroger Company (Kroger) expressed concern about increasing prices under the Ohio Valley order at a plant location within the marketing area of the Indiana order. The handler spokesman suggested that some type of temporary relief might be more appropriate to accommodate the milk that lost its market as a result of the closing of the distributing plant of Babcock. In this regard, he suggested that the milk moving from the Northwestern Zone of the marketing area to Goshen for surplus disposal be priced at the Northwestern Zone price where the milk would be deemed to have been received for a limited period of time—say 12 months. This would give the association one year to make the necessary marketing adjustments and accommodate to such institutional change.

In its exceptions, MMI embraced the Kroger suggestion discussed in the preceding paragraph. Since the handler's recommendation would have alleviated temporarily the cooperative's surplus milk marketing problems, MMI urged its adoption as an appropriate alternative to its hearing notice proposal. The cooperative indicated that the findings and conclusions of the recommended decision failed to appropriately consider the handler's suggestion.

The Kroger recommendation was offered as a modification at the hearing. No information was presented by Kroger in support of its recommendation. Moreover, no mention of it was advanced by interested parties in their briefs. Hence, there is no basis to adequately evaluate the merits of Kroger's suggestion.

A representative of the Dean Foods Company (Dean) questioned the timing of making such a change in the location adjustment provisions. Dean operates a distributing plant under the Indiana order. He testified that the current oversupply situation may be corrected with the adoption of the legislation that the Congress had under consideration. If that becomes law, he indicated that the marketing problems of proponent might disappear.

The current location pricing provisions, which are based on zoning in the marketing area and on mileage in the outlying territory surrounding such area, were designed to encourage the movement of milk from supply areas to the main population centers of the market where it is processed for fluid uses. In this regard, higher prices are provided at locations where milk is needed for fluid use. They reflect the higher utility value of milk at that particular point. Lower prices are provided at plants located in outlying procurement areas as a transportation allowance to encourage the milk to move to the city plants for higher-valued fluid uses. If the prices at plants in the outlying supply area were the same as the city price, there would be no monetary incentive under the order to move the milk.

Higher location prices at Goshen should not be provided under the order for the purpose contemplated by proponent, i.e., to help compensate the

cooperative for the cost of handling the market's reserve milk supply.

MMI excepted to the preceding paragraph on the basis that it implies that (1) "the change would more than offset the actual cost of transporting reserve supplies of milk to Goshen; and (2) the cooperative should perform marketwide services without compensation". The exception is without foundation. Location adjustments were never intended to compensate a handler for performing the services referred to by the exceptor. Rather, they serve to encourage the movement of milk from supply areas to the principal population centers where it is processed for fluid use. Additionally, they assist in maintaining a reasonable alignment of prices with nearby markets.

While the disposition of the market's reserve milk supplies is definitely a problem for proponent at this time because of abundant supplies and lower fluid use, the cooperative's solution to the problem should not be adopted. Such a solution would provide relief in the form of a higher uniform price to the proponent cooperative for milk received at Goshen, but it could cause serious procurement problems for other handlers operating under the Ohio Valley order in addition to those operating under nearby Federal milk orders, particularly the Indiana order.

If the proposed prices (Class I and uniform) at Goshen were the same as prices at plants in the Northwestern Zone, milk produced near the manufacturing plant could be committed for manufacturing uses at Goshen and not be available to the distributing plants in the Northwestern Zone of the marketing area. This could happen even though the milk is needed for fluid purposes at the distributing plants. In certain cases, because of the lower farm to plant hauling cost, the cooperative could realize a higher net return by moving the milk to Goshen for surplus disposal rather than moving it to such distributing plants for fluid use.

As indicated, the Goshen plant is located in the heart of the Indiana market's milk production area. The record shows that about 15 to 25 million pounds of milk is obtained by Indiana order distributing plants located in the order's no location adjustment zone each month from the general procurement area of the Goshen plant. If higher prices were applicable at the Goshen plant as proposed, the milk would most likely not be available to Indiana regulated plants in the no location adjustment zone unless they were willing to pay higher prices for it. This could result in increasing the total handling and transportation costs for some Indiana handlers as opposed to others in obtaining adequate milk supplies. Revising the location pricing structure in the manner proposed would be inappropriate and could culminate in disorderly marketing conditions in the northern and northcentral Indiana procurement areas.

Since the Goshen plant is located in a common supply area for the Indiana and Ohio Valley markets, the present location pricing structures of the two orders were designed to encourage the movement of milk from supply areas to the principal population centers of each market where it is processed for fluid use. Additionally, they were developed to maintain a reasonable price alignment with nearby markets, which is essential to the attraction of milk supplies to various locations where it is needed.

It should be noted that under the present pricing provisions of the Indiana and Ohio Valley orders, Class I prices at Goshen, Indiana are closely aligned. For instance, under the Ohio Valley order, the Class I differential is $1.465 at Goshen ($1.70−$.235=$1.465). Under the Indiana order the Class I differential is $1.45 (1.53−.08=$1.45). Under the cooperative's proposal, the Class I differential at Goshen under this order would be $1.65 or 20 cents more than the differential which is applicable at such location under the Indiana order. A difference of this magnitude could have an adverse impact on the procurement practices of handlers operating under the Indiana order.

There was considerable discussion at the hearing about the alignment of uniform prices at Goshen under the Indiana and Ohio Valley orders. However, such prices vary from month to month depending on the utilization of the market's milk supplies by handlers. Conversely, the market's Class I differential is the same each month. For this reason, the primary emphasis on alignment of prices between orders must be on a Class I basis.

The record evidence does not demonstrate that the present location pricing structures for the Indiana and Ohio Valley markets at the Goshen location are inappropriate or are contributing to disorderly marketing conditions. To the contrary, it appears that the present location pricing structure under each order is providing adequate milk supplies at all locations at which milk is delivered by producers. It also is providing a reasonable alignment of prices not only with other markets but among the various segments within each market. Accordingly, the location price structure now applicable at Goshen under the Ohio Valley order should be retained.

Dairymen, Inc. (DI), a cooperative supplying milk for the market, proposed that the application of minus location adjustments be eliminated at plants located outside the marketing area and generally to the south and east of such area.

There was no opposition to this concept either at the hearing or in briefs. The Kroger representative supported DI's proposal.

DI's proposal should be adopted. Specifically, the order would provide that no minus location adjustments shall apply at any plant located in the marketing area covered by the Louisville-Lexington-Evansville order or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia.

This change is warranted because of the operation of Kroger's distributing plant at Winchester, Kentucky. this plant is located in the Louisville marketing area. A majority of the plant's milk supply is obtained from producers located in the same geographic area as producers shipping to handlers regulated under the Louisville order.

The Winchester plant began operating in November 1982 and was regulated under the Ohio Valley Order in such month. For the months of December 1982 through March 1983, the plant was regulated under the Louisville order.[3] In April 1983, it once again became regulated under the Ohio Valley order. It has been a pool plant under this order since that time.

The record shows that a common procurement area exists for the Winchester plant and for Louisville handlers. Such evidence indicates that there are producers located in a number of Kentucky counties who are supplying the Kroger plant at Winchester and others located in the same counties who are supplying plants regulated under the Louisville order.

When the milk of producers is not needed at Winchester, it is normally diverted to nonpool manufacturing plants located in the marketing area covered by the Louisville order. An exhibit was presented by DI at the hearing showing the location of such manufacturing facilities that regularly process the reserve milk which is associated with the Kroger plant. It also shows that such plants are subject to location adjustments ranging from minus

[3] Official notice is taken of the "List of Pool Handlers under Federal Order No. 46" published by the Market Administrator for the months of December 1982 through March 1983.

14 cents to minus 20 cents under the Ohio Valley order. However, if the milk is diverted to the same manufacturing plant from a producer's farm in the same general area but is priced under the Louisville order, no minus location adjustment applies. Such pricing differences could lead to disorderly marketing and is inconsistent with the objective of providing stable marketing conditions under Federal milk orders.

Also, in some recent months the weighted average price under the Louisville order has been higher than the comparable Ohio Valley price. The higher price is an incentive for producers to pool their milk under the Louisville order when it is not needed at Winchester. The minus location adjustment which applies under the Ohio Valley order for milk diverted to nonpool plants in the Louisville marketing area only compounds the problem. Providing that no minus location adjustments apply at Ohio Valley order plants that are located in the Louisville order's marketing area will align producer pay-prices under these two orders more reasonably and therefore should be adopted.

Customarily, Class I prices under the Ohio Valley order have been reduced at distant plants irrespective of their direction from the marketing area. However, downward adjustments should be applicable only in those areas from which milk supplies logically would be drawn for this market. Milk supplies in areas to the north and west generally are heavier and Class I prices are lower than in the Ohio Valley market. In the territory south and east of the market, supplies are less ample and Class I prices are generally higher than in the Ohio Valley market. Ohio Valley handlers should not be encouraged to procure milk from plants in these tighter-supply areas through the application of minus location adjustments. In the interest of marketing efficiency, any available milk supplies in the areas south and east of this market should be encouraged to move to those markets that are more distant from the heavy production areas than is the Ohio Valley market.

Hence, the location adjustment provisions of the order should be modified to provide that no minus adjustments apply at plants that are east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia. In effect, minus location adjustments would not apply in a 10-state where prices are generally higher.

6. *Administrative provisions.* Certain administrative proposals were considered at the hearing. They involved charges on the overdue accounts of handlers, payments by handlers for fluid milk products received from a pool plant operated by a cooperative association, and handler reports concerning certain payroll information.

(a) Charges on overdue accounts. The order should impose a charge on handler payment obligations that are overdue. Such charge should be 1 percent per month and should apply on the first day after the due date and the same day of each succeeding month until the obligation is paid. Overdue accounts of handlers that would be subject to the charge would be those due the market administrator for the producer-settlement fund and the administrative expense fund in addition to any adjustments needed to correct errors in payment obligations discovered on audit. The order should also provide that all late-payment charges shall accrue to the administrative expense fund.

A late-payment charge was proposed jointly by MMI and Defiance. Proponents stated that their proposal would provide handlers an incentive to pay their order obligations on time.

The MMI spokeman cited the market's payment record and indicated that handlers are using producer monies for a number of days with no monetary penalty. In addition, he indicated that those handlers making late payments have a competitive advantage in their business operations relative to handlers making timely payments.

In support of its proposed late-payment charge, MMI contended that the charge should be at least as much as the cost of obtaining a loan from commercial sources since delinquent handlers are, in effect, borrowing money from producers. The cooperative's spokesman indicated that based on experience gained in other markets, the proposed charge of 1 percent per month would encourage more timely payments of order obligations.

Two proprietary distribution plant operators (Kroger and Beatrice) serving the market supported the joint-proposal of MMI and Defiance to impose a charge on handler payments that are late. No one opposed the charge at the hearing or in post-hearing briefs. However, Beatrice proposed that the late-payment charge not apply until 10 days after the due date.

The record evidence indicates that the incidence of late payments by pool handlers to the market administrator is a serious problem in this market. Data submitted into evidence by the market administrator's office demonstrated the severity of the problem. For example, during the 8-month period of January through August 1983, only 163 or 61 percent of the final payments made by pool handlers were received by the market administrator by the 16th of the month. This allows two days for the payments to have been received by the market administrator assuming they were mailed on the due date (14th). With respect to partial payments, the experience during the same 8-month period was only slightly better. For this period, 193 or 74 percent of all partial payments were received by the market administrator by the 2nd day after the due date.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. This is of particular importance in this market since the Ohio Valley order provides that a handler pay all order obligations for milk to the market administrator who, in turn, distributes such monies, in terms of the partial and uniform prices, to producers, cooperative associations, or handlers who elect to pay their producers. Payments to the market administrator must be made on a timely basis in order that he will be able to make the required payments to producers on time. Producers should not be expected to wait beyond the scheduled time for their payments. Delayed payments not only foster uncertainty and discontent among producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

The prompt payment of accounts due the administrative expense fund by handlers is essential to the effective operation of the order also. Delinquent payments to this fund could impair the ability of the market administrator to perform his various administrative duties prescribed by the order on a timely basis and in the most efficient manner.

Payment delinquency results in an inequitable situation among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the cost of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers who make timely payments.

Because of the late-payment problem that presently exists in the market, it is appropriate to adopt, as proposed, a charge of 1 percent per month on handler obligations that are overdue. Without such a charge handlers have little incentive to make their payments

on time. While the 1 percent charge may not be high enough to encourage strict compliance by all handlers, it should provide handlers substantial inducement to make their payments on time.

As provided and adopted herein, those unpaid handler obligations specified herein would be increased by 1 percent on the 1st day after the due date. Any unpaid balance on each such overdue account would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed.

In order to remove any uncertainty as to when an order payment obligation is late, the order should provide that a handler's payments must be received by the market administrator by the prescribed dates to be considered to have been made on time. Such dates would be the 26th day of the month for the partial payment and the 15th day after the end of the month for the final payment. Payments not received by these dates would be considered late and subject to the charge on overdue accounts.

Under the current order, partial payments by handlers are due on or before the 25th day of the month and final payments are due by the 14th of the following month. Since this decision changes due dates from postmark dates to receipt dates in deciding whether payments have been made on time, it is appropriate to allow handlers one additional day to pay their obligations to the market administrator.

Even though the handler payments to the market administrator would be delayed by one day, sufficient time remains (2 days) for the market administrator to pay the money due producers, cooperatives or handlers who elect to pay their producers by the dates specified in the current order. Two days should be adequate time for him to complete such payments. Hence, no amendatory action is needed in this regard.

It is appropriate to delay the date handlers must pay their assessments for administration of the order by one day also. Under the provisions adopted herein, handlers would be required to pay such amounts to the market administrator by the 15th rather than the 14th as provided under the current order. This change will permit handlers to pay their final settlement obligations and their administrative assessments to the market administrator at the same time. This change will maintain the present coordination in the due date for such payments.

Recognition should be given, however, to the occasional conflicts between scheduled payment dates and weekends or holidays. Accordingly, if the payment date should fall on a Saturday, Sunday, or national holiday, payments should not be due until the next day on which the market administrator's office is open for public business. Further, the order should provide that when the partial or final payments are so delayed, the corresponding payments by the market administrator to handlers, cooperatives or producers, as well as the subsequent payments by handlers to their producers, may be delayed by the same number of days.

The application of a late-payment charge on the day following the date when payment is due may require some adjustment in the procedures of the market administrator when billing handlers. In this connection, the market administrator may need to reduce the period customarily taken to notify a handler of his payment obligations so that the handler, in turn, will have sufficient time to insure that the payment is received by the market administrator not later than the due date. This adjustment can be accomplished administratively within the framework of the existing order provisions and, thus, requires no amendatory action.

The MMI proposal made at the hearing that all late-payment charges accrue to the administrative expense fund maintained by the market administrator should be adopted. The money spent by the market administrator in collecting delinquent handler obligations comes from such fund. Thus, the competitors of a noncomplying handler who pay their assessments to the fund are bearing the administrative costs associated with collecting the money from a delinquent handler. Therefore, it is appropriate that the late-payment charges assessed on such noncomplying handlers be deposited in the administrative expense fund. This money will offset the additional administrative costs associated with collecting money from such handlers.

The Beatrice modification to delay the application of the late-payment charge for 10 days is denied. Adopting such a grace-period would not assure prompt payments by handlers to the market administrator because the late-payment charge would not be imposed until 10 days after the due date. If handlers paid their obligations 10 days late, it would make it impossible for the market administrator to get the money to producers on a timely basis. Imposing the late payment charge on the 1st day after the due date will provide greater assurance of prompt payments by handlers and therefore should be provided.

Defiance also proposed that interest accrue on any refund of a handler's pool obligation that is due such person. At the hearing and in its post-hearing brief, the handler modified its proposal. The handler representative pointed out two specific overpayment situations where interest should accrue on refunds which are due and payable to a handler. In the first instance, if during an audit of a handler's records the market administrator discovers that a handler has overpaid an obligation, interest should accrue on the amount of the overpayment that is due such person. Also, if a handler successfully challenges a payment obligation in a 15(A) proceeding (i.e., brought under 608c(15)(A) of the Act) which results in money due the handler, interest should accrue on the refund due such person. The handler proposed that interest not begin to accure on the amount that is to be refunded to such a handler until six months after the date of such overpaymentin either situation. This six-month period was suggested as a reasonable amount of time for the market administrator to audit a handler's records and verify such person's payment obligations. Proponent claimed that, from an equity standpoint, there is little difference between a handler who overpays an obligation from one who pays an obligation late. Hence, monetary adjustments are needed in both situations to equalize the handler payments.

The Defiance proposal to require the market administrator to pay interest on refunds due a handler should not be adopted. Such overpayments discovered on audit are required to be paid promptly by the market administrator under the terms of the current order. There is no evidence on this record to indicate that this has not been done.

The other situation covered by the proposal dealt with contested obligations in a 15(a) proceeding. The record does not warrant changing the order to accommodate this situation either. In fact, where order obligations are in dispute in a 15(A) proceeding, at times it might be appropriate to escrow disputed amounts to protect the parties of interest.

The only purpose of adopting a late-payment charge under the order is to encourage handlers to pay their obligations on time and not to provide for payment of interest on outstanding

obligations. This is essential so that the market administrator can make the required payments to producers, cooperative associations, or handlers who elect to pay their producers at the time specified in the order. If interest were to apply on certain refunds due handlers, as Defiance urges, the order would represent a banking service for handlers. That is not the purpose of a Federal milk order. Hence, the handler proposal most appropriately should be denied.

(b) *Payments by handlers for bulk fluid milk products received from a pool plant operated by a cooperative association.* MMI proposed that the operator of a pool plant who receives bulk fluid milk products from a cooperative association pool plant should be required to pay for such milk in essentially the same manner as now applies for cooperative bulk tank milk received directly from the farm. The proposal should be adopted.

As proposed and adopted herein, any pool, plant operator who receives bulk fluid milk products from a cooperative association's pool plant during the month shall make a partial and final payment to the market administrator for such purchases. Under this method of payment, the handler would be required to make such payments to the market administrator for such plant milk by the same dates as the order now requires of a handler to pay for milk received directly from a cooperative acting as a bulk tank handler. In this regard, the partial payment, which would apply to such receipts during the first 15 days of the month, would be at the basic formula price for the preceding month. Final payments for such milk by the purchasing handler to the market administrator would be based on its classified use value less the amount of the partial payment. The purchase of such milk would be treated as a transfer between pool plants and classified accordingly. The class prices applicable at the location of the buying handler's plant where the milk is received and processed would be used to compute the transferee-plant's obligation to the market administrator for such milk. Also, such handler would be responsible for paying the administrative assessment applicable for such milk.

Under this adopted payment procedure, the cooperative association in turn would receive from the market administrator partial and final payments at the same rates and on the same dates that now apply with respect to payments to a cooperative association as the handler for farm bulk tank milk.

Presently, the order does not prescribe a schedule of payment dates that a handler must comply with for purchases of fluid milk products from a cooperative's pool plant. Rather, such milk is a receipt of producer milk by the cooperative at the location of its pool plant and is treated for classification purposes as an interplant movement under the order. The cooperative is held accountable to the market administrator at such milk's class use value. The payments by the pool plant operator to the cooperative is outside the terms of the order. Under this accounting and payment arrangement, the cooperative is burdened with collecting the minimum classified use value of such milk and could be placed in a serious financial bind, unless prompt payment is received from the buying handler.

In support of its proposal, MMI's witness testified that the present order does not provide adequate assurance of prompt payment by a pool plant operator to a cooperative association for milk sold from its pool plant. The witness contended that the cooperative should have the same payment protection under the order on that milk received by a handler from a pool plant operated by a cooperative as is now applicable on farm bulk tank milk that is received at a pool plant from a cooperative association. Proponent took the position that its proposed payment procedure whereby the pool plant operator who receives bulk fluid milk products from a cooperative's pool plant is accountable to the market administrator on such milk would provide handlers with a stronger incentive for making prompt payment for such milk purchases. There was no opposition to the proposal at the hearing or in post-hearing briefs.

The record establishes that most of the milk marketed by cooperatives in this market is moved to pool plants directly from the farm. However, to a limited extent, some milk is shipped to such plants, either on a regular or supplemental basis, from pool plants operated by cooperatives. Three such plants of MMI are located at Dayton and Sardinia, Ohio, and Goshen, Indiana. NFO also operates a supply plant located at Bryan, Ohio, which is regulated under the order and serves the market similarly.

Irrespective of the supply arrangements used, the producers involved are supplying milk for the fluid market and should be assured of receiving payment for their milk on a timely basis. Such assurance is essential to orderly marketing. Moreover, requiring handlers to channel all payments for milk purchases from a cooperative operated pool plant through the market administrator comports with the Act. In this regard, the Act provides that no cooperative association may sell milk to any handler at less than the prescribed class prices and retain its reblending privilege. By placing the obligation for such milk on the buying handler who receives, processes and disposes of it, the order will provide greater assurance that timely payments at minimum prices will be applicable on such milk.

Further, the revised payment procedure for such milk will facilitate the administration of the order with respect to matters of financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual utilization of such milk reflects the use of the milk at the receiving pool plant, it is reasonable, therefore, that the responsibility for its accounting and payment be placed directly on such pool plant operator.

As indicated previously, the order also should provide that the buying handler for milk purchased from a pool plant operated by a cooperative be responsible for paying the administrative assessment applicable to such milk. Presently, the cooperative association pays the administrative assessment on such milk. It is reasonable, however, that the handler processing the milk, rather than the cooperative, be the handler obligated under the order for the administrative assessment. This procedure is appropriate because much of the time and money expended in administering the order involves the verification of receipts and utilization of such milk by handlers. In contrast, the cooperative's role for such milk as a "handler" is merely that of moving the milk through its supply plant to the processing plant.

Applying the administrative assessment on such milk in the manner described herein also would be consistent with the intent of the Act that prices be uniform among handlers. The record establishes that it is a general practice in this market for cooperatives to pass on to the buying handler the administrative assessment on such milk. Otherwise, competitive pressures could develop that might tempt a cooperative to sell the milk at the class price and pay the related administrative assessment on the milk itself.

In connection with its proposal relating to payments for cooperative plant milk, MMI proposed offsetting the payments due from a cooperative to the market administrator with payments due the cooperative from the market administrator. The proposal should be adopted.

The order provisions now require that a cooperative association handler pay the market administrator the class use value of milk for which the cooperative is the handler. In turn, the market administrator pays the cooperative an amount equal to the value of such milk at the uniform prices payable to producers.

Cooperative associations in this market are handlers with respect to producer milk processed in their own pool plants or moved to nonpool plants. MMI operates three pool plants under the order in which, as the responsible handler, it is obligated to the market administrator at the class use value of the producer milk involved. On the milk so handled, the cooperative receives from the market administrator a payment at its uniform price value. Additionally, the cooperative receives payment at the uniform price from the market administrator on milk received by a pool plant operator from the cooperative as the handler for farm bulk tank milk. For such milk, the pool plant operator is obligated to the market administrator at its class use value. In these circumstances, the market administrator's payments due the cooperative for its overall handler operations in the market during the month normally far exceed the cooperative's payments due the market administrator for its milk at the classified use value. In such cases, the market administrator should be permitted to offset payments due from a cooperative association against payments due such handler. This payment procedure will eliminate the need for a cooperative to make payments to the market administrator for its milk when the amount due the handler from the market administrator for milk is greater.

(c) *Other reports.* The order should specify in detail the reporting requirements of handlers with respect to the various types of payroll data and the frequency when such data must be reported to the market administrator. This information is essential to the effective operation of the order's payment procedure to producers.

The current order does not prescribe the specific information that must be reported by handlers in this regard. Rather, the order provides that each handler shall report payroll data to the market administrator in the detail and on forms prescribed by him.

NFO proposed that the order prescribe more specifically the payroll information that handlers must report to the market administrator in connection with the order's payment procedure. Essentially, the proposal embraces the payroll data reporting procedure that is presently required of handlers under the Eastern Ohio-Western Pennsylvania Federal milk order.

In support of its proposal, NFO's witness testified that the market administrator requires basically two different types of payroll information from handlers, depending on whether a handler elects to pay producers. He pointed out that in those cases where the market administrator pays a handler's producers, such handler is required to report detailed receipts from each individual producer. This information is necessary for the market administrator to make the partial and final payments to the producers involved. Conversely, he stated that the market administrator requires only aggregate payroll data from handlers (including cooperative associations) who elect to pay producers.

The spokesman indicated that NFO pays some of its members supplying milk for the Ohio Valley market and elects to have the market administrator pay others. Because of this, he testified that the market administrator requires NFO to report payroll information for each of its producer members in the same manner as is required of handlers who choose to have the market administrator pay the producers from whom they receive milk.

The witness for NFO contended that reporting individual dairy farmer information for those producers the handler pays directly is an unnecessary burden. He contended that such reporting requirements are inappropriate because they involve too much time and considerably more information than is necessary to carry out the order's payment plan. In this regard, NFO proposed that the order provide different reporting requirements for handlers who pay their producers from those handlers who do not pay dairy farmers from whom they receive milk.

As adopted herein, the order should specify that different payroll information shall be reported by a handler depending on whether the handler pays the partial and final payments to producers from whom milk is received. In this regard, when a handler elects to pay such producers, only the aggregate receipts from producers must be reported prior to the handler's making the partial and final payments to such dairy farmers. The total receipts from and payments to each individual producer would be reported on such handler's payroll report after the end of each month.

Alternatively, if a handler elects to have the market administrator make the partial and final payments to producers from whom he receives milk, the handler must furnish sufficient payroll information for each producer to the market administrator prior to the partial and final payment dates so that he can follow through and make such payments to each producer for his milk deliveries. In such cases, however, these handlers would not be required to submit payroll reports after the end of each month because the market administrator would have made the payments to the individual producers.

As noted previously, similar payroll reporting requirements are applicable under the adjacent Eastern Ohio-Western Pennsylvania order. This order provides under certain conditions for similar payment procedures whereby producer money is channelled through the market administrator. From an administrative standpoint, it is in the best interest of the order program to provide handler reporting requirements which are uniform to the extent possible under Federal orders that have similar payment procedures, and particularly those which are in this general region. For that reason, the cooperative's proposal should be and hereby is adopted.

Contrary to MMI's position, adoption of the NFO proposal will not limit the authority of the market administrator to obtain any additional information from handlers he deems necessary in administering the terms and provisions of the order. Such authority is specifically provided in the order.

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 Ohio Valley order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT[4] regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Ohio Valley marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, execpt the marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are indentical with those contained in the order as hereby proposed to be ammended by the attached order which is published with this decision.

[4]Marketing agreement filed at the office of the Federal Register as part of the original document.

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 order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley marketing area in approved or favored by producers, as defined under the terms of the order (as amended amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1033

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on August 30, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order[5] amending the order, regulating the handling of milk in the Ohio Valley marketing area.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Ohio Valley marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et. seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

[5]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.

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Ohio Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the partial recommended decision issued by the Deputy Administrator, Marketing Program Operations, on July 11, 1984 and published in the **Federal Register** on July 16, 1984 (49 FR 28721), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

§ 1033.11 [Amended]

1. In § 1033.11, the word "transferred" is changed to "delivered".

2. Section 1033.12 is revised to read as follows:

§ 1033.12 Pool plant.

"Pool plant" means a plant described in paragraph (a), (b), or (c) of this section that is not a producer-handler plant or a plant that is subject to another Federal order as set forth in § 1033.56.

(a) A distributing plant with:

(1) Route disposition in the marketing area during each month of not less than 15 percent of its total disposition; and

(2) Route disposition of not less than 40 percent during each of the months of September through February, and 35 percent during each of the months of March through August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products

received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraph (a) (1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products priced as Class I milk under this or any other Federal order;

(ii) A distributing plant (except a plant that met the route disposition percentage on a unit basis under paragraph (a)(2)(iii) of this section) that does not meet the minimum route disposition percentage specified in paragraph (a)(2) of this section to qualify for pool status in the current month shall be deemed to have met such qualifying percentage in such month, if the plant met the applicable percentage in each of the three immediately preceding months; and

(iii) Two or more plants operated by the same handler may be considerd as a unit for the purpose of meeting the total route disposition percentage specified in paragraph (a)(2) of this section if such handler requests that the plants be so considered and each plant in the unit meets the in-area route disposition percentage specified in paragraph (a)(1) of this section.

(b) A supply plant from which during the month 35 percent or more of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk divereted to such plant) and from handlers described in § 1033.16(c) is delivered by transfer or diversion as fluid milk products, except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries.

(2) A supply plant that does not meet the minimum delivery requirement specified in paragraph (b) of this section to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the three immediately preceding months.

(3) A supply plant that qualified as a pool plant in each of the immediately preceding months of September through February on the basis of its deliveries to pool distributing plants shall be a pool plant for each of the following months of March through August, unless the plant operator files a written request with the market administrator asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s).

(c) A plant operated by a cooperative association if, during the month, 50 percent or more of the producer milk of members of the association is delivered to a pool distributing plant(s) either directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 50-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approve by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the similar provisions of another Federal order applicable to a distributing plant or a supply plant.

3. Section 1033.14 is revised to read as follows:

§ 1033.14 Producer.

(a) Except as provided in paragraph (b) of this section, "Producer" means any person who produces milk approved by a duly constituted health authority for fluid consumption, whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received at a pool plant from a handler described in § 1033.16(c); or

(3) Diverted from a pool plant in accordance with § 1033.15.

(b) "Producer" shall not include:

(1) Any person defined as a producer-handler under a Federal milk order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such dairy farmer which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1033.46(a)(8)(ii) and the corresponding step of § 1033.46(b); or

(3) Any person with respect to milk produced by such dairy farmer which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

4. Section 1033.15 is revised to read as follows:

§ 1033.15 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1033.16(c) under the conditions set forth therein;

(c) Received by an handler described in § 1033.16(c) from producers in excess of the quantity delivered to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1033.16(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) In any month of September through February, the operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent of the producer milk physically received at or diverted from such pool plant during the month;

(3) In any month of September through February, a cooperative association may divert an aggregate quantity of milk not exceeding 50 percent of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

(4) Any milk diverted in excess of the limit set forth in paragraph (e) (2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall

be priced at the location of the plant where it is received.

5. In § 1033.16, paragraphs (b) and (c) are revised to read as follows:

§ 1033.16 Handler.

* * * * *

(b) A cooperative association with respect to the producer milk which is diverted to nonpool plants for the account of such association pursuant to § 1033.15, excluding producer milk diverted by the association as the operator of a pool plant pursuant to paragraph (a) of this section;

(c) A cooperative association with respect to producer milk which is delivered for its account from the farm to a pool plant in a tank truck owned and operated by, or under contract to such cooperative association. Milk delivered pursuant to this paragraph shall not include producer milk diverted to another pool plant by the association as the operator of a pool plant pursuant to paragraph (a) of this section. Milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by such cooperative association at the location of the pool plant to which such milk was delivered;

* * * * *

§ 1033.30 [Amended]

6. In § 1033.30(b)(2), the reference "§ 1033.15(a)(2)" is changed to "§ 1033.15(b)".

7. In § 1033.31, paragraphs (c), (d), and (e) are revised and two new paragraphs (f) and (g) are added to read as follows:

§ 1033.31 Other reports.

* * * * *

(c) On or before the 26th day of the month, each handler who receives milk from a producer and does not make payment to such producer shall report the following information to the market administrator with respect to the receipts of milk by such handler during the first 15 days of the month:

(1) The identity of each such producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1033.16(c); and

(5) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(d) On or before the 26th day of the month, each handler who receives milk from a producer and makes payment to such producer, shall report the following information to the market administrator with respect to the receipts of milk by such handler during the first 15 days of the month:

(1) The total pounds of producer milk received from such producers;

(2) The total deductions authorized by such producers to be made from the partial payments for such milk;

(3) The total pounds of milk received from a handler described in § 1033.16(c); and

(4) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(e) On or before the 6th day after the end of the month, each handler who receives milk from a producer and does not make payment to such producer shall report to the market administrator the following information with respect to the receipts of milk by such handler during such month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat reveived from a handler described in § 1033.16(c); and

(5) The total pounds of skim milk and butterfat in bulk fliud milk products reveived from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred or diverted from each such plant.

(g) In addition to the reports required pursuant to paragraphs (a) through (f) of this section and §§ 1033.30 and 1033.32, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(8) A new Section 1033.32 is added to read as follows:

§ 1033.32 Payroll reports.

(a) On or before the 20th day after the end of the month, each handler who elects to pay producers pursuant to § 1033.72(d) shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer;

(5) The net amount of payment to the producer; and

(6) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments to § 1033.57(a) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, his payroll for such month for dairy farmers from whom he received bottling grade milk. Such payroll shall show for each dairy farmer the total pounds of milk received from him, the average butterfat content thereof, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat content thereof, and the rate and net amount of payment, together with the amount and nature of any deductions involved.

9. In § 1033.45, a new paragraph (d) is added to read as follows:

§ 1033.45 Computation of skim milk and butterfat in each class.

* * * * *

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in

accordance with the rules set forth in § 1033.43(a) and the value thereof at class prices (applicable at the location of the transferee-plant) shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60.

10. In § 1033.53, the section title is changed, paragraph (a) is revised, and a new paragraph (c) is added to read as follows:

§ 1033.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers that is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1033.51(a) shall be adjusted on the basis of where the plant receiving the milk is located, as follows:

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows:

Zone and Adjustment Per Hundredweight

Northwestern Zone—minus 5 cents
Central Zone—no adjustment
Southeastern Zone—plus 5 cents

(2) At a plant located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, no minus location adjustment shall apply at any plant located in the Louisville-Lexington-Evansville marketing area under Part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia; and

(4) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

* * * * *

(c) The Class I price applicable to other source milk shall be adusted at the rates set forth in paragraph (a) of this section.

§ 1033.57 [Amended]

11. In the introductory text and in paragraph (a)(1)(ii) of § 1033.57, the references to "1033.31(d)" should read "1033.32(b)" in both places.

12. In § 1033.60, paragraph (a) is revised to read as follows:

§ 1033.60 Computation of the net pool obligation of each handler.

* * * * *

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1033.46(c) and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.45(d) in each class as determined pursuant to § 1033.43(a) by the applicable class price and add the resulting amounts;

* * * * *

13. Section 1033.71 is revised as read follows:

§ 1033.71 Payments to the market administrator.

(a) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 26th day of each month an amount determined by multiplying the hundredweight of producer milk and bulk fluid milk products from a pool plant operated by a cooperative association received by such handler during the first 15 days of the month by the basic formula price for the preceding month less proper deductions and charges authorized in writing by such producers.

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60(a) adjusted by the butterfat differential specified in § 1033.73 plus the amounts computed pursuant to § 1033.60 (b) through (g), less:

(1) The amount obtained from multiplying the weighted average price applicable at the location of the plants from which the other source milk is received (not to be less than the Class III price) by the hunderdweight of other source milk for which a value is computed pursuant to § 1033.60(g);

(2) Partial payments made pursuant to paragraph (a) of this section for such month; and

(3) Proper deductions and charges authorized in writing by producers from whom the handler received milk, except that the total deductions and charges made under this section for the month for each producer shall not be greater than the total value of the milk received from such producer during the month.

(c) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) and (b) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator;

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall be considered to have been received by the due date if they are received not later than the next day on which the market administrator's office is open for public business; and

(3) Payments due the market administrator from a cooperative association as a handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1033.72.

14. In § 1033.72, the section title is changed and the section is revised to read as follows:

§ 1033.72 Payments to producers and to cooperative associations.

(a) On or before the 28th day of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the first 15 days of the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(a) at rate per hundreweight equal to the basic formula price for the preceding month, less the deductions authorized in writing by producers and charges made by handlers with respect to such milk.

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to pararaphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) at the uniform price per hundredweight as adjusted pursuant to §§ 1033.73 and 1033.74 less:

(1) Partial payments made pursuant to paragraph (a) of this section with respect to such milk;

(2) Deductions for marketing services pursuant to § 1033.75; and .

(3) Other deductions authorized in writing by producers and made by handlers with respect to such milk.

(c) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator as having authorized the cooperative association to receive such payment and amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraph (a) and (b) of this section.

(d) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to the individual producers pursuant to this paragraph, the handler shall furnish the following information to each producer:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if it is other than the applicable minimum rate;

(4) The amount and nature of any deductions subtracted from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(e) The following conditions shall apply with respect to the payments by the market administrator prescribed in paragraphs (a) through (d) of this section:

(1) If the date by which such payments are to be made falls on a Saturday or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1033.71(c)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to producers or cooperative associations, the corresponding partial or final payments prescribed in paragraphs (a) through (d) of this section may be delayed by the same number of days.

(f) If the market administrator does not receive the full payment required of a handler pursuant to § 1033.71, he shall reduce uniformly per hundredweight the payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete the payments to producers on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

(g) If the unobligated balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, except those payments due producers as described in paragraph (f) of this section, the market administrator shall reduce uniformly per hundredweight the payments to producers and shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the funds become available.

15. Section 1033.76 is revised to read as follows:

§ 1033.76 Expense of administration.

As a pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own farm production and milk received from a handler described in § 1033.16(c) but excluding bulk fluid milk products delivered from a pool plant operated by a cooperative association to another pool plant pursuant to § 1033.45(d));

(b) Receipts of bulk fluid milk products from a pool plant operated by a cooperative association pursuant to § 1033.45(d);

(c) Receipts of other source milk allocated to Class I pursuant to § 1033.46(a) (6), (7), and (11) and the corresponding steps of § 1033.46(b), except such other source milk on which no handler obligation applies pursuant to § 1033.60(g); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1033.57(b)(2)(ii).

16. A new section 1033.78 is added to read as follows:

§ 1033.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1033.57, 1033.71, 1033.72(d), 1033.76, 1033.77 or 1033.78 shall be increased on (1) percent beginning on the first day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) Charges on overdue accounts collected pursuant to this section shall be deposited into the administrative assessment fund maintained by the market administrator;

(b) Amounts payable pursuant to this section shall be computed by the market administrator monthly on the unpaid balance (including any unpaid charges previously assessed pursuant to this section) remaining on each overdue obligation on such date; and

(c) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

[FR Doc. 84-23531 Filed 9-5-84; 8:45 am]
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7 CFR Part 1097

[Docket No. AO-219-A40]

Milk in the Memphis, Tennessee, Marketing Area; Referendum Order; Determinaiton of Representative Period; and Designation of Referendum Agent

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document orders that a referendum be conducted to determine whether producers favor issuance of the amended order regulating the handling of milk in the Memphis, Tennessee, marketing area, as proposed in the emergency final decision issued by the Assistant Secretary on August, 22, 1984.

DATE: The referendum is to be completed on or before September 21, 1984.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued August 1, 1984; published August 3, 1984 (49 FR 31072).

Emergency Final Decision: Issued August 22, 1984; published August 28, 1984 (49 FR 34028).

It is hereby directed that a referendum be conducted to determine whether the issuance of the order, as amended, and as proposed to be amended, regulating the handling of milk in the Memphis, Tennessee, marketing area, which was attached to the decision of the Assistant Secretary issued August 22, 1984, is approved by producers, as defined under the terms of the order (as amended and as proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

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

Richard E. Arnold is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of such referenda. (7 CFR 900.300 *et seq.*).

Such referendum shall be completed on or before September 21, 1984.

List of Subjects in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C. on: August 30, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-23528 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-84-8]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, November 6, 1984.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ————, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION:

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on August 30, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the Petition
24139	Aeromar, C. par A	Description of Petition: To permit operations in foreign air transportation after January 1, 1985, aircraft whose measured or estimated noise levels satisfy the certification requirements set forth in Part 36 (including the use of applicable trade-off provisions) for the noisiest Stage 2 airplane which is permitted to operate under Subpart E. Regulations Affected: 14 CFR 91.303. Petitioner's Reason for Rule: This is needed to comply with the Dominican and certain other bilateral agreements and to eliminate discrimination among the operators of certain aircraft types without regard to their noise levels.
24153	Belize Air Int'l., Ltd	Description of Petition: To permit operations in foreign air transportation after January 1, 1985, aircraft whose messured or estimated noise levels satisfy the certification requirements set forth in Part 36 (including the use of applicable trade-off provisions) for the noisiest Stage 2 airplane which is permitted to operate under Subpart E. Regulation Affected: 14 CFR 91.303. Petitioner's Reason for Rule: This is needed to provide the airlines of Belize a fair and equal opportunity to compete with the airlines of the U.S. in accordance with Article II of Bermuda II, and to eliminate discrimination among airlines by aircraft type without regard to their noise levels.
24178	Air Transport Assocation (ATA).	Description of Petitions: To consider a pilot initially qualifying or upgrading as pilot-in-command as having satisfied the operating experience requirements after the appropriate number of hours whether or not those pilots have had a flight leg observed by an FAA inspector. Regulation Affected: 14 CFR 121.434(c)(1)(ii).
24076	Tennessee	Description of Petitions: Airways To allow a maximum seating capacity of 60 seats or less or a maximum payload capacity of 20,000 pounds or less. Regulations Affected: 14 CFR 135.1(a)(3). Petitioner's Reason for Rule: The reasons are: (1) Many short haul carriers are acquiring aircraft of 30- to 60-seat capacity; (2) the public interest would be served by conservation of funds expended to satisfy Part 121 rules that do not serve a purpose for short haul carriers; and (3) satefy would not be affected since more seat capacity does not alter the operation or system of short haul carriers.

[FR Doc. 84-23479 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 21

[Docket No. 24216; Notice No. 23-ACE-9]

Special Conditions; British Aerospace Jetstream Model 3101 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This notice proposes Special Conditions for the British Aerospace (BAe) Jetstream Series 3100, Model 3101 airplane. The airplane will have novel or unusual design features associated with turbopropeller engine installations incorporating Automatic Power Reserve Systems (APR) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations applicable to the Jetstream Model 3101 airplane.

DATES: Comments must be received by October 8, 1984.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 24216, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 24216. Comments may be inspected in the Docket File between 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Oscar E. Ball; Aerospace Engineer, Regulations & Policy Office, Room 1656, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for documents specified above will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both before and after the closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The applicable airworthiness standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. The certification basis for the BAe Jetstream Model 3101 airplane is as follows: Federal Aviation Regulations (FAR) § 21.29 and Part 23, effective February 1, 1965, including Amendments 23-1 through 23-3; Special Conditions in FAA letter of October 30, 1967; Special Federal Aviation Regulations (SFAR) No. 41, effective October 17, 1079, including Amendments 41-A and 41-C; FAA Exemption No. 3548, issued on June 10, 1982; SFAR No. 27, effective February 1, 1974, including Amendments 27-1 through 27-4; Part 36, effective December 1, 1969, including Amendments 36-1 through 36-12; and any Special Conditions which may result from this proposal.

Special Conditions may be issued, and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features. Special Conditions, as appropriate, are issued in accordance with §§ 21.16 and 21.101(b)(2), and become part of the type certification basis in accordance with § 21.17(a)(2).

Background

On February 20, 1984, the British Civil Aviation Authority (CAA), on behalf of British Aerospace Scottish Division, requested amendment to Type Certificate Data Sheet A21EU for Jetstream Series 3100 airplane Model 3101. BAe plans to incorporate certain modifications into the airplane, including more powerful turbopropeller engines with an integral Automatic Power Reserve System (APR) built into the fuel control of each engine. The APR is designed to increase the power on the operating engine automatically in the event of engine power loss during takeoff.

Discussion

Engine systems which automatically affect the power output of other engines were not considered when the regulations were promulgated. When such systems are incorporated into the airplane design, they allow operation of the airplane under certain conditions which would not otherwise be permitted if the systems were not installed. When the airplane is operated under such conditions, where that operation is dependent upon the continued function of a system, that system then becomes critical to the safe operation of the airplane. That is, if the system fails to perform its intended function, an unsafe condition would exist. Accordingly, under the existing small airplane requirements, which did not envision the use of such a critical system, the FAA would have *no* provisions for the approval of the system and denial of certification would be required.

To deny the approval of newly designed systems that have grown from modern technology is not in the interest of manufacturers, or the aviation community when such systems maintain or increase the level of safety intended by the applicable requirements. Accordingly, when such a system is presented for approval, all possible procedures are examined to determine how an approval may be granted and still retain the level of safety which has been established by the regulations in effect. Such a procedure has been developed and successfully used in the certification of critical systems on transport category airplanes for almost fifteen years. This procedure, found in the transport category airplane reliability requirements, is based on the theory that if the airplane manufacturer can show that the function of his system is so reliable that a failure of it is never expected to occur, the unsafe circumstance that would result from the systems failure does not need to be considered.

Under the reliability requirements of the transport category, extremely low level of failures have been identified as failures which are extremely improbable. When the transport category airplane manufacturer has found it necessary, the FAA has accepted numerical analysis procedures as a means of showing that these critical failures will not occur.

Part 23 rules applicable to small airplanes also contain reliability requirements. These requirements are based on the possible use of systems whose failure could be a hazard to the airplane, but did not envision a failure that would be catastrophic.

In the case of an APR system used during takeoff, the airplane may not satisfactorily complete its takeoff at the reduced power at which both engines are permitted to operate, if one engine fails during a critical time period and the APR system fails to advance the power on the remaining engine. Accordingly, the airplane would not meet the level of

safety presently in the small airplane requirements. This failure and the airplane's ensuing inability to continue its climb over obstacles in the flight path would result in an unsafe condition. Under the provisions of the requirements of Part 21 of the Federal Aviation Regulations, Section 21.21, this unsafe condition would require the FAA to deny the airplane certification approval.

As stated above, the addition of procedures which will permit the system's approval while retaining the currently established level of safety is in the best interests of the aviation community. Accordingly, this proposal contains requirements which identify failures which are not acceptable for the approval of an APR system. In addition, the proposed Special Conditions extend the provisions which have been used for transport category airplanes as an optional means of compliance and thereby permit the manufacturer to use those procedures to show that certain hazardous or critical failures will not occur. In the interest of clarity and understanding, the proposed Special Conditions identify these failures as those which are "improbable" or "extremely improbable." These terms have been used and understood in U.S. and foreign certification projects; therefore, the meaning of the term is clear to those who are concerned.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, and Safety.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following Special Conditions applicable to the British Aerospace Jetstream Model 3101 airplane equipped with an Automatic Power Reserve System (APR).

1. General

All references in these Special Conditions to specific sections of Parts 23 and 135 and to SFAR 41 are to those in effect as defined in the Certification Basis for Jetstream Model 3101 (Type Certificate Data Sheet No. A21EU).

2. Definitions

A. Automatic Power Reserve System

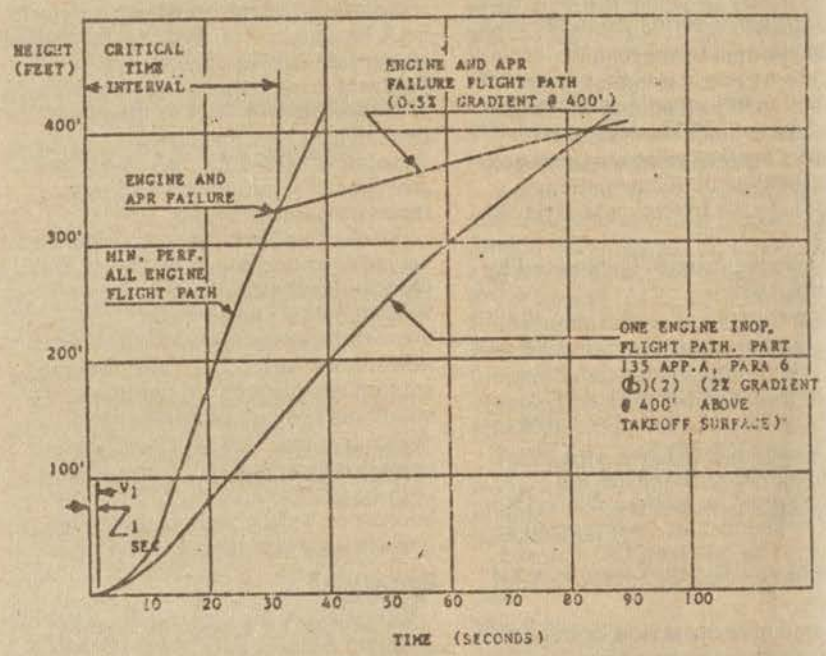
An Automatic Power Reserve (APR) System is defined as the entire automatic system used only during takeoff, including all devices both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines, including power sources, to achieve scheduled power increase and furnish cockpit information on system operation.

B. Selected Takeoff Power

Notwithstanding the definition of "Takeoff Power" in Part 1 of the Federal Aviation Regulations, "Selected Takeoff Power" means each power obtained from each initial power setting approved for takeoff under these Special Conditions.

C. Critical Time Interval

The critical time interval is that period starting at V_1 minus one second and ending at the intersection of the "engine and APR failure flight path" line with the "minimum performance all engine flight path" lines. The "engine and APR failure flight path" line intersects the "one engine inoperative flight path" line at 400 feet above the takeoff surface. The "engine and APR failure flight path" is based on the airplane's performance and must have a positive gradient of at least 0.5% at 400 feet above the takeoff surface. The critical time interval is illustrated in the following figure:



(For illustration only - typical for 120K climb speed)

3. Reliability and Performance Requirements

With the APR System and associated systems functioning normally, all applicable requirements of the certification basis previously established, except as provided in these Special Conditions, must be met without requiring any action by the crew to increase power. In addition:

A. It must be shown that, during the critical time interval, an APR failure which increases or does not effect power on either engine will not create a hazard to the airplane; or it must be shown that such failures are improbable.

B. It must be shown that, during the critical time interval, there are no failure modes of the APR system that would result in a failure that will decrease the power on either engine; or it must be shown that such failures are extremely improbable.

C. It must be shown that, during the critical time interval, there will be no failure of the APR system, in combination with an engine failure; or it must be shown that such failures are extremely improbable.

D. All applicable performance requirements of SFAR 41 must be met with an engine failure occurring at the most critical point during takeoff with the APR system functioning normally.

4. Power Setting

The selected takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

A. The power necessary to attain, at V_1, ninety (90) percent of the maximum takeoff power approved for the airplane for the existing conditions;

B. That required to permit normal operation of all safety-related systems and equipment that are dependent upon engine power or power lever position; and

C. That shown to be free of hazardous engine response characteristics when power is advanced from the selected takeoff power level to the maximum approved takeoff power.

5. Powerplant Controls—General

A. In addition to the requirements of § 23.1141, no single failure or malfunction or probable combination thereof, of the APR, including associated systems, may cause the failure of any powerplant function necessary for safety.

B. The APR must be designed to:

(1) Provide a means to verify to the flight crew before takeoff that the APR is in a condition to perform its intended function;

(2) Apply power on the operating engine following an engine failure during takeoff to achieve the maximum attainable takeoff power without exceeding engine operating limits;

(3) Provide that, following an engine failure with the APR operating normally, manual adjustments of the power levers by the crew shall not deactivate the APR;

(4) Provide a means for the flight crew to deactivate the automatic function. This means must be designed to preserve inadvertent deactivation; and

(5) Allow normal manual decrease or increase in power up to the maximum takeoff power approved for the airplane under the existing conditions through the use of power levers, as stated in § 23.1141(c), except as provided under paragraph C below.

C. For airplanes equipped with limiters which automatically prevent engine operating limits from being exceeded, other means may be used to increase the maximum level of power controlled by the power levers in the event of an APR failure. In this case, the means must be located on or forward of the power levers, it must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 23.777 (a), (b), and (c).

6. Powerplant Instruments

In addition to the requirements of § 23.1305 and paragraph 58 of Part 135, Appendix A, which is incorporated by reference in SFAR 41—

A. A means must be provided to indicate when the APR system is in the armed or ready condition.

B. If the inherent flight characteristics of the airplane do not provide warning that an engine has failed, a warning system that is independent of the APR must be provided to give the pilot a clear warning of any engine failure during takeoff.

C. Following an engine failure at V_1 or above, there must be means for the crew to readily and quickly verify that the APR system has operated satisfactorily.

Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.28 and 11.29(b).

Issued in Kansas City, Missouri on August 28, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-23526 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 21

[Docket No. 23682; Notice No. 23-ACE-6]

Special Conditions; Fairchild Model SA227 Series Airplanes to Type Certificate No. A8SW

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of Proposed Special Conditions; Amendment to Special Conditions No. 23-ACE-6.

SUMMARY: This notice proposes to amend Special Conditions, No. 23-ACE-6, for Fairchild Aircraft Corporation (FAC) Model SA227-PC series airplanes. The airplane will have novel or unusual design features associated with turbopropeller engine installations incorporating Automatic Power Reserve Systems (APR) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations applicable to the SA227-PC airplane.

DATES: Comments must be received by October 8, 1984.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 23682, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 23682. Comments may be inspected in the Docket File between 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Oscar E. Ball, Aerospace Engineer, Regulations & Policy Office, Room 1656, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both before and after closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation (FAC) Model SA227 series airplanes on Type Certificate No. A8SW is as follows: Part 23 of the Federal Aviation Regulations, effective Feburary 1, 1965, as amended by Amendments 23-1 through 23-6; Special Federal Aviation Regulations (SFAR) No. 23; § 23.175(d) of Amendment 23-14 of the FAR, effective December 20, 1973; Amendment C of Special Federal Aviation Regulations (SFAR) No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853 (a), (b), (b-1), (b-2), and (b-3) of the FAR in effect on September 26, 1978; Part 36 of the FAR, Appendix F, as amended by Amendments 36-1 through 36-6; SFAR No. 27, effective February 1, 1974, as amended by Amendments 27-1 through 27-4; Special Conditions SC No. 23-ACE-6; and any additional special conditions that may result from this proposal.

Special Conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in

accordance with § 21.17(a)(1) of the FAR do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special Conditions, as appropriate, are issued in accordance with §§ 21.16 and 21.101(b)(2) and become part of the type certification basis in accordance with § 21.17(a) of the FAR.

Background

On October 31, 1980, Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, submitted an application to amend Type Certificate No. A8SW to include a model of the SA227 with more powerful turbopropeller engines incorporating an Automatic Power Reserve System.

Type Certificate No. A8SW covers the FAC Model SA227-AC airplane, approved May 8, 1981, and other similar airplanes. The FAC Model SA227-PC is a derivative of the FAC Model SA227-AC airplane and differs from the Fairchild Model SA227-AC only with respect to the make and model of turbopropeller engines installed.

The FAC Model SA227-AC is a pressurized, low wing, twin turbopropeller-powered airplane type certificated in the normal category and limited to 12,500 pounds maximum certificated takeoff weight and a maximum seating capacity of 22 occupants. The FAC Model SA227-AC airplane also has an authorized increase in maximum takeoff weight to 14,500 pounds when compliance with SFAR No. 41, as amended, is shown.

The FAC Model SA227-AC airplane included novel or unusual design features for an airplane type certificated to the airworthiness standards of Part 23 of the FAR. The airworthiness standards of Part 23, which are the type certification basis for the FAC Model SA227-AC airplane, did not contain adequate or appropriate safety standards for a turbopropeller-powered, normal category airplane. Subsequently, Special Conditions applicable to other previous models were applied to the Model SA227-AC to assure a level of safety for the Fairchild Model SA227-AC airplane equivalent to that provided by the airworthiness standards of Part 23 of the FAR. The Special Conditions were added as a part of the type certification basis for the FAC Model SA227-AC airplane.

Since the FAC Model SA227 series airplanes to be added to Type Certificate No. A8SW are derivative models of the FAC Model SA227-AC airplane and differ only in the make and model of turbopropeller engine and other airplane improvements, the FAA issued Special Conditions SC No. 23-ACE-6 (48 FR 43166; September 22, 1983) to become a part of the type certification basis for the FAC Model SA227 series airplanes to be added to Type Certificate No. A8SW.

Fairchild now plans to incorporate certain modifications into the FAC Model SA227 airplanes, including turbopropeller engines with an integral Automatic Power Reserve System (APR) built into the fuel control of each engine. The APR is designed to increase the power automatically on the operating engine in the event of engine power loss during takeoff.

Discussion

Engine systems which automatically affect the power output of other engines were not considered when the regulations were promulgated. When such systems are incorporated into the airplane designs, they allow operation of the airplane under certain conditions which would not otherwise be permitted if the systems were not installed. When the airplane is operated under such conditions, where that operation is dependent upon the continued function of a system, that system then becomes critical to the safe operation of the airplane. That is, if the system fails to perform its intended function, an unsafe condition would exist. Accordingly, under the existing small airplane requirements, which did not envision the use of such a critical system, the FAA would have *no* provisions for the approval of the system and denial of certification would be required.

To deny the approval of newly designed systems that have grown from modern technology is not in the interest of manufacturers or the aviation community when such systems maintain or increase the level of safety intended by the applicable requirements. Accordingly, when such a system is presented for approval, all possible procedures are examined to determine how an approval may be granted and still retain the level of safety which has been established by the regulations in effect. Such a procedure has been developed and successfully used in the certification of critical systems on transport category airplanes for almost fifteen years. This procedure, found in the transport category airplane reliability requirements, is based on the theory that if the airplane manufacturer can show that the function of his system is so reliable that a failure of it is never expected to occur, the unsafe circumstance that would result from the systems failure does not need to be considered.

Under the reliability requirements of the transport category, extremely low level of failures have been identified as failures which are extremely improbable. When the transport category airplane manufacturer has found it necessary, the FAA has accepted numerical analysis procedures as a means of showing that these critical failures will not occur.

Part 23 rules applicable to small airplanes also contain reliability requirements. These requirements are based on the possible use of systems whose failure could be a hazard to the airplane, but did not envision a failure that would be catastrophic.

In the case of an APR system used during takeoff, the airplane may not satisfactorily complete its takeoff at the reduced power at which both engines are permitted to operate, if one engine fails during a critical time period and the APR system fails to advance the power on the remaining engine. Accordingly, the airplane would not meet the level of safety presently in the small airplane requirements. This failure and the airplane's ensuring inability to continue its climb over obstacles in the flight path would result in an unsafe condition. Under the provisions of the requirements of Part 21 of the Federal Aviation Regulations, § 21.21, this unsafe condition would require the FAA to deny the airplane certification approval.

As stated above, the addition of procedures which will permit the system's approval while retaining the currently established level of safety is in the best interests of the aviation community. Accordingly, this proposal to amend Special Conditions No. 23-A-6, contains requirements which identify failures which are not acceptable for the approval of an APR system. In addition, the proposed Special Conditions extend the provisions which have been used for transport category airplanes as an optional means of compliance and thereby permit the manufacturer to use those procedures to show that certain hazardous or critical failures will not occur. In the interest of clarity and understanding, the proposed Special Conditions identify these failures as those which are "improbable" or "extremely improbable." These terms have been used and understood in U.S. and foreign certification projects; therefore, the meaning of the term is clear to those who are concerned.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, Safety.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, The Federal Aviation Administration proposes the following special conditions as an amendment to SC No. 23-ACE-6 applicable to Fairchild Model SA227 Series airplanes equipped with an automatic power reserve system (APR).

Automatic Power Reserve System Items

Item No.:

42. General

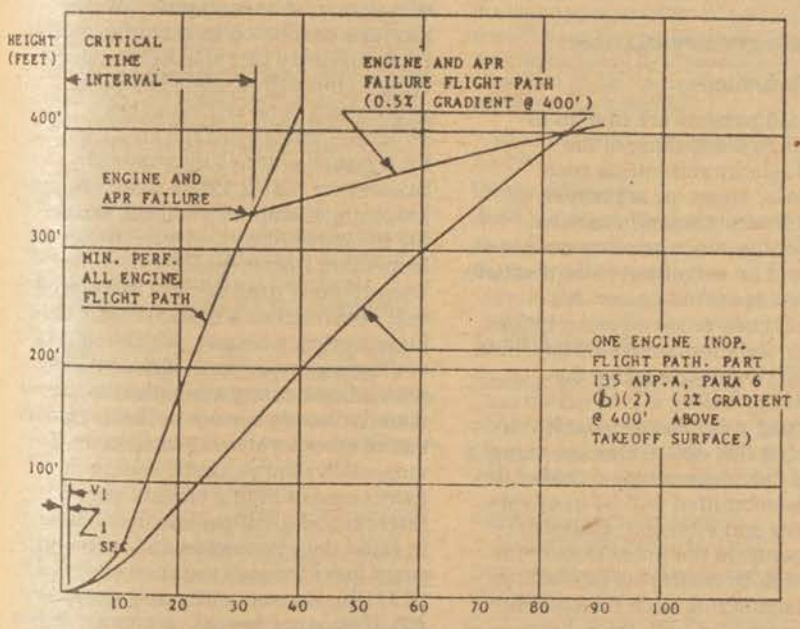
All references in these Special Conditions relative to APR to specific sections of Parts 23 and 135 and to SFAR 41 are those in effect as defined in the certification basis for FAC Model SA227-PC (Type Certificate Data Sheet No. A8SW).

43. Definitions

A. Automatic Power Reserve System. An Automatic Power Reserve (APR) System is defined as the entire automatic system used only during takeoff, including all devices both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines, including power sources, to achieve the scheduled power increase and furnish cockpit information on system operation.

B. Selected Takeoff power. Notwithstanding the definitions of "Takeoff Power" in Part 1 of the Federal Aviation Regulations, "Selected Takeoff Power" means each power obtained from each initial power setting approved for takeoff under these Special Conditions.

C. Critical Time Interval. The critical time interval is that period starting at V_1 minus one second and ending at the intersection of the "engine and APR failure flight path" line with the "minimum performance all engine flight path" line. The "engine and APR failure flight path" line intersects the "one engine inoperative flight path" line at 400 feet above the takeoff surface. The "engine and APR failure flight path" is based on the airplane's performance and must have a positive gradient of at least 0.5% at 400 feet above the takeoff surface. The critical time interval is illustrated in the following figure:



(For Illustration only - typical for 120K climb speed)

44. Reliability and Performance Requirements

With the Automatic Power Reserve (APR) System and associated systems functioning normally, all applicable requirements of the certification basis previously established, except as provided in these Special Conditions, must be met without requiring any action by the crew to increase power. In addition:

A. It must be shown that, during the critical time interval, an APR failure which increases or does not effect power on either engine will not create a hazard to the airplane; or it must be shown that such failures are improbable.

B. It must be shown that, during the critical time interval, there are no failure modes of the APR system that would result in a failure that will decrease the power on either engine; or it must be shown that such failures are extremely improbable.

C. It must be shown that, during the critical time interval, there will be no failure of the APR system, in combination with an engine failure; or it must be shown that such failures are extremely improbable.

D. All applicable performance requirements of SFAR 41 must be set with an engine failure occurring at the most critical point during takeoff with the APR system functioning normally.

45. Power Setting

The selected takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

A. The power necessary to attain, at V_1, ninety (90) percent of the maximum takeoff power approved for the airplane for the existing conditions;

B. That required to permit normal operation of all safety-related systems and equipment that are dependent upon engine power or power lever position; and

C. That shown to be free of hazardous engine response characteristics when power is advanced from the selected takeoff power level to the maximum approved takeoff power.

46. Powerplant Controls—General

A. In addition to the requirements of § 23.1141, no single failure or malfunction or probable combination thereof, of the APR including associated systems, may cause the failure of any powerplant function necessary for safety.

B. The APR must be designed to:

(1) Provide a means to verify to the flight crew before takeoff that the APR is in a condition to perform its intended function;

(2) Apply power on the operating engine following an engine failure during takeoff to achieve the maximum attainable takeoff power without exceeding engine operating limits;

(3) Provide that, following an engine failure with the APR operating normally, manual adjustments of the power levers by the crew must not deactivate the APR;

(4) Provide a means for the flight crew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation; and

(5) Allow normal manual decrease or increase in power up to the maximum takeoff power approved for the airplane under the existing conditions through the use of power levers, as stated in § 23.1141(c), except as provided under paragraph C below.

C. For airplanes equipped with limiters which automatically prevent engine operating limits from being exceeded, other means may be used to increase the maximum level of power controlled by the power levers in the event of an APR failure. In this case, the means must be located on or forward of the power levers, it must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 23.777 (a), (b), and (c).

47. Powerplant Instruments

In addition to the requirements of § 23.1305 and paragraph 58 of Part 135, Appendix A, which is incorporated by reference in SFAR 41—

A. A means must be provided to indicate when the automatic power reserve system is in the armed or ready condition.

B. If the inherent flight characteristics of the airplane do not provide warning that an engine has failed, a warning system that is independent of the APR must be provided to give the pilot a clear warning of any engine failure during takeoff.

C. Following an engine failure at V_1 or above, there must be means for the crew to readily and quickly verify that the APR System has operated satisfactorily.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1423); Section 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.28 and 11.29(b).

Issued in Kansas City, Missouri, on August 28, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-23527 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-68-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require structural inspections and repair as necessary, of the wing-to-body drag angle. The AD is prompted by numerous reports of cracking of these angles. Continued operation with failed angles could lead to progressive cracking of adjacent structure and rapid decompression.

DATES: Comments must be received on or before October 22, 1984.

ADDRESSES: The service documents may be obtained upon request from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION, CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S, telephone (206) 431-2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NW-68-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Model 737 airplane as part of their program to develop a supplemental structural inspection document (SSID) for the airplane. In conducting this reassessment, Boeing used advance analysis techniques which were not available during the original design and certification of the Model 737, and used as guidelines the requirements of Federal Aviation Regulation (FAR) 25.571, Amendment 46. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details must receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The wing-to-body drag angle is in this category of details.

The FAA issued Advisory Circular AC 91-56 on May 6, 1981, which provides guidelines for the development and implementation of supplemental structural inspection programs for large transport category airplanes. As a result of a structural reassessment of the airplane conducted in accordance with FAA Advisory Circular AC 91-56, the wing-to-body drag angle has been determined to be critical to the structural integrity of the airplane. The FAA issued a notice of proposed rulemaking (49 FR 12276, March 29, 1984) proposing mandatory inspections per the Boeing 737 Supplemental Structural Inspection Document D6-37089. The wing-to-body drag angle is referenced in that document as a critical detail, with a known service history, which requires continuing inspections in accordance with a flight safety addendum to the manufacturer's service bulletin. This notice incorporates those continuing inspection requirements. Failure to detect cracks in this vicinity prior to their reaching critical length could result in rapid decompression and inability to carry failsafe loads required under FAR 25.571(b). Consequently, this proposed AD, if adopted, would require inspection and, if necessary, replacement or modification of the affected structure.

Boeing issued Service Bulletin 737-53-1031 on July 20, 1973, advising operators to inspect wing-to-body drag angles. Nine operators have reported 55 cracked or broken upper and lower drag angles on 33 airplanes with 5600 to 10,000 flight hours. On October 28, 1983, Revision 3 to Service Bulletin 737-53-1031 was issued and established a flight safety

addendum which provides minimum inspection requirements. This proposed AD embraces those requirements.

It is estimated that 178 airplanes of U.S. registry would be affected by this AD, and that approximately 2 manhours per airplane would be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspections would be $14,240. Therefore, the proposed rule is not considered a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive.

Boeing: Applies to all Model 737 series airplanes certificated in all categories listed in Boeing Service Bulletin 737-53-1031, Revision 3, or later FAA approved revisions. To prevent raid decompression resulting from undetected cracking of the wing-to-body drag angle, accomplish the following upon the accumulation of 8,000 landings on Group I airplanes, or 35,000 landings on Group II airplanes, or within 90 days from the effective date of this AD, whichever occurs later, unless previously accomplished.

A. Visually inspect the upper drag angles for cracks in accordance with Boeing Service Bulletin 737-53-1031, Revision 3, or later FAA approved revisions. Repeat the visual inspections at intervals not to exceed 4000 landings.

B. Repair or replace the upper drag angles before further flight in accordance with Boeing Service Bulletin 737-53-1031, Revision 3, or later FAA approved revisions, if cracks are detected. Repeat the visual inspections at intervals not to exceed 4000 landings.

C. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with the AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplanes's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

F. Upon request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for the operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Reguatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on August 22, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-23483 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-75-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspection, and modification if necessary, of the main landing gear (MLG) attach fittings on certain McDonnell Douglas DC-9 series airplanes. This proposed AD would require repetitive inspections of the MLG attach fittings fabricated from 7075-T73 forging alloy. This proposal is prompted by reports of MLG fitting cracks, the failure of which could result in significant damage to the wing MLG supporting/fitting structures and subsequent collapse of the landing gear.

DATES: Comments must be received on or before October 26, 1984.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "AVAILABILITY OF NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-75-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Two operators have reported four cracks in the main landing gear attach fitting fabricated from 7075-T73 forging

alloy. One crack was discovered during an inspection after a hard landing and the other three were found during routine inspections. The aircraft involved had accumulated between 22,056 and 27,147 landings. Results of analysis conducted by the manufacturer attribute the cracks to metal fatigue. If not corrected, this condition could result in significant damage to the wing MLG supporting/fitting structures and subsequent loss of the landing gear. Increasing the counterbore radius of the 1⅛ inch diameter bolt holes at the lower rear spar-to-fitting attachment, and shotpeening selected areas will reduce the effects of a stress riser. Also, bushing the 1⅛ inch diameter holes down to ⅞ inch diameter, and installing interference fit fasteners in the lower flange will reduce the load transfer in the lower forward flange area. These changes will increase the service life of the fitting.

Operators of DC-9 aircraft who have accomplished Option 1 of DC-9 Service Bulletin 57-125, Revision 2, or prior issues, and have installed a MLG attach fitting fabricated from forging alloy 7075-T73, must accomplish Service Bulletin 57-148.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require the modification of the auxiliary spar web and inspection of the MLG attach fitting for cracks, as described in McDonnell Douglas Service Bulletin 57-148, Revision 1, dated June 8, 1983.

It is estimated that 120 airplanes (2 units per aircraft) of U.S. registry would be affected by this AD and it would require approximately 40 manhours per airplane to accomplish the required modification, and 13 manhours per airplane to accomplish the required repetitive/inspections. Average labor charge is $40 per hour. Based on these figures, the total cost impact of this AD is estimated to be $62,400. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subject in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes, certificated in all categories, equiped with main landing gear (MLG) attach fittings fabricated from forging alloy 7075-T73 installed in production or by accomplishment of Option I of McDonnell Douglas DC-9 Service Bulletin 57-125, Revision 2, or prior issues.

Specific corresponding factory serial numbers for the production effectivity are listed in McDonnell Douglas DC-9 Service Bulletin 57-148, Revision 1, dated June 8, 1983, hereinafter referred to as SB 57-148, R1. Compliance required as indicated, unless previously accomplished. To detect cracks and prevent failure of the MLG attach fitting and its interrelated structure, accomplish the following:

A. For aircraft with fittings having 15,000 to 19,999 landings, inspect the affected MLG attach fittings for cracks within 3,600 additional landings in accordance with SB 57-148, R1.

B. For aircraft with fittings having 20,000 or more landings, inspect the affected MLG attach fittings for cracks within 1,800 additional landings in accordance with SB 57-148, R1.

C. Repeat the inspections at intervals not to exceed 3,600 landings until replaced with a new fitting or the preventative modification is accomplished in accordance with SB 57-148, R1.

D. If a MLG attach fitting is found cracked, it must be reworked in accordance with SB 57-148, R1, or later FAA approved revisions, prior to further flight.

E. If cracks are found in locations in the fitting(s) other than those identified in SB 57-148, R1, replace the fitting(s) before further flight in accordance with SB 57-125, R4, Option 1, or rework in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Preventative modification in accordance with SB 57-148, R1, must be accomplished before the MLG attach fitting(s) accumulates 37,000 landings.

G. Completion of the preventative modification in accordance with SB 57-148 or replacement of cracked fitting(s) in accordance with SB 57-125 constitutes terminating action for this AD.

H. Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

I. Upon request of operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 27, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-23484 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-CE-21-AD]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. (MHI), Models MU-2B, -10, -15, -20, -25, -26, -30, -35, -36 Airplanes and Mitsubishi Aircraft International, Inc. (MAI), Models MU-2B, -25, -26, -26A, -35, -36A, -40, and -60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain serial numbered Mitsubishi Models MU-2B, -10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes manufactured by Mitsubishi Heavy Industries, Ltd. (MHI), and Mitsubishi Aircraft International, Inc. (MAI) which would require modifying the pitot system by installing an improved pitot head with a higher heat capacity and mast heater. Since 1975, 18 pitot/airspeed malfunctions

have occurred in either severe icing or extreme cold conditions. The modification will preclude these occurrences by providing more heat in these locations.

DATES: Comments must be received on or before October 5, 1984.

ADDRESSES: Mitsubishi Heavy Industries, Ltd., MU-2 Service Recommendation No. 053 dated January 19, 1979, applicable to this AD, may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aircraft Works, 10, Oye-cho, Minato-ku, Nagoya, Japan, or Mitsubishi Aircraft International, Inc., P.O. Box 3848, San Angelo, Texas 76901.

Mitsubishi Aircraft International, Inc., MU-2 Service Recommendation No. SR020/34-005, Revision A dated July 31, 1979, applicable to this AD, may be obtained from Mitsubishi Aircraft International, Inc., P.O. Box 3848, San Angelo, Texas 76901.

Copies of these service bulletins are also contained in the Rules Docket and comments should be submitted to Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For the MHI Series airplanes manufactured in Japan: John G. Sullivan, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, Telephone: (213) 536-6166. For the MAI Series airplanes manufactured in the U.S.: Mark R. Schilling, Systems Engineer, Airplane Certification Branch, ASW-150, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, Telephone: (817) 877-2598.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket at the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NRPM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-CE-21-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been at least 18 documented instances, during heavy icing or extreme cold conditions when the airspeed indicator has given erroneous readings or has dropped to no indicated airspeed. The erroneous readings of the airspeed indicator have been linked to the pitot tube (P/N PH506) icing over and/or accumulated moisture freezing within the mast casting. There have been no accidents directly attributable to the pitot icing; however, FAA has determined that pitot icing could lead to hazardous conditions in certain flight regimes.

MHI issued Service Recommendation No. 053, dated January 19, 1979, and MAI issued Service Recommendation SR 020/34-005, dated July 31, 1979, that gave operators of MU-2 aircraft the option of changing to an improved pitot head. The improved pitot head (P/N PH 1100) utilizes a higher heat on the pitot probe and incorporates a mast heater in the mast casting. Since these service recommendations were issued, there have been no additional documented pitot icing problems. However, it cannot be determined how many airplanes in the field have been modified with the improved pitot tube. Because FAA has determined that there may be airplanes in the field with the unmodified pitot system, and that in certain circumstances the unmodified pitot system could cause a hazardous condition by allowing the pitot probe to ice over or allow moisture within the mast casting to freeze, FAA is proposing an AD that would make compliance with MHI Service Recommendation No. 053 and MAI Service Recommendation SR 020/34-005 mandatory on or before December 1, 1984. The proposed AD is applicable to all MHI and MAI Model MU-2B, -10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, -60 airplanes. Approximately 322 MHI and 120 MAI Model MU-2 airplanes could be affected by the proposal. Estimated costs of $734 for parts and $1,400 for labor are expected to accrue for a total of $2,134 per airplane ($943,228 for the fleet). However, as many as half of the fleet may have already complied with the Service Recommendation. Few, if any, small entities operate the affected airplane and any that may would operate only one airplane. Therefore, the possible cost to any small entity will not exceed the significant threshold cost level for small entities.

For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under the provisions of Executive Order 12291; (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3), I certify under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Mitsubishi: Applies to Models MU-2B, -10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 Serial Numbers 1 up to and including 753, with or without the SA suffix, airplanes certificated in any category.

Note.—The serial numbers of airplanes manufactured in the United States by Mitsubishi Aircraft International, Inc. (MAI) are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries, Ltd. (MHI) have no suffix.

Compliance: Required as indicated, unless already accomplished.

To assure anti-ice capability of the pitot tubes accomplish the following:

(a) On or before December 1, 1984, modify the pitot system of the affected model and serial numbered airplanes in accordance with MHI Service Recommendation No. 053, dated January 19, 1979, or MAI Service Recommendation SR 020/34-005, Revision A, dated July 31, 1979, as applicable.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM-170W, Federal Aviation Administration, P.O.

Box 92007, Worldway Postal Center, Los Angeles, California 90009, and on the MAI airplanes, if approved by the Manager, Airplane Certification Branch, ASW-150, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101.

(Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); sec. 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on August 27, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-23525 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 198

[Docket No. 24223; Notice No. 84-15]

Aviation Insurance; Proposed Comprehensive Revision of Current War Risk Insurance Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes rules which would amend the provisions of the Federal Aviation Regulations dealing with the Federal aviation insurance program. The proposed revisions are necessary to reflect certain amendments to the Federal Aviation Act which broadened the scope of risks which may be insured by the Administrator. This proposal would implement those legislative changes and, in addition, would extensively revise the current aviation insurance regulations to better reflect current air carrier insurance needs and commercial insurance practice.

DATES: Comments must be received on or before: January 9, 1985.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24223, Washington, D.C. 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert C. Toenniessen, Office of Aviation Policy and Plans, APO-220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone 202-426-3420.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. In addition, commenters are encouraged to address the environmental, energy, economic, or social impact that might result from adoption of the proposals contained in this notice. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24223." The postcard will be date/time stamped and returned to the commenter.

The FAA requests that interested persons, when submitting comments, fully identify the proposal to which the comment relates.

Availability of NPRMS

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

In 1951, the Congress amended the Civil Aeronautics Act of 1938 by adding a new Title XIII which authorized the Secretary of Commerce, with the approval of the President, to provide aviation war risk insurance adequate to meet the needs of U.S. air commerce and the Federal Government. This insurance could only be issued when the Secretary of Commerce found that war risk insurance was commercially unavailable on reasonable terms and conditions.

The war risk insurance program was established to provide the insurance necessary to enable air commerce to continue in the event of war. This was needed because of several factors: Commercial war risk insurance policies contained automatic cancellation clauses in the event of major war; the geographical coverage of commercial war risk insurance could be restricted upon reasonable notice to air carriers; rates for commercial war risk insurance could be raised without limit upon reasonable notice to air carriers.

The aviation insurance program was incorporated in Title XIII of the Federal Aviation Act of 1958 (Act). Statutory responsibility for the program was transferred by the Department of Transportation Act to the Secretary of Transportation who delegated this authority to the Federal Aviation Administrator (49 CFR 1.47 (b)).

The definition of war risk in Title XIII was that traditionally employed by commercial underwriters, and, as a matter of policy, the FAA had always conservatively interpreted the definition.

In the early 1970's this definition led to uncertainty about the extent of the Administrator's statutory authority to provide insurance against loss or damage arising from, for example, undeclared wars, hijacking and terrorist acts. Due to a combination of the progressive exclusion of these new risks from commercial all risk policies, and the failure of the traditional definition of war risk to cover these risks, a potential gap in insurance coverage occurred with the potential result of termination of important air services in emergency situations.

In recognition of the fact that the Administrator needed broad discretionary authority in extraordinary circumstances to insure air services determined to be in the national interest, Congress amended Title XIII on November 9, 1977. These amendments, included in Pub. L. 95-163, removed from title XIII all references to risk categories. It authorized the Administrator to provide insurance against loss or damage due to any risk arising from operations of aircraft in foreign air commerce or between two points outside the United States deemed by the President to be in the foreign policy interests of the United States. Such insurance can only be issued if commercial insurance for those

operations is not available on reasonable terms.

The Aviation Insurance Program

Title XIII authorizes the Administrator to issue two forms of insurance: insurance with premium and insurance without premium. The two forms of insurance do not differ in the scope of coverage, only in the charge for protection. In the case of premium insurance, the Administrator accepts financial liability for claims payable and charges applicants a premium commensurate with the risks covered. In the case of non-premium insurance, coverage is provided to applicants performing contract services for other Federal Departments and Agencies which have entered into indemnity agreements with the FAA. Under the terms of these agreements, the FAA would be reimbursed for the costs of any payable insurance claims. Therefore, because the FAA does not assume any financial liability in the provision of this insurance, no premium fees are charged. Applicants are charged only a small aircraft registration fee to recover the administrative costs of providing the insurance. The fundamental policy underlying both programs is that the Government should not provide insurance on a regular or routine basis; rather, commercial problems should be resolved by commercial entities.

Currently, the Administrator may issue aviation insurance for aircraft registered either in the United States or in a foreign country against damage or loss resulting from any risk with regard to aircraft and persons and property on board provided the following conditions are met:

(1) The President has determined that the continuation of specified air services is in the foreign policy interests of the United States;

(2) The operation of the aircraft is either in foreign air commerce or between two points outside the United States; and

(3) The Administrator has found that insurance for the particular operation cannot be obtained on reasonable terms from the commercial insurance market.

In order for the first condition to be satisfied, the Administrator must consult with other interested Federal agencies as the President may require to establish a basis for determination by the President that foreign policy reasons mandate providing insurance so that air service can continue. This condition is a significant determinant of whether the issuance of Federal insurance is warranted. Before Title XIII was amended, the key question was whether the risk to be insured fell within the category of "war risks" as defined in the Act.

The foreign policy consideration is linked to the second qualifications: the only risks insurable are those arising from the operation of an aircraft between two points outside the United States or in foreign air commerce. Hence, an international flight originating in the United States with an intermediate stop in the United States before continuing to a destination abroad is not fully insurable by the FAA. Only that portion of the flight commencing with the last stop in the United States comes within the purview of the aviation insurance program.

For the third condition to be satisfied, the Administrator must determine that commercial insurance is unavailable on reasonable terms and conditions. Establishing the unavailability of coverage requires an investigation of several facets or commercial coverage. Specifically, the Administrator must determine whether certain risks are being excluded and for which operations. An investigation also must be made as to whether the applicant for insurance can obtain commercial coverage in amounts sufficient to cover the full reasonable value of aircraft and associated liability. Finally, if adequate commercial coverage is available, the Administrator must ascertain whether that insurance is available at reasonable permium rates.

Premium Program

In accordance with the provisions of Title XIII, premiums for premium insurance are based, insofar as is practicable, upon consideration of the risk involved. Rates charged for the premium program have been geared to the most recent charges for coverage purchased from the commercial insurers plus an increase judged necessary to reflect the additional hazard which caused the commercial insurers to terminate coverage or increase its cost to an unreasonable level. Recognizing the purpose of Title XIII, an effort is made to arrive at a rate which is fair, reasonable and nondiscriminatory. The amount of the premium ordinarily includes a deductible and a factor for claims adjustment expenses. Furthermore, the rate is set at a level high enough to encourage commercial insurance companies to reenter the market after a crisis has passed.

Nonpremium Program

In addition to the premium program, the Administrator may, in accordance with Section 1304 of the Act, provide insurance for air carriers under contract to other Federal departments or agencies without premium, in consideration of an indemnity agreement between the Department of Transportation and the department or agency seeking insurance. At present, indemnity agreements exist between the Department of Transportation and the Departments of Defense (DOD) and State (DOS) respectively. Under the terms of those agreements, if DOD or DOS requests insurance coverage for aircraft operations in support of its departmental activities, and commercial insurance is unavailable, the FAA will provide the necessary insurance. The insurance is provided without a premium cost to the air carriers concerned; however, a $200 per aircraft registration fee is required to recover the administrative costs of providing this insurance. In the event of loss or damage due to a risk covered by nonpermium insurance, DOD or DOS, under the terms of the agreements, will indemnify the FAA for payment of claims.

At the present time, Title XIII nonpremium insurance provides the insurance basis for contract operations which would be performed during periods of activation of the Civil Reserve Air Fleet (CRAF). DOD requires each air carrier participant in the CRAF program to apply to the FAA for nonpremium hull and liability war risk insurance. Commercial war risk aviation insurance is unavailable for aircraft operations performed pursuant to CRAF activation.

Explanation of Proposed Changes

Part 198 must be amended to reflect the statutory changes with regard to eligibility for Title XIII insurance and the scope of insurance risks and to reflect the current needs of air carriers and evolving commercial aviation insurance practice.

At the time Part 198 was originally promulgated, commercial war risk insurance policies contained a 24-hour automatic cancellation clause in the event of outbreak of war between any of the five post World War II "great powers." This clause created a special problem concerning the availability of commercial insurance coverage. Since notification 24 hours prior to cancellation may not have provided sufficient time for air carriers to remove their aircraft from high risk environments or for the FAA to process an application for Title XIII premium insurance, a potential gap in war risk insurance coverage existed.

In recognition that this potential gap in coverage could seriously constrain

the growth of international civil aviation, Part 198 provides for the issuance of interim coverage to bridge this gap. This is accomplished by issuing to air carriers interim binder policies, of three years in duration, in consideration of a $200 per aircraft binding fee. Interim binders incorporate by reference all the terms of the standard premium war risk insurance policy. Coverage provided by the iterim binders automatically comes into force following activation of the 24-hour cancellation clause in commercial war risk insurance policies. The interim binders remain in force until the FAA either issues a premium war risk policy or notifies the insured of its intent to cancel the interim binder policy and the notice period has passed. Because the FAA must give five days advance notice of its intent to cancel an interim binder policy, ample time is provided for the insured to remove its aircraft from a high risk environment.

To an extent, technological innovations in aviation have eliminated the need for the interim binder policies. The introduction of long range jet aircraft and the establishment of instantaneous global communications systems currently enable air carriers to move aircraft to insurance "safe-havens" from any point on the globe on 24-hours notice.

The introduction of the CRAF program eliminated any residual need for the interim binders. By providing a mechanism whereby Title XIII nonpremium insurance automatically is substituted for commercial war risk insurance in the event of major war, the CRAF program has bridged the potential gap which previously existed between commercial and Title XIII war risk insurance coverage. In the event of major war, commercial war risk insurance would be automatically terminated, CRAF would be activated and that portion of the United States civil aircraft fleet required to fulfill United States foreign policy needs thus would come under the control of DOD, and Title XIII nonpremium war risk insurance coverage would become effective, thereby precluding a need for interim binder coverage.

Accordingly, the interim binder policies have fallen into disuse. Because no air carrier continues to have active interim binder policies, the continued availability of these policies apparently serves no useful purpose. Therefore, this proposal would delete all references to interim binder policies.

The principal statutory changes to Title XIII enacted by Pub. L. 95–163 were two-fold and complementary. On one hand, Congress greatly expanded the scope of insurable risks for which the Administrator may provide insurance coverage. On the other hand, Congress strengthened the requirement for Presidential review of the exercise of this expanded authority The statutory changes are incorporated in proposed §§ 198.1. 198.3, 198.5, and 198.7. These sections present a revised and consolidated statement of aircraft operations eligible for insurance and the scope of insurance coverage available. Section 198.1 would contain a specific reference to the requirement for Presidential approval of the insurance. Similarly, §§ 198.3, 198.5, and 198.7 would reflect the fact that the Administrator has broad discretionary authority in extraordinary circumstances to accept applications for any aviation insurance customarily available from commercial sources. This is accomplished by deleting from Part 198 all references to categories of insurable risks or types of insurance. In addition, all references to nationality of aircraft would be deleted. Even prior to the enactment of Pub. L. 95–163, the Administrator possessed authority to insure the operations of foreign-registered aircraft, and retention in Part 198 of a distinction between United States and foreign-registered aircraft would serve no purpose.

The reporting requirements and responsibilities of applicants for insurance have been consolidated in §§ 198.9, 198.11, 198.13, and 198.15. Section 198.9 is a restatement of the documentation an applicant must provide to demonstrate that commercial insurance is not available on reasonable terms and conditions. Section 198.11 emphasizes the responsibility of air carriers to promptly notify the Administrator of any changes in the status of insured aircraft. Sections 198.13 and 198.15 restate the payment procedures for Title XIII insurance.

The Appendices to Part 198 would be substantially revised and consolidated. Whereas the current Appendices to Part 198 contain a separate application form and standard policy format for nearly every type and form of insurance the Administrator was authorized to issue prior to 1977, the proposed Part 198 contains a single Appendix which presents a standard application form for insurance. This form has been designed to enable an applicant to apply for any type, form or amount of insurance coverage. All standard policies have been deleted from Part 198. The Administrator now possesses authority to provide insurance coverage against any risk or peril from specified aircraft operations, and it is, therefore, no longer possible to anticipate all the risk(s) or peril(s) for which insurance may be requested. Rather than attempt to prepare a separate standard policy for every conceivable risk or peril for which an application for insurance may be anticipated, it is proposed that preparation of policies occur after an application has been accepted and the risks or perils for which coverage is requested can be precisley identified. Although all such policy provisions are, therefore, technically negotiable, the agency has attempted to describe the principal provisions which would be commonly included in premium policies issued by the agency These principal provisions would include:

• An identification of the insurer and insured parties.

• A description of the amounts of insurance provided.

—Insurance will be provided in any amount requested, provided:

• The amounts do not exceed the corresponding amounts by which the insured is or was insuring or self-insuring applicable aircraft or itself against loss, damage or liability from the risks covered.

• The amount of hull insurance may not exceed the fair and reasonable value of the aircraft covered.

• A description of any deductibles.

• A single catastrophe limit.

• A statement of the time of effectiveness of the insurance.

• A description of the coverage, including:

—A enumeration of the risks or perils covered (coverage may be provided against any risk or peril customarily covered by commercial insurance companies authorized to conduct business in the United States).

—Any geographical or other operational limitations.

• An enumeration of exclusions.

• A statement of premium rates, including:

—Any requirement for deposit premiums.

—Payment schedules and related requirements.

—Any procedures for revision of premium rates.

• A description of termination, voidance and cancellation procedures.

—Termination will occur:

• Upon expiration of the statutory authority to issue insurance.

• Upon expiration of a Presidential determination of foreign policy need for continuation of air services covered by the insurance.

• If there is a change in the status (ownership, registration, operational mission) of aircraft covered.

• After notice of termination or cancellation.

• Upon request of the insured.

—Voidance shall occur in the event of:

• Assignment or transfer of insurance without written consent.

• Concealment, misrepresentation of information, or fraud.

—Cancellation shall occur if:

• Comparable insurance becomes available on reasonable terms and conditions.

• Requested by the insured.

• A statement of general obligations of the insured to:

—Defend itself against loss claims.

—Promptly notify the agency of any event which may result in a claim for compensation.

—Assist the agency in securing all relevant information and evidence concerning loss claims.

—Subrogate to the agency all rights against any other person or entity regarding loss claims.

Regulatory Evaluation

As stated in the preamble to this notice, the FAA proposes: (1) to consolidate and simplify the regulatory procedures and requirements applicable to the provision of aviation insurance and (2) editorially align these procedures and requirements with changes in the FAA's statutory authority to issue aviation insurance. Because applicants for aviation insurance currently are complying with the statutory requirements for issuance of aviation insurance, the FAA does not contemplate applicants having to incur any additional costs in securing insurance. Rather, the proposed simplification of the regulations may enable applicants to realize a small administrative cost saving. Therefore, the proposed amendment will have no net adverse economic impact on the public and a full regulatory evaluation pursuant to Department of Transportation Order 2100.5 is not required.

Regulatory Flexibility Determination

This proposal would not impose any new requirements on small entities. Because it simplifies the regulatory procedures and requirements for applying for aviation insurance, any applicant, small or large, may realize a small administrative cost saving. Therefore, the FAA has determined that the proposed amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

This rule will not significantly influence international trade involving aviation products or services. This rule implements changes in statutory authority to provide Title XIII aviation insurance. The changes did not change the fundamental policy underlying the administration of Title XIII; i.e., commercial problems should be resolved to the maximum extent possible by commercial entities and the Government should provide aviation insurance only in extraordinary circumstances. Rather, these statutory changes sought only to bring admninistration of Title XIII into conformity with current insurance practices. FAA believes that the net impact on international trade in aviation services of the regulatory implementation of these changes through this rule will be insignificant. Therefore, the FAA believes that this amendment will not eliminate existing, or create additional, barriers to the sale of foreign aviation products or services in the United States and will not eliminate existing, or create additional, barriers to the sale of U.S. aviation products and services in foreign countries.

Paperwork Reduction Act

Information collection requirements contained in this regulation (Appendix A) have been forwarded to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, D.C. 20503; Attention: FAA Desk Officer (Telephone: 202–395–7313). A copy should be submitted to the FAA Docket.

Note.—For the reasons set forth the FAA has determined that the proposal: (1) Does not involve a major proposal under Executive Order 12291, (2) is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11043; February 26, 1979); and (3) does not warrant preparing a regulatory evaluation; For reasons set forth previously I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 198

Transportation, Air transportation, War risk insurance, Aviation insurance.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to revise Part 198 of the Federal Aviation Regulations (14 CFR Part 198) to read as follows:

PART 198—AVIATION INSURANCE

Sec.
198.1 Eligibility of aircraft for insurance.
198.3 Basis of insurance.
198.5 Types of insurance coverage available.
198.7 Amount of insurance coverage available.
198.9 Application for insurance.
198.11 Change in status of aircraft.
198.13 Premium insurance—payment of premiums.
198.15 Nonpremium insurance—payment of registration fees.

Appendix A—Form of Application Named in § 198.9.

Authority: Sec. 1307 Pub. L. 85–726, 72 Stat. 803; Sec. 6(a) Pub. L. 89–670, 80 Stat. 937; Pub. L. 95–173, 91 Stat. 1278 [49 U.S.C. 1537]; sec. 1.4(b)(1) 32 FR 5606, April 5, 1967; Amdt. 1–31, 35 FR 4959, March 21, 1970; Amdt. 1–113, 40 FR 43901, Sept 24, 1975 [49 CFR 1.47(b)]

§ 198.1 Eligibility of aircraft for insurance.

An aircraft operation is eligible for insurance if:

(a) The President of the United States has determined that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States,

(b) The aircraft operation is in foreign air commerce or between two or more points all of which are outside the United States; and

(c) The Administrator finds that commercial insurance against loss of damage arising out of any risk from the aircraft operation cannot be obtained on reasonable terms and conditions from any company authorized to engage in an insurance business in a State of the United States.

§ 198.3 Basis of insurance.

(a) Application for insurance with premium may be made if the eligibility criteria in § 198.1 are met. Premiums charged for insurance shall be based, insofar as practicable, upon consideration of the risk involved.

(b) Applications for insurance without premium may be made if the eligibility criteria in § 198.1 are met and air services are to be performed under contract to a Federal agency which has agreed to indemnify the Administrator, acting for the Secretary of Transportation, against all losses covered by such insurance.

§ 198.5 Types of insurance coverage available.

Application may be made for insurance against loss or damage with

respect to the following persons, property or interests:

(a) Aircraft engaged in operations which are eligible for insurance, as defined in § 198.1;

(b) Any person employed or transported on the aircraft referred to in paragraph (a) of this section;

(c) The baggage of persons referred to in paragraph (b) of this section;

(d) Cargoes transported or to be transported on the aircraft referred to in paragraph (a) of this section;

(e) Any other liability of the aircraft referred to in paragraph (a) or of its owner or operator of the nature customarily covered by insurance.

§ 198.7 Amount of insurance coverage available.

(a) For each aircraft the amount insured may not exceed the amount by which the applicant has otherwise insured or self-insured the aircraft or itself against damage or liability arising from any risk. In the case of hull insurance, the amount insured shall not exceed the fair and reasonable market value of the aircraft.

(b) Policies issued without premium may be revised from time to time, by agreement of the Federal Aviation Administrator and the insured and with the approval of the Federal agency on whose behalf contract air services are to be performed, to add aircraft or contracts, or to amend amounts of coverage if the insured has changed the amount by which it has otherwise insured or self-insured the aircraft or itself.

§ 198.9 Application for insurance.

(a) Application for premium or nonpremium insurance shall be made in accordance with the applicable form set forth in Appendix A of this part. Application for hull and liability insurance shall be filed on the same form.

(b) Each applicant for insurance with premium under this part also shall submit to the FAA with its application a letter describing in detail the operations in which the aircraft is or will be engaged and stating the type of insurance coverage being sought and the reason it is being sought.

§ 198.11 Change is status of aircraft.

In the event of sale, lease, confiscation, requisition, total loss, or any other change in the status of an aircraft covered by insurance under this part, notice shall be given to the Administrator within 10 working days after the change in status.

§ 198.13 Premium insurance—payment of premiums.

The premium for insurance issued under this part shall be paid within 10 days after receipt, by the insured, of notice that premium payment is due. Premiums shall be sent to the Federal Aviation Administrator by check made payable to the Federal Aviation Administration.

§ 198.15 Nonpremium insurance—payment of registration fees.

(a) The registration fee for each aircraft to be covered by nonpremium insurance shall be $200. The fee shall cover the cost of hull and liability insurance.

(b) An application for nonpremium insurance shall be accompanied by the proper fee, payable by check to the order of the Federal Aviation Administration. Registration fees are not returnable unless applications are rejected.

(c) Requests made after issuance of a nonpremium policy for the addition of aircraft shall be accompanied by the registration fee for each aircraft.

APPENDIX A—FORM OF APPLICATION NAMED IN § 198.9

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Application for Aviation Insurance

Application is made for Aviation Insurance, pursuant to Title XIII of the Federal Aviation Act of 1958, as amended, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached "Schedule of Aircraft," with the understanding that this application does not commit the Government to any liability or make the applicant liable for any premium or fees unless insurance is effected by the Federal Aviation Administrator.

Name of applicant _____
Address _____
Basis of Insurance
(——) insurance with premium
(——) insurance without premium:
Contracting Federal Agency _____
Date and Number of Contract _____

Hull

Amounts set forth in the attached "Schedule of Aircraft" as representing the amount of hull insurance desired for each such aircraft shall not exceed the amount in effect on the date of this application, by which the applicant has insured, or self-insured, that aircraft.

Liability, Exclusive of Cargo

The type and amounts of coverage required for the aircraft described in the attached "Schedule of Aircraft" shall be indicated and the limits of liability for each such coverage shall be specified in the schedule, but such limits shall not exceed the corresponding amounts in effect on the date of this application by which the applicant has insured, or self-insured, against liability.

Liability of Cargo

Limits of liability desired for each of the aircraft described in the attached "Schedule of Aircraft" shall be specified.

General

Insurance shall attach no earlier than the commercial insurance terminates or at such time as may be specified in the policy.

If application is for insurance with premium, the rate of premium and the amount of any deductible shall be fixed by the Federal Aviation Administrator, acting for the Secretary of Transportation. The registration fee for insurance without premium is $200 per aircraft listed on the Schedule of Aircraft and is not returnable unless application is rejected. Registration fees are due upon application or revision of the Schedule of Aircraft adding aircraft and are payable by check to Federal Aviation Administration.

The application shall be accompanied by copies of any commercial insurance policy and any company plan of self-insurance applicable to the aircraft listed in the "Schedule of Aircraft."

The Schedule of Aircraft attached to policies without premium may be revised from time to time by agreement of the Federal Aviation Administrator and the Insured and with the approval of the Federal agency on whose behalf contract air services are to be performed, to add aircraft or to add contracts.

The application also shall be accompanied by a statement which shall be considered to be incorporated in the application and to form a part thereof, and which shall be signed by the same corporate official who signs the application on behalf of the applicant. The statement shall show that the applicant:

(a) Controls and operates the aircraft listed in the attached "Schedule of Aircraft," and if application is for insurance without premium, has committed such aircraft to the above indicated contract(s);

(b) Is maintaining and has maintained during the 6-month period preceding this application (or since the aircraft was acquired if acquired during the 6-month period) insurance, including demonstrable self-insurance, covering possible injury, loss or damage in amounts which equal or exceed the insurance coverages requested in the application; and

(c) Cannot obtain insurance of the type requested on reasonable terms and conditions from companies authorized to engage in an insurance business in a State of the United States or the District of Columbia, or has partial commercial insurance coverage, but is unable to obtain the additional needed insurance of the type requested on reasonable terms and conditions from such commercial sources;

Verification shall include evidence of premium rate history, the names of the commercial insurance carriers which have been contacted and the premium rates quoted by such carriers which applicant considers

not reasonable, and any conditions or limitations which those carriers would impose or have imposed, such as evidence of cancellation or notice of cancellation, which would cause their insurance to be inapplicable to some or all of the operations by aircraft listed in the "Schedule of Aircraft".

If this application is for insurance with respect to a foreign-flag aircraft, it shall be accompanied by the statement setting forth the registration number(s) of the aircraft, the nationality of registration and the name of the owner or lessee.

The insurance applied for hereunder shall not cover risks to persons or property engaged or transported exclusively in operations between two points in the United States as defined in Section 101 (41)a of the Federal Aviation Act of 1958, as amended (49 USC 1301 (41)).

Applicant warrants that the particulars herein are true and complete to the best of his or her knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application, including all attachments hereto and all revisions of the Schedule of Aircraft hereinafter accepted by the Government and the terms and conditionns of the form of policy prescribed by the Federal Aviation Administrator, acting for the Secretary of Transportation, will constitute the basis of any contract between him or her and the United States of America.

Applicant _____

By _____

(Name and Title)

Date _____

Schedule of Aircraft

HULL INSURANCE

Make, model, and configuration (passenger, cargo, or convertible)	FAA identification No. or equivalent	Amount of hull insurance desired for each aircraft	Amount for which each aircraft is currently insured (including self-insurance)	Loss payee

LIABILITY INSURANCE

[Exclusive of cargo]

Amount requested per occurrence	Amount of insurance (including self-insurance) in effect per occurrence

LIABILITY TO CARGO

Amount requested	Amount of insurance (including self-insurance) in effect

Dated: July 19, 1984.

Harvey B. Safeer,

Director of Aviation Policy and Plans, APO-1.

[FR Doc. 84-23478 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157 and 284

[Docket No. RM83-31-000]

Emergency Natural Gas Sale, Transportation, and Exchange Transactions

Issued August 30, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations pertaining to emergency natural gas transactions that are exempt from the certificate requirements of section 7(c) of the Natural Gas Act. The rule would eliminate outdated or unnecessary regulations, transfer the emergency transaction regulations from Part 157 to Part 284 with other non-certificate transactions, and update and clarify the emergency transaction regulations in light of the Commission's experience with the regulations since passage of the Natural Gas Policy Act.

DATE: Written comments must be received on or before November 5, 1984.

ADDRESS: Comments must be sent to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All comments must refer to Docket No. RM83-31-000.

FOR FURTHER INFORMATION CONTACT: Cathy Ciaglo, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to revise and update the Commission's regulations on the emergency sale, transportation, and exchange of natural gas. These regulations exempt certain types of emergency transactions from the requirement for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act.[1] This rulemaking has three overall objectives—to eliminate out-of-date or unnecessary regulations, to clarify the kinds of emergency transactions that will be exempt from the certificate requirement, and to consolidate the non-certificate transaction regulations in one place.

More specifically, this rule would:

(1) Eliminate 18 CFR 2.68, 157.22, and 157.29 because they concern temporary emergency transactions under contracts executed prior to December 1, 1978, that are no longer taking place;

(2) Eliminate Subpart C of 18 CFR Part 157 (exemption of emergency sale arrangements), and add emergency transaction regulations to Part 284 which covers the other types of transactions for which certificates are not required;

(3) Adopt a new Subpart I in Part 284 (18 CFR 284.261-284.267) that would contain all emergency transaction regulations, better define "emergency," better describe the types of transactions covered, state all limitations on emergency transactions, and specify the terms, conditions, and applicable rates and charges for such transactions; and

(4) Revise the emergency transaction reporting requirements to ensure a

[1] 15 U.S.C. 717f(c) (1982). *See infra* note 2 and accompanying text for a discussion of the section 7(c) requirements.

concise and timely flow of information and to eliminate quarterly reports that are no longer required.

The elimination of unnecessary regulations and the addition of emergency transaction regulations to Subpart I will have several positive impacts. First, companies seeking to engage in non-certificated transactions will benefit from having to consult only one unified portion of the Commission's regulations. Second, litigation time and expense should be reduced for pipelines and their customers because the consolidation and clarification of the emergency transaction regulations should reduce uncertainty and ambiguity. Third, the unified regulations should simplify the Commission's administration responsibilities and reduce the need to expend agency resources on litigation over the application of the emergency transaction rules.

II. Background

A. Natural Gas Act

Section 7 (c) of the Natural Gas Act (NGA)[2] provides that every jurisdictional natural gas company must obtain a certificate of public convenience and necessity before transporting or selling gas or constructing or operating facilities for those purposes. However, section 7(c)(1)(B) provides two exceptions to this certificate requirement: one authorizing the issuance of a temporary certificate during emergencies pending a determination on a regular application,[3] and one exempting from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The latter exception is the subject of this rulemaking.

Prior to the enactment of the NGPA, section 7(c)(1)(B) was the only authority for the sale for resale of surplus intrastate gas into the interstate market without jurisdictional consequences to the seller. Over time, the Commission has used this authority under section 7(c)(1)(B) to promulgate implementing regulations (§§ 2.68, 157.22 and 157.29). These regulations set forth the Commission's policy of encouraging non-jurisdictional local distribution companies and intrastate pipelines (including Hinshaw pipelines)[4] to provide temporary emergency gas in interstate commerce for up to 60 days.[5] They also authorize for 60 days the construction and operation of facilities or the sale or transportation of natural gas without a certificate in certain circumstances of emergency or other special need. The regulations require reports to be filed with the Commission describing the emergency and the transaction involved.[6]

B. Natural Gas Policy Act

The Natural Gas Policy Act of 1978 (NGPA)[7] had several impacts on the emergency provisions of the Natural Gas Act. The most significant impacts were that sections 311 and 312 of the NGPA[8] provide an alternative to section 7(c) of the NGA for the following transactions in interstate commerce: the interstate and intrastate pipeline transportation of gas, intrastate pipeline sale of gas, and intrastate pipeline assignment of gas to interstate pipelines and local distribution companies. As a result of the NGPA, therefore, these transactions no longer must be subject to the certificate requirements of the NGA. These provisions provide express statutory authority for the sale of surplus intrastate gas in the interstate market without subjecting the seller to NGA jurisdiction.

The Commission's interim regulations[9] implementing the NGPA effected several relevant changes. First, the interim regulations phased out the Natural Gas Act emergency program covered by §§ 2.68, 157.22 and 157.29; these three sections were preserved only to the extent that they applied to *then-existing* contracts for emergency transactions.[10]

Second, the interim NGPA regulations established new rules for the emergency transactions that were designed to be transitional provisions until the Commission gained greater experience with the NGPA regulatory structure.[11] Among other aspects, these rules defined the emergency transactions that were exempt from the certificate requirements of section 7 of the NGA, described the nature of specific exemptions allowed, provided the terms and conditions applicable to the emergency transactions, and established the applicable rates and charges.[12]

Third, the interim regulations contained the reporting requirements for all of the emergency transactions under Subpart C of 18 CFR Part 157[13] and under the NGA regulations retained in 18 CFR 2.68, 157.22 and 157.29.[14] Under the Subpart C provisions, the participating interstate pipeline must file an initial report within 48 hours of delivering the gas, describing the emergency and resulting transaction. The regulations also contained a requirement for a report at the end of each quarter for only 1979, regarding details of emergency transactions that were either completed or in progress in that year.

Finally, the interim regulations promulgated rules for certain types of "self-executing" transactions in both routine and emergency situations.[15]

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[2] 15 U.S.C. 717f(c)(1)(A) provides in relevant part:

No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations.

. . .

Clause 7(c)(1)(B) provides in relevant part:

. . . the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirement of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

[3] *See* 18 CFR 157.17 (1983) (requirements for a temporary emergency certificate).

[4] *See* sections 1(b) and 1(c) of the Natural Gas Act, 15 U.S.C. 717 (b) and (c) (1982). Generally speaking, these sections exempt intrastate transportation or sale of natural gas, the local distribution of natural gas, the facilities used for such distribution, and the production or gathering of natural gas.

[5] 18 CFR 2.68 (1983).

[6] 18 CFR 157.22, 157.29 (1983).

[7] 15 U.S.C. 3301–3342 (1982).

[8] 15 U.S.C. 3371, 3372 (1982).

[9] 47 FR 56448 (Dec. 1, 1978) (Docket No. RM79–3–000).

[10] 18 CFR 157.46(i) (1983) defines an "existing emergency transaction" as a transaction under §§ 2.68. 157.22, or 157.29 pursuant to a contract executed:

(1) Before November 9, 1978, in the case of a sale which is a first sale within the meaning of the Natural Gas Policy Act of 1978; or

(2) Before December 1, 1978, in any other case.

[11] *See* Subpart C in 18 CFR Part 157 (1983).

[12] *See* CFR 157.45–157.52 (1983).

[13] *See* 18 CFR 157.51 (1983).

[14] Section 2.68 requires a written statement 10 days after the emergency commences, and another written statement within 10 days after the termination of the emergency concerning details about the emergency and the transaction. Section 157.22 requires an annual report describing the transactions and § 157.29 requires an immediate telegram or letter describing the circumstances of the transaction, followed by a written statement within ten days providing the details of the transaction. Because the transactions covered by these sections ceased sometime after the NGPA was enacted, these reporting requirements have not been used for several years.

[15] *See* Subparts B, C, and E of 18 CFR Part 284 (1983). Although Subpart C of Part 157 and Part 284 both permit emergency transportation and sale arrangements, each set of provisions is implemented under different statutory authority: Subpart C (which specifically requires that an emergency exist) under the Natural Gas Act and Part 284 under the NGPA. (*See* § 157.45 and § 284.3.)

These self-executing transactions require no prior Commission approval and may be performed for a period of up to two years.[16]

After issuing these interim NGPA regulations, the Commission established two "blanket certificate" programs in Subpart G of Part 284 covering the transportation, sale, and assignment of gas for periods of up to two years.[17] A blanket certificate under Part 284 allows an interstate pipeline to transport gas for another interstate pipeline, or a local distribution company or Hinshaw pipeline to transport, sell, or assign natural gas in interstate commerce. These transactions may be conducted without prior individual authorization by the Commission. The promulgation of the additional self-executing provisions of Subpart D and the blanket certificate regulations of Subpart G is not reflected in the current emergency provisions.

The Commission intends this Notice of Proposed Rulemaking to be a step toward making final the interim NGPA regulations pertaining to emergency natural gas transactions. These proposed revisions should correct and clarify the regulations in response to the problems the Commission has encountered in administering the emergency program established in the interim rule.

III. Discussion and Summary of Proposed Changes

A. Elimination of Outdated Regulations

The Commission proposes to eliminate §§ 2.68, 157.22, and 157.29. These provisions apply to contracts for emergency transactions under the NGA that were executed either before November 9, 1978 in the case of a first sale of gas, or before December 1, 1978, for all other emergency sales. These contracts governing NGA transactions were essentially superseded by passage of the NGPA, and are no longer in use because no pre-NGPA emergency transactions are still taking place. Therefore, the provisions pertaining to them may be deleted from the regulations.

B. Addition of Emergency Transaction Regulations to New Subpart I of Part 284

The Commission also proposes to eliminate §§ 157.45–157.52 from Subpart C and replace them with a new Subpart I (§§ 284.261–284.268) in Part 284, entitled "Emergency Natural Gas Sale, Transportation, and Exchange Transactions." The new Subpart I would revise and update the current provisions in Subpart C of Part 157 relating to emergency transactions that involve construction and operation of facilities, the sale or transportation of natural gas in interstate commerce, or exchange of gas for emergency purposes. Following is a section-by-section discussion of the proposed emergency provisions in new Subpart I of Part 284.

(1) § 284.261—Purpose

This section clarifies that Subpart I prescribes the conditions under which a participant who engages in an emergency natural gas transaction in interstate commerce is exempt from the certificate requirements of section 7 of the Natural Gas Act. This provision is similar to § 157.45, the corresponding section in Subpart C that would be deleted by this rule.[18]

(2) § 284.262—Definitions

This section more narrowly defines the "emergency" that would trigger an exemption from certificate requirements. Under the current definition in § 157.46(a), there need only exist a situation in which (a) the gas supply that is available or expected to be available would require an affected entity to curtail gas on its system, (b) there is a sudden unanticipated loss of gas supply or increase in demand, or (c) a qualified purchaser, in good faith, needs gas immediately for the protection of life, health, or maintenance of physical property.

The Commission has found that the current definition of emergency is too broad and has prompted the use of the exemption provisions under Subpart C of Part 157 for transactions which should be conducted as certificated transactions.[19]

The proposed definition of emergency would have a narrower application to help curb abuse of the exemption. The definition is divided into "pipeline emergency" and "curtailment emergency." Only two types of pipeline emergencies would be recognized—first, a "sudden, unanticipated loss of a recipient's gas supply" (similar to the current definition), but only if the loss is due to a "failure of facilities," and second, an "unanticipated situation" in which a participant determines, in good faith, that immediate action is necessary to protect life or health, to maintain physical property, or to maintain scheduled levels of storage inventories. This second type of pipeline emergency is similar to the current Subpart C definition except that the proposed provision is more restrictive with regard to storage. The proposed rule allows an emergency to be claimed only to maintain scheduled levels of gas inventory, rather than to maintain deliverability from storage or to replenish storage volumes, as does the current rule.

A "curtailment emergency" under the proposed rule would be limited to situations in which a pipeline or distributor experiences actual or imminent curtailment to high priority end-users or to persons who are unable to use alternative fuels and whose operations would be impaired without purchase of emergency gas. The Commission stresses that economic emergencies are not recognized under the proposed definition of emergency. Therefore, the price of alternative fuel is not a relevant consideration. This more functionally-related definition is narrower than the current definition which does not limit the emergency requirements by categories of end-users.

A new definition would be added for "alternative fuel." It would be any fuel other than natural gas, including propane. In the case of an electric utility, alternative fuels would include power purchased from another utility.

"Participants" are defined as the entities that are eligible to use these emergency provisions. They include first sellers, interstate and intrastate pipelines, and local distribution companies (including Hinshaw pipelines). This simplified definition encompasses the current Subpart C definitions of "qualified seller," "qualified purchaser," "interstate pipeline," and "distribution pipeline."

The proposed definition of "emergency natural gas" is revised to include exchanges. This will allow elimination of the current definition for "sale of emergency natural gas," which addresses exchanges. However, the requirement that exchanges be paid back within 180 days after termination of deliveries of natural gas is retained in § 284.264(b)(2) of the proposed regulations.

Three new definitions would be added to clarify the regulations. First, "emergency natural gas transactions" is defined as the sale, transportation, or

[16] In a later rule, the Commission promulgated in Subpart D of Part 284 self-executing regulations for intrastate sales of gas. *See* 44 FR 12406 (Mar. 7, 1979) (Docket No. RM79–20).

[17] 44 FR 68819 (Nov. 30, 1979) (Docket No. RM79–74, Order No. 60); 45 FR 1,872 (Jan. 9, 1980) (Docket No. RM79–24, Order No. 63).

[18] Section 157.45 provides a breakdown of transactions according to whether they are covered in Part 284 or some other part of the regulations. Because the emergency gas provisions would be in Part 284 under this proposed rule, there would no longer be a need for a breakdown.

[19] For example, under the current regulations, instead of using other, more appropriate provisions, an entity may use the emergency provisions to purchase emergency gas for interruptible-type curtailment simply because that gas is cheaper than an alternative fuel.

exchange of natural gas (including construction and operation of required facilities) that is needed to alleviate an emergency and that is not anticipated to extend more than 60 days. "Emergency costs" means all costs paid by a recipient for emergency gas, including transportation costs. "Recipient" is defined to include both a purchaser when a sale of emergency gas under Subpart I is involved and a participant who receives gas that is transported or exchanged whenever an actual sale is not involved.

(3) § 284.263—Emergency transactions authorized by this subpart

Paragraph (a) of this section states the statutory basis for the certificate exemption—section 7(c) of the NGA—and provides that these Subpart I regulations will not themselves extend the Commission's NGA jurisdiction regarding emergency transactions beyond that specified in the subpart. This limitations section is similar to provisions in § 157.47 (a) and (c) of the current regulations. This paragraph also provides the statutory bases for the certificate exemption: section 7(c)(1)(B) of the NGA for first sellers, interstate pipelines and local distribution companies (including Hinshaw pipelines), and section 311 of the NGPA for intrastate pipelines.

Paragraph (b) includes a special provision for any participant who may conduct an emergency natural gas transaction under this subpart and who is also eligible to conduct the same transaction under the self-executing or blanket certificate authorizations of Part 284 (which do not require an emergency). The participant may choose to complete the transaction under whichever set of regulations the participant finds most appropriate. However, the proposed rule also ensures that participants do not obtain any rate advantage in using one or another set of regulations in Part 284. (The rate implications are discussed in greater detail below, under § 284.266.) Participants are to be allowed flexibility in complying with non-certificate requirements as long as they follow an appropriate set of regulations to effect the transactions.

Paragraph (c) combines the current provisions in paragraphs (a) and (b) of § 157.47 in describing eligible transactions under this subpart. However, the proposed rule provides a more general description of the transactions. These transactional descriptions are revised from the current provisions to account for the implementation of the more comprehensive self-executing provisions in Subparts B through E of Part 284 and the blanket certificate provisions of Subpart G of Part 284.

As a matter of format, this section clarifies the emergency regulations by including in one part references to all of the provisions by which a participant could be exempt from NGA certificate requirements. This should assist participants in an emergency situation because they would not have to consult several parts of the regulations to ensure that they are complying with all of the applicable requirements.

(4) § 284.264—Terms and conditions of emergency transactions

Paragraph (a) of this section is similar to § 157.48(a) in that both provide that participants should try to avoid reliance on the emergency gas transactions, if possible. Both provisions also require the recipient to have available data showing that an emergency exists or is imminent.[20]

The proposal also adds three clarifying provisions to paragraph (a). The first would prohibit a participant from engaging in an emergency transaction if this participation will render the participant unable to provide adequate service to its existing customers. The second would prohibit a participant from selling emergency gas under this subpart if the participant is simultaneously purchasing emergency gas. The third outlines the Commission's enforcement procedures. These clarifications will enable potential participants to more easily determine the limitations on their participation, and will indicate the types of enforcement responses to be expected if these limitations are violated.

Also, three provisions would be transferred to this section from § 157.48(d)(2). One provides that gas acquired inadvertently in excess of that needed for a curtailment emergency may be used for general system supply transactions. The second would prohibit an interstate pipeline from receiving compensation for acting as a broker or agent in an emergency transaction. Third, the regulations would require that the recipient of emergency gas provide the line loss and fuel volumes required to transport the emergency gas and pay for facilities needed to be constructed to effect the emergency gas transportation.[21] This provision is more comprehensive than the current provision, which requires a customer to pay for the compressor station fuel and lost or unaccounted-for gas. This is to clarify that the recipient is responsible for all costs associated with acquiring the gas.

Paragraph (b) of § 284.264, regarding the duration of the emergency gas transaction, is essentially the same as § 157.48(b). Both provisions limit the emergency transaction period to 60 days, with the possibility of one 60-day extension. However, if a transaction is likely to extend beyond the initial 60 days, the Commission emphasizes that the buyer and seller should use authority other than Subpart I as a basis for the transaction.[22]

Paragraph (b) also provides a pay-back provision for gas that is received in an emergency exchange. Like § 157.48(b), the pay-back period is limited to 180 days following termination of delivery of the exchange gas.

(5) § 284.265—Rate treatment by recipient

This section addresses how purchasers of emergency natural gas may treat the costs of that gas, and is similar to § 157.48(d) of the current regulations. The proposed rule provides that an interstate pipeline that purchases emergency gas for a *pipeline* emergency may roll-in the costs of that gas to its general system supply. This clarifies the regulations, which currently provide only that a pipeline may purchase emergency gas for general system supply, but does not state how the gas costs may be treated. (*See* § 157.48(d)(1).)

In a *curtailment* emergency, however, a pipeline will generally not be able to roll-in the cost of emergency gas to all on-line customers. This is to permit normal market signals to flow from the incremental gas customers, who would otherwise face curtailments to their supplies of emergency gas. The sole exception to this rule is for minimal amounts of gas which have been inadvertently purchased in excess of the volumes needed to address the curtailment emergency. Because such volumes would automatically enter the

[20] The current provisions require that the recipient provide the data to the interstate pipeline delivering the gas in time for the pipeline to make reports required by the Commission in § 157.51. The proposed rule does not key this information to any reports by the interstate pipeline; instead it provides that the data be sufficient "to enable another participant to form a good faith belief that an emergency exists or is imminent."

[21] Line loss and fuel volumes may be sold by the provider of the service.

[22] The 60-day emergency period coincides with the holding in Consumers Federation of America v. F.P.C., 515 F.2d 347, 352–353 (D.C. Cir. 1975). The court prohibited, as too long, a 180-day certificate exemption period under section 7(c) of the NGA and stated that section 7(c) allows only a narrow exception to the certificate requirement to deal with temporary emergencies.

system supply of the pipeline, their costs could be recoverable through the rolled-in method.[23]

Like the current rule, the proposed section provides that a purchasing interstate pipeline either may directly assign costs to customers who receive the emergency gas or may establish a separate account to cover costs of all emergency gas and allocate the gas on a weighted, average-cost basis.

The proposed rule would also provide that local distribution companies that purchase gas under Subpart I may directly assign the gas to specific customers. This provision clarifies the Commission's intent to exclude end-users as eligible purchasers of emergency gas. Because end-users are served by pipelines or distributors that may assign emergency volumes to specific customers, it is unnecessary to include end-users as eligible purchasers under this rule. Moreover, "emergency" is defined with respect to pipelines and distributors, and not end-users. This exclusion does not require local distribution companies to roll-in emergency gas costs when they resell gas to end-users. Rather, it merely requires that the distributors participate in a comprehensive effort to respond to the emergency within the context of their on-going relationship with the end-users.

(6) § 284.266—Rates and charges

This proposed section parallels current §§ 157.49 and 157.50. However, when possible, the Commission proposes to adopt the same methodology for determining rates and charges in emergency transactions that is applied under the self-implementing or blanket certificate procedures of Part 284. Thus, the following provisions would apply: for transportation of emergency gas, an interstate pipeline would apply the rate provisions in § 284.103, and an intrastate pipeline would apply the rate provisions in § 284.123. A local distribution company (including a Hinshaw pipeline) would apply the rate provisions of § 284.123 if it has an existing rate on file with an appropriate state regulatory agency for city-gate transportation services, or the rate provisions in § 284.222(e)(2)(ii) if it has no such rate on file. The Commission proposes this methodology for transportation by a local distribution company because many distributors do not have an approved rate that recovers only transmission costs without also recovering distribution costs.

Interstate pipelines (who sales are not covered by blanket certificate regulations) would base their rates for sales of emergency gas on applicable or comparable tariff rates. If there is no tariff, rates would be based on the methodology used in designing rates to recover its transmission and storage costs and its current purchased gas adjustment. This is similar to the current methodology. Finally, intrastate pipelines and local distribution companies (including Hinshaw pipelines) would set sale rates according to the provisions in § 284.144, the self-implementing provisions for gas sales by intrastate pipelines.

Aside from the reasonableness of being consistent in using the rates and charges provisions from the blanket certificate and self-executing provisions for emergency transactions under Subpart I, the Commission is also doing so because many of these transactions could satisfy the requirements for all of these programs. Use of the same rates and charges would avoid confusion. Moreover, the Commission has already made its "just and reasonable" determination for the blanket certificate program. The Commission stresses that implementing the new emergency regulations is not meant either to alter any current rates or charges or to provide an incentive for using Subpart I to attain a rate advantage not found in the other types of authorization for the transaction.

Paragraph (c) is virtually identical to the current § 157.48(c). It prohibits an interstate pipeline from including in its jurisdictional rate base, costs associated with facilities installed and operated in connection with an emergency transportation unless the pipeline obtains a section 7 certificate for the facilities. This is intended to prevent the emergency provisions from being used to circumvent the normal certificate requirements.

The Commission proposes to delete § 157.49(b), which provides a rebuttable presumption of prudence for emergency purchases to the extent that the rates do not exceed the maximum lawful price specified under section 102 of the NGPA.[24] The Commission believes that there is no longer a significant reason why a rebuttable presumption of prudence should apply to section 102 price levels (which may, in fact, set too high a standard in today's market) as opposed to the level for another type of gas. Moreover, as the Commission stated in its interim rule promulgating § 157.48, "nothing in this section will operate to preclude an interstate pipeline from availing itself of the opportunity to establish that a rate in excess of the new natural gas price was prudent in the circumstances." (43 FR 56532.) To the extent that an emergency purchase is a first sale or an NGPA section 311(b) sale, it is already governed by the statutory guarantee of cost pass-through in NGPA section 601(c)(2). Given these other statutory guarantees and the absence of record support for a section 102 price, the presumption of prudence can be removed from the regulations without significant effect.

(7) § 284.267—Reporting requirements

The reporting requirements now found in § 157.51 would be reorganized and clarified. The Commission would continue to require a report within 48 hours after the deliveries of emergency gas commence, but the proposed rule would require a 48-hour telegraphic report rather than the written report now allowed. The Commission believes that it would be more effective and less burdensome for a participant to send a telegram under emergency conditions than to prepare and send a written report.

The Commission would also make the reporting requirements clearer by dividing them into sales requirements, transportation requirements, and exchange requirements. The Commission would request much of the same data about each transaction that it currently requests under § 157.51. These data include the specific nature and anticipated duration of the emergency, the amount of gas to be purchased or transported on a daily basis, the names of the sellers, transporters, and any assignee, and the price.

The proposed rule would also require the following additional data for each type of transaction: a statement that the report is made under § 284.267, the date the transaction began, the total amount of emergency gas expected to be moved in the transaction, and the identity of all participants involved. The proposed rule would also require similar data pertaining to exchanges (except that, instead of the price for the gas, the regulations would require data on whether the exchange is simultaneous or deferred). The rule would require a statement of the redelivery schedule and any imbalances in the volumes, whether the exchange is on a thermal or

[23] Any pipeline that rolls-in the costs of gas purchased in a curtailment emergency must be prepared to document the reason for the excess purchases. The pipeline could not, therefore, purchase any significant volumes of emergency gas on a rolled-in basis in response to a curtailment emergency.

[24] Section 102 gas includes new natural gas and certain gas produced from old leases on the Outer Continental Shelf. *See* 15 U.S.C. 3312 (1982).

volumetric basis, and the rates or charges for the exchange service.

The additional data should not significantly increase the reporting burden of the affected participants. All of this information is readily available to the recipient of the gas and can be reported quickly and without undue detail.

The termination report under proposed § 284.267(b) would be a new requirement.[25] Three sworn copies of the termination report would be required 30 days after the emergency transaction ends and should include the following information: a description of the emergency transaction, including whether it was a pipeline or curtailment emergency; the date it began and ended; the date of the 48-hour report; the way the emergency was resolved; any corrections to the initial telegraphic report or a statement that it is correct; the volumes delivered and compensation received for the emergency gas; how the compensation was determined; the volumes of natural gas that were assigned; the total volume in system supply; any information supplied to other participants that an emergency existed or was imminent; and a statement that the circumstances demonstrated that the emergency existed or was imminent so as to qualify as an emergency transaction, and that the emergency was carried out under Subpart I.

Like the telegraphic report, the 30-day termination report would require data that should be readily available to a participant, because it is essentially a final version of the data previously sent in the 48-hour telegraphic report. The 30-day report also does not mandate any considerable amount of detail. Most of the information could be provided in a few phrases or lines. The Commission believes that the termination report is necessary to its effective administration of Part 284 in light of incidents where emergency transactions may have been used improperly to circumvent NGA certificate requirements. The small burden associated with this report is considerabily outweighed by the Commission's administrative and enforcement needs.

(8) § 284.268—Waiver

This provision is identical to § 157.52, which allows the Commission the flexibility to waive any of the emergency transaction requirements "to the extent required by the public interest."

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act, section 3, 5 U.S.C. 601–612 (Supp. V 1981), requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that, if promulgated, would have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a proposed rule would not have such an impact.

Most of the pipeline companies affected by this rule do not fall within the RFA's definition of small entity.[26] Some local distribution companies may meet the small entity definition. However, the accounting, filing, and reporting burdens on all of the entities affected by the rule would either remain about the same or would be increased by a very small degree. The associated costs that would be incurred by participants to emergency transactions are likely to be insignificant. Conversely, the reporting requirements should be easier to understand and complete. The Commission is revising these reporting requirements only where its administrative and enforcement experience has shown a need to do so. In addition, any increased compliance burden should be offset by the clarifications and consolidations made in this rule. For example, the substitution of a brief 48-hour telegraphic report for a more burdensome written report will probably reduce the overall time and resources that must be spent by transaction participants.

For these reasons, the Commission does not believe that the impact of this rule will be economically "significant," at least within the meaning of the RFA. Pursuant to section 605(b) of the RFA, therefore the Commission certifies that this rule, if promulgated, will not have a "significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act Statement

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520s (Supp. IV 1980) and the Office of Management and Budget's (OMB) regulations, to be codified at 5 CFR 1320.13 (1983), require that OMB approve certain information collection requirements imposed by agency rule. The proposed information collection requirements of this rule are being submitted to OMB for its approval. Interested persons can obtain information on these provisions by contacting the Office of the General Counsel, Rulemaking and Legislative Analysis Division, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Cathy Ciaglo, (202) 257–8033). Comments on the information collection provisions of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Written Comment Procedure

The Commission invites interested persons to submit written data, views, and other information concerning the matters set out in this notice. An original and 14 copies of such comments should be filed with the Commission by November 5, 1984. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM83–31–000.

All written submissions in this rulemaking will be placed in the Commission's public files and will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

List of Subjects

18 CFR Part 2

Pipelines.

18 CFR Part 157

Natural gas.

18 CFR Part 284

Natural gas.

In consideration of the foregoing, the Commission proposes to amend Parts 2, 157 and 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

§ 2.68 [Removed]

1. Part 2 is amended by removing § 2.68.

[25] The quarterly report prescribed under § 157.51(b) was required to be filed only at the end of each calendar quarter in 1979. This report is still prescribed in the regulations.

[26] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. V 1981). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to the codified 13 CFR Part 121).

(Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978))

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

2. Part 157 is amended as follows:

(a) The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978).

§§ 157.22, 157.29 and §§157.45—157.52 [Removed]

(b) Sections 157.22, 157.29, and §§157.45 through 157.52 are removed.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. Part 284 is amended as follows:

(a) The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978).

(b) A new Subpart I is added to read as follows:

Subpart I—Emergency Natural Gas Sale, Transportation, and Exchange Transactions

Sec.
284.261 Purpose.
284.262 Definitions.
284.263 Emergency transactions authorized by this subpart.
284.264 Terms and conditions.
284.265 Rate treatment by recipient.
284.266 Rates and charges.
284.267 Reporting requirements.
284.268 Waiver.

Subpart I—Emergency Natural Gas Sale, Transporation, and Exchange Transactions

§ 284.261 Purpose.

This subpart prescribes the conditions under which a participant who engages in an emergency natural gas transaction in interstate commerce is exempt from the certificate requirements of section 7 of the Natural Gas Act.

§ 284.262 Definitions.

For purposes of this subpart:

(a) "Emergency" means a pipeline emergency or curtailment emergency.

(1) "Pipeline emergency" means (i) a sudden, unanticipated loss of a recipient's natural gas supply caused by a failure of facilities; or (ii) an unanticipated situation in which a participant, in good faith, determines that immediate action is required to protect life or health, to maintain physical property, or to maintain scheduled levels of natural gas storage inventories.

(2) "Curtailment emergency" means a situation experienced by a pipeline or distributor in which there is an actual or imminent threat of a curtailment of natural gas deliveries to any person who uses natural gas:

(i) In a residence;

(ii) In a commercial establishment in amounts less than 50 Mcf of natural gas on a peak day, as defined in 18 CFR § 281.203(a)(9);

(iii) In any hospital or school, as defined in 18 CFR § 281.203(a) (10) and (11); or

(iv) In any other use if this person:

(A) Does not have installed facilities for using alternative fuels, or adequate supplies of alternative fuels are not available, and

(B) Has operations that would be impaired but for the receipt of emergency natural gas.

(b) "Alternative fuel" means any fuel (including propane), other than natural gas, regardless of price. In the case of an electric utility, power that is purchased from another utility shall be considered an alternative fuel.

(c) "Emergency natural gas" means natural gas sold, transported, or exchanged in an emergency natural gas transaction.

(d) "Emergency natural gas transaction" means the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to this subpart which is:

(1) Necessary to alleviate an emergency, and

(2) Not anticipated to extend for more than 60 days in duration.

(e) "Emergency costs" means the amount paid by a recipient for emergency natural gas and all associated costs, including all transportation costs.

(f) "Participant" means any first seller, interstate pipeline, intrastate pipeline, or local distribution company (including a Hinshaw pipeline) that participates in an emergency natural gas transaction under this subpart.

(g) "Recipient" means:

(1) In the case of the sale of emergency natural gas, the purchaser of such gas, or

(2) In the case of a transportation or exchange of emergency natural gas when there is no sale of emergency natural gas under this subpart, the participant who receives the transported gas.

(h) "Hinshaw pipeline" means a pipeline that is exempt from the Natural Gas Act jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act.

§ 284.263 Emergency transactions authorized by this subpart.

(a) *Exemption from section 7 of Natural Gas Act.* Any participant who engages in an emergency natural gas transaction is exempt from the requirements of section 7 of the Natural Gas Act if the transaction is conducted in accordance with this subpart. Participation in any emergency natural gas transaction shall not subject any participant to the jurisdiction of the Commission under section 7 of the Natural Gas Act except to the extent such transaction is provided for in this subpart.

(1) A first seller, interstate pipeline or local distribution company is exempt from section 7 of the Natural Gas Act by authority of section 7(c)(1)(B) of the Natural Gas Act.

(2) An intrastate pipeline is exempt from section 7 of the Natural Gas Act by authority of section 311 of the NGPA.

(b) *Election by participant.* If any participant in an emergency natural gas transaction is also authorized to conduct the transaction under any other subpart under which to conduct the transaction.

(c) *Covered transactions*—(1) *Sales.* Any first seller, interstate pipeline, intrastate pipeline, or local distribution company (including a Hinshaw pipeline) may sell emergency natural gas to any interstate pipeline or local distribution company for a period not to exceed 60 days.

(2) *Transportation.* Any interstate pipeline, intrastate pipeline, or local distribution company (including a Hinshaw pipeline) may transport natural gas for any participant for a period not to exceed 60 days. For purposes of this subpart, transportation includes exchange, except as otherwise provided.

§ 284.264 Terms and conditions.

(a) *General conditions.* (1) Participants should make every reasonable attempt to minimize or, if possible, to avoid reliance upon emergency natural gas transactions.

(2) Before deliveries of emergency natural gas commence, a responsible official of the recipient shall supply any other participants in the emergency natural gas transaction with sufficient information to enable the participant to form a good faith belief that an emergency exists or is imminent.

(3) No participant may engage in an emergency natural gas transaction if its participation will render the participant unable to provide adequate service to its existing customers.

(4) A participant may not sell emergency natural gas if, during the term of the sale, the participant is also purchasing emergency natural gas from another participant under this subpart.

(5) If the Commission determines that a participant has engaged in an emergency natural gas transaction but has failed to comply with the conditions of this subpart, the Commission shall provide notice and opportunity for hearing and then may take appropriate action to ensure compliance. In addition to any other remedies for a failure to comply, the Commission may declare such participant ineligible to engage in further emergency natural gas transactions under this subpart.

(6) If a purchasing interstate pipeline acquires emergency natural gas that exceeds the volumes necessary to avoid a curtailment emergency of its direct assignment customers, the balance may be used for general system supply. It is expected that such excess emergency natural gas volumes will be small and that purchasing participants will make every reasonable attempt to balance assignments with supplies.

(7) An interstate pipeline shall not receive compensation from any person when acting as a broker or agent for another participant or customer in an emergency natural gas transaction.

(8) The recipient of emergency natural gas shall:

(i) Provide line loss and the fuel volumes required to transport the emergency natural gas; and

(ii) Pay the facilities required to be constructed to conduct the emergency natural gas transaction.

(b) *Duration*—(1) *Emergency sale or transportation.* An emergency natural gas transaction shall be limited to a period of not more than 60 consecutive calendar days, except that such transaction may be continued for an additional period of not more than 60 consecutive days if:

(i) Fifteen days prior to the end of the initial 60-day period, the recipient of emergency natural gas files a petition that:

(A) Describes fully the continued emergency,

(B) Requests a waiver of the initial 60-day limitation and permission for an extension of the transaction for an additional 60 days; and

(ii) Within the 15-day period, the Commission does not, by order, prohibit continuation of the emergency natural gas transaction for the additional 60-day period. If a transaction is likely to extend beyond 60 days, the participants should use authority other than this subpart to effect the transaction.

(2) *Redelivery in emergency exchange.* The redelivery of emergency natural gas in an exchange shall occur within 180 consecutive days following the termination of deliveries of the emergency natural gas.

§ 284.265 Rate treatment by recipient.

(a) *Interstate pipeline.* An interstate pipeline that purchases emergency natural gas shall:

(1) Treat the cost of such purchases as a natural gas cost and roll it into the cost of the pipeline's general system supply (except that the pipelines may only roll-in those costs from a curtailment emergency that are associated with the volumes acquired in excess of the amount needed for the emergency),

(2) Directly assign the costs to the customer that receives the emergency natural gas, or

(3) Establish a separate account to cover the emergency costs for all of its customers that receive emergency natural gas and allocate costs in that account to the individual assignment customers on a weighted, average-cost basis.

(b) *Local distribution company.* A local distribution company that purchases emergency natural gas may directly assign the costs of such purchase to the customer that receives the emergency natural gas.

§ 284.266 Rates and charges.

(a) *Transportation rates*—(1) *Interstate pipeline.* Rates and charges for the transportation of emergency natural gas by interstate pipelines shall be determined in accordance with § 284.103.

(2) *Intrastate pipeline.* Rates and charges for the transportation of emergency natural gas by an intrastate pipeline company shall be determined in accordance with § 284.123.

(3) *Local distribution company.* (i) A local distribution company that has an existing rate on file with an appropriate state regulatory agency for city-gate transportation services shall determine its rates and charges in accordance with § 284.123.

(ii) A local distribution company that does not have an existing rate on file with an appropriate state regulatory agency for city-gate transportation services shall determine its rates and charges (per unit volume of emergency natural gas transported) in accordance with § 284.222(e)(2)(ii).

(b) *Sale rates*—(1) *Interstate pipelines.* An interstate pipeline shall determine its rates for sales under this subpart according to a tariff that covers this type of service. If no rate is on file in a tariff for this type of service, the interstate pipeline shall determine its rates according to the methodology used in designing rates to recover its transmission and storage costs and its current purchased gas cost.

(2) *Intrastate pipelines and local distribution companies.* An intrastate pipeline or local distribution company shall determine its rates for sales under this subpart in accordance with § 284.144.

(c) *Costs excluded from rate base.* No interstate pipeline shall include in its jurisdictional rate base any cost associated with facilities installed and operated in connection with an emergency natural gas transaction unless a certificate of public convenience and necessity has been issued authorizing the costs. Absent a certificate, these facilities may only be used to conduct emergency natural gas transactions or transactions authorized under section 311 of the NGPA.

§ 284.267 Reporting requirements.

(a) *Forty-eight hour report*—(1) *Sales.* Within 48 hours after deliveries of emergency natural gas commence, the purchasing participant shall notify the Commission by telegram of the sale, stating, in the following sequence:

(i) That the telegram is for an emergency transaction under § 284.267;

(ii) The date deliveries commenced;

(iii) The specific nature (*i.e.,* pipeline or curtailment) and anticipated duration of the emergency;

(iv) The total amount and average daily amount of emergency natural gas to be purchased during the term of the transaction;

(v) The purchase price of the gas;

(vi) The transportation rate; and

(vii) The identity of all participants involved in the transaction, including any customers to whom the emergency natural gas is to be assigned.

(2) *Transportation (excluding exchanges).* Within 48 hours after deliveries commence in an emergency natural gas transaction which does not involve the sale of emergency natural gas, the recipient of emergency natural

gas shall notify the Commission by telegram of the transportation, stating, in the following sequence:

(i) That the telegram is for an emergency transaction under § 284.267;

(ii) The date deliveries commenced;

(iii) The specific nature (*i.e.*, pipeline or curtailment) and anticipated duration of the emergency;

(iv) The total amount and average daily amount of emergency natural gas to be transported during the term of the transaction;

(v) The transportation rate; and

(vi) The identity of all the participants involved in the transaction.

(3) *Exchanges.* Within 48 hours after an exchange transaction for emergency natural gas commences, the initial recipient of the exchange volumes shall notify the Commission by telegram of the exchange, stating, in the following sequence:

(i) That the telegram is for an emergency transaction under § 284.267;

(ii) The date the exchange commenced;

(iii) The specific nature (*i.e.*, pipeline or curtailment) and anticipated duration of the emergency;

(iv) The total amount and average amount of emergency natural gas to be exchanged during the term of the transaction;

(v) The identity of all participants involved in the transaction;

(vi) Whether the exchange is simultaneous or deferred; the redelivery schedule of the volumes, or any imbalances in the volumes;

(vii) Whether the exchange is on a thermal or volumetric basis; and

(viii) The rates or charges, if any, for the exchange service.

(b) *Termination report.* Within thirty days after the emergency transaction ends, the participant who received the emergency natural gas shall file with the Commission a sworn statement and two conformed copies thereof, which shall include the following information in the following sequence:

(1) A description of the emergency transaction, including whether it was a pipeline or curtailment emergency transaction; the commencement and termination date; the date of the 48-hour report, and the method of resolving the emergency;

(2) Any corrections to the 48-hour report information supplied to the Commission under paragraph (a) of this section or a statement that the information was correct;

(3) The volumes of the emergency natural gas delivered during the transaction;

(4) The total compensation received by the seller for the emergency sale;

(5) The total compensation paid for the emergency natural gas transportation or exchange service, if any;

(6) The methods by which such compensation was derived;

(7) The volumes of natural gas assigned and the total volumes included in system supply;

(8) The information supplied to any other participant pursuant to § 284.264(a)(2); and

(9) A statement that the emergency natural gas transaction was carried out in accordance with this subpart, and that identifies the circumstances demonstrating an emergency existed or was imminent so as to require an emergency natural gas transaction.

§ 284.268 Waiver.

The Commission may, by order, waive the requirements of this subpart in connection with any emergency natural gas transaction to the extent required by the public interest.

[FR Doc. 84-23465 Filed 9-5-84; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-232; Texas—40]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Strawn Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on October 15, 1984.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 14, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Walter W. Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Issued: August 30, 1984.

I. Background

On July 11, 1984, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Strawn Formation located in the western part of the state of Texas be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Strawn Formation in the Whitehead (Strawn) Field be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Strawn Formation located in portions of Sutton, Schleicher and Crockett Counties, Texas, Railroad Commission District 7c, be designated as a tight formation. The recommended area lies primarily in the extreme western portion of Sutton County, and extends north into the southwest part of Schleicher County, and to the west into the eastern part of Crockett County. The area includes approximately 250,000 contiguous acres and includes three fields; the Aldwell Ranch (Canyon), Sawyer (Canyon), and Whitehead (Strawn).

The top part of the Strawn Formation is a brown finely crystalline, fossiliferous limestone, the mid-section of the formation is a shaly limestone, and the low part of the formation is a grey to white fossiliferous limestone. The Strawn Formation underlies the Canyon sandstones and shales and overlies the Atoka Formation.

The formation dips to the southwest over the recommended area. The shallowest formation top is approximately 7,383 feet in the northeast while the deepest formation top is 9,858 feet in the southwest. The approximate

average depth to the top of the Strawn Formation is 8,300 feet.

A type log for the area is the Amoco Production Company, Edwin S. Mayer, Jr. No. C–8 well located in the northern part of the recommended area in Section 5, McMullen County School Land Survey A–500. In this well, the thickness of the Strawn Formation is 306 feet. A gradual thickening of the Strawn Formation occurs towards the south part of the recommended area.

III. Discussion of Recommendation

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

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

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

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

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

Accordingly, under the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Texas that the Strawn Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before October 12, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–232 (Texas—40), and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street N.E., Washington, D.C., during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than September 14, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, will be amended as set forth below, in the event the Commission adopts Texas' recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulations.

PART 271—[AMENDED]—

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

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

2. Section 271.703 is amended by adding paragraph (d)(204) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(176) —(203) [Reserved]

(204) *Strawn Formation in Texas.* RM79–76–232 (Texas—40)

(i) *Delineation of formation.* The Strawn Formation is found in the western part of the State of Texas. The designated area lies primarily in the extreme western part of Sutton County, and extends north into the southwest part of Schleicher County, and to the west into the eastern part of Crockett County.

(ii) *Depth.* The vertical limits of the Strawn Formation are defined by the Canyon sand and shale Formations above and the Atoka Formation below. The depth to the top of the formation is approximately 7,383 feet in the northeast part of the designated area and dips to 9,858 feet in the southwest, having an average depth of 8,300 feet to the top of the formation. In a type log, the Amoco Production Company, Edwin, S. Mayer, Jr. No. C–8 well, located in the northern part of the designated area, the thickness of the Strawn Formation is 306 feet. A gradual thickening of the formation occurs toward the south part of the designated area.

[FR Doc. 84–23470 Filed 9–5–84; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–26–83]

Elections and Miscellaneous Procedural Matters Under Section 338 of the Internal Revenue Code

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations that redesignate and amend (as redesignated) temporary income tax regulations relating in part to elections and miscellaneous procedural matters under section 338 of the Internal Revenue Code of 1954. The text of the revisions to § 1.338–1T of the redesignated temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Proposed effective date. The regulations are proposed to be effective, generally, for stock acquisitions made after August 31, 1982.

Date for comments and requests for a public hearing. Written comments and requests for a public hearing must be delivered or mailed by November 5, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–26–83) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Duane H. Pellervo of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington,

D.C. 20224, Attention: CC:LR:T (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** redesignate and amend temporary regulations published in the **Federal Register** on February 8, 1984 (49 FR 4722). The final regulations that are proposed to be based on temporary regulations § 1.338-1T, as redesignated and amended in the Rules and Regulations portion of this issue of the **Federal Register**, would be added to Part 1 ot Title 26 of the Code of Federal Regulations. Those final regulations would provide rules for making elections under section 338(g) (other than elections subject to section 224(d)(2) of TEFRA) and would provide guidance relating to miscellaneous procedural matters. For the text of the amendments to the temporary regulations, see T.D. 7975, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

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

List of Subjects in 26 CFR 1.301-1—1.385-6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

These regulations are proposed to be issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 485, 26 U.S.C. 338; 68A Stat. 917, 26 U.S.C. 7805, respectively).

Roscoe L Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23597 Filed 9-4-84; 9:13 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 301

[LR-200-82]

Returns of Foreign Personal Holding Companies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the amendments made to the Internal Revenue Code of 1954 by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) which concern returns of officers, directors and shareholders of foreign personal holding companies. While the changes expanded the number of persons required to file information returns for foreign personal holding companies, they also simplified the reporting requirements with respect to foreign personal holding companies and gave the Secretary the authority to set the return due dates and to waive duplicative filings. TEFRA also provides a new $1,000 civil penalty for failure to file a proper and timely foreign personal holding company information return.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 5, 1984. The amendments are proposed to be effective 30 days after their publication as a Treasury decision in the **Federal Register** for taxable years of foreign corporations beginning after September 3, 1982. Taxpayers who are required to file under section 340 of TEFRA and who have compiled information based on the old Forms 957 and 958, which were replaced by Form 5471, may file the old forms instead of Form 5471 for taxable years ending on or before November 30, 1983. (See announcement 83-56, 1983-13 I.R.B. 92).

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-200-82], Washington, D.C. 20224.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

FOR FURTHER INFORMATION CONTACT: Mary Frances Pearson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (LR-200-82) (202-566-3289, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6035 and the Regulations on Procedure and Administration under section 6679 (26 CFR Part 301). These amendments are proposed to conform the regulations to changes made to sections 6035 and 6679 by section 340 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 633) (TEFRA). The amendments are proposed under the authority contained in Code sections 6035 (a), (d) and (e) (96 Stat. 633, 634; 26

U.S.C. 6035 (a), (d), and (e)) and 7805 (68A Stat. 917, 26 U.S.C. 7805).

Discussion

TEFRA simplified the reporting requirements that section 6035 imposes with respect to foreign personal holding companies. Prior to its amendment, section 6035 and the regulations thereunder required U.S. officers and directors of foreign personal holding companies to file two annual returns. The first information return was filed on Form 957 and concerned the stock structure and identity of the shareholders of the corporation. This information return was originally intended by statute to be filed monthly but was made an annual filing requirement by the regulations.

The second information return was filed on Form 958 and concerned the foreign personal holding company's income and deductions for the taxable year, as well as undistributed foreign personal holding company income. Form 958 had to be filed on the 60th day after the close of the taxable year of the foreign personal holding company, which was a different filing date than that required for Form 957.

In addition, any U.S. shareholder who had not already filed as a director or officer and who held 50% or more of the corporation's stock was required to file Form 957. The result in many cases was that duplicative and overlapping returns were filed.

Because the various returns of officers, directors, and 50% shareholders suffered from overlapping coverage, as well as inconveniently staggered filing dates, TEFRA combined the filing requirements and gave the Service flexibility in setting return due dates and waiving duplicative filings. Forms 957 and 958 have now been incorporated into Form 5471.

TEFRA also expands its reporting requirements to each United States citizen or resident who is a 10-percent (rather than 50-percent) shareholder of a foreign personal holding company as well as to officers and directors who are U.S. citizens or residents. The reason for the change is two-fold. First, foreign personal holding company income is subject to U.S. tax when five or fewer U.S. individuals own more than 50-percent in value of the corporation's stock (sec. 552(a)(2)). The 10-percent shareholder reporting requirement conforms more closely to underlying tax liability. Second, when the reporting requirements applied to 50-percent shareholders and officers and directors, the reporting requirement could be avoided altogether, since U.S. shareholders who held less than 50 percent of the stock but were still controlling shareholders could arrange for only foreign individuals to serve as officers and directors.

The proposed regulations require that shareholder and income information be filed on the same date that the individual's income tax return is due. The person required to supply the information will attach the information return for the annual accounting period of the foreign corporation that ends with or within the individual's income tax year to his or her income tax return.

Whether an individual is considered an officer, director, or 10-percent shareholder is determined on the date that the information return is required to be filed. If no individual qualifies as of that date, the determination is made on the last day of the foreign corporation's taxable year on which a U.S. citizen or resident was an officer, director, or 10-percent shareholder.

The proposed regulations provide that one person may file Form 5471 and the applicable schedules for other persons who have the same filing requirements. This rule is proposed because it is similar to the rules under existing § 1.6038–2(k) and proposed § 1.6038–2(j) (published in the **Federal Register** on December 19, 1983, 48 FR 56076) which allow for joint returns to be filed and is also similar to the rule under the pre-TEFRA section 6035 regulations dealing with duplicative filing of officers and directors (see § 1.6035–1(b)). A person who does not file Form 5471 because another person has agreed to file the information on his behalf still remains liable under the penalty provisions if that other person fails to file a proper return.

Information required by the proposed regulation includes corporate, shareholder and income information. The required shareholder information includes the names and addresses of all persons who held shares, options, and convertible securities during the taxable year; a description of each class of shares and the total number of shares of each class outstanding at the beginning and end of the taxable year; the number of shares of each class, option, or convertible security held by each person; and any changes in the holdings of shares, options, or convertible securities during the year. Required income information includes the foreign personal holding company's gross income, deductions, credits, taxable income, and undistributed foreign personal holding company income for the year.

In addition to the criminal penalties imposed by existing law for failure to file a return and filing a false or fraudulent return, TEFRA imposed by an amendment under section 6679 a $1,000 civil penalty for failure to file a proper foreign personal holding company information return. This penalty does not apply, however, if the failure is shown to be due to reasonable cause.

Comments and Requests for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (Preferably six copies) to the Commissioner of Internal Revenue. All comments will be hearing available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Regulatory Flexibility Act of 1980 and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major regulation subject to Executive Order 12291.

Drafting Information

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

List of Subjects

26 CFR §§ 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes,

Disclosure of Information, Filing requirements.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Parts 1 and 301 are as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. Section 1.6035-1 is revised to read as follows:

§ 1.6035-1 Returns of U.S. officers, directors and 10-percent shareholders of foreign personal holding companies for taxable years beginning after September 3, 1982.

(a) *Requirement of returns—(1) In general.* For taxable years of a foreign personal holding company beginning after September 3, 1982, each United States citizen or resident who is an officer, director, or 10-percent shareholder of the foreign personal holding company (as defined in section 552) shall file with his income tax return, on or before the date that return is due, Form 5471 and the applicable schedules to be completed in accordance with the instructions setting forth corporate, shareholder, and income information for the foreign personal holding company's annual accounting period that ends with or within the officer's, director's, or shareholder's taxable year.

(2) *General corporate information.* The general foreign personal holding company information required by this section with respect to each taxable year is as follows:

(i) The name and address and employer identification number (if any) of the corporation;

(ii) The kind of business in which the corporation is engaged;

(iii) The date of its incorporation;

(iv) The country under the laws of which the corporation is incorporated;

(iv) A description of each class of stock issued and outstanding by the corporation for the beginning and end of the annual accounting period;

(vi) The number of shares and par value of common stock of the corporation issued and outstanding as of the beginning and end of the taxable year;

(viii) The number of shares and par value of preferred stock of the corporation issued and outstanding as of the beginning and end of the taxable year, the rate of dividend on such stock and whether such dividend is cumulative or noncumulative; and

(viii) Any other information required by the appropriate form and its instructions.

For purposes of this paragraph, the term "share" includes any security convertible into a share in the corporation and any option granted by the corporation with respect to any share in the corporation.

(3) *Shareholder information.* The shareholder information required by this section is as follows:

(i) The name, address and taxpayer identification number (if any) of each person, whether foreign or U.S., who was a shareholder during the taxable year and the class and number of shares held by each, together with an explanation of any changes in stock holdings during the taxable year;

(ii) The name and address of each holder during the taxable year of securities convertible into stock of the corporation and the class, number, and face value of the securities held by each, together with an explanation of any changes in the holdings of such securities during the taxable year;

(iii) The name and address of each holder during the taxable year of any option granted by the corporation with respect to any share in the corporation, and a full description of the options held by each, together with an explanation of any changes in the holdings of such options during the taxable year, and

(iv) Any other information required by the appropriate form and its instructions.

(4) *Income information.* The income information required by this section is the gross income, deductions and credits, taxable income, foreign personal holding company income, and undistributed foreign personal holding company income for the taxable year and other information required by the approriate form and its instructions.

(b) *Persons required to file return—(1) In general.* The determination of whether a United States citizen or resident is a person who is an officer, director, or 10-percent shareholder required to file a return with respect to any foreign corporation is made as of the date that Form 5471 is required to be filed. If there is no such person required to file on that date (because, for example, the corporation has been dissolved), then filing is required of the persons who were officers, directors or 10-percent shareholders on the last day of the most recent taxable year of the corporation for which there was such a person who was a United States citizen or resident.

(2) *10-percent shareholder.* (i) The term "10-percent shareholder" means any individual who owns directly or indirectly (within the meaning of section 554) 10 percent or more in value of the outstanding stock of a foreign corporation.

(ii) An individual who does not own 10 percent or more in value of the outstanding stock directly but is required to file solely by attribution of another United States person's stock ownership is excused from filing if the direct owner that is an individual furnishes all the information required.

(3) *Two or more persons required to submit the same information.* If two or more persons are required to furnish the information for the same foreign personal holding company for the same period, one person may make one return on Form 5471. The single Form 5471 may be filed with the income tax return of any one of the persons and shall disclose the name, address, and identifying number of each other person or persons on whose behalf the return is filed. Each person on whose behalf the return is filed remains liable for any penalties imposed under sections 6679, 7203, 7206, and 7207.

(4) *Statement required.* Any United States citizen or resident required to furnish information under this section with his return who does not do so by reason of the provisions of subparagraph (2)(ii) or (3) of this paragraph shall file a statement with his return indicating that such requirement has been or will be satisfied and identifying the return with which the information was or will be filed and the place of filing.

(c) *Separate returns for each corporation.* If a person is required to file returns under section 6035 and this section with respect to more than one foreign personal holding company, separate returns must be filed with respect to each company.

(d) *Corrective filing.* If an information return with respect to a taxable year of a foreign personal holding company beginning after September 3, 1982, is filed before [date which is 30 days after the date of publication of a Treasury decision in the **Federal Register**] and that return does not contain all of the information required by this section, then the filer of the return shall file an amended information return containing all of such information within 60 days after [date which is 30 days after the date of publication of a Treasury decision in the **Federal Register**].

(e) *Penalties—(1) Criminal penalties.* For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(2) *Civil penalties.* For civil penalties for failure to file a proper foreign personal holding company information

return, see section 6679 and the regulations thereunder.

Par. 2. Section 1.6035–2 is revised to read as follows:

§ 1.6035–2 Returns of U.S. officers and directors of foreign personal holding companies for taxable years beginning before September 4, 1982.

For rules relating to information returns required to be filed by officers and directors of foreign personal holding companies for taxable years beginning before September 4, 1982, see section 6035(a) (as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 26 CFR 1.6035–1 (Rev. as of April 1, 1981).

Par. 3. Section 1.6035–3 is revised to read as follows:

§ 1.6035–3 Returns of 50-percent U.S. shareholders of foreign personal holding companies for taxable years beginning before September 4, 1982.

For rules relating to information returns required to be filed by shareholders of foreign personal holding companies for taxable years beginning before September 4, 1982, see section 6035(b) (as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 26 CFR 1.6035–2 (Rev. as of April 1, 1981).

PART 301—[AMENDED]

Regulations on Procedure and Administration

Par. 4. Section 301.6679–1 is amended as follows:

1. The section heading is revised to read as follows: "Failure to file returns, etc. with respect to foreign corporations or foreign partnerships for taxable years beginning after September 3, 1982".

2. Paragraph (a)(1) is revised as set forth below.

3. Paragraph (a)(2) is amended by removing "section 6046 and § 1.6046–1," and adding in its place "section 6035, 6046, or 6046A,".

4. The third sentence of paragraph (a)(3) is amended by removing "section 6046" and adding in its place "section 6035, 6046, or 6046A".

§ 301.6679–1 Failure to file returns, etc. with respect to foreign corporations or foreign partnerships for taxable years beginning after September 31, 1982.

(a) *Civil penalty*—(1) *In general.* In addition to any criminal penalty provided by law, each United States citizen, resident or person filing a separate or joint return, or on whose behalf a return is filed, pursuant to sections 6035, 6046, or 6046A, and the regulations thereunder, who fails to file such a return within the time provided, or who files a return which does not show the required information, shall pay a penalty of $1,000, unless such failure is shown to be due to reasonable cause.

* * * * *

Roscoe L. Egger, Jr.,
Commissoner of Internal Revenue.

[FR Doc. 84–23593 Filed 9–5–84; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 90

[DoD Instruction 7045.xx]

Collection of Indebtedness From DoD Employees

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule will be issued to implement, within the Department of Defense, the Debt Collection Act of 1982, and other statutory authorities available to DoD regarding the collection of debts. This proposed rule provides specific guidance to all heads of DoD Components on the conduct and management of debts. It also provides advice to other federal agencies on how to request offset from debtors who are DoD military members or employees.

DATES: Written comments must be received October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Adam T. Shaw, (202) 697–0585.

ADDRESS: Office of the Assistant Secretary of Defense (Management Systems), the Pentagon, Room 3E825, Washington, D.C. 20301.

SUPPLEMENTARY INFORMATION:

1. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

2. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

3. Although exempt under section 1.(a)(2) of E.O. 12291, the Department of Defense does not consider this rule to be a major rule under section 1.(b), E.O. 12291.

List of Subjects in 32 CFR Part 90

Debt collection.

Accordingly, 32 CFR Chapter 1, is amended by adding a new Part 90, reading as follows:

PART 90—COLLECTION OF INDEBTEDNESS FROM DoD EMPLOYEES

Sec.
90.1 Purpose.
90.2 Applicability and Scope.
90.3 Definitions.
90.4 Policy.
90.5 Responsibilities.
90.6 Procedures.

Authority: 5 U.S.C. 5514.

§ 90.1 Purpose.

Under DoD Directive 7045.13 this part provides policy, prescribes uniform procedures to implement 5 U.S.C. 5514, section 3716 and portions of section 3711 of 31 U.S.C. as modified by Pub. L. 97–365 and the Federal Claims Collections Standards (FCCS); and assigns responsibilities.

§ 90.2 Applicability and Scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereinafter referred to collectively as "DoD Components").

(b) It includes all civil and military functions under the direct supervision of a DoD Component.

§ 90.3 Definitions.

In addition to the definitions below, other definitions, concepts, and terminology used herein may be found in the FCCS.

(a) *Debt.* An amount owed to the United States from sources that include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other claims and similar sources. However, it does not include overpayments from normal processing delays arising from the conditions below and if adjustment is made by the Department of Defense or the individual Military Departments within four pay periods.

(1) An employee elects coverage or a change in the coverage under a federal benefits program requiring periodic deductions from pay; or

(2) A ministerial adjustment in pay rates or allowances cannot be placed into effect immediately.

(b) *Delinquent Debt.* A debt that has not been paid by the date specified in the DoD Component's initial written notification or as specified in 4 CFR 101.2(b).

(c) *Disposable Pay.* The amount that remains from an employee's federal pay

after required deductions for federal, state, and local income taxes; social security taxes, including medicare taxes; federal retirement programs; premiums for life and health insurance benefits; and other deductions that are required by law to be withheld.

(d) *Employee.* A current or retired civilian employee; a member or retiree of the Armed Forces or Reserves of the United States; an employee of the U.S. Postal Services or a member of the Postal Rate Commission

(e) *Ministerial Adjustment.* Any adjustment that is nondiscretionary, such as an adjustment prescribed by statue or regulation.

(f) *Pay.* Basic pay, special pay, incentive pay, retired pay, retainer pay, or, in case of employees not entitled to pay, other authorized payments. Allowances are *not* "pay."

(g) *Pay Period in the Department of Defense.* Biweekly for working civilians. Monthly for active duty military and all retirees.

(h) *Person.* An individual, employee, or contractor.

(i) *Salary Offset.* The collection of a debt to the government by deduction from the pay account of an employee. Deductions may be by lump sum or by installment.

§ 90.4 Policy.

It is DoD policy that each Component shall manage credit properly and pursue vigorously timely and economical debt collection. Credit management and debt collection programs shall be established to comply with collection standards.

§ 90.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) under DoD Directive 5118.3 shall oversee the administration of the debt collection and credit management program in the Department of Defense.

(b) The *Heads of DoD Components* shall: (1) Develop and implement procedures to comply with this part and the FCCS.

(2) Carry out involuntary salary offsets and transfer resultant funds to appropriate federal agencies, as required.

(3) Participate in the internal DoD data exchange program for delinquent debtors.

(4) Report to the Defense Manpower Data Center (which operates under the policy guidance of the Assistant Secretary of Defense (Manpower, Installations, and Logistics) (ASD(MI&L)) activities on internal matching and salary offsets for other federal agencies under Pub. L. 97–365.

(c) The *Director, Defense Logistics Agency (DLA),* through the DMDC, shall conduct the data exchange program for debt collection, which shall include: (1) Conducting computer matching programs within the Department of Defense and with other federal agencies for the purpose of identifying current or former employees in default or in debt to either DoD Components or other Federal agencies.

(2) Ensuring that federal agencies requesting salary offsets of DoD employees include certificates of due process with their requests.

(3) Providing appropriate offices within DoD Components with requests for offsets that have been certified by other federal agencies.

(4) Ensuring that appropriate steps are taken to safeguard all information as required by the Privacy Act, such as notification in the **Federal Register**, or the preparation and submission of any required reports, or both.

(5) Providing necessary guidance to DoD Components on reporting formats and data elements to be considered to ensure uniformity.

(6) Identifying all federal agencies involved in performing the matches and the roles to be performed by each agency.

(7) Providing periodic progress and summary reports to the ASD(C), the ASD (MI&L), and other DoD Components on activities under Pub. L. 97–365 such as the number of employees and associated dollar amounts entering into voluntary repayments as a result of DoD efforts and assistance to other federal agencies, amounts withheld involuntarily from DoD employees, and the amounts recovered by DoD Components.

§ 90.6 Procedures.

All DoD Components shall follow the procedures as prescribed below.

(a) *Governing Regulations.* (1) The authorities under which the following procedures have been developed are:

(i) 5 U.S.C. 5705, Advancements and Deductions

(ii) 37 U.S.C. 1007, Deductions from Pay

(iii) 10 U.S.C. 9837, Settlement of Accounts: Deductions from Pay

(iv) 10 U.S.C. 4837, Settlement of Accounts: Deductions from Pay

(v) 5 U.S.C. 5513, Withholding Pay; Credit Disallowed or Charge Raised for Payment

(vi) Pub. L. 97–365

(2) The above authorities are separate and distinct and should be treated as such. Collections under these authorities shall be made as prescribed.

(b) *Collections Under 5 U.S.C. 5705.* (1) A DoD Component may advance, through the proper disbursing official, to an employee entitled to per diem or mileage allowances under 5 U.S.C. 5705, a sum considered advisable with regard to the character and probable duration of the travel to be performed. A sum advanced and not used for allowable travel expenses is recoverable from the employee or the estate by:

(i) Offset against accrued pay, retirement credit, or other amount due the employee;

(ii) Deduction from an amount due from the United States; and

(iii) Such other methods as provided by law.

(2) *Debtor Entitlement.* Under this law, the debtor may be given an opportunity to repay the amount due or the amount may be deducted automatically from the next pay due the debtor. If the offset is initiated automatically, notice will be given the debtor when the amount is deducted. DoD Components may elect to explain the procedure to the debtor before disbursing the advance.

(3) *Formal Notification Process.* DoD Components are free to choose the method by which a debtor shall be advised of the debt or implementation of the procedures described in § 90.6(b)(2) of this section.

(c) *Collections Under 37 U.S.C. 1007* (applies only to the Army and the Air Force). (1) This law generally authorizes the deduction of amounts due the United States from the pay or other sources of officers and enlisted members of the Army and the Air Force, when amounts due have been reported or an administrative determination has been made that a debt is due the United States. This law provides specific circumstances under which involuntary deductions may or may not be made and should be cited when collections are made under this authority.

(2) *Debtor Entitlements.* Under 37 U.S.C 1007, deductions can be made from the pay of an officer only for an indebtedness to the United States that is admitted to by the officer or established by a court judgment or a special order issued by the Secretary of the Military Department concerned or a designee. There is no requirement for enlisted members of the Army or the Air Force to admit to a debt. Implementing regulations of appropriate DoD Components shall provide for notification to debtors when collections are made under this authority.

(d) *Collections Under 10 U.S.C. 9837* (applicable to Air Force only). (1) This law authorizes the deduction from the

next pay of an officer or enlisted member of the Air Force. Amounts due the United States for articles sold to the debtor on credit; amounts administratively determined to be owed by an enlisted member to the United States to cover the cost of lost articles or the cost to repair damaged articles. The Air Force should cite this section when making collections under this authority.

(2) *Debtor Entitlements.* The Secretary of the Air Force shall issue implementing regulations to provide for those debtor entitlements considered to be appropriate in the circumstances.

(e) *Collections under 10 U.S.C. 4837* (applicable to Army only). (1) This law authorizes collections from officers or enlisted members of the Army under the same conditions as those provided for the Air Force in § 90.6(d), above. The Army shall cite this section when making collections under this authority.

(2) *Debtor Entitlements.* The Secretary of the Army shall issue implementing regulations to provide for those debtor entitlements considered to be appropriate in the circumstances.

(f) *Collections under Pub. L. 97-365 and 5 U.S.C. 5514.* The salary offset provisions of Pub. L. 97-365 generally provide that when the Secretary of Defense, a designee, or the head of another federal agency determines that an employee is indebted to the United States, the amount of the indebtedness may be collected by deduction from the current pay of the employee. The offset will be made either in the total amount of the debt or, if the total debt exceeds 15 percent of disposable pay, in increments approximating the 15 percent amount over a number of pay periods.

(1) *Debtor's Entitlement.* (i) A minimum of 30 days written notification of the circumstances under which the debt occurred, the amount owed, the intent to collect by deduction from pay, and an explanation of other rights of the employee.

(ii) An opportunity to inspect and copy the records of the DoD Component related to the debt.

(iii) An opportunity to enter into a written agreement to establish a schedule for repayment of the debt.

(iv) An opportunity for a hearing on the determination of the DoD Component concerning the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement, concerning the terms of the repayment schedule.

(A) If the employee requests the Department of Defense to reconsider the determination concerning the existence or amount of the debt, the employee shall submit to the Department of Defense a statement, with supporting documents, indicating why the employee believes he or she is not so indebted.

(B) If the employee requests the Department of Defense to reconsider the proposed offset schedule, the employee shall file an alternative proposed offset schedule that explains clearly why reconsideration is requested. If the current offset schedule imposes a financial hardship, the alternative proposed offset schedule shall include a statement with supporting documents, showing why the DOD schedule would produce an extreme financial hardship for the employee. The supporting documents must show, for the employee and his or her spouse and dependents for 1 year preceding the DOD notice and for the repayment period proposed by the employee in his or her offset schedule, specific details on income and the family's financial position.

(2) *Formal Notification Process.* (i) Appropriate written demand shall be made promptly upon a debtor in terms that inform the debtor of the consequence of failing to cooperate. As prescribed in § 90.6(f)(1)(i) of this section, only one written demand is required. However, DOD Components must be satisfied that the debtor has received the demand letter and has been advised of the entitlements also identified in § 90.6(f)(1) (i) through (iv). In addition, the notification letter shall advise the debtor of the following:

(A) The date by which payment is to be made, which normally should be no more than 30 days from the date that the demand letter is mailed or hand-delivered. DOD Components shall exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated.

(B) The amount, frequency, approximate beginning date, and duration of the intended deduction if payment is not made on the due date.

(C) The DOD Component's requirements concerning interest, penalties, and administrative costs, unless such payment are excused in accordance with the FCCS.

(D) The method and time period for requesting a hearing.

(E) The fact that the timely filing of a petition for the hearing will stay the commencement of collection proceedings.

(F) The fact that a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(G) Any other rights and remedies available to the employee such as the possibility of a waiver under provisions of statutes or regulations governing the claim for which the collection is being made, or the possibility of an appeal if the eventual hearing decision is not in the employee's favor.

(H) The fact that amounts paid or deducted for the debt that are later waived or found not owned to the United States will be refunded promptly to the employee, unless there are applicable statutes or regulations to the contrary.

(I) The specific address to which all correspondence shall be directed regarding the debt.

(3) *Hearings*—(i) *Petitions.* Debtors who petition for hearings under this Part are entitled to an oral hearing unless such hearing is waived specifically in the petition letter.

(A) An employee must file a petition with the DOD Component concerned for a hearing not later than 15 days from the date the employee receives the notice described in § 90.6(f)(2), of this section, if an employee wants a hearing concerning the existence of the debt or the proposed DOD offset schedule.

(B) The employee's petition or statement shall identify and explain with reasonable specificity and brevity the facts, evidence, and witness that the employee believes support his or her position.

(C) The employee also must indicate whether he or she wishes the hearing to consist solely of written submissions or whether the hearing is to be oral. If an employee elects an oral hearing, this election may be changed to written submissions only if made 3 days before the original hearing date.

(D) If an employee files a petition for a hearing under § 90.6(f)(3)(i)(A) of this section, the DOD Component shall:

(*1*) Notify the employee of the time, date, and location of the hearing if the employee does not request a hearing consisting solely of written submissions.

(*2*) Provide the employee and the hearing official with a copy of the records in the DoD Component's possession relating to the employee's debt.

(E) Not later than 15 days from the date the employee receives the records described in § 90.6(f)(3)(i)(D) of this section, or not later than 25 days from the date the employee receives the notice described in § 90.6(f)(2) of this section, if he or she has received records, the employee shall file the following with the DoD Component concerned and the hearing official:

(*1*) The items listed in § 90.6(f)(3)(i)(F) of this section, if the employee contests the DoD Component's determination of

the existence or the amount of the debt; or

(2) The items listed in § 90.6(f)(3)(i)(H) of this section, if the employee contests the DoD Component's offset schedule.

(F) An employee contesting the Department of Defense's determination of the existence or amount of the debt shall file the following:

(1) A statement of the reasons that caused the employee to believe that the Department of Defense's determination of the existence or amount of the debt was clearly erroneous. The statement shall include all facts on which the employee bases his or her belief and any legal arguments supporting the belief.

(2) A list of witnesses the employee will call at the hearing and a summary of their anticipated testimony.

(3) A copy of any records the employee intends to introduce at the hearing if they differ from the records provided by the DoD Component.

(G) However, the employee may not raise any issue that he or she has not raised previously with the DoD Component concerning the existence or the amount of the debt or introduce any facts or records that he or she has not submitted previously to the DoD Component concerning the existence or amount of the debt.

(H) If an employee contests the DoD Component's proposed offset schedule, the employee shall file the following:

(1) A proposed alternative offset schedule.

(2) A statement of the reasons why the DoD Component's proposed offset against disposable pay will produce an extreme financial hardship.

(3) The information required in § 90.6(f)(1)(iv)(B) of this section.

(4) A list of witnesses the employee intends to call at the hearing and a summary of their anticipated testimony; and

(5) A copy of the records the employee intends to introduce at the hearing if they differ from the ones provided by the DoD Component.

(I) As applicable, not later than 15 days from the date the DoD Component receives the materials submitted under § 90.6(f)(3)(i)(A) of this section, the DoD Component shall provide the employee and the hearing official with the following:

(1) A statement supporting the DoD Component's determination regarding the existence and amount of the debt.

(2) A statement setting forth the reasons why the DoD Component's proposed offset schedule does not produce an extreme financial hardship for the employee under § 90.6(f)(4) of this section.

(3) A list of witnesses that the DoD Component intends to call at the hearing.

(4) A summary of their anticipated testimony.

(ii) *Scheduling.* (A) The DoD Component shall select the time, date, and location for the hearing. To the extent feasible, a location convenient for the employee shall be selected. DoD Components shall establish and publish specific sites at which hearings will be conducted.

(B) Expenses incident to inspection and copying of government records or transportation to attend oral hearings shall be borne by the employee requesting the hearing.

(C) An employee forfeits or waives his or her right to a hearing and will have his or her pay offset in accordance with the DoD Component's offset schedule, if the employee:

(1) Fails to file a petition for a hearing before the deadline date prescribed in § 90.6(f)(3)(i) of this section.

(2) Is scheduled to appear and fails to appear on time at the hearing.

(3) Fails to file the required submissions under § 90.6(f)(3)(i) (F) and (H) of this section within 5 days after the deadline date established under § 90.6(f)(3)(iv) of this section.

(D) If the employee files his or her required submissions within 5 days after the established deadline date and the hearing official finds that the employee has shown good cause for the failure to comply with the established deadline date, the hearing official may find that the employee has not waived his or her right to a hearing. However, in making this determination, the hearing official shall take into account that the employee was provided 45 days to respond to the DoD Component's position on the same issues under § 90.6(f)(3)(iv) of this section.

(iii) *Procedures.* (A) The hearing shall be conducted by a hearing official who is not an employee of the DoD Component to which the debt is owed (creditor component) and is not otherwise under the supervision or control of the creditor component. When collection action is being taken by the Department of the Army (DA) and a hearing is granted to a DA employee, the hearing official cannot be employed or supervised by the DA.

(B) The hearing normally will consist of informal conferences before a hearing official in which the employee and creditor component will be given a full opportunity to present evidence, witnesses, and arguments. The employee may represent him or herself or be represented by a person of his or her choice. However, the hearing official will permit only the introduction of such evidence as described in the prehearing submissions under § 90.6(f)(3)(i) (F) and (H) of this section.

(C) The creditor component shall provide for maintaining a summary record of the hearing.

(D) The hearing official shall provide a written decision on the merits of the hearing that discusses the basic facts offered to document the nature and origin of the debt; the hearing official's findings and conclusions whether the DoD Component or the employee has best supported its or his or her positions on which the hearing was conducted.

(iv) *Time Limitations.* (A) Time limitations for employee requests are as follows:

(1) Requests for copies of the records relating to the debt will be made no later than 10 days from receipt by the debtor of the notice of indebtedness.

(2) Requests for reconsideration of existence of the debt or the proposed offset schedule will be made within 45 days of the debtor's receipt of the notice of indebtedness, or if records were requested 45 days from the debtor's receipt of the records.

(B) Upon timely receipt of the appropriate statements and documents, the DoD Component will reconsider whether the employee is indebted to the Department of Defense, the amount of the indebtedness, or the appropriateness of the offset schedule.

(C) If the review of statements and documents provided so warrants, the DoD Component will notify the employee that:

(1) The employee is not indebted to the Department of Defense, or

(2) The employee's proposed alternative offset schedule is approved.

(D) If, after considering the statement and supporting documents, the DoD Component determines that the employee is indebted to the Department of Defense, the Component will send the employee the following:

(1) A statement indicating the reasons for the decision regarding the indebtedness, including, if applicable, the reasons for reducing the amount of the indebtedness.

(2) The formal notice.

(E) If, after considering the statement and supporting documents, the DoD Component determines that the original offset schedule, or a modification to that schedule, will not impose an extreme financial hardship for the employee, the Component will send the employee a statement indicating the reason it concluded that the original or modified offset schedule will not impose an exteme financial hardship under

§ 90.6(f)(4) of this section, and the notice described in § 90.6(f)(2) of this section.

(v) *Exceptions to Entitlements.* (A) Exceptions to the provisions of § 90.6(f)(1) of this section, are limited to the following intra-agency adjustments of four pay periods or less that are not considered debts:

(*1*) An employee's election of coverage or of a change in coverage under a DoD benefit program that requires periodic deductions from pay and that cannot be placed into effect immediately because of normal processing delays.

(*2*) A ministerial adjustment in pay rates or allowances that cannot be placed into effect immediately because of normal processing delays.

(B) In the above cases, the DoD Component shall issue in advance of the collection a notice that:

(*1*) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying (an official to be specified by each Component) to be responsible for resolving the dispute; or

(*2*) On account of a normal ministerial adjustment in pay or allowances that could not be placed into effect immediately, future salary will be reduced to cover any excess pay or allowance received by the employee, and that the employee may dispute the amount of the retroactive collection by notifying the disbursing officer responsible for making the adjusted payment.

(C) If normal processing delays exceed four pay periods, the full procedures prescribed under 5 U.S.C. 5514 and § 90.6(f)(2) of this section, shall be extended to the employee.

(4) *Standards For Determining Extreme Financial Hardship.* (i) An offset produces an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistance expense of the employee and his or her spouse and dependents.

(ii) These essential subsistence expenses include only costs incurred for food, housing, clothing, transportation, and medical care.

(iii) In determining whether the offset would prevent the employee from meeting the essential subsistence expense described above, the DoD Component and the hearing official shall consider the following:

(A) The income from all sources of the employee, his or her spouse, and dependents.

(B) The extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses.

(C) Whether these essential subsistence expenses have been minimized to the greatest extent possible.

(D) The extent to which the employee or his or her spouse can borrow money to meet the offset and other essential expenses.

(E) The extent to which the employee and his or her spouse and dependents have other exceptional expenses that should be taken into account and whether these expenses have been minimized.

(5) *Collections in Installments.* (i) The amount deducted involuntarily for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the deduction of a greater amount is necessary to make the collection within the period of anticipated active duty or employment. Deductions shall be reasonable in terms of the employee's ability to pay after considering necessary living expenses, including recurring legal debts (required by law) and deductions being made from disposable pay at the time the erroneous payment is discovered. If possible, the installment payments should be sufficient in size and frequency to liquidate the government's claim in not more than 3 years.

(A) If the repayment extends over a period of years, provisions shall be made for increasing the deduction when conditions so warrant. The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay. For military members, the definition for disposable pay may be found in the Military Pay and Allowances Entitlement Manual.

(B) While the amount deducted involuntarily for any pay period may not exceed 15 percent of disposable pay, a greater amount may be deducted upon the written consent of the employee involved. The employee should be encouraged to consent to payment of more than 15 percent in order to liquidate the indebtedness as soon as possible. Installment payments of less than $50 per month should be accepted only if justified on the grounds of financial hardship or some other reasonable cause.

(ii) If the employee retires or resigns, or if his or her employment or period of active duty ends before collection of the debt is completed, offset from subsequent payments of any nature (such as, final salary payment, lump-sum leave, and bonuses) may be effected under 31 U.S.C. 3716.

(iii) Payroll deduction shall begin on the next expedient payday after expiration of the full time provided in the notification, unless other appeals have been registered by the employee to stay the commencement of collection proceedings.

(6) *Refunds.* (i) The DoD Component shall refund promptly to the employee amounts paid or deducted under this Part when one of the following incurs:

(A) A debt is waived or otherwise found not owing to the Department of Defense (unless expressly prohibited by statute or regulation).

(B) The employee's paying office is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(ii) Unless there are statutory, regulatory, or contractual provisions to the contrary, such refunds do not bear interest.

(7) *Requests from other Federal Agencies.* (i) If a determination has been made by a federal agency that a debtor is employed by the Department of Defense, a request for salary or administrative offset shall be addressed to the Secretary of Defense and a copy of all documentation shall be forwarded to the Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940. Such request shall include the following:

(A) A statement that the due process provisions of 5 U.S.C. 5514, 31 U.S.C. 3716 or other applicable law have been completed.

(B) Details of the debt, including the amount and reason for the debt, the payment due date, the date the federal agency determined the debt was due, a statement that the federal agency's regulations have been approved by the Office of Personnel Management (OPM).

(C) Unless the debtor has given a signed statement acknowledging receipt of the required procedures under 5 U.S.C. 5514 or other applicable law, an indication of the actions taken under 5 U.S.C. 5514 or other applicable law and the dates on which they were taken.

(ii) DoD Components may not honor requests to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 and 3711 or other applicable law more than 10 years after the government's right to collect the debt first accrued except as provided in the FCCS.

(8) *Requests To Other Federal Agencies.* (i) If a determination has been made that the debtor is employed by another DoD Component or federal agency, a request for salary or administrative offset shall be forwarded

to the employing agency. Such request shall include the following:

(A) A statement that the due process provisions of 5 U.S.C. 5514 or 31 U.S.C. 3716 have been completed.

(B) A certified debt claim form (to be provided by OPM).

(C) Details of the debt including the amount and reason for the debt; the payment due date; the date the DoD Component determined the debt was due; a statement that the DoD regulations have been approved by OPM.

(D) Unless the debtor has given a signed statement acknowledging receipt of the required procedures under 5 U.S.C. 5514 and 31 U.S.C. 3716 and 3711 the requesting Component shall indicate the actions taken under 5 U.S.C. 5514 and 31 U.S.C. 3716 and 3711 and the dates on which they were taken.

(ii) DoD Components may not initiate offset to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 and 3711 more than 10 years after the government's right to collect the debt first accrued, except as provided in the FCCS.

(9) *Request For Waiver.* (i) An employee may address a written request for waiver under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716 to the official designated in the notification letter. The request should state the reasons that a waiver under the standards cited in the notice should be made. To delay further collection action, a former employee's request for waiver must be received within 30 days of the date of the notification letter if the former employee is in the United States, or 45 days if the former employee is in a foreign country. While the request for waiver is pending, interest on the amount due shall not accrue.

(ii) The DoD Component shall notify the debtor in writing of the designated official's final decision. This decision shall be final and conclusive as far as the Component is concerned. Unless the debtor makes direct payment of the amount due, further collection actions shall be initiated. If the decision is to the advantage of the debtor, the accounts shall be adjusted as appropriate. The Component's determination that a payment was erroneous in no way restricts the debtor from disputing the validity of the administrative determination and asserting a subsequent claim against the government either to the GAO or in the courts.

(10) *Compromise Of Claims.* (i) Claims may be compromised under Chapter II, Part 103, FCCS for the following reasons:

(A) Inability to pay within a reasonable time.

(B) A doubt concerning the government's ability to prove its case in court.

(C) Cost of collecting the claim does not justify enforced collection.

(D) Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised if the DoD Component's enforcement policy in terms of deterrence and securing compliance, both present and future, will be served adequately by acceptance of the sum to be agreed upon. Accidental or technical violations may be dealt with less severely than willful and substantial violations.

(E) When two or more debtors are jointly and severally liable, collection action may not be withheld against one such debtor until the other or others pay their proportionate shares. Care shall be taken that compromise with one such debtor will not be considered a precedent or as morally binding in determining the amount that shall be required from other debtors jointly and severally liable on the claim.

(F) A combination of one or more of the above reasons.

(ii) The head of a DoD Component or a designee may exercise the compromise authority with respect to claims for money or property arising out of the activities of the Component when the difference between the amount offered in settlement by the debtor and the amount owed, exclusive of interest, penalties, and administrative costs, does not exceed $20,000. Amounts exceeding $20,000 shall be referred to the Department of Justice or GAO, as appropriate. Only the Comptroller General or a designee may compromise a claim that arises out of an exception made by the GAO in the account of an accountable officer.

(g) *Collections under Pub. L. 97–365 and 31 U.S.C. 3716.* This law provides that "After trying to collect a claim from a person under 5 U.S.C. section 3711(a), the head of an executive or legislative agency may collect the claim by administrative offset." Unlike salary offset, which applies to basic pay, special pay, incentive pay, retired pay, and so forth, administrative offset applies to monies due an employee that are not considered to be pay, such as amounts due for accrued leave, certain bonuses, stipends, refunds, or other. Debts owed the United States may be collected by administrative offset only after affording the debtor certain rights. Before initiating the collection of a claim by means of administrative offset, the DOD Component shall establish detailed procedures for providing a debtor, before the offset is made, with procedural rights as described here.

(1) *Debtor's Entitlement.* (i) Except for the mandatory hearing if requested by the debtor, a debtor shall be entitled to the same basic rights as defined in § 90.6(f)(1), above, before collection of a claim by administrative offset. Although on a oral hearing is not required, the debtor shall be entitled to an opportunity for the review, within the DOD Component, of the determination of the Component with respect to the claim.

(ii) Before collecting a debt under § 90.6(g), the DOD Components shall prescribe regulations on such collections that are consistent with this Part and the FCCS.

(A) The DOD Component as the cerditor agency shall make a determination to collect debt by administrative offset on a case-by-case basis using sound judgment. A Component shall not only consider whether administrative offset is feasible from a practical and legal standpoint, but also whether such offset is in the best interest of the Department of Defense and the United States. A DOD Component may give due consideration to the debtor's financial condition, but is not required to use administrative offset in every instance in which there is an available source of funds.

(B) DOD Components are not authorized by 31 U.S.C. 3716 to use administrative offset with respect to one of the following:

(*1*) Debts owed by any state or local government.

(*2*) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(*3*) Any case in which collection of the type of debt by administrative offset is explicitly provided for or prohibited by another statute.

(C) However, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 and 3711 still may be collected by administative offset under some other statute or common law. Components shall pursue collection under whatever authorities are available.

(2) *Formal Notification Process.* (i) After appropriate written demand has been made promptly upon a debtor of the Department of Defense as prescribed in § 90.6(f)(2) of this section a total of two progressively stronger letters at not more than 30-day intervals normally will be made unless a response to the first or second letter indicates that a further letter would be futile and the debtor's response does not require rebuttal. In

determining the timing of the demand letters, DOD Components shall give due regard to the need to act promptly so that, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within 1 year of the Component's final determination of the fact and amount of the debt. When necessary to protect the government's interest (for example, to prevent the statute of limitations 28 U.S.C. 2415 from expiring) written demand may be preceded by other appropriate actions. Subsequent demand letters shall be progressively stronger and advise the debtor of the following:

(A) The Component's intent to collect the debt by administrative offset.

(B) An opportunity to obtain review within the Component of the determination of the indebtedness.

(ii) If a determination has been made that a debtor is working for another federal agency, the procedures provided in § 90.6(g)(2)(i) of this section, will apply. However, after all debtor entitlements have been offered, the Component shall forward the request for offset to the employing agency. The request shall include a written statement that the debtor owes the debt (including the amount and basis of the debt and the date on which payment was due) and that the debtor was so notified as required by 31 U.S.C. 3716.

(iii) DoD Components may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 and 3711 more than 10 years after the government's right to collect the debt first accrued, unless facts material to the government's right to collect the debt were not known and could not reasonably have been known by the officials of the Department of Defense who were charged with the responsibility to discover and collect the debt. The date the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as 28 U.S.C. 2415.

(iv) DoD Components may effect administrative offset against a payment to be made to a debtor before the completion date of procedures required by § 90.6(g)(1)(ii) of this section, if failure to take the offset would prejudice substantially the Department of Defense's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such offset must be followed promptly by the completion of those procedures. Amounts recovered by offset but later found not to be owed the Department of Defense shall be refunded promptly.

(3) *Hearings.* (i) The provisions of § 90.6(g) do not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the DoD Component has determined that review of the written record ordinarily is an adequate means to correct past mistakes. When an oral hearing is not required, a Component nevertheless shall afford the debtor a "paper hearing." That is, the Component will make its determination on the request for waiver or reconsideration based upon a review of the written record.

(ii) When a DoD Component is required to afford a debtor with a hearing or review within the Component, the Component shall provide the debtor with a reasonable opportunity for an oral hearing when one of the following occurs:

(A) An applicable statute authorizes or requires the Department of Defense to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity.

(B) The debtor requests reconsideration of the debt and the Component determines that the question of the indebtedness cannot be resolved by review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under § 90.6(g) is not required to be a formal evidentiary-type hearing, although the Component always shall document carefully all significant matters discussed at the hearing.

(iii) The filing of petitions, the scheduling and procedural conduct of hearings shall be accomplished as outlined in § 90.6(f)(3) of this section.

(iv) A DoD Component shall not initiate a request for offset until the procedures in § 90.6(f)(7) of this section, have been carried out and such action has been evidenced.

(h) *Collections of Out of Service Debts.* The collection of amounts under § 90.6(h) shall be in accordance with the standards promulgated pursuant to the Federal Claims Collection Act of 1966, as amended by Pub. L. 97–365 and implemented by the FCCS.

(1) *Debtor Entitlements.* An out-of-service debtor has the same basic entitlements as an in-service debtor except for entitlement to mandatory hearings (see § 90.6 (f) and (g) of this section).

(2) *Formal Notification Process.* In addition to the notification requirements provided in § 90.6 (f) and (g) of this section, subsequent notification letters shall advise the debtor of (i) the possible notification of commercial credit bureaus if payment is not made on time; (ii) the possible use of commercial collection agencies, and (iii) the possible referral of the claim to the Department of Justice for prosecution.

(i) *Data Exchange Program.* (1) *General.* DoD Components periodically shall conduct exchanges of records on delinquent debts for the purpose of locating debtors and initiating offset collection action. Components operating within the provisions of this Instruction shall ensure that actions prescribed for aggressive debt collection complies with the policy promulgated by the Attorney General and Comptroller General before the match. A determination shall be made that all other alternatives either are less effective, more expensive, or would present a greater threat to personal privacy.

(2) This guidance is intended to aid DoD Components in balancing the government's need to maintain the integrity of federal programs with the employee's right to personal privacy. It does not authorize activities that are not permitted by law, nor does it prohibit activities expressly required to be performed by law. The procedures and limitations set forth herein apply, even when a statute authorizes or requires a matching program to be carried out, to the extent that these procedures and limitations would not inhibit the legislative purposes of that statute. Compliance with these guidelines does not relieve a Component from the obligation to comply with the provisions of Part 286 of this Title, including any provisions not cited herein.

(3) DoD Components are expected to cooperate with one another and with other federal agencies in their debt collection activities.

(4) DoD Components shall establish necessary procedures to ensure that the establishment and maintenance of debtor records are compatible for matching and referred programs.

(j) *Use of Private Collection Agencies*—(1) *General.* As a means of enhancing the DoD debt collection program DoD Components shall use commercial collection agencies for collection services to supplement their collection programs. This conforms with FCCS and Pub. L. 97–365 and 95–109.

(2) *DoD Component's Responsibilities.* When a Component uses commercial collection services the following conditions must be met:

(i) All actions required by the Federal Claims Collection Standards shall be accomplished before release to the commercial collection agency.

(ii) The DoD Component will establish procedures covering the transfer of

accounts, the review and approval of formats of letters and bills and a system for repayment processing.

(iii) The DoD Component must retain ultimate responsibility for collections. Thus, the Component head must retain the authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action under the jurisdiction of the Department of Justice (28 U.S.C. 516).

(3) *Contractural Procedure.* Contracts for commercial collection services must meet the following conditions:

(i) The contract will be in compliance with the Federal Acquisition Regulations (FAR).

(ii) the contract will provide a mechanism to ensure that any substantive issues relating to the underlying merits of the claims are referred to the originating DoD Component for resolution, at which time the contractor shall relinquish to the Component its complete file of information on an account.

(iii) The Contract will list the minimum collection activities to be performed and the minimum documentation to be obtained for various categories of accounts such as:

(A) Locating and contacting debtor.

(B) Repayment schedules.

(C) Suspension of collection activity.

(D) Resolution of complaints.

(E) Unlocatable accounts.

(F) Inability to pay.

(G) Refusal to pay.

(iv) The contract will require the contractor to record all collection actions taken on each account and provide a report of such actions to the Department of Defense monthly, or as requested.

(v) The contract will require the contractor to calculate up-to-date accrued interest, using the rate tables supplied by the Department of Defense.

(vi) The contract will define clearly the procedures for billing debtors, receiving and processing repayments.

(vii) The contractor shall be subject to the Privacy Act of 1974, 5 U.S.C. 552a and, when applicable, to federal state and local laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act.

(k) *Reporting debts to commercial credit bureaus*—(1) *General.* As a means of further enhancing the debt collection program of the Department of Defense, Components authorized to terminate or write-off individual debts may report to commercial credit bureaus those delinquent debts that have been terminated (no further collection action is economically feasible) or have been referred to the GAO or the Department of Justice for further collection effort.

(2) *Component Responsibility.* Each DoD Component that is authorized to terminate or write-off individual debts will be responsible for reporting debts in compliance with Pub. L. 97–365 and the OMB Bulletin No. 83–21. Before reporting an employee's debt to a commercial credit bureau, a Component must provide public notice in the **Federal Register** identifying those systems of records from which it intends to disclose information. Chapter 4, Subsection B.13. of Part 286a of this title authorizes such disclosure. A disclosure under Chapter 4, subsection B.13 is *not* a routine use disclosure. Each DoD Component also shall ensure that an individual debtor is afforded the due process protection prescribed by Pub. L. 97–365 before any disclosure of information is made on that debtor.

(3) *Reporting of Referrals.* Each DoD Component shall maintain an accurate account of all names reported to credit bureaus.

Dated: August 31, 1984.

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23494 Filed 9–5–84; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–10–FRL–2665–2]

Approval and Promulgation of State Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment deadline.

SUMMARY: By this notice, EPA is extending the deadline for receiving written comments on the Agency's proposed promulgation of a Federal Implementation Plan for attainment of National Ambient Air Quality Standards for lead for the portion of Shoshone County surrounding and including the Bunker Limited Partnership primary lead smelter. The extension will permit more time for public comment.

DATE: Comments must be received or postmarked on or before September 7, 1984.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4016, FTS: 399–4016.

SUPPLEMENTARY INFORMATION: EPA is in the process of soliciting public comment on its proposed promulgation of a Federal Implementation Plan for attainment of National Ambient Air Quality Standards for lead for the portion of Shoshone County surrounding and including the Bunker Limited Partnership primary lead smelter. This notice extends the deadline for receiving written comments from August 20 to September 7, 1984 to comply with statutory requirements.

EPA is seeking comment on all aspects of its proposal. Copies of the proposal and supporting documents are available to anyone who wants to become familiar with them. They may be inspected at the following locations:

Kellogg Library, 16 West Market Avenue, Kellogg, Idaho

EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Lead, Particulate matter; Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: August 27, 1984.

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 84–23508 Filed 9–5–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–5–FRL–2665–5]

Illinois; Approval and Promulgation of Implementation Plans

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking to disapprove a revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The revision pertains to the incorporation of a source specific variance for Acme Barrel Company in the Illinois SIP. USEPA's action to

propose disapproval of the SIP revision is based upon the failure of the State to demonstrate that the variance would not jeopardize attainment and maintenance of the TSP National Ambient Air Quality Standards (NAAQS).

DATE: Comments on this revision and on the proposed USEPA action must be received by October 9, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035, before visting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: In a September 8, 1983, Final Order (PCB 82-135), the Illinois Pollution Control Board (IPCB) granted Acme Barrel Company a variance from Rules 105(a), 105(d), 202(b), 203(e)(3), and 502 until March 6, 1984, for the operation of its gas fired drum incinerator which is located in Chicago, Cook County, Illinois, a primary nonattainment area for total suspended particulates (TSP). On October 31, 1983, the Illinois Environmental Protection Agency (IEPA) submitted this Final Order to USEPA as a proposed revision to the Illinois SIP. The following presents a summary of IPCB regulations involved in this variance.

Rule 105(a)—Prohibition on operation during breakdown

Rule 105(d)—Report of operation during breakdown or start-up

Rule 202(b)—Prohibition of visible emissions greater than 30%

Rule 203(e)(3)—Particulate emission standard of 0.2 grains per standard cubic foot corrected to 12% CO_2, applicable to existing incinerators burning less than 2000 pounds of refuse per hour

Rule 502—Prohibition of open burning

Rule 502 is not part of the Illinois SIP for TSP. USEPA can take no action on this variance as it pertains to Rule 502.

USEPA's analysis of this proposed SIP revision was completed in conformance with the provisions of a July 20, 1983, memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, to the Directors of the regional Air and Waste Management Divisions and the regional Air Management Divisions. This policy requires the State to show that the SIP, as a whole despite the relaxation, will continue to provide for the attainment of the TSP national ambient air quality standards (NAAQS) by the end of 1982 prior to securing USEPA's approval of TSP source specific relaxation that would maintain the overall approval status of the Part D SIP in a nonattainment area. For TSP, a modeling demonstration using USEPA reference modeling techniques and the best available information are required.

The State's submission contained no modeling demonstration. USEPA, therefore, proposes disapproval of this variance as it pertains to IPCB Rules 105(a), 105(b), 202(b), and 203(e)(3). As stated above, USEPA takes no action on this variance as it pertains to Rule 502, because Rule 502 is not part of the Illinois SIP.

All interested persons are invited to submit written comments on the proposed SIP revision and on USEPA's proposed disapproval. Written comments received by the date specified above will be considered in USEPA's final rulemaking action.

Under 5 U.S.C. 605(b), USEPA has determined that this proposed action, if finally disapproved, will not have a significant economic impact on a substantial number of small entities. Only a single entity, Acme Barrel Company, is affected by this action.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

(Secs. 110, 172, and 301(a) of the Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

List of Subjects in 40 CFR Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

Dated: June 27, 1984.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 84-23509 Filed 9-5-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-2620-8]

Proposed Amendment and Proposed Innovative Technology Waiver for New Source Performance Standards for Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to amend the standards of performance for kraft pulp mills by adding a provision for determining compliance on a mass equivalent basis for digester systems and to grant, subject to concurrence by the Governor of the State of Georgia, an innovative technology waiver for operation of a new batch digester at the Owens-Illinois, Incorporated (O-I) kraft pulp mill in Clyattville, Georgia, pursuant to section 111(j) of the Clean Air Act, as amended (the Act), 42 U.S.C. 7411(j).

This amendment is necessary because the standards on a concentration basis preclude process systems which may have larger emissions on a concentration basis because of lower air flow rates but at the same time have equal or lesser emissions on a mass basis.

This waiver would provide an opportunity to demonstrate the capability of a batch digesting displacement heating system to achieve equal or greater emission reductions than required by the existing standards of performance for digester systems at kraft pulp mills at lower costs. Considerable energy and environmental benefits would also be achieved with this technology.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on the proposed amendment and the proposed innovative technology waiver.

DATES: *Comments.* Comments must be received on or before October 18, 1984.

Public Hearing. A public hearing will be held if requested. Persons wishing to request a public hearing must contact EPA by September 19, 1984. If a hearing is requested, an announcement of the date and place will appear in a separate **Federal Register** notice.

ADDRESSES: *Comments.* Under section 307(d)(2), 42 U.S.C. 7607(d)(2), the Administrator is required to establish two separate rulemaking dockets for each rule that would apply only within the boundaries of one state. One copy of the docket is located in Washington, D.C., and a second copy is located at the

EPA Regional Office in Atlanta, Georgia. Therefore, copies of all comments on the waiver should be submitted to both the Washington, D.C., and the Atlanta, Georgia, dockets.

One copy of each comment should be sent to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-84-16.

A second copy of each comment on the waiver should be sent to: U.S. Environmental Protection Agency, Region IV, Attention: Mr. Brian Beals, Docket No. A-84-16, 345 Courtland Street, Atlanta, Georgia 30365.

The docket may be inspected at the listed addresses between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying.

Public Hearing. Persons wishing to present oral testimony should notify Ms. Shelby Jornigan, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (929) 541-5578.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Industrial Studies Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5595.

SUPPLEMENTARY INFORMATION:

Background

Current Regulations

On September 24, 1976, standards of performance were proposed to limit emissions of particulate matter and total reduced sulfur compounds (TRS) from new, modified, and reconstructed kraft pulp mills (41 FR 42012). Final standards were published in the **Federal Register** on February 23, 1978 (43 FR 7568). Proposed revisions to the standards were published in the **Federal Register** on January 19, 1984 (49 FR 2448).

Section 111 of the Clean Air Act, as amended, requires that standards of performance be established at levels that reflect the performance of best demonstrated technology (BDT) for emission control. For digester systems, BDT for TRS emission control was determined to be incineration of exhaust gases. The digester TRS emission standard reflecting the performance of well-designed and well-operated incinerators was determined to be 5 parts per million (ppm).

Requirements of Section 111(j)

Section 111(j) of the Clean Air Act sets forth provisions for the issuance of waivers for the development of innovative technology. In the 1977 Amendments to the Clean Air Act, Congress added this provision to encourage the use of innovative technological systems of continuous emision reduction for the control of air pollutants. The intent in doing so was to provide a statutory incentive for the improvement of emission control technology and for reducing costs, environmental impacts, and energy usage of such technology.

Under section 111(j) of the Act, upon request by the owner or operator of a new source and with the consent of the Governor of the State in which the source is located, the Administrator is authorized to grant a waiver from the requirements of Section 111 for a limited time period and under specific terms and conditions provided certain statutory prerequisites are satisfied. The Administrator must determine that:

a. The proposed system or systems have not been adequately demonstrated;

b. The proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction that that required to be achieved under the standard of performance which would otherwise apply, or achieve at least an equivalent reduction at lower costs in terms of energy, economic, or nonair quality environmental impact;

c. The owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute unreasonable risk to public health, welfare, or safety in its operation, function or malfunction; and

d. The number of waivers granted under section 111(j) with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such a system will achieve the conditions specified in "b" and "c" immediately above.

In making any determinations under "b", the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards (NSPS). In determining whether an unreasonable risk exists under "c", the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under Section 111 without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out "c". Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

Waiver Request

On March 11, 1984, Owens-Illinois, Incorporated (O-I) submitted a request for an innovative technology waiver for the batch digester and multiple effect evaporator system at its Valdosta kraft pulp mill in Clyattville, Georgia. O-I indicates that a waiver would permit it to install and operate a digester displacement heating systemn that eventually would enable the digester system to comply with the mass equivalent of the NSPS TRS emission limit of 5 ppm. Additionally, O-I indicates that the displacement heating system (DHS) would achieve emission reductions at least equivalent to those of the control technology on which the standard is based, but at lower cost. In support of their request, O-I submitted a report (Docket No. A-84-16/II-D-I) which describes the DHS and the environmental and energy impacts that may result from its use.

Analysis of Information and Data

The report indicates that O-I plans to install DHS on its 9 existing batch digesters late in 1984. A new digester with a DHS will be installed first to maintain production capacity as each of the 9 existing digesters are removed from operation singly to retrofit the DHS. It is the new digester system which would be subject to the NSPS. Neither the existing digesters nor the multiple effect evaporators are, or would be, subject to NSPS.

Installation of the DHS on the mill's digesters will reduce significantly mill energy requirements and enable an existing 200 million Btu per hour oil-fired boiler to be shut down. This will result in annual energy savings of about 6.1 $\times 10^{11}$ Btu's; emissions of particulate matter, sulfur dioxide, and nitrogen oxides will be reduced by 11, 137, and 235 tons per year, respectively. This energy savings is possible because the

DHS utilizes heat generated for the wood cooking process. Essentially, spent liquor chemicals (known as black liquor) at 350°F are displaced from the digester with washer filtrate at 200°F at the end of the cooking process, and the heat content of the displaced liquor is used to preheat the wood chips, fresh pulping solution (known as white liquor), and digester vessel for the next cook.

After displacement of the spent liquor, the digester contents (pulp and washer filtrate) are transferred to a blow tank by using compressed air to empty the vessel through an opening in the digester's bottom. The elevated pressure and "cold" conditions in the digester forces the contents into the unpressurized blow tank without steam release and with much less gaseous volatile compounds such as methanol and ethanol, and gaseous reduced sulfur compounds (known as total reduced sulfur compounds, or TRS). By contrast, in a conventional batch digester, the uncontrolled TRS emission concentration is about 9,500 ppm, and the equivalent uncontrolled mass emission rate is about 1.5 lb TRS/ton of air dried pulp (TADP). In addition, steam is dissipated in the "hot" blow. The NSPS for a digester system is 5 ppm, which is achievable by incineration of the noncondensable gases.

The concentration format was selected over the mass per unit of production format, lb TRS/TADP, because the concentration rate is obtained directly from the reference test method and the continuous monitor. The mass format, which is the most common format used by the industry, would require the control agency to obtain a measurement of the equivalent pulp production rate. The mass format would prevent circumvention of the standard by the addition of dilution air or the use of excessive amount of air in process operation. However, the selection of the concentration format was appropriate because incineration is the only control option capable of providing high efficiency TRS reduction and will achieve 5 ppm TRS regardless of the process air flow. The equivalent mass rate for the 5 ppm concentration standard, in terms of lbs TRS/TADP, will depend on the air volume from the particular digester system. Available data indicate that the air flow can vary from digester to digester. Based on the calculated average flow rate for a typical batch digester system presented in the document entitled "Kraft Pulping: Control of TRS Emissions from Existing Mills" (EPA-450/2-78-003b), the equivalent mass emission of the 5 ppm TRS standard would be 0.01 lb/TADP.

No emission test data for a complete DHS such as the one planned by O-I are available to quantify the system's emissions. This is because the O-I system will be the first complete system installed in a U.S. kraft pulp mill. However, the O-I report presents data from a partial DHS at a kraft mill in the Southeastern U.S. This partial system had higher blow temperatures and exhaust gas rates than would be encountered with the O-I systems which would increase emissions above levels that would be expected from a complete DHS. Emission tests from seven cooks indicate that the digester with the partial DHS had an average uncontrolled TRS emission concentration of 460 ppm. While this concentration is a factor of 92 above the NSPS limit, the equivalent uncontrolled mass emission rate of 0.03 lb/TADP for the partial DHS would be only a factor of three above the NSPS limit expressed on a mass emission basis. These test data indicate that the partial DHS achieved a TRS emission reduction of 98 percent over the typical uncontrolled rate of 1.5 lb/TADP, compared to a 99.3 percent reduction resulting from the NSPS. the O-I report indicates that the DHS vendor guarantees that the planned digester system will achieve an emission rate of 0.02 lb/TADP, or about a 99 percent TRS emission reduction. Moreover, O-I will optimize the system as necessary to achieve the mass equivalent of the NSPS by lowering the blow temperatures and exhaust gas rates. Based on discussions with O-I, it is the Agency judgment that this optimization will reduce the TRS emissions to the mass equivalent (0.01 lb/TADP) of the NSPS.

Testing of the digester with the partial DHS also included collection of black liquor samples from the digester during five cooks. These samples were collected to provide an indication of the extent to which TRS emissions are displaced from digester exhaust gases to the multiple effect evaporator exhaust gases or condensate. Evaporating the samples under laboratory conditions simulated condensates that would be generated in the multiple effect evaporator. Analysis of the simulated condensates indicates an average increase of biological oxygen demand (BOD) beyond levels found in evaporator condensate from conventional batch digester cooks of about 3.2 lb BOD/TADP. This represents a 60 percent increase in evaporator condensate BOD. This analysis suggests that TRS emissions from digesters with DHS may be displaced to evaporator condensate and exhaust gases. O-I expects that the BOD content of the overall mill effluent will be reduced, or be at least the same, by the use of the DHS because the displacement feature of the system will result in a corresponding reduction in the BOD content of the effluent from the present pulp washing system. The displacement stage can be considered as a stage of the mill's pulp washing system. This expectation needs verification upon installation but it is the Agency judgment that it would equal any increase in BOD in the evaporator condensate.

O-I also submitted confidential information on the capital costs of the planned digester displacement heating system. While information on annualized costs was not provided and cannot be obtained from other sources, annualized costs are expected to consists primarily of capital recovery charges. Based on the O-I cost information, it is evident that the capital costs of the DHS are more than capital costs for incineration control of conventional batch digester TRS emissions. However, in addition to DHS capital costs, there are energy savings associated with shutting down the oil-fired boiler of more than $500,000 annually (assuming $1.10/gal. of oil). Thus, it can be concluded that the overall cost impact of the DHS would be a significant annualized cost saving.

Conclusion

Based on an analysis of the information contained in the O-I report, the Administrator has determined that the DHS has not been adequately demonstrated and that there is a substantial likelihood that the DHS system will achieve greater continuous emission reduction than that required to be achieved under the standard of performance which would otherwise apply, or achieve at least an equivalent reduction at lower costs in terms of energy, economic, or nonair quality environmental impact. However, the emission reduction achieved will not be sufficient to achieve the NSPS of 5 ppm TRS but there is substantial likelihood that the emission reduction will achieve an equivalent TRS mass level to that achieved by the NSPS. As discussed earlier, there will be substantial reductions in particulate matter, SO_2, and NO_x emissions resulting from shutting down one 200 million Btu/hr oil-fired boiler. Moreover, this emission reduction will be achieved at a significantly lower cost than that of the conventional batch digester, considering

both energy and economic impacts. While there may be some interim displacement of some TRS emissions from the digester and DHS to the mill's multiple effect evaporators, the granting of the waiver will be contingent upon O–I preventing an increase in TRS emissions from the multiple effect evaporator system beyond the present emission level. Therefore, there will be a net improvement in ambient air quality as a result of granting the requested waiver and no risk to public health or welfare. Therefore, the Administrator proposes to grant, subjects to compliance with the conditions outlined below and to the concurrence of the Governor of Georgia, an innovative technology waiver for the construction and operation of a new digester and displacement heating system at the O–I Valdosta, Georgia, kraft pulp mill. Since with optimizing of the exhaust rate and temperature from the DHS, it is believed capable of acheving the NSPS on a mass equivalent basis, the Administrator, in order to grant such a waiver, proposes to amend the standard of performance for the digester system to provide an equivalent mass TRS standard which reflects the mass level achieved by the best system of emission reduction which is incineration.

The waiver will cover the new batch digester system and the multiple-effect evaporator system. Since the TRS emissions from the multiple-effect evaporation system may temporarily increase due to the DHS, the waiver will require that O–I prevent any increases in the TRS emissions above existing levels. Furthermore, since the fixed capital cost of the new components for each of the existing nine batch digesters does not exceed 50 percent of the fixed capital cost of the entire new digester system, the existing nine digesters will not become subject to the NSPS.

The waiver will cover a period of 2 years from the startup date (fall 1984) of the No. 10 digester. O–I has an agreement with the vendor to achieve the guarantees of the DHS within 1 year. Since the guaranteed TRS is above the NSPS, O–I will need additional time to optimize the DHS to achieve the mass equivalent of the NSPS.

The Administrator has considered the possibility that, if the DHS is applied to other mills in the future, the TRS emission reduction attributed to the innovative system may be achieved by displacement of the TRS emissions from the digester system to the multiple effect evaporator system. However, in new installations there will be no displacement of TRS emissions because the evaporator system is an affected facility with an NSPS of 5 ppm. Furthermore, since TRS has been designated a non-criteria pollutant, section 111(d) of the Act requires the States to develop standards for existing affected facilities. Therefore, the Administrator will consider the DHS system adequately demonstrated if it achieves the mass NSPS of 0.01 lb/TADP.

Proposed Waiver

The waiver is propose to be granted under the following general conditions. The waiver will cover only the No. 10 batch digester. Reports of progress on the performance of the displacement heating system must be made to EPA within 60 days of startup and at least once each 6 month period. Tests will be conducted prior to and after the digester modifications for TRS emissions and air flow rates on all vents to the atmosphere from the No. 10 digester system, the multiple effect evaporator system, and at the existing batch digester system. In addition, tests will be performed to determine the BOD content of the effluents from the multiple effect evaporator system, the brown stock washing system, and the mill prior to and after the digester modifications. The digester standard of performance must be achieved as soon as possible. The waiver will not exceed a period of 2 years from the startup date of the No. 10 digester nor will it go beyond December 31, 1986.

The company is required, consistent with section 173 of the Clean Air Act, to obtain a permit to operate from the State. The permit will assure that the mill granted the waiver will not prevent attainment and maintenance of any national abient air quality standard. The condition of the proposed waiver would also require proper operation of the displacement hearing system.

By virtue of section 111(j)(1)(B) of the Act, 42 U.S.C. 7411(j)(1)(B), the terms and conditions of Section 111(j) waiver would be federally promulgated standards of performance legally applicable during the waiver period. Violations of the terms and conditions of the section 111(j) waiver would subject the owner and operator of the mill granted a waiver to Federal enforcement under section 113 (b) and (c), 42 U.S.C. 7413 (b) and (c), and 120, 42 U.S.C. 7420 of the Act, as well as possible citizen enforcement under section 304 of the Act, 42 U.S.C. 7604.

State Concurrence

Pursuant to section 111(j)(1)(A) of the Act, 42 U.S.C. 7411(j)(1)(A), if after review and consideration of comments submitted in response to this rulemaking, the Administrator decides to issue a waiver to the Federal NSPS to the O–I Valdosta, Georgia mill, the Administrator shall request the concurrence of the Governor of the State of Georgia. Receipt of such concurrence is a prerequisite for a waiver under section 111(j) of the Act.

Docket

The docket for the proposed waiver is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and located documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated waiver of EPA's responses to significant comments, the contents of the docket will serve as the record in case of judicial review except for interagency review material [section 307(d)(A)].

Miscellaneous

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information".

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291. This proposed rule was submitted to OMB for review under E.O. 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fixed steam generators, Sulfuric acid plants,

Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation; Synthetic fibers.

Dated: August 27, 1984.

Alvin L. Alm,

Deputy Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Title 40 Part 60, Subpart BB of the Code of Federal Regulations is proposed to be amended to read as follows:

§ 60.283 [Amended]

1. In § 60.283, paragraph (a)(1) is amended by adding paragraph (vi) to read as follows:

(vi) The uncontrolled exhaust gases from a new, modified, or reconstructed digester system contain TRS less than 0.005 g/kg ADP (0.01 lb/ton ADP).

2. Section 60.286 is added to read as follows:

§ 60.286 Innovative technology waiver.

(a) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), the No. 10 batch digester at O–1 Valdosta kraft pulp mill in Clyattville, Georgia, shall comply with the following conditions:

(1) O–I shall obtain the necessary permits as required by section 173 of the Clean Air Act, as amended August 1977, to operate the No. 10 batch digester at the Valdosta mill.

(2) Commencing on ———— [date of promulgation in **Federal Register**] and continuing for 2 years or to December 31, 1986, or until the displacement heating system that can achieve the standard specified in 40 CFR 60.283 is demonstrated to the Administrator's satisfaction, whichever comes first, O–I shall limit the discharge of TRS emissions to the atmosphere:

(i) From the No. 10 batch digester at the Valdosta mill to 0.02 lb. of TRS per ton of air-dried pulp.

(ii) From the existing multiple-effect evaporators at the Valdosta mill to the TRS level existing prior to the modifications.

(3) Commencing the day after the expiration of the period described in (a)(2) of this section, and continuing thereafter, emissions of TRS from the No. 10 batch digester shall not exceed the TRS level of 0.005 g/kg ADP (0.01 lb/ton ADP) as specified in 40 CFR 60.283.

(4) The No. 10 batch digester system shall comply with the provisions of § 60.284 and § 60.285.

(5) A technology development report shall be sent to EPA, Emission Standards and Engineering Division (MD–13), Research Triangle Park, North Carolina 27711 and EPA Region IV, 345 Courtland, NE, Atlanta, Georgia 30365, postmarked before 60 days after the promulgation of this waiver and every 6 months thereafter while this waiver is in effect. The technology development report shall summarize the displacement heating system work including the results of tests of the various emission points being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.283 based on the most current information.

(b) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for O–I to operate the No. 10 batch digester or the multiple-effect evaporators in violation of the requirements established in this waiver. Violations of the terms and conditions of this waiver shall subject O–I to enforcement under section 113 (b) and (c), 42 U.S.C. 7412 (b) and (c), and section 120, 42 U.S.C. 7420, of the Act as well as possible citizen enforcement under section 304 of the Act, 42 U.S.C. 7604.

§ 60.285 [Amended]

3. In § 60.285, paragraph (d) is amended by adding a new paragraph (5) to read as follows:

(5) When determining compliance with § 60.283(a)(1)(vi), use the results of Method 2, Method 16, and the pulp production rate in the equation specified in § 60.285(d)(3), except substitute the pulp production rate (PPR) [(kg/hr (tons/hr)] for the black liquor solids feed rate (BLS).

(Secs. 111 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7411 and 7601(a))

[FR Doc. 84–23421 Filed 9–5–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF DEFENSE

48 CFR Part 230

Federal Acquisition Regulations System; Availability and Request for Comment on Proposed Implementation Plan for Maintenance of Cost Accounting Standards

AGENCY: Department of Defense (DoD).

ACTION: Notice of availability and request for comment, proposed implementation plan for maintenance of Cost Accounting Standards.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has developed a proposed implementation plan for the maintenance and promulgation of Cost Accounting Standards Rules and Regulations. This implementation plan will be the basic structure for incorporating the maintenance and promulgation of Cost Accounting Standards into the Federal Acquisition Regulations System.

DATE: Any comments on the proposed implementation plan must be received by the DAR Council no later than October 1, 1984.

ADDRESS: Interested parties may contact the following to obtain copies of the proposed implementation plan and to submit comments: Defense Acquisition Regulatory Council, ATTN: Executive Secretary OUSDRE(AM)DARS, c/o 3D139, Pentagon, Washington, D.C. 20301–3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7267.

SUPPLEMENTARY INFORMATION: The Defense Acquisition Regulatory (DAR) Council has developed a proposed implementation plan for the maintenance and promulgation of Cost Accounting Standards Rules and Regulations. Basically, the DAR Council intends to use the existing DAR Subcommittee structure with the addition of a proposed new Cost Accounting Standards (CAS) Policy Group. This Policy Group would provide suggested coverage to the DAR Council regarding revisions/changes to present Standards, proposed new Standards, and waivers of, and exceptions from existing Standards. The CAS Policy Group will consist of voting members from Army, Navy, Air Force, DLA and NASA. Designated consultants from GSA, DCAA, the OSD (Comptroller) and OUSDRE(AM) Cost, Pricing and Finance will participate. The DAR Council will consider additional consultants, when requested, on a case-by-case basis. The new Policy Group will be augmented with public advisors from the professional accounting and academic communities on an as needed and as required basis.

List of Subjects in 48 CFR Part 230

Government procurement.

Dated: August 30, 1984.

James T. Brannan,

Director, DAR Council.

Patricia H. Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84–23499 Filed 9–5–84; 8:45 am]

BILLING CODE 3810–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 507

[GSAR Notice No. 5-7]

Acquisition Planning

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to Part 507, Acquisition Planning, of the General Services Administration Acquisition Regulation (GSAR). The proposed change will implement and supplement FAR Subpart 7.1 and prescribe policies and procedures for acquisition planning. The policies and procedures will be applicable to all elements of GSA with respect to the acquisition of personal property, nonpersonal service (including construction) and to leases of real property. The intended effect is to provide policies and procedures to be followed in the acquisition planning process.

DATES: Comments are due in writing not later than October 18, 1984.

ADDRESS: Requests for a copy of the proposal or your comments should be addressed to Ms. Carol A. Farrell, Office of GAS Acquisition Policy and Regulations, Office of Acquisition Policy, 18th & F Sts., NW., Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Harry Rosinski, Office of GSA Acquisition Policy and Regulations, (202) 523-4768.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Service 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 Part 507

Government procurement.

Dated: August 27, 1984.

Richard H. Hopf III,

Director, GSA Acquisition Policy and Regulations.

[FR Doc. 84-23516 Filed 9-5-84; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register
Vol. 49, No. 174
Thursday, September 6, 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

Office of the Secretary

Review of the United States Sugar Import Quota System

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice reviews the U.S. sugar import quota system established by Presidential Proclamation 4941 of May 5, 1982. (47 FR 19661.)

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447-2916.

SUPPLEMENTARY INFORMATION:

I. Introduction

In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS), the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies on the operation of the sugar import quota system established under the authority of Headnotes 2 and 3 of subpart A of part 10 of schedule 1 of the TSUS, the International Sugar Agreement, 1977, Implementation Act, and Section 201 of the Trade Expansion Act of 1962. After reviewing the operation of the sugar import quota system, the Secretary of Agriculture has determined that the system should be continued in effect in order to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT). The rationale for this decision is based on the following analysis.

A. Current World and U.S. Sugar Market Situation

A fundamental imblance between world sugar supplies and demand continued during 1983/84. World output of centrifugal sugar in 1983/84 is estimated at 95.7 million metric tons, while consumption is projected at around 94.7 million metric tons. Ending stocks should decline slightly, to 44.4 million metric tons, but still constitute a price depressing 46 percent of consumption. U.S. centrifugal sugar production is estimated at 5.6 million short tons (5.1 million metric tons), and domestic utilization is expected to be 8.67 million short tons (7.86 million metric tons).

During the period September 26, 1983 through August 17, 1984, 2.73 million short tons were charged against the quotas for the 39 countries which have allocations totalling 3,173,150 short tons. The domestic price of raw sugar (c.i.f., duty and fee paid, No. 12 contract as published by the New York Coffee, Sugar and Cocoa Exchange) averaged 21.85 cents per pound for the first eleven months of the quota year. The world price (f.o.b.s., Caribbean, No. 11 contract as published by the New York Coffee, Sugar and Cocoa Exchange) has dropped since the beginning of the 1983/84 quota year to its lowest level since 1970.

B. Outlook for World and U.S. Sugar Market

After the slight drawdown in stocks in 1983/84, world contrifugal sugar production will exceed consumption in 1984/85, leading to a further increase in stocks. Prospects for 1984/85 world contrifugal sugar production point to an increase in putput to around 99.8 million metric tons and an increase in global consumption to around 97.3 million metric tons. 1984/85 ending stocks are expected to increase to a record 46.9 million metic tons, or about 48 percent of consumption. Large world sugar stocks are having an extremely depressing effect on prices. This is reflected in world sugar futures prices which currently range between 4 cents per pound for countracts due in September 1984 and 6 cents per pound for contracts due to mature in September 1985.

Given these factors, we anticipate that world prices will remain at levels that make it impossible to achieve, even after accounting for duties and fees on imported sugar, market conditions that give due consideration to the interests of domestic producers in the U.S. sugar market.

II. Modification of Quota

Paragraph (d) of Headnote 3 authorizes the Secretary, after appropriate consultations, to amend the quantitative limitations established by paragraph (c) if he determines that such amendments are appropriate to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Accordingly, on March 15, 1984, after appropriate consultations, the Secretary announced an increase of 100,000 short tons, raw value, in the total base sugar import quota. This raised the base quota for the period September 26, 1983 through September 30, 1984 from 2,950,000 short tons, raw value, to 3,050,000 short tons, raw value. The increase was effective on April 5, 1984 and was designed to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT. The U.S. Trade Representative gave notice, effective April 4, 1984, that 92,000 tons of the increase would be allocated according to paragraph (c) of Headnote 3, with the remaining 8,000 tons distributed to Malawi in order to remedy an original miscalculation of quota percentage over the life of the quota program.

Notice

In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that the continued operation of paragraphs (b), (c), (d) and (e) of Headnote 3 give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT, and that paragraph (g) of that headnote, which would allow for entry of sugar into the United States not to exceed 6.90 million short tons, would not give due consideration to such interests.

Signed at Washington, D.C. on August 31, 1984.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 84-23598 Filed 8-31-84; 4:54 pm]

BILLING CODE 3410-10-M

Forms Under Review by Office of Management and Budget

August 31, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Federal Grain Inspection Service
Reporting and Recordkeeping Requirement (USGSA and AMA of '46)
CP-357 and FGIS 922
Recordkeeping; Monthly
State or local governments; Businesses or other for-profit; 2,707 responses; 8,938 hours; not applicable under 3504(h)
Lewis Lebakken, Jr. (202) 382-1738

• Rural Electrification Administration
Loans for Telephone System Improvements and Extensions
REA 490, 491, 494, 495, and 569
On occasion
Small businesses or organization; 2500 responses; 4,950 hours; not applicable under 3504(h)
John N. Rose (202) 382-8532

Extension

• Animal and Plant Health Inspection Service
Record of Acquisition, Disposition, or Transport of Animals and Continuation Sheet
VS Form 18-20 and VS Form 18-20A Continuation Sheet
Recordkeeping
Businesses or other for-profit; Small businesses or organizations; 4,800 responses; 8,160 hours; not applicable under 3504(h)
Dr. W. C. Stewart (301) 436-7833

• Food and Nutrition Service
Child Care Food Program Regulations (Part 226) and Related Forms
FNS 341, 342, 343, 344, 345, 345-1, 430, 431, 433 and 82
Monthly, Annually, As needed
State and local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; 356,187 responses; 1,074,447 hours; not applicable under 3504(h)
Albert V. Perna (703) 756-3600

Jane A. Benoit,

Acting Department Clearance Officer.

[FR Doc. 84-23575 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Toiyabe National Forest Grazing Advisory Board; Meeting

The Toiyabe National Forest Grazing Advisory Board will meet on October 17, 1984, at 10:00 a.m. in the Lander County Courthouse, Austin, Nevada.

The meeting will be open to the public.

The purpose of the meeting is to discuss:

1. Allotment Management Planning.
2. Utilization of Range Betterment Fund.

James A. Lawrence,

Deputy Forest Supervisor.

[FR Doc. 84-23538 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-11-M

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Final Rate Base Determination

Issued: August 30, 1984.

AGENCY: Office of the Federal Inspector (OFI) for the Alaska Natural Gas Transportation System.

ACTION: Final Determination.

FOR FURTHER INFORMATION CONTACT: J. Richard Berman (202) 275-1100.

SUPPLEMENTARY INFORMATION: The Federal Inspector has issued a Final Determination on the expenditures incurred by Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest) and the Cooperative Agreement for Design and Engineering of Alaskan Gas Pipeline and Conditioning Plant (Cooperative Agreement) related to the Alaskan segment of the Alaska Natural Gas Transportation System (ANGTS) during the period October 1, 1981 through June 30, 1983. The Final Determination affirms a Tentative Determination issued by the Office of Audit and Cost Analysis on April 27, 1984.

This is a final OFI action under section 202(a) of Reorganization Plan No. 1 of 1979.

Dated: August 31, 1984.

John T. Rhett,

Federal Inspector.

[FR Doc. 84-23562 Filed 9-5-84; 8:45 am]

BILLING CODE 6119-01-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Architectural and Transportation Barriers Compliance Board; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 1:00 PM to 5:00 PM, Tuesday, September 11, 1984, to take place in the Hubert Humphrey Building, Rooms 503A-529A, 200 Independence Avenue, SW, Washington, D.C. Please note the change in location from previous ATBCB meetings.

Items on the agenda: showing of video tape regarding attitudinal barriers toward disabled people; discussion of ATBCB research and technical assistance program (a portion of this

agenda item may be closed to non-federal employees due to the possibility of future contracting); approval of the ATBCB FY 1986 budget request to OMB; approval of proposed compliance regulation and notice of existing standards concerning the accessibility of public conveyances; proposed ATBCB regulation for implementation of the Privacy Act of 1974; proposed change of the ATBCB Statement of Organization and Procedures to hold four meetings per year instead of six; a resolution from the American Coalition of Citizens with Disabilities (ACCD) calling for legislation to authorize the Board to enforce nondiscrimination on the basis of handicap with respect to air transportation.

DATE: September 11, 1984—1:00 PM–5:00 PM.

ADDRESS: Hubert Humphrey Building, Rooms 503A–529A, 200 Independence Avenue, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245–1591 (voice or TDD)

Committee meetings of the ATBCB will be held on Monday, September 10, in the Hubert Humphrey Building, 200 Independence Avenue, SW, and the HHS North Building, 330 Independence Avenue, SW, Washington, D.C.

Robert M. Johnson,

Executive Director.

[FR Doc. 84-23552 Filed 9-5-84; 8:45 am]

BILLING CODE 6820-BP-M

CIVIL AERONAUTICS BOARD

Exemptions for Air Taxi Operators

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval to extend the collection of air carrier traffic data on CAB Form 298–C "Report of Scheduled Passenger Operations of Commuter Air Carriers." OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: August 30, 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.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell, (202) 673–5922

How Often the Collection of Information Must Be Filed: Quarterly

Who is Asked or Required to Report: Commuter Air Carriers

Estimate of Number of Annual Responses: 740

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 5,180

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23631 Filed 9-5-84; 8:45 am]

BILLING CODE 6320-01-M

Uniform System of Accounts and Reports for Certificated Air Carriers; Report of Financial and Operating Statistics for Certificated Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of CAB Form 41, "Report of Financial and Operating Statistics for Certificated Air Carriers," filed pursuant to Part 241 of the Board's Economic Regulations. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr., Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, DC 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922.

How Often the Collection of Information Must Be Filed: Monthly, Quarterly, Semiannually and Annually.

Who is Asked or Required to Report: U.S. Certificated Air Carriers.

Estimate of Number of Annual Responses: 10,840.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 43,257.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23632 Filed 9-5-84; 8:45 am]

BILLING CODE 6320-01-M

Uniform System of Accounts and Reports for Certificated Air Carriers; Service Segment Data

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of the collection of service segment data filed pursuant to section 19–3 of Part 241 of the Board's Economic Regulations. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr., Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, DC 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922.

How Often the Collection of Information Must Be Filed: Monthly.

Who is Asked or Required to Report: U.S. Certificated Air Carriers.

Estimate of Number of Annual Responses: 540

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 27,000.

Phyllis T. Kaylor.

Secretary.

[FR Doc. 84-23633 Filed 9-5-84; 8:45 am]

BILLING CODE 6320-01-M

Uniform System of Accounts and Reports for Certificated Air Carriers; Passenger Origin-Destination Survey

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed collection of information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of CAB Form 2787, "Passenger Origin-Destination Survey Report," (O&D) filed pursuant to section 19–7 of Part 241 of the Board's Economic Regulations. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus, Data Requirements Section, Information Management Division, Office of Comptroller, Civil

Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, DC 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673-5922.

How Often the Collection of Information Must Be Filed: Quarterly.

Who is Asked or Required to Report: U.S. Certificated Air Carriers.

Estimate of Number of Annual Responses: 180.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 70,200.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23634 Filed 9-5-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42185]

Jetpass Airlines Fitness Investigation; Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to be held on September 4, 1984, will be held on Wednesday, September 5, 1984, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., NW, Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., August 31, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-23635 Filed 9-5-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness; Meeting

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of Meetings.

SUMMARY: This notice announces the forthcoming meetings of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and Place

September 17, 1984, 10:00 a.m.-3:00 p.m., the Capital Resources Committee will meet at the Data Resources, Inc., 24 Hartwell Avenue, Lexington, Massachusetts 02173. The agenda will include a presentation by Data Resources, Inc. on causes and effects of the high U.S. dollar and a discussion of the draft report to be submitted to the full President's Commission on Industrial Competitiveness in October.

September 18, 1984, 9:30 a.m.-4:00, the Research, Development and Manufacturing Committee will meet at AT&T, 1120-20th Street, NW., 10th floor, Washington, DC 20036. The agenda will include continued discussion of research, development and manufacturing issues to identify final recommendations.

September 18, 1984, 9:00 a.m.-5:00 p.m., the International Trade Committee will meet at the Sheraton International, 6810 N. Manneheim Road, Rosemont, Illinois 60018. The agenda will include discussion of recommendations concerning export control, antitrust and the trading environment.

September 19, 1984, 9:00 a.m.-5:00 p.m., the Human Resource Committee will meet at the Overhead Door Corporation, 6750 L.B.J. Freeway, Dallas, Texas 75380. The agenda will include a discussion on government/industry/labor collaboration and retraining the workforce and discussion of the overview paper.

Public Participation

The meetings will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone: 202-395-4527.

Dated: August 31, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84-23556 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-18-M

International Trade Administration

[A-475-404]

Tubular Metal Framed Stacking Chairs from Italy: Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether tubular metal framed stacking chairs (stacking chairs) from Italy are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 24, 1984, and we will make ours on or before January 17, 1985.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Ken Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-2613.

SUPPLEMENTARY INFORMATION:

The Petition

On August 10, 1984, we received a petition in proper form filed on behalf of Frazier Engineering, Inc., and the United States industry producing stacking chairs. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that the imports of the subject merchandise from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner based U.S. sales prices on f.o.b. Italian quotes from Italian stacking chair producers, less ocean freight and import duty.

The petitioner based foreign market value on its own costs of production adjusted for differences in estimated Italian input costs.

Using this comparison, petitioner alleged dumping margins ranging from 23 to 40 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a

petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on stacking chairs, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether stacking chairs from Italy are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 17, 1985.

Scope of Investigation

The products covered by this investigation are "tubular metal framed stacking chairs", including stacking chairs with plastic slats or expanded metal mesh instead of wire grid, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item 727.7065.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 24, 1984, whether there is a reasonable indication that imports of stacking chairs from Italy are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 30, 1984.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23609 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-402]

Tubular Metal Framed Stacking Chairs From Taiwan: Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether tubular metal framed stacking chairs (stacking chairs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 24, 1984, and we will make ours on or before January 17, 1985.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Ken Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-2613.

SUPPLEMENTARY INFORMATION:

The Petition

On August 10, 1984, we received a petition in proper form filed on behalf of Frazier Engineering, Inc., and the United States industry producing stacking chairs. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that the imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner based U.S. sales prices on f.o.b. Taiwan quotes from Taiwan stacking chair producers, less ocean freight and import duty.

The petitioner based foreign market value on its own costs of production adjusted for differences in estimated Taiwan input costs, discounted to reflect the lighter gauge tubing and shorter arms used in Taiwan stacking chairs, and the possible use of less expensive coatings.

Using this comparison, petitioner alleged dumping margins ranging from 32 to 48 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on stacking chairs, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether stacking chairs from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 17, 1985.

Scope of Investigation

The products covered by this investigation are "tubular metal framed stacking chairs", including stacking chairs with plastic slats or expanded metal mesh instead of wire grid, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item 727.7065.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 24, 1984, whether there is a reasonable indication that imports of stacking chairs from Taiwan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 30, 1984.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23610 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-DS-M

Applications; for Duty-Free Entry of Scientific Instruments; Carnegie Institute of Washington, et al.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-236. Applicant: Carnegie Institution of Washington, Department of Terrestrial Magnetism, 5241 Broad Branch Road, NW., Washington, DC 20015. Instrument: Mass Spectrometer, Model VG MM354 with Accessories. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended use: Isotopic analysis of a wide variety of elements extracted from geologic specimens, including meteorites and lunar rocks, for the purpose of research in the fields of geochronology, geochemistry, isotope geology, cosmochronology, cosmochemistry, and astrophysics. Materials to be analysed will be individual elements, such as salts, chemically isolated from natural rock and mineral samples. Experiments to be conducted on the instrument include, but are not limited to:

1. Geochronological studies using Rb-Sr, Sm-Nd, Lu-Hf, and U-Th-Pb radioactive systems on rocks from southern Africa, Canada, India, and the U.S.A.

2. Isotope geological studies using Sr, Nd, Hf, and Pb isotopic systematics coupled with major and trace element determinations for recent volcanic rocks from island arcs, oceanic islands, mid-ocean ridges, and continental regions world wide.

3. Chronological studies of chondritic and differentiated meteorites and lunar rocks.

4. Search for isotopic anomalies in Mg, Ca, Ti, Cr, Sm, and Nd in meteoritic materials.

5. $^{230}Th/^{232}Th$ and $^{234}U^{238}U$ measurements as a means of dating recent geologic events.

Application received by Commissioner of Customs: June 25, 1984.

Docket No. 84-238. Applicant: Institute for Cancer Research, 7701 Burholme Avenue, Philadelphia, PA 1911. Instrument: X-ray Rotating Anode Generator with Accessories. Manufacturer: Rigaku Corporation, Japan. Intended use: Studies of various enzymes such as xylose isomerase and ATP citrate lyase. Nucleic acid-drug complexes, polycyclic carcinogens and mutagens and polycyclic antitumor agents will also be investigated. The experiments to be conducted will be X-ray diffraction studies using crystals of the molecules of interest. The aim of the investigations is to increase the understanding of the stereochemistries and modes of intermolecular interactions in certain key reactions of biological importance. Application received by Commissioner of Customs: August 6, 1984.

Docket No.: 84-241. Applicant: The Veterans Administration Medical Center, 5000 W. National Avenue, Wood, WI 53193. Instrument: Rotating anode X-Ray generator System, Model RU-200VP. Manufacturer: Rigaku, Japan. Intended use: X-ray crystallographic investigations, specifically analysis of crystal-containing Veteran patient and research samples derived or synthesized in VA and NIH research programs. The research samples are related to crystals which induce human diseases such as gout arthritis, calcium pyrophosphate dihydrate crystal deposition arthritis, hydroxyapatite crystal deposition arthritis, calcium oxalate induced arthritis, kidney stone disease, and pulmonary diseases such as silicosis and asbestosis. The scientific data obtained with the instrument will be presented in numerous course. These courses will include: Medical Biochemistry, Introduction to Biophysics, The Physical Chemistry of Biologic Macromolecules and numerous Medical Grand Rounds. Application received by Commissioner of Customs: June 25, 1984.

Docket No. 84-254. Applicant: Northwestern University Medical School, Department of Pharmacology, Room 8-477, 303 E. Chicago Avenue, Chicago, IL 60611. Instrument: Micromanipulator and Microdrive, Models MK-2-R and MO-103-R. Manufacturer: Narishige Scientific Instruments Laboratory, Japan. Intended use: Perform experiments that have long term objectives of understanding the nature of channel grating, ion permeation, and the molecular mechanisms by which drugs and blocking ions interact with the sodium and potassium channels in nerve tissue. To achieve these objectives, recently developed gigaseal patch clamp techniques will be used which permit direct measurement of individual channel current, along with the suction pipette technique which permits measurement of macroscopic channel currents. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84-255. Applicant: The Regents of the University of California, Materiel Management Department, Riverside, CA 92521. Instrument: Root Length Scanner. Manufacturer: Commonwealth Aircraft Corporation, Ltd., Australia. Intended use: Numerous experiments conducted with sugarbeets, beans, cotton, tomatoes and other annual crops—some with nematodes, some with soil fungi and some healthy. The objectives of these experiments are to better define the relationship between solid populations of plant pathogenic nematodes and plant growth. Educational purposes—Introduce students to advanced level study in nematology as well as new techniques/instrumentation in the course Nematology 250. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84-257. Applicant: Yale University, Department of Chemistry, P.O. Box 6666, New Haven, CT 06511. Instrument: Gas Chromatograph Mass Spectrometer System, Model MS-80. Manufacturer: Kratos Scientific Instruments, United Kingdom. Intended use: Study of materials from several areas of chemical and biochemical research, including newly synthesized compounds, reaction byproducts, and natural product isolated from various sources. Chemists involved in synthesis of various types of compounds will use mass spectral data to confirm the identities of final products and of intermediates produced at various stages of the synthesis process. Mass spectral data will be used to identify unknown compounds which may be present as reaction byproducts, primary products of new reactions, and impurities in reagents and synthetic products. Researchers in the areas of biological, analytical, and natural products chemistry will use mass spectroscopy to assign structures to compounds found in very small quantities, often in very complex mixtures. Researchers concerned with the chemical and physical properties of

compounds will use mass spectroscopy as a tool for determining those properties. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84–258. Applicant: Los Alamos National Laboratory, P.O. Box 1663, Los Alamos, NM 87545. Instrument: Laboratory Interferometric Spectrophotometer, Model IZMO5. Manufacturer: Bomem, Inc., Canada. Intended use: Continued studies of the guest-host interactions for molecules trapped in low concentration (0.1 to 0.001 mole per cent) in low temperature solids. Results of these studies have yielded some very important information on the site structure of these molecules in the host lattice and on a dynamic energy transfer induced by vibrational dephasing involving a local site phonon mode (a libration of the guest molecule in its host lattice cage). Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84–259. Applicant: Los Alamos National Laboratory, P.O. Box 1663, Los Alamos, NM, 87545. Instrument: Laser System. Manufacturer: Lumonics, Inc., Canada. Intended use: Study of laser produced plasmas, x-ray emission from such plasmas, fast temporal characteristics of the x-ray emission and resolution and timing features of x-ray streak image-converter tubes used to observe the x-ray emission. Laser will be used to drive a laser amplifier chain with high energy stability (7 percent), pulse reliability (98 percent) and short (100 ps) pulse lengths. The laser pulses will be used to heat heavy metal foils generating a plasma and x-rays. This source will be used to calibrate fast x-ray detectors and will be studied for its own characteristics. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84–261. Applicant: Arizona State University, Tempe, AZ 85287. Instrument: Electron Microscope, Model JEM–4000EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: The advancement and further application of the techniques of high resolution imaging, particularly of crystals. Other materials to be studied include many metals, alloys, semiconductors and ceramics. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84–263. Applicant: Brown University, 182 Hope Street, Providence, RI 02912. Instrument: Electron Microscope, Model EM 420 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used to obtain images, diffraction information and elemental composition analysis on a wide range of materials, including metals and alloys, ceramics, composites, semiconductors and polymers. This information concerning the chemistry and microstructure of materials will be used to understand the behavior of these materials on a basic scientific level. Specific projects include (i) studies of the relationship of chemistry and microstructure of metals and mechanical behavior, e.g., plastic deformation and fracture; (ii) studies of the effects of chemistry and thermal history on the microstructure and physical properties of ceramics, (iii) correlations of microstructure and electronic properties in metallic glasses; and (iv) analysis of the chemistry and structure of very fine precipitates in alloys and ceramics. Application received by Commissioner of Customs: August 3, 1984.

Docket No. 84–264. Applicant: University of Arizona, Department of Biochemistry/Biological Sciences West, Tucson, AZ 85721. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Studies of the following materials:

DNA from bacteriophage
DNA helix destabilizing protein from T4 bacteriophage
DNA helix destabilizing protein from E. coli
RecA protein from E. coli
Crotoxin complex protein from rattlesnake venom
Tetanus toxin from bacterial cell
Antibody protein from rabbit serum
Lysozyme protein from fungus
Muscle proteins from insect

High resolution images and diffraction patterns will be recorded from these protein molecules at different tilt angles with the electron microscope. Application received by Commissioner of Customs: August 3, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–23607 Filed 9–5–84; 8:45 am]

BILLING CODE 3510–OS–M

Oregon State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–104. Applicant: Oregon State University, Corvallis, OR 97330. Instrument: Liquid Nitrogen Shielded Magnetometer, Model GM 400A with Accessories. Manufacturer: Cryogenic Consultants Ltd., United Kingdom. Intended Use: See notice at 49 FR 10323.

Comments: None received.

Decision: Denied. Instruments of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, are being manufactured in the United States.

Reasons: The National Bureau of Standards (NBS) advises in its memorandum dated April 23, 1984, that domestic instruments are available which meet the pertinent specifications given in the application and are therefore scientifically equivalent to the foreign instrument for the applicant's intended use. (See § 301.5(d)(1)(i) of the regulations.) Formal bids were extended to the applicant by two domestic manufacturers of comparable instruments (United Scientific Corporation and 2G Enterprises, both located in Mountain View, California).

As the applicant acknowledges, the specification of a liquid helium dewar capacity and design to allow continuous operation without refilling more than every seven days is related to cost and convenience and therefore not pertinent to determining scientific equivalency. Section 301.2(s) states that:

> Specifications or features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent.

The applicant's response to Question 8 (justification for duty-free entry) is almost entirely concerned with considerations such as the cost of liquid helium, its consumption rate (boil-off), its local non-availability, and the depleting effects of such costs on research funding. These considerations are not allowable under § 301.2(s).

The applicant states in the application that the foreign instrument provides an option for an automated sample handling system "to be purchased at a later date." Section 301.2(s) rules out "ease of operation" and "productivity" as pertinent considerations for determining scientific equivalency. Section 301.5(d)(1)(ii), in any event, states: "The Director shall not consider the planned purchase of additional accessories or the planned conversion of the article at some unspecified future time."

With regard to the applicant's statement that the foreign instrument provides a dedicated computer, we note that both domestic instruments are amendable to automatic data processing through appropriate interfacing.

We find, therefore, that magnetometers scientifically equivalent to the foriegn article for the applicant's purposes are being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-23608 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Modification To Letter of Exemption

Notice is hereby given that pursuant to section 101(a)(4) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and Special Condition 4 of the Letter of Exemption, the Letter of Exemption issued on February 7, 1984, to the New England groundfish gillnetters, is hereby modified as detailed below.

1. Condition 2 is deleted and replaced by:

"2. The taking by killing or serious injury of marine mammals is limited annually to:

"180 harbor porpoise (*Phocoena phocoena*), 50 harbor seals (*Phoca vitulina*) and a total of 50 marine mammals of the following species:

"Grey seal (*Halichoerus grypus*)
"White-sided dolphin (*Lagenorhynchus acutus*)
"Common dolphin (*Delphinus delphis*)
"White-beaked dolphin (*Lagenorhynchus albirostris*)
"Pilot whale (*Globicephala melaena*)"

The Letter of Exemption as modified and supporting documentation pertaining to the modification are available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Dated: August 31, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23604 Filed 9-6-84; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Proposed Modification to Permit No. 404 (P77 No. 6)

Notice is hereby given that the Southwest Fisheries Center, National Marine Fisheries Services, P.O. Box 271, La Jolla, California 92038, has requested a modification of Permit No. 404 issued on January 5, 1984 (48 FR 478) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to take by tagging, elephant seals on Santa Barbara Island, Channel Islands, California in addition to the locality described in the original application.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in the modification are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 30, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23612 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. , Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

The Department of Defense (DOD) has requested a three year extension for the use of the DD Form 1630 entitled "Research and Development Capability Index—Scientific and Technological Fields of Interest." This form enables a business firm to apply to be placed on the bidders' mailing list of those DOD contracting activities which procure Research and Development products and services. When completed, it also provides the contracting activities a profile of a firm's specific R&D capabilities and the information necessary to determine which firms should be solicited.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DOD Clearance Office, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from Stanley Tesko, OPI, Room 2A340, The Pentagon, Washington, D.C. 20301-3061, telephone (202) 697-4912.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-23496 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-01-M

National Advisory Panel on the Education of Handicapped Dependents; Meeting

AGENCY: Department of Defense Dependents Schools, Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice also describes the functions of the Panel. Notice of this meeting is required under the National Advisory Committee Act. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the ODS coordinator.

DATE: October 16, 1984, 9:00 a.m. to 4:00 p.m.; October 17, 1984, 9:00 a.m. to 4:00 p.m.; October 18, 1984, 9:00 a.m. to 4:00 p.m.

ADDRESS: Office of Dependents Schools (ODS), 2461 Eisenhower Avenue, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Goltz, Chief, Special Education, DODDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, (202/325–7810).

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under section 613 of the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401, Pub. L. 94–142). The Panel is directed to advise the Director, DODDS, of unmet needs within the system for the education of handicapped children, to comment publicly on rules and regulations proposed for issuance by ODS concerning education for the handicapped and on procedures for distribution of funds, and to assist ODS in developing and reporting all data and evaluation as may assist the Director in performance of her responsibilities under section 613 of Pub. L. 94–142. The Panel will review the following areas: related services, personnel development, program development, administration, budget, and communication.

Dated: August 30, 1984.

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23493 Filed 9–5–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Peacekeeper Contractor Monitoring Survey

Contractor data is required to verify Peacekeeper Final Environmental Impact Statement conclusions and validate associated assumptions, multipliers and proposed mitigation measures. The collected information will be incorporated in summary fashion into an annual *Monitoring Report* and early warning communiques. The federal government and state and local units of government are expected to tailor Peacekeeper project mitigation measures to findings in the Monitoring Report.

Peacekeeper-related contractors: 3200 responses; 640 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Mr. David McPhee, AFRCE–BMS/DEVE, Norton AFB, CA 92409.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23497 Filed 9–5–84; 8:45 am]

BILLING CODE 3910–01–M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of information collection and form number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondent; (5) An estimate of the total number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

Air Force Academy Precandidate Questionnaire (USAFA Form 149)

USAFA Form 149 will be used to collect information from prospective candidates for admission to the Air Force Academy. The information will be used to conduct a preliminary assessment of the candidates' prospects, qualifications, and eligibility status for application and selection for entry into the Academy.

Sixteen to twenty-one year old youths: 50,000 responses; 20,000 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington DC 20503, and Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Lt. Col. Lynn B. Ralston, Office of the Registrar, USAF Academy, CO 80840, telephone (303) 472–3072.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23498 Filed 9–5–84; 8:45 am]

BILLING CODE 3910–01–M

Privacy Act of 1974; New System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice for a new system of records.

SUMMARY: The Department of the Air Force proposes to add a notice for a new system of records subject to the Privacy Act of 1974. The system notice is set forth below.

DATES: The new system will be effective October 9, 1984, unless public comments are received which result in a contrary determination.

ADDRESS: Send comments to the System Manager named in the notice for the system of records set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAAD(S), Room 4A–1088, The Pentagon, Washington, DC 20330. Telephone: (202)694–3431.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been previously published in the **Federal Register.**

A new system report as required by 5 U.S.C. 552a(o) was submitted on July 24, 1984.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

F030 SAC A

SYSTEM NAME:

Automated Command and Control Executive Support System.

SYSTEM LOCATION:

Headquarters Strategic Air Command (SAC), Executive Systems Program Management Officer (ADUC), Offutt Air Force Base, NE 68113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel of all services, civilian employees, and contractor personnel assigned to SAC after 1 September 1984.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data extracted from the Personnel Data System (F030 AF MP A) plus 100 characters of locally generated information. Record includes name, grade, SSN, unit of assignment, security clearance, supervisor's name, duty title, office telephone, home address and telephone number, dependents, education and training, specialty or job qualification, performance/effectiveness reports, awards/decorations, promotions, duty assignment history and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: powers and duties; delegation by.

PURPOSE(S):

Used by HQ SAC for locating and administering assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on computer and computer output products, and on microfiche.

RETRIEVABILITY:

By Social Security Number or name.

SAFEGUARDS:

Records are accessed by the custodian of the system and by persons servicing the records who are properly cleared for need-to-know. Records are portected by computer software and the system is operated in a secure area.

RETENTION AND DISPOSAL:

Computer record is retained until individual is no longer assigned to or attached to SAC. Records will be destroyed not later than 2 years after last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Executive Systems Program Management Office (HQ SAC/ADUC), Offutt AFB, NE 68113.

NOTIFICATION PROCEDURE:

Requests from individuals should be sent to the System Manager. Full name, military or civilian status, grade and SSN are needed to determine if the system contains a record. Visitors must provide indentification such as a military ID card, driving license, or some information contained in the record.

RECORDS ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager:

CONTESTING RECORDS PROCEDURE:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation (AFR) 12–35.

RECORDS SOURCE CATEGORIES:

Information obtained from the Air Force Personnel Data System, personnel records or the individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–23501 Filed 9–5–84; 8:45 am]

BILLING CODE 3910–01–M

Privacy Act of 1974; New System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice for a new system of records.

SUMMARY: The Department of the Air Force proposes to add a notice for a new system of records subject to the Privacy Act of 1974. The system notice is set forth below.

DATES: The new system will be effective October 9, 1984, unless public comments are received which result in a contrary determination.

ADDRESS: Send comments to Mr. Jon Updike, HQ USAF/DAAD(S), Room 4A–1088, The Pentagon, Washington, DC 20330. Telephone: (202) 694–3431.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAAD(S), Room 4A–1088, The Pentagon, Washington, DC 20330. Telephone: (202) 694–3431.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been previously published in the **Federal Register.**

A new system report as required by 5 U.S.C. 552a(o) was submitted on July 17, 1984.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

F030 AF A

SYSTEM NAME:

Automated Personnel Management System.

SYSTEM LOCATION:

Unit or offices at all levels within the Air Force who implement the system under a specific authorizing local or higher level directive.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military and civilian personnel assigned to the office or unit as specified in the governing directive for the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data obtained from existing personnel or training records or from the individual. Record includes name, grade, SSN, unit of assignment, security clearance, supervisor, duty title, office and telephone number, home address and telephone number, dependents, education and training, specialty or job qualifications, performance/effectiveness reports, awards/decorations, promotions, duty assignment history and similar information listed in the governing directive for the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: powers and duties; delegation by; as implemented by a specific governing directive. The system cannot be operated until a directive is published listing authorized locations, subjects, categories of records, safeguards, and management procedures. A copy of the directive will be provided to the command Privacy Act Officer.

PURPOSE(S):

Used to locate, manage and train assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on computer or word processor and output products as lsited in the governing directive.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

Records are accessed by the custodian of the system and by persons servicing the records who are properly cleared for need-to-know. Records are protected in accordance with Air Force Regulation 300–13, Safeguarding Personal Information in Automatic Data Processing Systems.

RETENTION AND DISPOSAL:

Computer record is retained until no longer needed. Records will be destroyed not later than 2 years after last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of office or unit as specified in governing directive.

NOTIFICATION PROCEDURE:

Requests from individuals should be sent to the System Manager.

RECORDS ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURE:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation (AFR) 12–35.

RECORDS SOURCE CATEGORIES:

Information obtained from personnel records, training records or the individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–23500 Filed 9–5–84; 8:45 am]
BILLING CODE 3910–01–M

Department of the Navy

Privacy Act of 1974; Amendment to the Notice for a System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Amendment to the notice for a system of records.

SUMMARY: The Department of the Navy proposes to amend the notice for a system of records subject to the Privacy Act of 1974. The system notice as amended is set forth below.

DATES: The new notice will be effective October 9, 1984, unless public comments are received which result in a contrary determination.

ADDRESS: Send comments to the System Manager named in the notice for the system of records set forth below.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op–09B30), Department of the Navy, The Pentagon, Washington, DC 20350.Telephone: (202) 697–1459.

SUPPLEMENTARY INFORMATION: The Department of Navy notices for systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been previously published in the **Federal Register.**

An altered system report as required by 5 U.S.C. 552a(o) was submitted on July 9, 1984.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

N05801–1

SYSTEM NAME:

Legal Assistance Card Files (48 FR 26105) June 6, 1983.

CHANGES:

SYSTEM NAME:

Delete the entire entry and substitute with the following: "Legal Services Management Information System."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entire entry and substitute with the following: Servicemembers who are pending courts-martials. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any Command with a legal assistance office."

CATEGORIES OF RECORDS IN THE SYSTEM:

At the beginning of the entry, add: "(1) *Legal Assistance Card Files.*" At the end of the entry, add the following two paragraphs: "(2) *Case Analysis and Tracking System (CATS):* CATS records contain identification information about the individual being courts-martialled, such as name; rank/rate; service number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges alleged, charges of which convicted if any, sentence adjudged; and other information describing overall case management and processing. (3) *Legal Assistance and Personal Representation Client Records:* File contains ID information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and the attorney time expended."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

In the second line, delete the number: "1914. . ."

PURPOSE(S):

Add the following entry: "Attorneys and clerical personnel directly involved in processing courts-martials, and

rendering legal assistace and advice within the Naval Legal Service Offices and Detachments and legal assistance offices establishes within the Department of the Navy. Data will be used for the internal management of the Navy Legal Service Offices and legal assistance offices such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Add the following at the end of the entry: ". . . case files are stored on magnetic disk. Reports extracted from this data may be stored temporarily in paper files."

RETRIEVABILITY:

Delete the entire entry and substitute with the following: "Card files maintained by the legal assistance offices are retrieved by name of client. Case files maintained by the Naval Legal Service Offices are retrieved by an internal case number and secondarily, by name of individual."

SAFEGUARDS:

At the beginning of the entry, add the words: 'Manual records/. . ."

Add the following paragraph at the end of the entry: "Data disks are secured in areas accessible only by authorized personnel. Additional, data disks are unreadable without the program disks, as an added security precaution."

RETENTION AND DISPOSAL:

Delete the entire entry and substitute with the following: "Records are retained for two years after completion of the case, then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

At the end of the entry, add the following phrase:: ". . . for legal assistance card files."

Add a new second paragraph as follows: "Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, Virginia 22332, for case files."

RECORD SOURCE CATEGORIES:

Delete the entire entry and substitute with the following: "Basic information contained in the card files is provided by the client. Basic information contained in the courts-maritial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service."

NO5801-1

SYSTEM NAME:

Legal Services Management Information System.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Servicemembers who are pending courts-martials. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any Command with a legal assistance office.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) *Legal Assistance Card Files.* Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expanded.

(2) *Case Analysis and Tracking System (CATS):* CATS records contain identification information about the individual being courts-martialled, such as name; rank/rate; service number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges alleged, charges of which convicted if any, sentence adjudged; and other information describing overall case management and processing. (3) *Legal Assistance and Personal Representation Client Records:* File contains ID information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and attorney time expended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Manual of the Judge Advocate General; 44 U.S.C. 3101.

PURPOSE(S):

Attorneys and clerical personnel directly involved in processing courts-martials, and rendering legal assistance and advice within the Naval Legal Service Offices and Detachments and legal assistance offices established within the Department of the Navy. Data will be used for the internal management of the Naval Legal Service Offices and legal assistance offices such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Pre-printed cards stored in file cabinets; case files are stored on magnetic disk. Reports extracted from this data may be stored temporarily in paper files.

RETRIEVABILITY:

Card files maintained by the legal assistance offices are retrieved by name of client. Case files maintained by the Naval Legal Service Offices are retrieved by an internal case number and scendarily, by name of individual.

SAFEGUARDS:

Manual records/cards are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

Data disks are secured in areas accessible only by authorized personnel. Additionally, data disks are unreadable without the program disks, as an added security precaution.

RETENTION AND DISPOSAL:

Records are retained for two years after completon of the case, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332, for legal assistance card files.

Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, Virginia 22332, for case files.

* * * * *

RECORD SOURCE CATEGORIES:

Basic information contained in the card files is provided by the client. Basic information contained in the courts-martial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge

assigned to the case, and administrative personnel assigned to the Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service.

* * * * *

[FR Doc. 84-23495 Filed 9-5-84; 8:45 am]
BILLING CODE 3810-01-M

Performance of Commercial Activities; Announcement of Program Cost Studies

Department of the Navy intends to conduct OMB Circular A-76 (48 FR 37110, August 16, 1983) cost studies of various functions at listed activities commencing 9 October 1984. Cost study process is rigorous, time-consuming procedure and, depending upon size of functions involved, can take several months to several years to complete. Since studies not yet begun, specifications not yet prepared. When bids/proposals desired, appropriate advertisements will be placed. No consolidated bidders' list being maintained since solicitations will be processed by various contracting offices throughout U.S.

Naval Hospital, Camp Pendleton, CA

Medical Records Transcription

Naval Facility Centerville Beach, Ferndale, CA

BOQ/BEQ
Food Services and Administration
Motor Vehicle Operations
Motor Vehicle Maintenance
Heating Plants and Systems
Water Plants and Systems
Sewage/Waste Plants and Systems
Other Services and Utilities
Storage and Warehousing
Administrative Telephone Services
Buildings and Structures (Family Housing)
Buildings and Structures (Non-Family Housing)
Grounds (Improved)
Surfaces areas

Naval Hospital, Lemoore, CA

Medical Records Transcription
Clinical Nutrition

Naval Air Station, Lemoore, CA

Recreational Library Services
Motor Vehicle Maintenance
Electrical Plants and Systems
Heating Plants and Systems
Water Plants and Systems
Sewage and Waste Plants and Systems
Air Conditioning and Refrigeration Plants
Other Services or Utilities
Receipts
Care/Rewarehousing and Support of Material
Packing and Crating
Storage and Warehousing (Other)
Operation of Bulk Liquid Storage
Air Transportation Services
Fueling Service (Aircraft)
Preparation and Disposal of Excess and Surplus Property
Buildings and Structures
Other Maintenance

Naval Station, Long Beach, CA

Supply Operations
Data Processing Services

Naval Hospital, Long Beach, CA

Medical Records Transcription

Naval Air Station, Miramar, CA

Recreational Library Services
Dining Facility Equipment
Other Maintenance and/or Repair of Equipment
Bus Service
Motor Vehicle Operations and Maintenance
Electrical Plants and Systems
Water Plants and Systems
Air Conditioning and Refrigeration Plants
Air Transportation Services
Buildings and Structures (Family Housing)
Buildings and Structures (Other than Family Housing)
Other Maintenance, Repairs, Alteration, and Minor Construction of Real Property

Naval Air Station, Moffett Field, CA

Recreational Library Services
Crane Operations (Including Rigging)
Heavy Truck Operation
Construction Equipment Operation
Street Sweeping
Airfield Sweeping
Other Vehicle Operation (Light Truck and Automobile)
Heating Plants and Systems
Air Conditioning and Refrigeration
Supply Operations
Storage and Warehousing (Receipt)
Storage and Warehousing (Care, Rewarehousing and Support of Material)
Storage and Warehousing (Preservation and Packaging)
Storage and Warehousing (Packing and Crating)
Operations of Bulk Liquid Storage
Fueling Services (Aircraft)
Buildings and Structures (Other than Family Housing)

Naval Hospital, Oakland, CA

Medical Records Transcription
Orthopedic Appliances

Military Sealift Command, Pacific, Oakland, CA

Storage and Warehousing
Administrative Support Services
System Design, Development, and Programming Services

Naval Medical Clinic, Port Hueneme, CA

Medical Records Transcription

Naval Air Landing Facility, San Clemente Island, CA

Unaccompanied Personnel Housing
Electronics and Communications Equipment
Storage and Warehousing
Operation of Bulk Liquid Storage
Air Transportation Services
Water Transportation Services

Naval Air Station, North Island, San Diego, CA

Recreational Library Service
Other Installation Services
Supply Operations
Material Division
Operation of Bulk Liquid Storage
Air Transportation Services
Material Division

Fleet Area Control and Surveillance Facility, San Diego, CA

Custodial Services
Data Transcription/Data Entry Services

Naval Hospital, San Diego, CA

Medical Records Transcription
Veterinary Services

Naval Hospital, Groton, CT

Medical Records Transcription

Military Sealift Command, Command Information System Office, Washington, D.C.

Data Processing Services
System Design, Development and Programming Services

Naval Hospital, Jacksonville, FL

Medical Records Transcription

Naval Hospital, Orlando, FL

Medical Records Transcription

Naval Aerospace Medical Research Laboratory, Naval Air Station, Pensacola, FL

Veterinary Services

Naval Air Station, Pensacola, FL

Training Devices and Simulators

Naval Aerospace Medical Institute, Pensacola, FL

Medical Records Transcription

Naval Hospital, Pensacola, FL

Medical Records Transcription

Naval Ocean Processing Facility, Ford Island, Pearl Harbor, HI

Communications Center

Naval Logistics Command, Pearl Harbor, HI

Word Processing Center

Naval Hospital, Great Lakes, IL

Medical Records Transcription

Navy Data Automation Facility, Great Lakes, IL

Operation of ADP Media Library

Naval Air Station, Brunswick, ME

Operation of ADP Equipment, Production Control and Customer Services, ADP Magnetic Media Library, Other ADP Operations and Support
System Design, Development and Programming

Naval Medical Research Institute, Bethesda, MD

Veterinary Services

Naval Air Test Center, Patuxent River, MD

Other Non-Manufacturing Operations

Military Sealift Command, Atlantic, Bayonne, NJ

Storage and Warehousing
Operation of ADP Equipment
Production Control and Customer Services
Keypunch Services
Development and Maintenance of Applications Software
Other Automatic Data Processing Services

Naval Hospital, Camp Lejeune, NC

Medical Records Transcription
Veterinary Services

Naval Hospital, Cherry Point, NC

Medical Records Transcription

Naval Hospital, Philadelphia, PA

Medical Records Transcription
Orthopedic Appliances

Naval Hospital, Roosevelt Roads, PR

Medical Records Transcription

Naval Hospital, Beaufort, SC

Medical Records Transcription

Charleston Naval Shipyard, Charleston, SC

Motor Vehicle Operation and Maintenance

Naval Hospital, Charleston, SC

Medical Records Transcription

Naval Hospital, Millington, TN

Medical Records Transcription

Naval Air Station, Chase Field, Beeville, TX

Buildings and Structures (Chase Park Family Housing)

Naval Hospital, Corpus Christi, TX

Medical Records Transcription

Naval Air Station, Kingsville, TX

Insect and Rodent Control

Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA

Administrative Support
ADP Operations and Support
System Design, Development and Programming Services
Provide Technical Support Services

Surface Warfare Development Group, Norfolk, VA

Custodial Services
Graphic Art
Data Processing Services
Grounds and Surfaced Areas

Naval Hospital, Portsmouth, VA

Medical Records Transcription

Naval Hospital, Bremerton, WA

Medical Records Transcription

Naval Undersea Warfare Engineering Station, Keyport, WA

Administrative Support Services

Naval Medical Clinic, Seattle, WA

Medical Records Transcription

Naval Hospital, Whidbey Island, WA

Medical Records Transcription

Dated: August 20, 1984.

T.H. Upton,

Captain, SC, USN, Head Commercial Retail/Activities Branch.

[FR Doc. 84-22824 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. (App.), notice is hereby given that the Naval Research Advisory Committee Panel on OT&E Requirements and Facilities will meet on September 20, 1984, at Nellis Air Force Base, Nevada. Sessions of the meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on September 20, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to determine the adequacy of the Navy's ability to test new systems and equipment. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: August 30, 1984.

Dennis Gonzalez,

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

[FR Doc. 84-23553 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Air Development Center (NADC) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on September 20, 1984, at the Naval Air Systems Command, Jefferson Plaza #1, Crystal City, Arlington, Va. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on September 20, 1984. The entire meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NADC. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably interwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because

they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: August 30, 1984.

Dennis Gonzalez,

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

[FR Doc. 84-23554 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Environmental Support will meet on September 20, 1984, at the U.S. Naval Observatory, Washington, D.C.; and on September 21, 1984, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The first session of the meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on September 20, 1984. The second session will commence at 8:30 a.m. and terminate at 4:30 p.m. on September 21, 1984. All sessions will be closed to the public.

The purpose of the meeting is to receive various briefings relating to an assessment of the Navy's environmental support in the design, development, test, operational planning, and employment of naval systems. All sessions of the meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The Secretary of the Navy therefore has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because it will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100n), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: August 30, 1984.

Dennis Gonzalez,

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

[FR Doc. 84-23555, Filed 9-5-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of the Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Egypt; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of the Arab Republic of Egypt Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the conversion of uranium enrichment services agreements to the new utility services contract form, for the EFAPP Sidi Krier 1, the El Dabaa, the Egypt 3, and the Egypt 4 power stations.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1984.

John Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23518 Filed 9-5-84 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Japan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-JA-351, to the Power Reactor and Nuclear Fuel Development Corp., Japan, 212 grams of natural uranium oxide, 519.9 grams of natural uranium metal, 43.68 grams of uranium enriched to 1.349% in U-235, and 49.13 grams of uranium enriched to 1.71% in U-235, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1984.

John Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23520 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Japan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the assignment of uranium enriching services totaling 18,000 separative work units in Fiscal Year 1986 from a domestic utility to the Chugoku Electric Power Company, Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be

inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1984.

John Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23519 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community and Norway

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Norway Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreements invovles approval of the folllowing retransfer: RTD/EU(NO)-38, from the Institutt for Energiteknikk, Halden, Norway to the Atomic Energy Research Institute, Harwell, England, five irradiated test fuel rods, containing approximately 2.21 Kilograms of uranium, enriched to 7.24% in U-235, and 18 grams of plutonium, for post-irradiation examination, and final disposal as waste.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 30, 1984.

John R. Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23505 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File No. WP-85]

Proposed Wholesale Power Rate Adjustment; Public Hearings and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Proposed Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Review and Comment.

BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP-85.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), enacted on December 5, 1980, confirms BPA's obligation to establish and periodically revise BPA's rates so that they are adequate to recover, in accord with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS).

BPA is proposing to revise its wholesale power rate schedules in order to produce sufficient revenue to fulfill its statutory requirements. Section 7 of the Northwest Power Act controls the establishment of rates applicable to all power sales provided for in the Northwest Power Act.

Opportunities will be available for interested persons to review the proposed rates and the supporting studies, to participate in hearings, and to submit written comments. While BPA welcomes public comment on its entire proposal, it particularly requests comments on Section IV of the notice that deals with revenue levels and rate design issues. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rates proposal differing from the rate proposed in this Notice.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The notification must be received by September 24, 1984, and should be addressed as follows: Hon. Seymour Wenner, Hearing Officer, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Customers of BPA who provide notice are parties of right. Others may become parties by demonstrating in their notice and at the Prehearing Conference that they would represent a significant and otherwise unrepresented interest. The notice should contain: (1) The name of the person or entity claiming status as a party; (2) the person who will be representing the party; (3) whether the person or entity claiming status as a party has a contractual relationship with BPA that could be affected by the proposed rates; and (4) if no contractual interest exists, the interest the person believes would be served by the person or entity being a party. All timely applications will be ruled on by the Hearing Officer.

A Prehearing Conference, required by the rate procedures, will be held before the Hearing Officer at 9 a.m. on September 24, 1984, in the Cafeteria, Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the Prehearing Conference will begin at 8:30 a.m.

It is expected that during the Prehearing Conference dates will be set for presentation of direct cases, rebuttal cases, cross-examination, oral argument, and briefs. A notice of the dates and times of the hearings will be mailed to all parties of record. All formal hearing sessions will be held in the Cafeteria, Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon.

Two series of public field hearings regarding BPA's proposal will be held at various regional locations. At the first series, BPA will provide information concerning the ratemaking process and the issues in this rate case, and a synopsis of the rate proposal. Both the public's comments contained in a verbatim transcript of the hearings and all written comments received will be made a part of the Official Record. The public oral comments will be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings.

Registration for the field hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. The dates and locations are:

October 16—Holiday Inn at the Coliseum, XJS Room, 10 N. Weidler, Portland, Oregon.
October 17—Seattle Center, Shaw Room, North Court, Seattle, Washington.
October 18—City Council Chambers, 777 Pearl Street, Eugene, Oregon.
October 22—Burley Inn, 800 N. Overland Avenue, Burley, Idaho.

October 23—Red Lion Village Inn, 100 Madison Street, Missoula, Montana.
October 24—Cavanaugh's River Inn, Clearwater Room, N. 700 Division Street, Spokane, Washington.
October 25—Richland Federal Building, 825 Jadwin Avenue, Richland, Washington.
October 29—Virginia Motel, Buffalo Room, 750 W. Broadway, Jackson, Wyoming.

A second series of field hearings will be scheduled near the end of the formal hearings. These field hearings will provide the public an additional opportunity to comment, based on their review of the evidence presented in the formal hearings. BPA will consider the public's comments in the evaluation of the Record. The hearing schedule and locations will be announced in newspapers in the region.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice (currently expected to be published in February 1985).

ADDRESSES: Written comments not submitted at the hearings should be summitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Written comments submitted by the close of the hearing will be made part of the record.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212; 503-230-3478. BPA maintains toll-free lines for the use of persons within the region. Oregon callers outside of Portland may use 800-452-8429; callers in Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California may use 800-547-6048. Additional information is available from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Earl C. Schoer, Acting Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

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SUPPLEMENTARY INFORMATION: BPA published in the **Federal Register** a notice of "Intent to Revise Wholesale Power Rates to Become Effective July 1, 1985; Request for Recommendations and Suggestions" (49 FR 30007) on July 25, 1984. The notice of intent indicated that, based on contract provisions presently in force and proposed with BPA's customers, the revised rates are expected to become effective on July 1, 1985.

BPA developed a study of its financial situation to determine the amount of revenue required to meet these obligations. The total revenue requirement for FY 1987 is $3.33 billion. This revenue requirement translates into an increase of 10 percent in the Priority Firm Power rate, a 1 percent increase in the Industrial Firm Power rate, a 7 percent decrease in the Surplus Firm Power rate, a 5 percent decrease in the New Resources Firm Power rate, and an 11 percent increase in the average Nonfirm Energy Standard rate over the proposed rate period.

The proposed wholesale power rates have been prepared in accord with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C., Section 832 e and f (1976); the Flood Control Act of 1944, 16 U.S.C., Section 825 *et seq* (1976); the Regional Preference Act, 16 U.S.C., Section 837 *et seq* (1976); the Federal Columbia River Transmission System Act, 16 U.S.C., Section 838g and h (1976); and the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C., Section 839 *et seq* (Supp. V., 1981).

In developing the proposed wholesale power rates, BPA considered revenue requirements, costs of service, marginal costs, conservation, environmental impacts, ease of administration, revenue stability, rate continuity, ease of comprehension, economic efficiency, and statutory obligations. The major studies that have been prepared to support the proposed wholesale rates will be available for examination on September 7, 1984, at BPA's Public Involvement office, BPA Headquarters Building, 1002 NE. Holladay Street, Portland, Oregon. The studies also may be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference. The studies are:

1. Revenue Requirement Study
2. Loads and Resources Study
3. Cost of Service Analysis
4. Marginal Cost Analysis
5. Sec. 7(b)(2) Rate Test Study
6. Sec. 7(c)(2) Industrial Margin Study
7. Wholesale Power Rate Design Study

In developing these studies, consideration was given to the comments and recommendations received from BPA's customers and the public in response to BPA's Notice of Intent.

The environmental impacts of the proposed rates will be considered. An environmental assessment documenting the impacts of the proposed rates and alternatives will be available for examination at a later date. Its availability will be announced by a separate notice published in the Federal **Register.**

I. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act provides procedures for encouraging the participation of the public in the development of BPA's rates. In order to give the public notice of how it could participate in BPA's rate adjustments and to elaborate on the procedures set out in Section 7(i), BPA published "Procedures Governing Bonneville Power Administration (BPA) Rate Adjustments" by **Federal Register** notice (46 FR 6240, February 10, 1982). These procedures were used in the 1983 wholesale power and transmission rate filings. On March 23, 1984, BPA published its Interim Amendment of Procedures Governing BPA Rate Adjustments (49 FR 1090), and requested comments from interested parties. This amendment was necessary in order to comply with a judicial determination that BPA ratemaking proceedings are subject to the *ex parte* communication restrictions found in section 557(d) of the Administrative Procedures Act. BPA is in the process of evaluating comments on the Interim Amendment and will finalize the Interim Amendment as soon as possible. BPA's procedures, as amended, will be applicable to the section 7(i) hearings on BPA's 1985 rate

case. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

The Northwest Power Act prescribes a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments outside the hearings; and a decision by the Administrator based on the record developed during the hearings process. BPA's procedures expand these requirements. They provide for publication of a ntoice of intent to revise rates followed by a notice of the proposed rates, a prehearing conference, hearing, receipt of written comment, preparation of decision documents, a decision, and the transmittal of the decision with supporting documentation to the Federal Energy Regulatory Commission (FERC).

The process begins with publication of the notice of intent to revise rates. This is followed by publication of this notice of the proposed rates, which includes the proposed rates; a discussion of the research, studies, analyses, and other available information in support of the proposed rates; the deadline for claiming status as a "party"; and the beginning date for the hearing.

The procedures further provide for a Prehearing Conference if scheduled by the Hearing Office. A Prehearing Conference has been scheduled before the Hearing Officer at 9 a.m. on September 24, 1984, in the cafeteria at Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m., and the conference will commence at 9 a.m. with the Honorable Seymour Wenner presiding.

Issues for discussion at the Prehearing Conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at or before the Prehearing Conference.

BPA will also convene a series of public hearings at certain locations throughout the region. The purpose of these hearings is to present to interested members of the public a synopsis of BPA's rate proposal and to receive comments, views, and opinions from the general public. The public's oral comments will be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties will not be allowed at these sessions. The hearings will be held at the times and locations previously listed. The conduct of these hearings will be substantially the same as that of the public field hearings held for BPA's 1981, 1982, and 1983 rate proceedings. BPA staff will present a synopsis of the proposed rates followed by comments from the public. The public will have an opportunity to present their comments, views, and opinions about the proposed rates.

BPA finds it necessary to distinguish between "participants in" and "parties to" the hearings. During the field hearings, BPA will receive comments, views, opinions, and information form "participants," who are defined in the procedures as interested persons who may express their views at a hearing, but who may not cross-examine other witnesses, participate in the Prehearing Conference, or serve or be served with documents. Participants, however, will be provided regular letters during the rate hearings summarizing the proceedings and are provided the opportunity to request materials presented during the hearings. Participants' written comments will be made part of the Official Record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon the "parties."

The second category of interest is that of a "party." A party may be either a party of right because of its legal and/or contractual relationship with BPA, and hence, its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in prehearing conferences, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interests and positions, the Hearing Officer may, to expedite the hearing, order appropriate limitations on the number of attorneys (or parties appearing *pro se*) who will be permitted to cross-examine witnesses as well as file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. BPA expects that the clarification sessions will be followed by the presentation of the parties' direct cases, the presentation of rebuttal cases, cross-examination, oral argument, and briefing. The times for these proceedings will be established by the Hearing Officer at the prehearing conference and will be announced in a subsequent order that will be served upon all parties of record.

After the close of the hearings, BPA will file an Evaluation of the Record. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the law through briefs. The Evaluation of the Record will provide a written evaluation of the Record addressing significant technical issues. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the Record. Written comments may be included in the Record if they are submitted before the close of the hearings. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement Manager.

The Record will include, among other things, the transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the Record by the Hearing Officer. The Hearing Officer then will review the Record, will supplement it if necessary, and will certify the Record to the Administrator for decision.

The Administrator will develop the fiscal proposed rates based on the entire Record, including the Record certified by the Hearing Officer, comments received from participants in the field hearings, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rates together with the Record with FERC for confirmation and approval.

II. Elements of the Northwest Power Act

The rate schedules contained in this publication are proposed in accord with the Northwest Power Act, which was signed into law on December 5, 1980. BPA's 1981, 1982, and 1983 rate

schedules were also proposed in accord with the Northwest Power Act. Prior to the Northwest Power Act, BPA allocated costs of resources from a single block, the Federal Columbia River Power System (FCRPS), and designed rates to recover those costs from limited classes of customers. Now there are two additional distinct blocks of resources costs, and BPA's services extend to all classes of customers within the Pacific Northwest. Accordingly, the proposed rate schedules reflect many requirements contained principally in the Northwest Power Act's rate directives (Section 7), as well as the conditions related to classes of customers and services contained in the Northwest Power Act's power sales directives (Section 5).

Most importantly, the Northwest Power Act places on BPA a responsibility to all the electric power consumers in the region. While protecting the historical preference and priorities of public bodies and cooperatives, the Northwest Power Act authorizes BPA to extend the benefits of low-cost Federal power to residential and small farm consumers; to share the burdens, risks, and benefits of meeting the load growth requirements of all requesting utilities; to provide a positive inducement to individual utilities to accept the responsibility for achieving conservation and developing renewable resources; to accept the risks and costs of meeting the entire region's power supply deficits; and to provide access for all of BPA's regional firm loads to the reserves provided by BPA's rights to restrict deliveries to industrial customers served directly by BPA.

A. Services

BPA's public body, cooperative and Federal agency customers will be able to have their current and future requirements met by BPA. In addition, the residential and small farm consumers of investor-owned utilities (IOUs) will share in the benefits of what are now BPA's lowest cost resources.

The IOU's net firm power requirements in the region (in excess of their own firm resources in the year prior to the Northwest Power Act) also can be served by BPA if the utility seeks such service. These loads would be served at a different rate as described below, but would retain the benefits of system integration, reserves, risk sharing, and nonfirm energy supplies.

BPA's existing direct-service industrial (DSI) customers have received 20-year contracts for industrial power. These contracts include significant BPA rights to restrict service to the DISs. These rights provide the region with a major portion of the planning and operating reserves that help to keep costs lower to all of the region's consumers.

B. Costs

The Act identifies three distinct resource pools, commonly referred to as the Federal base system resources (FBS), the exchange resources under section 5(c) of the Northwest Power Act (Exchange), and new resources.

The first pool, the FBS, is defined by section 3(10) of the Northwest Power Act as (1) the FCRPS hydroelectric projects; (2) the resources acquired by the Administrator under long-term contracts in force on the effective date of the Northwest Power Act; and (3) the resources acquired as necessary to replace any reductions in capability of the components of (1) and (2). For the test year FY 1987, the FBS used in developing rates includes the existing hydroelectric system, 30 percent of the output of the Trojan nuclear plant, 72 percent of the output from Hanford Generating Project, and the net-billed portions of the Washington Public Power Supply System plants 1, 2, and 3.

The second resource pool, Exchange, consists of the power that BPA purchases from utilities, primarily IOUs, under the provisions of Sec. 5(c), for the direct benefit of their residential and small farm consumers. Beginning on October 1, 1981, the amount of power purchased was equal to 60 percent of the residential and small farm loads of the individual utility, increasing by 10 percentage points each July 1 through 1985. For the 1987 test year, the power eligible for exchange purchase is equal to 100 percent of the residential and small farm loads of the individual utilities in the region. BPA is directed to acquire the power at the offering utility's average system cost. The average system cost is determined using a methodology developed by BPA, pursuant to section 5 of the Northwest Power Act, in consultation with its customers, State regulatory bodies in the region, and the Pacific Northwest Electric Power and Conservation Planning Council (Regional Council). (FERC approved BPA's methodology on a final basis on October 17, 1983 (48 FR 46,970). A revision of BPA's methodology has been filed with FERC. In the development of the rate schedules contained herein, it was assumed that this revision would be approved by the FERC for implementation on October 1, 1984.) BPA must then sell an equivalent amount of power to the utility under the rate schedule that is in effect for sales of wholesale firm power to BPA's public body, cooperative, and Federal agency customers. The benefits of this "exchange" are to be passed through to the participating utility's residential and small farm loads within that region.

While the exchange provisions of the Northwest Power Act were presumed to benefit primarily investor-owned utility residential ratepayers, the average system cost methodology now in effect on an interim basis permits publicly owned utilities to exchange. Thus, a portion of the projected exchange resource, exchange cost, and exchange load in this proposal is attributable to this public agency exchange.

The third resource pool is the "new resource" pool. It will include all new resources developed, purchased, or otherwise acquired by BPA other than Exchange resources and FBS replacements.

C. Rates

The costs of the various resource pools described above, plus the other costs incurred by the Administrator, must be recovered in a manner described in section 7 of the Northwest Power Act, including provisions of other applicable law.

Section 7(b) directs the Administrator to establish a rate or rates for power sold to meet the general requirements of the public body, cooperative, and Federal agency customers within the region as well as power sold to utilities participating in the residential power exchange to serve their residential and small farm consumers. The 7(b) rate is to be based on FBS costs and, to the extent that the loads exceed the capability of the FBS, exchange resource costs. In addition, section 7(b)(2) of the Northwest Power Act directs the Administrator to ensure that rates charged the public agency customers do not exceed a level determined by certain assumptions contained in section 7(b)(2). BPA has conducted a separate study based on a section 7(b)(2) methodology developed in a separate 7(i) proceeding, which determined that no adjustment is required for the proposed rates. For test year 1987, 7(b) loads exceed the capability of the FBS. Consequently, a portion of BPA's exchange resources is allocated to the 7(b) rate class.

For test year 1987, the DSIs are basically served by exchange resources remaining after serving 7(b) load. However, section 7(c)(2) of the Northwest Power Act directs that the rates charged the DSI customers beginning July 1, 1985 are to be based on the wholesale rates charged the preference customers plus a margin typical of those chared by the region's

public utilities for electricity sold to retail industrial consumers. In addition, BPA must ensure that the rates charged DSI customers beginning July 1, 1985 are not lower than those in effect in the year ending June 30, 1985. These statutory directives cause potential reallocations of costs and credits among customer classes. The overall DSI rate is also adjusted pursuant to section 7(c)(3) of the Northwest Power Act in recognition of the value of the forced outage, stability, and plant delay reserves provided through restriction rights on delivery of power to meet the DSI loads.

Section 7(f) of the Northwest Power Act directs the establishment of rates that will be charged for all other firm power sales made within the region by the Administrator. Loads served under these rates may be the load growth or firm deficits of the IOUs, which BPA is obligated to serve under the Northwest Power Act, if requested to do so by the individual IOUs. Section 7(f) rates also apply to service to preference customers' new large single loads as defined in the Northwest Power Act, which are excluded from service under the section 7(b) rate. Exchange resources and new resources will be used to serve the IOU load growth and new large single loads provided for in section 7(f).

Finally, section 7(k) of the Northwest Power Act governs FERC review of BPA rates for sale of nonfirm energy outside the Pacific Northwest, but within the United States. Section 7(k) directs the Administrator to develop such rates in accordance with section 7(i) and with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. These statutes, however, provide no additional or different statutory standards than those which BPA meets in developing all of its rates.

III. Wholesale Power Rate Schedules and General Rate Schedule Provisions

Schedule PF-85—Priority Firm Power Rate

Section I: Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest.

Priority Firm Power may be purchased for resale to ultimate consumers, direct consumption, construction, test and start-up, and station service by public bodies, cooperatives, and Federal agencies.

Utilities participating in the exchange under section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, BPA may make Priority Firm Power available to those parties participating in exchange agreements which use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule PF-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Demand Charge

1. $5.99 kilowatt of billing demand occurring during Peak Period hours in the billing months December through April.

2. $2.56 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November.

3. No demand charge during Offpeak Period hours.

B. Energy Charge

1. 17.2 mills per kilowatthour of billing energy for the billing months September through March;

2. 14.2 mills per kilowatthour of billing energy for the billing months April through August.

Section III. Billing Factors

In this section billing factors are listed for each of the following types of purchasers: computed requirements purchasers (section III.A), purchasers of residential exchange power pursuant to the Residential Purchase and Sale Agreements (section III.B), and metered requirements purchasers and those Priority Firm Power purchasers not covered by sections III.A and III.B (section III.C).

A. Computed Requirements Purchasers

Purchasers designated by the Bonneville Power Administration (BPA) as computed requirements purchasers, either pursuant to section IV.B.1.b of the General Rate Schedule Provisions (GRSPs) or pursuant to power sales contracts executed after December 5, 1980, shall be billed in accordance with the provisions of this subsection.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b", below:

a. The lower of:

(1) The Measured Demand, before adjustment for power factor; or

(2) The larger of the Computed Peak Requirement or the Computed Average Energy Requirement, and

b. The lower of:

(1) The Computed Peak Requirement; or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be:

a. For the months September through March, the sum of:

(1) 61 percent of the Measured Energy (excluding unauthorized increase), and

(2) 39 percent of the Computed Energy Maximum;

b. For the months April through August, the sum of:

(1) 56 percent of the Measured Energy (excluding unauthorized increase), and

(2) 44 percent of the Computed Energy Maximum.

B. Purchasers of Residential Exchange Power

Purchasers buying Priority Firm Power under the terms of a Residential Purchase and Sale Agreement shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the demand calculated by applying the load factor, determined as specified in the Residential Purchase and Sale Agreement, to the billing energy for each billing period.

2. *Billing Energy.* The billing energy shall be the energy associated with the utility's residential load for each billing period. Residential load shall be computed in accordance with the provisions of the purchaser's Residential Purchase and Sale Agreement.

C. Metered Requirements Purchasers and Other Purchasers Not Covered by Sections III.A and III.B, Above

Purchasers designated as metered requirements customers and purchasers taking power under this rate schedule who are not otherwise covered by sections III.A and III.B shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be

made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. Low Density Discount (LDD)

BPA shall apply a discount to the charges for all Priority Firm Power sold to purchasers who are eligible for an LDD. Eligibility for the LDD and the amount of the discount (3, 5, or 7 percent) shall be determined pursuant to section III.C.3 of the GRSPs.

C. Conservation Surcharge

The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The conservation surcharge shall be applied monthly and shall equal ten percent of the customer's total monthly charge for all power purchased under this rate schedule. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal ten percent of the total charge for all power purchases multiplied by the ratio of (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (d) the customer's total retail load.

D. Exchange Adjustment

The Exchange Adjustment shall be calculated pursuant to section III.C.5 of the GRSPs and shall be applied to all power purchases under this rate schedule.

For this rate schedule, the variable ECP in the Exchange Adjustment calculation shall have a value of .7212.

E. Supply System Adjustment

The Supply System Adjustment shall be calculated pursuant to section III.C.6 of the GRSPs. The adjustment shall be applied to the energy component of the Priority Firm Power Rate and shall be in effect from October 1, 1986, through the end of the rate period.

For this rate schedule, the variables SS and BD in the Supply System calculation shall have the following values:

1. SS=.7397, and
2. BD=78,972.

F. Outage Credit

Pursuant to the conditions specified in section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver Priority Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

G. Unauthorized Increase

BPA shall apply the charge for Unauthorized Increase to any purchaser of Priority Firm Power taking demand and/or energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 82.2 mills per kilowatthour.

2. *Calculation of the Amount of Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount which may be considered an unauthorized increase. BPA shall first determine the amount of unauthorized increase related to demand and shall treat any remaining unauthorized increase as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, which exceeds the demand which the purchaser is contractually entitled to take during the billing month and which cannot be assigned:

(1) To a class of power which BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) To a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such hour,

Shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) If such exhibit does not apply or is not a part of the purhaser's power sales contract, at the Rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month which exceeds the amount of energy which the purchaser is contractually entitled to take during that month and which cannot be assigned:

(1) To a class of power which BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

(2) To a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such month,

Shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) As unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

H. Coincidental Billing Adjustment

Purchasers of Priority Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.4 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

I. Energy Returns

Any purchaser who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's computed peak requirement and computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.93 mills per kilowatthour for the months of April through November, and

2. 1.66 mills per kilowatthour for the months of December through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the PF-85 rate is 86.5 percent FBS and 13.5 percent Exchange.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule IP–85—Industrial Firm Power Rate

Section I. Availability

This schedule is available to direct-service industrial (DSI) customers for both the contract purchase of Industrial Firm Power and the purchase of Auxiliary Power if requested by the DSI customer and made available by BPA. This rate schedule supersedes Schedule IP–83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

This rate schedule includes three possible rates for Industrial Firm Power: the Standard Industrial Rate, the Premium Industrial Rate, and the Industrial Incentive Rate. Under the Standard Industrial Rate, first quartile service is provided by BPA with nonfirm energy and/or provisional drafts. Under the Premium Industrial Rate, first quartile service with surplus firm energy load carrying capability (surplus FELCC) is requested by the customer and provided by BPA. The Industrial Incentive Rate is for the same quality of service as that provided under the Standard Industrial Power Rate, but the Industrial Incentive Rate will be offered at the discretion of the Administrator and shall be applied to consenting DSIs on a take-or-pay basis. The procedures for determining when the Industrial Incentive Rate will be offered are specified in section V.E of the General Rate Schedule Provisions (GRSPs).

A. Standard Industrial Rate

The following rate shall apply to purchases of Industrial Firm Power under the Standard Industrial Rate:

1. *Customer Charge.* a. For large IP plants, $5.18 per kilowatt of Customer Charge Demand during all billing months;

b. For small IP plants, $5.26 per kilowatt of Customer Charge Demand during all billing months.

2. *Demand Charge.* a. $3.47 per kilowatt of billing demand occurring during Peak Period hours in the billing months December through April;

b. $1.92 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November;

c. No demand charge during Offpeak Period hours.

3. *Energy Charge.* a. 17.2 mills per kilowatthour of billing energy for the billing months September through March;

b. 14.2 mills per kilowatthour of billing energy for the billing months April through August.

B. Premium Industrial Rate

The following rate shall apply to purchases of Industrial Firm Power under the Premium Industrial Rate:

1. *Customer Charge.* a. For large IP plants, $5.18 per kilowatt of Customer Charge Demand during all billing months;

b. For small IP plants, $5.26 per kilowatt of Customer Charge Demand during all billing months.

2. *Demand Charge.* a. $3.69 per kilowatt of billing demand occurring during Peak Period hours in the billing months December through April;

b. $2.05 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November;

c. No demand charge during Offpeak Period hours.

3. *Energy Charge.* a. 18.3 mills per kilowatthour of billing for the billing months September through March;

b. 15.1 mills per kilowatthour of billing energy for the billing months April through August.

C. Industrial Incentive Rate

If BPA elects to implement the Industrial Incentive Rate, the rate shall be specified by BPA. In setting the rate, BPA shall adhere to the provisions and/or procedures set forth in section V.E of the GRSPs.

1. *Customer Charge.* a. For large IP plants, $5.18 per kilowatt of Customer Charge Demand during all billing months;

b. For small IP plants, $5.26 per kilowatt of Customer Charge Demand occurring all billing months.

2. *Demand Charge.* The demand charge for power purchased under the Industrial Incentive Rate shall be specified by BPA at the time that the Administrator adopts the Industrial Incentive Rate.

3. *Energy Charge.* The energy charge for power purchased under the Industrial Incentive Rate shall be specified by BPA at the time that the Administrator adopts the Industrial Incentive Rate.

Section III. Billing Factors

A. Customer Charge Demand

The customer charge shall be applied on a monthly basis to all purchases of Industrial Firm Power under the Standard Industrial Rate, the Premium Industrial Rate, and the Industrial Incentive Rate. The Customer Charge Demand is defined in Section III.A.11. of the GRSPs.

1. *Customer Charge Demand for Large Direct-Service Industrial Plants.* The Customer Charge Demand for large direct-service industrial plants for the billing month shall be the weighted average of:

a. Restricted Demand(s), if any, during the billing month,

b. Curtailed Demand(s), if any, during the billing month, resulting from Uncontrollable Forces as defined in the power sales contract, and

c. Plant Capacity Demand.

2. *Customer Charge Demand for Small Direct-Service Industrial Plants.* The Customer Charge Demand for small direct-service industrial plants for the billing month shall be the greater of:

a. The weighted average of:

(1) Restricted Demand(s), if any, during the billing month,

(2) Curtailed Demand(s), if any, during the billing month, resulting from Uncontrollable Forces as defined in the power sales contract, and

3. The Distributed DSI Demand, or

b. The level of demand to which the demand charge is applied.

3. The weighted average in both III.A.1 and III.A.2 above shall be based on the number of hours in the month of:

(a) Restriction, and/or (b) curtailment resulting from Uncontrollable Forces.

B. Billing Demand

1. *Standard Industrial Rate and Premium Industrial Rate.* The billing demand for power purchased under either the Standard Industrial Rate or the Premimum Industrial Rate shall be the BPA Operating Level as adjusted for power factor. If there is more than one BPA Operating Level during the billing month, the billing demand shall be a weighted average of the BPA Operating Levels for the billing month. The BPA Operating Level is the lowest of the following billing factors for the period(s) during which each applies:

a. Operating Demand Plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily

demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C. of the GRSPs.

2. *Industrial Incentive Rate.* For customers purchasing under the Industrial Incentive Rate, the billing demand for Industrial Firm Power shall be the greater of billing factors "a" or "b", as adjusted for power factor:

a. The weighted average BPA Operating Level for the billing month; or

b. The lower of:

(1) Committed Demand; or

(2) The weighted average of Committed Demand and Restricted Demand, based on the number of hours of restriction during the month.

C. Billing Energy

1. *Standard Industrial Rate and Premium Industrial Rate.* The billing energy for power purchased under either the Standard Industrial Rate or the Premium Industrial Rate shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

2. *Industrial Incentive Rate.* The billing energy for the billing month shall be the higher of:

a. The Measured Energy minus any kilowatthours on which BPA assesses the charge for unauthorized increase, or

b. The Committed Energy.

The kilowatthours of billing energy shall be prorated among the respective billing demands for the billing month.

Section IV. Selection of the IP-85 Rate

All sales of Industrial Firm Power for which there is no agreement between BPA and the DSI specifying use of the Premium Industrial Rate or the Industrial Incentive Rate shall be made at the Standard Industrial Rate.

If the DSI elects to purchase Industrial Firm Power under the Premium Industrial Rate and if BPA agrees to supply Surplus FELCC to the requesting purchaser, BPA and the DSI shall agree to the period of time for which the Premium Industrial Rate shall be effective.

The Industrial Incentive Rate shall be applied to sales of Industrial Firm Power only when the Administrator and the DSI have agreed to the use of such rate. Prior to applying the Industrial Incentive Rate, BPA and the DSI shall agree to the terms and conditions under which the Incentive Rate shall apply. The agreement with the DSI shall specify:

A. The Committed Demand;

B. The Committed Energy;

C. The level of the demand and energy charges in the Industrial Incentive Rate;

D. The period of time for which the Industrial Incentive Rate is to be applied.

Section V. Adjustments and Special Provisions

A. Curtailments

BPA shall charge the DSI for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract. BPA shall apply the demand charge in effect at the time of the curtailment in the computation of the amount of the curtailment charge.

B. Unauthorized Increase

1. *Rate for Unauthorized Increase.* 82.2 mills per kilowatthour.

2. *Application of the Charge.* BPA may assess the unauthorized increase charge on the number of kilowatthours associated with all DSI Measured Demands during the billing month that exceed the BPA Operating Level.

C. Value of Reserves Credit

1. *Amount of the Value Reserves Credit.* The monthly billing credit for the value of the reserves provided by purchasers of Industrial Firm Power shall be:

a. $0.33 per kilowatt of billing demand; and

b. 1.1. mills per kilowatthour of billing energy.

2. *Application of the Value of Reserves Credit.* The value of reserves credit shall be applied to the same billing factors that are used to determine the billing for power purchased under sections III.B.1, and III.C.1. of this rate schedule. No value of reserves credit shall be applied to:

a. That portion of the DSI's demand curtailed under section 9(c) of the power sales contract;

b. Unauthorized increases under section V.B, above; and

c. Purchases of Industrial Firm Power under the Industrial Incentive Rate.

D. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1. of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5. or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

E. Exchange Adjustment

The Exchange Adjustment shall be calculated pursuant to section III.C.5. of the GRSPs and shall be applied to all power purchases under the Standard Industrial Rate and the Premium Industrial Rate.

For this rate schedule, the variable ECP in the Exchange Adjustment calculation shall have a value of .2426.

F. Supply System Adjustment

The Supply System Adjustment shall be calculated pursuant to section III.C.6. of the GRSPs. The Adjustment shall be applied to the energy component of the Industrial Firm Power Rate and shall be in effect from October 1, 1986, through the end of the rate period.

For this rate schedule, the variables SS and BD in the Supply System calculation shall have the following values:

1. SS=.2489, and

2. BD=26,733.

G. Outage Credit

Pursuant to the conditions specified in section 7 of the GRSPs, BPA shall provide an outage credit to any DSI to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the General Rate Schedule Provisions.

Section VI. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the IP-85 rate is 100 percent Exchange.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 milles per kilowatthour.

C. The forecased cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville

Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule SI–85. Special Industrial Power Rate

Section I. Availability

This rate schedule is available to any direct-service industrial (DSI) purchaser using raw materials indigenous to the region as its primary resource and qualifying for this special power pursuant to the procedures established in section 7(d)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). This schedule is available for the contract purchase of this special class of Industrial Power and also for the purchase of Auxiliary Power if requested by the DSI and made available by BPA. Schedule SI–85 supersedes Schedule IH–83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

This rate schedule includes two possible rates for Special Industrial Power service: the Standard Special Industrial Power Rate and the Offpeak Special Industrial Power Rate. The Standard Special Industrial Power Rate is available for full service provided during all hours of the day. The Offpeak Special Industrial Power Rate is a lower rate available to the purchaser for service during periods specified by BPA.

A. Standard Special Industrial Power Rate

1. *Demand Charge.* a. $5.99 per kilowatt of billing demand occurring during Peak Period hours in the billing months December through April;

b. $2.56 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November;

c. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 17.2 mills per kilowatthour of billing energy for the billing months of September through March;

b. 14.2 mills per kilowatthour of billing energy for the billing month April through August.

B. Offpeak Special Industrial Power Rate

1. *Demand Charge.* a. No demand charge in any hour of the day.

2. *Energy Charge.* a. 7 mills per kilowatthour of billing energy during all billing months.

Section III. Billing Factors

A. Billing Demand

1. *Standard Special Industrial Power Rate.* The billing demand for power purchased under the Standard Special Industrial Power Rate shall be the BPA Operating Level as adjusted for power factor. If there is more than one BPA Operating Level during the billing month, the billing demand shall be a weighted average of the BPA Operating Levels for the billing month. The BPA Operating Level is the lowest of the following billing factors for the period(s) during which each applies:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Special Industrial Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C of the GRSPs.

2. *Offpeak Special Industrial Power Rate.* There is no billing demand for purchases under the Offpeak Special Industrial Power Rate.

B. Billing Energy

The billing energy under both the Standard and Offpeak Special Industrial Power Rates shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

The kilowatthours of billing energy shall be prorated among the respective billing demands for the billing month.

Section IV. Selection of the SI–85 Rate

The purchaser may select one of two service options, standard or offpeak service. BPA will provide standard service under the Standard Special Industrial Power Rate and offpeak service under the Offpeak Special Industrial Power Rate. Unless BPA receives a formal request for service under the Offpeak Special Industrial Power Rate, all service will be standard service provided under the Standard Special Industrial Power Rate. To change the type of service provided and the associated rate, the DSI shall submit a formal request for service under the preferred rate option in accordance with the terms of the DSI's power sales contract. Once a DSI has elected to purchase under one of the two options, all purchases of Special Industrial Power shall be subject to the terms and conditions of that rate option until such time that the DSI requests the other type of service.

Section V. Service Under the Offpeak Special Industrial Power Rate

BPA shall designate the hours during which offpeak service will be available, and shall provide the DSI with at least 2 weeks notice before changing those designated hours. BPA shall identify at least 10 and up to 13 hours on each day Monday through Friday, 15 hours on Saturday, and 24 hours on Sunday, during which offpeak service will be available to the purchaser.

If the DSI has elected to be served under the Offpeak Special Industrial Power Rate, the DSI may request, during the designated offpeak periods, service in an amount not to exceed the purchaser's Contract Demand. During all other hours the purchaser shall curtail service to a level not to exceed 10 percent of Contract Demand.

Section VI. Adjustments and Special Provisions

A. Curtailments

BPA shall charge the DSI for curtailments in accordance with the provisions of the DSI's power sales contract as amended. BPA shall apply the Standard Special Industrial Power Rate in the computation of any curtailment charge.

B. Unauthorized Increase Charge

1. *Rate for Unauthorized Increases.* 82.2 mills per kilowatthour.

2. *Application of the charge.* BPA may assess the unauthorized increase charge on the number of kilowatthours associated with all DSI Measured Demands during the billing month that exceed the BPA Operating Level. If BPA is providing service to the DSI under the Offpeak Special Industrial Power Rate, the amount by which the DSI's Measured Demand exceeds 10 percent of its Contract Demand during any hour other than the specified special hours shall be considered unauthorized increase.

C. Value of Reserves Credit

1. *Amount of the Value of Reserves Credit.* The monthly billing credit for the value of the reserves provided by purchasers of Special Industrial Firm Power shall be:

a. $0.33 per kilowatt of billing demand; and

b. 1.1 mills per kilowatthour of billing energy.

2. *Application of the Value of Reserves Credit.* The value of reserves credit shall be applied to the same billing factors which are used to

determine the billing for power purchased under sections III.A.1, III.B of this rate schedule. No value of reserves credit shall be applied to:

a. That portion of the purchaser's demand subject to curtailment charges under section VI.A of this rate schedule;

b. Those purchases subject to unauthorized increase charges under section VI.B, above; and

c. Purchases of Special Industrial Power under the Offpeak Special Industrial Power Rate.

D. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment for service under the Standard Special Industrial Power Rate, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. For service under the Offpeak Special Industrial Power rate, BPA shall increase the billing energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

E. Outage Credit

Pursuant to the conditions specified in section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to delivery Special Industrial Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. In addition, no credit shall be applied to purchases under the Offpeak Special Industrial Power Rate. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the General Rate Schedule Provisions.

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The SI-85 rate is not based on the cost of resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: The Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule CF-85. Firm Capacity Rate

Section I. Availability

This schedule is available for the purchase of Firm Capacity without energy on a Contract Demand basis. The schedule is available only to those purchasers holding Firm Capacity contracts executed prior to July 1, 1985. BPA may supply Firm Capacity to those purchasers.

A. On a contract year basis (all 12 months of the year); or

B. On a contract season basis (June 1 through October 31).

This schedule supersedes Schedule CF-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Contract Year Service

$47.88 per kilowatt per year of Contract Demand, billed monthly at the rate of $3.99 per kilowatt of Contract Demand.

B. Contract Season Service

$12.80 per kilowatt per season of Contract Demand, billed monthly during the contract season at the rate of $2.56 per kilowatt of Contract Demand.

Section III. Billing Factors

The billing demand shall be the Contract Demand.

Section IV. Adjustments and Special Provisions

A. Intertie Service Adjustment

The monthly capacity rate specified in sections II.A. and II.B., above, shall be increased by $0.18 per kilowatt for capacity made available at the Oregon-California or the Oregon-Nevada border for delivery over the Pacific Northwest-Pacific Southwest (Southern) Intertie.

B. Conservation Surcharge

The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The conservation surcharge shall be applied monthly and shall equal ten percent of the customer's total monthly charge for all power purchased under this rate schedule. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal ten percent of the total charge for all power purchases multiplied by the ratio of (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (b) the customer's total retail load.

C. Exchange Adjustment

The Exchange Adjustment shall be calculated pursuant to section III.C.5 of the General Rate Schedule Provisions (GRSPs) and shall be applied to all power purchases under this rate schedule.

For contract year service, the variable ECP in the Exchange Adjustment calculation shall have a value of .0235.

For contract season service, the variable ECP in the Exchange Adjustment calculation shall have a value of .0022.

D. Supply System Adjustment

The Supply System Adjustment shall be calculated pursuant to section III.C.6 of the GRSPs. The Adjustment shall be applied to the demand component of the Firm Capacity Rate, and shall be in effect from October 1, 1986 through the end of the rate period.

For contract year service the variables SS and BD in the Supply System calculation shall have the following values:

1. SS=.0113, and
2. BD=18,024.

For contract season service, the variables SS and BD in the Supply System calculation shall have the following values:

1. SS=.0001, and
2. BD=1,800.

E. Extended Peaking Surcharge

The monthly capacity rate specified in sections II.A. and II.B., above, shall be increased by the following extended peaking surcharge to compensate BPA

for each hour that the purchaser's monthly demand duration exceeds 8 hours.

1. $0.1023 per kilowatt per hour of extended peaking for the months April through November, and

2. $0.0577 per kilowatt per hour of extended peaking for the months December through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

The purchaser's monthly demand duration shall be determined by dividing:

1. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

2. The purchaser's Contract Demand for such month.

The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds eight hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

F. Energy Return Surcharge

Contracts for the purchase of Firm Capacity under this schedule shall include provisions for the purchaser to replace the energy accompanying the delivery of such capacity. Unless waived by BPA, any purchaser whose energy returns exceed 60 percent of the purchaser's Contract Demand during a single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.93 mills per kilowatthour for the months April through November, and

Section V. Resource Cost Contribution

2. 1.66 Mills per kilowatthour for the Months December through March.

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CF-85 rate is 87.8 percent FBS and 12.2 percent Exchange for contract year service, and 100.0 per cent Exchange for contract season service.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule CE-85—Emergency Capacity Rate

Section I. Availability

This schedule is available for the purchase of capacity:

A. When an emergency exists on the purchaser's system, or

B. When the purchaser wishes to displace higher cost firm capacity resources which are otherwise available to meet the purchaser's load, provided the purchaser requests such capacity and BPA has capacity available for such purpose.

This schedule supersedes Schedule CE-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Demand Charge

$1.20 per kilowatt of demand per calendar week or portion thereof.

B. Intertie Charge

The demand charge specified above shall be increased by $0.04 per kilowatt per week for capacity made available at the Oregon-California or Oregon-Nevada border for delivery over the Pacific Northwest-Pacific Southwest (Southern) Intertie.

Section III. Billing Factors

The billing demand shall be the maximum amount requested by the purchaser and made available by BPA during a calendar week. If BPA is unable to meet subsequent requests by a purchaser at the demand previously established during such week, the billing demand for that week shall be the lower demand which BPA is able to supply.

Section IV. Billing Period

Bills shall be rendered monthly.

Section V. Special Provision

Energy delivered with such capacity shall be returned to BPA within 7 days of the date of delivery and shall be returned at times and rates of delivery agreed to by both the purchaser and BPA prior to delivery. BPA may agree to accept the return energy after the normal 7 day return period provided that such delay has been mutually agreed upon prior to delivery.

Section VI. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CE-85 rate is 87.8 percent FBS and 12.2 percent Exchange.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule NR-85—New Resource Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest.

New Resource Firm Power is available to those investor-owned utilities under net requirements contracts purchasing firm power for resale to ultimate consumers, direct consumption, or use in construction, test and start up, and station service.

New Resource Firm Power is also available to any public body, cooperative, or Federal agency to the extent such power is needed to serve any increase in energy consumption of a load as defined in section 3.(13) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) as interpreted in Notice of Final Action (46 FR 44353) (September 3, 1981).

In addition, BPA may make this rate available to those parties participating in exchange agreements which use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule NR-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Demand Charge

1. $5.99 per kilowatt of billing demand occurring during Peak Period hours in

the billing months December through April.

2. $2.56 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November.

3. No demand charge during Offpeak Period hours.

B. Energy Charge

1. 23.5 mills per kilowatthour of billing energy for the billing months September through March;

2. 20.4 mills per kilowatthour of billing energy for the billing months April through August;

Section III. Billing Factors

In this section billing factors are listed for each of the following types of purchasers: computed requirements purchasers (section III.A), metered requirements purchasers and those New Resource Firm Power purchasers not covered by section III.A (section III.B).

A. Computed Requirements Purchasers

Purchasers designated by the Bonneville Power Administration (BPA) as computed requirements purchasers pursuant to power sales contracts executed after December 5, 1980, shall be billed in accordance with the provisions of this section.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b", below:

a. The lower of:

(1) The Measured Demand, before adjustment for power factor; or

(2) The larger of the Computed Peak Requirement or the Computed Average Energy Requirement; and

b. The lower of:

(1) The Computed Peak Requirement; or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be the lesser of:

a. The Computed Energy Maximum; or

b. For the months September through March, the sum of: 44 percent of the Measured Energy, and 56 percent of the Computed Energy Maximum;

c. For the months April through August, the sum, of: 39 percent of the Measured Energy, and 61 percent of the Computed Energy Maximum.

B. Metered Requirements Purchasers and Other Purchasers Not Covered By Section III.A, Above

Purchasers designated as metered requirements customers and purchasers taking power under this rate schedule who are not otherwise covered by section III.A shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract. However, purchasers who previously used the Firm Energy Rate Schedule FE–2, either in the computation of their power bills or in the determination of the value of an exchange account, shall not be charged for demand under this rate schedule.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. Conservation Surcharge

The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The conservation surcharge shall be applied monthly and shall equal ten percent of the customer's total monthly charge for all power purchased under this rate schedule. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal ten percent of the total charge for all power purchases multiplied by the ratio of (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (b) the customer's total retail load.

C. Exchange Adjustment

The Exchange Adjustment shall be calculated pursuant to section III.C.5 of the GRSPs and shall be applied to all power purchases under this rate schedule.

For this rate schedule, the variable EC in the Exchange Adjustment calculation shall have a value of .0105.

D. Unauthorized Increase

BPA shall apply the charge for Unauthorized Increase to any purchaser of Priority Firm Power taking demand and/or energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 82.2 mills per kilowatthour.

2. *Calculation of the Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount which may be considered an unauthorized increase. BPA shall first determine the amount of unauthorized increase related to demand and shall then treat any remaining unauthorized increases as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, that exceeds the demand which the purchaser is contractually entitled to take during the billing month and that cannot be assigned:

(1) To a class of power which BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) To a type of power which the purchaser acquires from sources other then BPA and which BPA delivers during such hour, shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) If such exhibit does not apply or is not a part of the purchaser's power sales contract, at the Rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month that exceeds the amount of energy which the purchaser is contractually entitled to take during that month and that cannot be assigned:

(1) To a class of power that BPA delivers such month pursuant to contracts between BPA and the purchaser; or

(2) To a type of power that the purchaser acquires from sources other

than BPA and that BPA delivers during such month, shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) As unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

E. Coincidental Billing Adjustment

Purchasers of New Resource Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.4 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

F. Outage Credit

Pursuant to the conditions specified in section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver New Resource Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

G. Energy Returns

Any purchaser who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's estimated computed peak requirement and estimated computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.93 mills per kilowatthour for the months of April through November, and

2. 1.66 mills per kilowatthour for the months of December through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the NR-85 rate is 97.9 percent Exchange and 2.1 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule SP-85—Surplus Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of Surplus Firm Power or Capacity to be used either for release or direct consumption. Surplus Firm Power or Capacity may be sold to entities inside and outside the Pacific Northwest as well as outside the United States. This rate schedule shall not apply to contracts for which rates have been negotiated pursuant to section 7(1) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). In addition, this schedule is not available to any direct-service industrial purchaser who buys power under either Schedule IP-85 or Schedule SI-85. Schedule SP-85 supersedes Schedule SP-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

The rate for Surplus Firm Power shall be mutually agreed upon and contractually specified by the parties prior to delivery of the power. Purchasers buying under a contract that establishes a price of power and a quantity of power to be purchased for a term of less than a year and ending on or before September 30, 1987, may buy at either the Resource Rate or the Contract Rate. Purchasers buying under a contract that establishes a price of power and a quantity of power to be purchased for a term of at least 1 year or terminating after September 30, 1987, shall buy at the Contract Rate.

A. Resource Rate

A Surplus Firm Power rate based on the cost of resources shall use one of the following as the basis of the charge:

1. The generation and transmission costs associated with providing power from one or more Federal system thermal resources to the contractually specified point of delivery. A rate based on the costs of thermal resources shall include all the variable costs and up to 100 percent of the fixes costs associated with generating and transmitting such thermal power.

The following variable costs, if applicable, shall be included in the determination of a rate based on the cost of thermal resources: (a) Total fuel costs; (b) incremental costs of labor and supplies required for operation and maintenance of the thermal plant(s) providing such power; (c) incremental administrative and general expenses; (d) taxes; (e) transmission network losses (to be priced at the incremental cost of the fuel required to generate the lost power); and (f) any other related costs associated with production and transmission of such thermal power.

The fixed costs associated with the generation and transmission of such thermal power shall include, if applicable: (a) Debt service; (b) capital additions; (c) taxes; (d) fixed administrative and general expenses; (e) fixed operation and maintenance expenses; (f) insurance for the facilities used in the production and transmission of this thermal power; and (g) any other fixed costs associated with the generation and transmission of such thermal power.

Prior to delivery of this thermal power, BPA shall determine what portion of the fixed costs listed above shall be included in the rate.

2. The average cost of exchange resources of one or more utilities participating in the residential exchange plus up to 100% of the associated transmission expense;

3. The average costs to BPA of one or more power purchases plus up to 100% of the associated transmission expense;

4. The average costs of one or more types of resources (thermal, exchange, purchased power) plus up to 100% of the associated transmission expense.

B. Contract Rate

For contracts that refer to the Contract Rate in this rate schedule in determining the rate for Surplus Firm Power, the following rate shall apply:

1. *Demand Charge.* a. $6.76 per kilowatt of billing demand occurring during Peak Period hours in each billing month.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 19.7 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. Escalation Factor

The SP-85 Contract Rate shall be subject to change each October 1, beginning October 1, 1987, for all contracts that extend beyond September 30, 1987. The effective rate for each rate component of the Contract Rate shall be determined according to one of the two formulas below. Formula 1 shall apply unless otherwise contractually specified.

1. $Rate_n = Rate_{n-1} * (1 + ARG_{-1})$

where:

$Rate_n$ = the rate in the fiscal year (October 1 through September 30) for which the SP-85 Contract Rate is being calculated;

$Rate_{n-1}$ = the rate for the demand component and energy component of the SP-85 Contract Rate in the previous fiscal year (year n−1);

ARG_{n-1} = the weighted average annual rate of growth (ARG) in the cost of exchange resources in year n−1 as calculated on October 1 in year n. The average cost of exchange resources shall be based on the average system costs of C.P. National Corporation, Idaho Power Company, Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, Utah Power & Light Company, and Washington Water Power Company. If any of the eight utilities equalizes rates in year n-1, pursuant to section 10 of the Residential Purchase and Sale Agreement, the calculation of ARG shall not reflect the average system cost of such utility.

2. $Rate_n = Rate_{n-1} * 1.071$

where:

$Rate_n$ = the rate in the fiscal year (October 1 through September 30) for which the SP-85 Contract Rate is being calculated; and

$Rate_{n-1}$ = the rate for the demand component and energy component of the SP-85 Contract Rate in the previous fiscal year (year n−1);

B. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the contract shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

C. Extended Peaking and Returned Energy Surcharge

Surcharges for extended peaking and returned energy (similar to those listed in sections IV.E. and IV.F. of the CF-85 rate schedule) will be established pursuant to contract, unless BPA determines that appropriate service provisions established in the contract make these unnecessary. Billing factors for these surcharges will be established in the contract.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SP-85 rate is 0.1 percent FBS, 98.5 percent Exchange and 1.4 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule SE-85—Surplus Firm Energy Rate

Section I. Availability

This schedule is available for the contract purchase of Surplus Firm Energy to be used either for resale or direct consumption. Surplus Firm Energy may be sold to entities inside and outside the Pacific Northwest as well as outside the United States. This rate schedule shall not apply to contracts for which rates have been negotiated pursuant to section 7(l) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). In addition, this schedule is not available to any direct-service industrial purchaser who buys power either under Schedule IP-85 or Schedule SI-85. Schedule SE-85 supersedes Schedule SE-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

29 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing energy shall be determined as provided in the purchaser's power sales contract. If BPA does not have a power sales contract in force with a purchaser or if the contract does not specify how to calculate the billing energy, the billing energy shall be the Measured Energy.

Section IV. Adjustments and Special Provisions

A. Escalation Factor

Schedule SE-85 shall be subject to change each October 1, beginning October 1, 1987, for all contracts that extend beyond September 30, 1987. The change in the SE-85 rate shall be determined according to one of the two formulas below. Formula 1 shall apply unless otherwise contractually specified.

1. $Rate_n = Rate_{n-1} * (1 + ARG_{n-1})$

where:

$Rate_n$ = the rate in the fiscal year (October 1 through September 30) for which the SE-85 rate is being calcualated;

$Rate_{n-1}$ = the SE-85 rate in the previous year n−1);

ARG_{n-1} = the weighted average annual rate of growth (ARG) in the cost of exchange resources in year n−1 as calculated on October 1 in year n. The average cost of exchange resources shall be based on the average system costs of C. P. National Corporation, Idaho Power Company, Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, Utah Power & Light Company, and Washington Power Company. If any of the eight utilities equalizes rates in year n-1 pursuant to Section 10 of the Residential Purchase and Sale Agreement, the calculation of ARG shall not reflect the average system cost of such utility.

2. $Rate = Rate_{n-1} * 1.071$

where:

$Rate_{n-1}$ = the rate is the fiscal year (October 1-September 30) for which the SE-85 rate is being calculated; and

$Rate_{n-1}$ = the SE-85 rate in the previous year (year n-1).

B. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is suuplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing energy by one percentage point of each percentage point or major fraction therefor (0.5 or

greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SE-85 rate is 0.1 percent FBS, 98.5 percent Exchange and 1.4 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule FD-85—Firm Displacement Power Rate

Section I. Availability

This schedule is available for the contract purchase of Firm Displacement Power and Capacity by Pacific Northwest utilities. Firm Displacement Power and Capacity may be used either for resale or direct consumption within the Pacific Northwest, to replace the output of firm resources exported from the region on a firm basis for a period of at least 3 years. The amount of Firm Displacement Power or Capacity may not exceed the planned output of resource(s) identified by the purchaser available to serve extra-regional load. BPA may limit the amount of Firm Displacement Power or Capacity available for sale under this rate schedule to the amount specified as actually serving extra-regional load in the contract between BPA and the utility.

Section II. Rate

The following rate shall apply to sales of Firm Displacement Power and Capacity through June 30, 1990:

A. Demand Charge

1. $5.92 per kilowatt of billing demand occurring during Peak Period hours in all billing months.

2. No demand charge during Offpeak Period hours.

B. Energy Charge

22.2 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. Escalation Factor

The FD-85 rate shall be subject to change each July 1, beginning July 1, 1986. The effective rate for each rate component of the FD-85 Rate shall be calculated as follows:

1. $Rate_n = Rate_{n-1} * 1.025$

where:

$Rate_n$ = the rate in the year (July 1 through June 30) for which the SE-85 rate is being calculated; and

$Rate_{n-1}$ = the demand component and energy component of the FD-85 rate in the previous year (year n-1).

B. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the contract shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs.). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing energy by one percentage point of each percentage point or major fraction therefor (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

C. Outage Credit

Pursuant to the conditions specified in section 7 of the General Contract Provisions to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver Firm Displacement. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternate facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

D. Extended Peaking and Returned Energy Surcharges

Surcharges for extended peaking and returned energy (similar to those listed in sections IV.E and IV.F of the CF-85 rate schedule) will be established pursuant to contract unless BPA determines that appropriate service provisions established in the contract make these unnecessary. Billing factors for these surcharges will be established in the contract.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the FD-85 rate is 97.9 percent Exchange and 2.1 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule NF-85—Nonfirm Energy Rate

Section I. Availability

This schedule is available for the contract purchase of Nonfirm Energy to be used both inside and outside the Pacific Northwest as well as outside the United States. This schedule also applies to energy delivered for emergency use under the conditions set forth in section V.A. of the General Rate Schedule Provisions (GRSPs). This rate schedule is not available for the purchase of energy that BPA has a firm obligation to supply except to the extent that short-term guarantees are agreed to, nor is this schedule applicable to contracts for which rates have been negotiated pursuant to Sec. 7(l) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). The availability of Nonfirm Energy under this rate schedule shall be determined by BPA. This rate schedule supersedes Schedule NF-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Market Rates

1. *Standard Rate.* a. 21.0 mills per kilowatthour of billing energy during Offpeak Period hours; and

b. 19.3 mills per kilowatthour of billing energy during Offpeak Period hours.

2. *Displacement Rates*—a. *Variable Displacement Rate.* The rate shall be the greater of:

(1) 75 percent of either:

(a) The decremental costs in mills per kilowatthour of the displaceable thermal resource or end-user load with alternate fuel sources, or

(b) The rate in mills per kilowatthour associated with the displaceable purchase of energy; and

(2) 11 mills per kilowatthour.

b. *Fixed Displacement Rate.* (1) 7 mills per kilowatthour of billing energy for displacement of coal-fired resources and end-user load with alternate fuel sources; or

(2) 3 mills per kilowatthour of billing energy for displacement of nuclear resources.

3. *Incremental Rate.* The Incremental Rate is equal to the Incremental Cost of power plus 2.0 mills per kilowatthour, where the Incremental Cost is defined as all identifiable costs (expressed in mills per kilowatthour) that BPA would not have incurred had it not chosen to produce or purchase the power being sold under this rate.

B. Contract Rate

The Contract Rate is 16.6 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing energy for power purchased under this rate schedule shall be in the Measured Energy unless otherwise specified in the power sales contract.

Section IV. Selection of the NF-85 Rate

Any time that BPA has Nonfirm Energy for sale, either the Standard Rate, the Variable Displacement Rate, the Fixed Displacement Rate, the Incremental Rate, or a combination of these rates may be in effect. The Contract Rate may apply to a particular sale, but only if the conditions of service are consistent with all the provisions of this section.

A. Market Rates

1. *Standard Rate.* The Standard Rate shall apply:

a. Unless the purchaser is able to demonstrate that its Decremental Cost is less than the applicable Standard Rate plus 2 mills per killowatthour;

b. When BPA does not seek to expand its market beyond sales being made at the Standard Rate; or

c. To nonfirm energy purchased pursuant to the Relief from Overrun Exhibit to the power sales contract.

2. *Displacement Rates*—a. *Variable Displacement Rate.* The Variable Displacement Rate shall apply to purchasers who qualify for the rate when all markets have been satisfied at the Standard Rate and BPA seeks to expand its sales beyond those being made at the Standard Rate.

To qualify for the Variable Displacement Rate, the displaceable resource or displaceable purchase of energy must have Decremental Costs lower than the applicable Standard Rate plus 2.0 mills per kilowatthour. To qualify for the Variable Displacement Rate, the end-user load with alternate fuel source must have Decremental Costs lower than the applicable Standard Rate plus 4.0 mills per kilowatthour. End-user loads with alternate fuel sources may not use the Decremental Cost of a displaceable purchase of electricity to qualify for this rate.

Decremental Cost of a displaced thermal resource or end-user load with alternate fuel source is defined as all identifiable costs (expressed in mills per kilowatthour) that the purchaser is able to avoid by purchasing power at this rate, rather than generating the power itself, or using the alternate fuel.

Decremental Cost of a displaced purchase of energy is defined as all identifiable costs to serve load (expressed in mills per kilowatthour) that the purchased is able to avoid by choosing not to purchase the energy.

When displacing a resource, purchasers at the Variable Displacement Rate must shut down or reduce the output of the identified displaceable resource in an amount equal to the amount of Variable Displacement Rate energy purchased.

When displacing a purchase, purchasers must demonstrate that the purchase has been reduced and that the output of the resource being purchased has been reduced in an amount equal to the amount of Variable Displacement Rate energy purchased.

b. *Fixed Displacement Rate.* When all markets have been satisfied at the Variable Displacement Rate, BPA may make additional energy available at the Fixed Displacement Rate to displace coal-fired and nuclear resources and end-user alternate fuel sources. To qualify for the Fixed Displacement Rate:

(1) Coal-fired and nuclear resources must have Decremental Costs lower than 13 mills per kilowatthour; and

(2) End-user loads with alternate fuel sources must have Decremental Costs lower than 15 mills per kilowatthour.

Energy will be made available at 3 mills per kilowatthour to displace nuclear resources only after all markets have been satisfied at the 7 mills per kilowatthour rate.

Decremental Cost is defined as all identifiable costs (expressed in mills per kilowatthour) that the purchaser is able to avoid by choosing not to produce the power being purchased at this rate.

When displacing coal-fired and nuclear resources, purchasers and/or end-users of energy at the Fixed Displacement Rate must shut down or reduce the output of the identified displaceable resource in an amount equal to the amount of Fixed Displacement Rate energy purchased. The purchaser and/or end-user must own and operate the identified resource or be able to control the generation level of the resource through purchase of the resource's variable output.

BPA will offer Nonfirm Energy for sale at the Fixed Displacement Rate only to displace identified qualified resources and end-user alternate fuel sources.

3. *Incremental Rate.* The Incremental Rate shall be applied to sales of power:

a. That is produced or purchased by BPA concurrently with the nonfirm sale;

b. That BPA may at its option not produce or purchase; and

c. That has an Incremental Cost greater than the Standard rate less 2.0 mills per kilowatthour.

B. Contract Rate

The Contract Rate shall apply to sales of Nonfirm Energy pursuant to contracts (except the 20-year utility power sales contracts) that:

1. Refer to this rate schedule to determine the value of energy; and

2. Do not specify that a different nonfirm rate (Standard, Variable Displacement, Fixed Displacement, or Incremental) will apply.

Section V. Delivery

A. Rate of Delivery

BPA shall determine the rate of delivery for Nonfirm Energy made available by BPA under this rate schedule.

B. Guaranteed Delivery

A surcharge of 3.4 mills per kilowatthour shall be applied for guaranteed delivery of Nonfirm Energy at the Standard Rate and the Fixed Displacement Rate, except that the Fixed Displacement Rate for displacement of nuclear resources shall not include this surcharge.

On the second and last working day of each week, or more often if BPA determines that it is appropriate, BPA will indicate the amounts of Nonfirm Energy available for delivery, normally for the next three or four days, on a guaranteed basis. On the second working day of each week BPA will indicate the daily or hourly amounts that it is willing to guarantee through at least the Friday immediately following. On the last working day of each week BPA will indicate the amounts it is willing to guarantee through at least the Tuesday immediately following. Such daily or hourly amounts may be as small as zero or as much as all the Nonfirm Energy that BPA plans to offer for sale on such days.

Scheduled amounts of guaranteed Nonfirm Energy may not be changed except:

1. When BPA and the purchaser mutually agree to increase or decrease the scheduled amounts; or

2. When BPA must reduce Nonfirm Energy deliveries in order to serve firm loads because of unexpected generation loss in the Pacific Northwest.

Section VI. Unauthorized Increase Adjustment

BPA may apply the charge for Unauthorized Increase to any purchaser of Nonfirm Energy who continues to take nonfirm energy from BPA after having been notified by BPA that nonfirm service is no longer available.

A. Rate for Unauthorized Increase

82.2 mills per kilowatthour.

B. Calculation of the Amount of Unauthorized Increase

The amount of unauthorized increase is equal to the number of kilowatthours that are delivered to a purchaser for use by the nonfirm load following notification that BPA is no longer able to supply Nonfirm Energy.

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the NF-85 Standard Rate is 99.2 percent FBS and 0.8 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule EB-85—Energy Broker Rate

Section I. Availability

This rate schedule may be applied to both sales and purchases of nonfirm energy among those participants in the Western Systems Coordinating Council (WSCC) Energy Broker System between whom agreements for energy transmission have been transacted. BPA shall determine the availability of energy to be provided under this rate schedule. This schedule supersedes Schedule EB-83, which went into effect on an interim basis on November 1, 1983.

Section II. Rate

The following formula shall be used in determining the rate at which power will be sold or purchased on the energy broker:

$$EB\text{-}85 = \frac{BP + SP}{2}$$

where:
EB-85 = Energy Broker Rate,
BP = Quoted Buy Price, and
SP = Quoted Sell Price.

The Energy Broker will identify potential transactions when the Sell Price is at least 4.0 mills per kilowatthour less than the Buy Price. The final transaction rate for brokered nonfirm energy will be based on splitting the difference between the quoted Buy and Sell Prices, with the settlement for wheeling charges and energy losses determined in accordance with Exhibit A of the WSCC Broker Transmission Service Agreement. When a transaction involving BPA takes place on the Energy Broker System, the BPA Buy Price and BPA Sell Price, respectively, shall be defined as follows:

A. The BPA Buy Price is the estimated decremental or equivalent expense per kilowatthour that would otherwise have been incurred by BPA in generating or purchasing power from alternative sources in lieu of brokered energy scheduled for delivery to BPA during that hour.

B. The BPA Sell Price is the estimated incremental or equivalent expense per kilowatthour that would be incurred by BPA in supplying broker identified energy scheduled for delivery during such hour to the buyer from resources that are available to supply power during that hour as determined by BPA.

Section III. Billing Factors

The billing energy for power purchased under this rate schedule shall be the Measured Energy unless otherwise specified in the power sales contract.

Section IV. Delivery

BPA shall determine the rate of delivery for Energy Broker energy made available by BPA under this rate schedule.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The cost contribution of different resource categories to the EB-85 rate is based upon the specific resource(s) offered during the scheduled time of sale.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour after the displacement by BPA's available secondary energy.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule RP-85—Reserve Power Rate

Section I. Availability

This schedule is available for the purchase of power:

A. In cases where a purchaser's power sales contract states that the rate for Reserve Power shall be applied;

B. For which BPA determines no other rate schedule is applicable; and/or

C. To serve a purchaser's firm power loads in circumstances where BPA does not have a power sales contract in force with such purchaser, and BPA determines that this rate should be applied. This rate schedule may be applied to power purchased by entities outside the United States.

This rate schedule supersedes Schedule RP-83 which went into effect

on an interim basis on November 1, 1983.

Section II. Rate

A. Demand Charge

1. $7.87 per kilowatt of billing demand occurring during Peak Period hours in the billing months December through April.

2. $2.16 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November.

3. No demand charge during Offpeak Period hours.

B. Energy Charge

1. 25.3 mills per kilowatthour of billing energy.

Section III. Billing Factors

The factors to be used in determining the billing for power purchased under this rate schedule are as follows:

A. Billing Demand

If applicable, the billing demand shall be the Contract Demand as specified in the power sales contract. Otherwise the billing demand shall be the Measured Demand as adjusted for power factor.

B. Billing Energy

The billing energy shall be the Contract Demand multiplied by the number of hours in the billing month, if use of the Contract Demand for determining billing energy is specified in the power sales contract. Otherwise the billing energy for such purchasers shall be the Measured Energy.

Section IV. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent. To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The RP-85 rate is not based on the embedded cost of resources

B. The forecasted average cost of resources available to BPA under less than average water conditioins is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Outline for General Rate Schedule Provisions

I. Adoption of Revised Schedules and General Rate Schedule Provisions
- A. Approval of Rates
- B. General Provisions
- C. Reorganization of the Wholesale Power Rate Schedules and General Rate Schedule Provisions
  - 1. Reorganization of the Wholesale Power Rate Schedules
  - 2. Reorganization of the General Rate Schedule Provisions (GRSPs)

II. Types of BPA Service
- A. Priority Firm Power
- B. New Resource Firm Power
- C. Industrial Firm Power
- D. Special Industrial Power
- E. Auxiliary Power
- F. Firm Capacity
- G. Surplus Firm Power
- H. Surplus Firm Energy
- I. Firm Displacement Power
- J. Nonfirm Energy
- K. Energy Broker Energy
- L. Reserve Power

III. Billing Factors and Billing Adjustments
- A. Billing Factors for Demand
  - 1. Measured Demand
    - a. Metered Demand
    - b. Scheduled Demand
  - 2. Ratchet Demand
  - 3. Contract Demand
  - 4. Computed Peak Requirement
  - 5. Computed Average Energy Requirement
  - 6. Operating Demand
  - 7. Curtailed Demand
  - 8. Restricted Demand
  - 9. Auxiliary Demand
  - 10. BPA Operating Level
  - 11. Customer Charge Demand
  - 12. Plant Capacity Demand
  - 13. Forecasted Demand
  - 14. Distributed Demand
  - 15. Committed Demand
- B. Billing Factors for Energy
  - 1. Measured Energy
    - a. Metered Energy
    - b. Scheduled Energy
  - 2. Computed Energy Maximum
  - 3. Commited Energy
  - 4. Contract Energy
- C. Billing Adjustments
  - 1. Power Factor Adjustment
  - 2. Outage Adjustment
  - 3. Low Density Discount
    - a. Basic LDD Principles
    - b. Eligibility Criteria
    - c. Discounts
  - 4. Coincidental Billing Adjustment
  - 5. Exchange Adjustment Clause
    - a. Calculation of the Exchange Adjustments
    - b. Implementation of the Exchange Adjustment
    - c. Provisions for Final Adjustment
  - 6. Supply System Adjustment Clause
    - a. Calculation of the Supply System Adjustment
    - b. Implementation of the Supply System Adjustment
- D. Billing-Related Definitions
  - 1. Peak Period
  - 2. Offpeak Period

IV. Other Definitions
- A. Restriction of Deliveries
- B. Computed Requirements Purchasers
  - 1. Designation as a Computed Requirements Purchaser
  - 2. Purpose of the Computed Requirements Designation
  - 3. Definitions and Terms Relating to Computed Requirements Purchasers with Power Sales Contracts Executed Prior to December 5, 1980
    - a. General Principles
    - b. Determination of Assured Capability

V. Application of Rates Under Special Circumstances
- A. Energy Supplied for Emergency Use
- B. Construction, Test and Start-up, and Station Service
- C. Application of Rates During Initial Operation Period—Transitional Service
  - 1. Eligibility for Transitional Services
  - 2. Calculation of the Daily Demand
  - 3. Billing for Transitional Services
- D. Changes in DSI's Operating Level
- E. Application of the Industrial Incentive Rate
  - 1. Industrial Incentive Rate Feasibility Study
  - 2. Contractual Arrangements Relating to Implementation of the Industrial Incentive Rate.
  - 3. Industrial Incentive Rate Implementation Procedure

VI. Billing Information
- A. Determination of Estimated Billing Data
- B. Billing for New Large Single Loads

C. Adjustment of Measured Demand to Arrive at Billing Demand
D. Billing Month
E. Payment of Bills
1. Computation of Bills
2. Estimated Bills
3. Due Date
4. Late Payment
5. Disputed Billings

General Rate Schedule Provisions

Section I. Adoption of Revised Rate Schedules and General Rate Schedule Provisions

A. Approval of Rates

These rate schedules and General Rate Schedule Provisions GRSPs) shall become effective following confirmation and approval by the Federal Energy Regulatory Commission (FERC). If the rates and GRSPs are first approved on an interim basis, they shall not be considered final until the FERC has issued an order confirming and approving them on a final basis.

B. General Provisions

BPA's Wholesale Power Rate Schedules and associated General Rate Schedule Provisions (GRSPs) that are effective July 1, 1985, supersede in their entirety BPA's Wholesale Power Rate Schedules and GRSPs effective November 1, 1983. The revised schedules and provisions shall be applicable to every BPA contract, including contracts executed prior to and subsequent to enactment of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).

C. Reorganization of the Wholesale Power Rate Schedules and General Rate Schedule Provisions (GRSPs)

1. *Reorganization of the Wholesale Power Rate Schedules.* All references in the industrial power sales contract to section 4 of the rate schedules for Industrial Firm Power shall be deemed to refer to the section in such schedules entitled "Billing Factors."

2. *Reorganization of the General Rate Schedule Provisions (GRSPs).* A major restructuring of the GRSPs took place effective with BPA's 1983 wholesale power rates. Contractual and other references to sections in GRSPs associated with earlier BPA rates deemed to be changed to the new organization and numbering system as of November 1, 1983, when the 1983 rates were adopted. Those changes are not reiterated herein. Only those changes effective with these new GRSPs are indicated in the table below.

References to sections in those GRSPs that were in effect between November 1, 1983, and July 1, 1985, are deemed to refer to the section in these revised GRSPs indicated in the listing below.

Title	Old GRSPs Section No.	New GRSPs Section No.
Priority Firm Power	II.A	II.A
New Resource Firm Power	II.B	II.B
Industrial Firm Power	II.C	II.C
Special Industrial Power	N/A	II.D
Auxiliary Power	II.D	II.E
Firm Capacity	II.E	II.F
Surplus Firm Power	II.F	II.G
Surplus Firm Energy	II.G	II.H
Firm Displacement Power	N/A	II.I
Nonfirm Energy	II.H	II.J
Energy Broker Energy	II.I	II.K
Reserve Power	II.J	II.L
Measured Demand	III.A.1	III.A.1
Ratchet Demand	N/A	III.A.2
Contract Demand	III.A.2	III.A.3
Computed Peak Requirement	III.A.3	III.A.4
Computed Average Energy Requirement.	III.A.4	IIIA.5
Operating Demand	III.A.6	III.A.6
Curtailed Demand	III.A.7	IIIA.7
Restricted Demand	III.A.8	III.A.8
Auxiliary Demand	III.A.9	III.A.9
BPA Operating Level	N/A	III.A.10
Customer Charge Demand	N/A	III.A.11
Plant Capacity Demand	N/A	III.A.12
Forecasted Demand	N/A	III.A.13
Distributed Demand	N/A	III.A.14
Committed Demand	III.A.10	III.A.15
Measured Energy	III.B.1	III.B.1
Computed Energy Maximum	III.B.2	III.B.2
Committed Energy	III.B.3	III.B.3
Contract Energy	N/A	III.B.4
Power Factor Adjustment	III.C.1	III.C.1
Outage Adjustment	N/A	III.C.2
Low Density Discount	N/A	III.C.3
Coincidental Billing Adjustment	VI.A	III.C.4
Exchange Adjustment Clause	III.C.2	III.C.5
Supply System Adjustment Clause	III.C.3	III.C.6
Conservation Charge	III.C.4	N/A
Peak Period	N/A	III.D.1
Offpeak Period	N/A	III.D.2
Restriction of Deliveries	IV.A	IV.A
Computed Requirements Purchasers.	IV.B	IV.B
Application of Rates Under Special Circumstances.	V.	V.
Changes in a DSI's Operating Level	N/A	V.D
Application of the Industrial Incentive Rate.	V.D	V.E
Determination of Estimated Billing Data.	VI.B	VI.A
Billing for New Large Single Loads	N/A	VI.B
Adjustment of Measured Demand to Arrive at Billing Demand.	N/A	VI.C
Billing Month	VI.C	VI.D
Payment of Bills	VI.D	VI.E
Computation of Bills	VI.D	VI.E.1
Estimated Bills	VI.D	VI.E.2
Due Date	VI.D	VI.E.3
Late Payment	VI.DVI.E.4	
Disputed Billings	VI.D	VI.D.5

Section II. Types of BPA Service

A. Priority Firm Power

Priority Firm Power is electric power that BPA will make continuously available for resale to ultimate consumers, direct consumption, construction, test and start-up, and station service by public bodies, cooperatives, and Federal agencies. (Construction, test and start-up, and station service are defined in section V.B of these GRSPs.)

Utilities participating in the exchange under section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, BPA may make Priority Firm Power available to those parties participating in exchange agreements specifying use of the Priority Firm Rate for determining the amount or value of power to be exchanged.

Power purchased under the Priority Firm Power Rate Schedule is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section IV.A). However, BPA shall not restrict Priority Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

Any increase in energy consumption of a load as defined in:

1. Section 3.(13) of the Northwest Power Act, or

2. Section 8 of any BPA utility power sales contract executed after December 5, 1980,

shall be considered New Resource Firm Power and shall be served under the New Resource Firm Power Rate.

B. New Resource Firm Power

New Resource Firm Power is electric power that BPA will make continuously available:

1. For any new large single load as defined in Sec. 3.(13) of the Northwest Power Act and as described in section 8 of any BPA utility power sales contract executed after December 5, 1980,

2. For firm power purchased by investor-owned utilities pursuant to power sales contracts with BPA, and/or

3. For construction, test and start-up, and station service for facilities owned and/or operated by investor-owned utilities.

New Resource Firm Power is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section IV.A). However, BPA shall not restrict New Resource Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

C. Industrial Firm Power

Industrial Firm Power is electric power that BPA will make continuously available to a direct-service industrial purchaser (DSI) pursuant to the DSI's power sales contract and subject to:

1. The restriction applicable to deliveries of all firm power pursuant to the Uncontrollable Forces and Continuity of Service provisions of the General Contract Provisions of the power sales contract, and

2. The restrictions given in the Restriction of Deliveries section of the power sales contract.

D. Special Industrial Power

Special Industrial Power is electric power which BPA will make continuously available to any DSI purchaser that qualifies for the Special Industrial Power Rate pursuant to section 7(d)(2) of the Northwest Power Act. This power is similar in nature to Industrial Firm Power, but is subject to greater restriction by BPA. Special Industrial Power is made available to the qualifying DSI upon adoption of and subject to an agreement modifying their power sales contract.

E. Auxiliary Power

Auxiliary Power is that power which a DSI purchaser requests and which BPA agrees to make available to serve that portion of the DSI's load which is in excess of the DSI's Operating Demand for Industrial Firm Power or Special Industrial Power.

F. Firm Capacity

Firm Capacity is capacity that BPA assures a purchaser will be available in the amount(s) and during the period(s) specified in the power sales contract. The energy associated with this capacity msut be returned to BPA. Firm Capacity may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section IV.A).

G. Surplus Firm Power

Surplus Firm Power is firm power that BPA assures a purchaser will be available in the amount(s) and during the period(s) specified in the power sales contract. BPA will make Surplus Firm Power available only to the extent that BPA determines that it has firm power in excess of the amount required to meet BPA's existing contractual obligations to provide firm service. Surplus Firm Power may be used either for resale or direct consumption by purchasers both inside and outside the United States. Such power may, however, be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section IV.A).

H. Surplus Firm Energy

Surplus Firm Energy is firm energy that BPA assures a purchaser will be available in the amount(s) and during the period(s) specified in the power sales contract. BPA will make Surplus Firm Energy available only to the extent that BPA determines that it has firm energy in excess of the amount required to meet BPA's existing contractual obligations to provide firm service. Surplus Firm Energy may be used either for resale or direct consumption by purchasers both inside and outside the United States. Such energy may, however, be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section IV.A).

I. Firm Displacement Power

Firm Displacement Power is power (capacity, or capacity and energy) that is sold by BPA for displacement of firm resources on a planning basis by Pacific Northwest utilities to allow the sale of those resources to extra regional customers for at least 3 years, consistent with Pub. L. 88–552 and Pub. L. 96–501. Capacity-only Firm Displacement sales may include energy return provisions.

J. Nonfirm Energy

Nonfirm Energy is energy that BPA supplies or makes available to a purchaser under an arrangement that does not have the guaranteed continuous availability feature of firm power. However, Nonfirm Energy that has been purchased under a guarantee provision in the Nonfirm Energy Rate Schedule shall be provided to the purchaser in accordance with the provisions of that schedule and the applicable power sales contract. BPA may make Nonfirm Energy available to purchasers both inside and outside the Pacific Northwest. Purchasers may be located outside the United States as well.

K. Energy Broker Energy

Energy Broker Energy, as used in BPA's EB–85 rate schedule, is nonfirm energy that:

1. BPA purchases from the Western Systems Coordinating Council (WSCC) Energy Broker System under the Energy Broker Rate Schedule, or

2. BPA makes available to the WSCC for sale to WSCC participants. Power that BPA sells to WSCC participants is subject to the Restrictions of Deliveries section of these GRSP (section IV.A).

L. Reserve Power

Reserve Power is power sold to a purchaser:

1. in cases where the purchaser's power sales contracts states that the rate for Reserve Power shall be applied;

2. to provide service when no other type of power is deemed applicable; and/or

3. to serve the purchaser's firm power loads under circumstances where BPA does not have a power sales contract in force with the purchaser.

Sales of Reserve Power are subject to the Restriction of Deliveries section of these GRSPs (section IV.A).

Section III. Billing Factors and Billing Adjustments

A. Billing Factors for Demand

1. *Measured Demand.* The purchaser's Measured Demand shall be determined in the manner described in this section unless the terms of a power sales contract executed after December 5, 1980, provide otherwise. Measured Demand shall be that portion of the metered and/or scheduled demand that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant to the power sales contract. The portion of the total Measured Demand so assigned shall constitute the Measured Demand for each such class of power.

The Measured Demand shall be determined from the metered demand and/or the scheduled demand, as hereinafter defined. The Measured Demand shall be determined either on a concidental or a noncoincidental basis, as provided in the purchaser's power sales contract.

a. *Metered Demand.* The metered demand in kilowatts shall be the largest of the 60-minute cock-hour integrated demands, adjusted as specified in the power sales contract, at which electric energy is delivered to a purchaser:

(1) At each point of delivery for which the metered demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Such largest integrated demand shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section IV.A of these GRSPs. In determining the metered demand, BPA shall exclude any abnormal integrated demands due to or resulting from:

(1) Emergencies or breakdowns on, or maintenance of, the Federal system facilities, and/or

(2) Emergencies on the purchaser's facilities, provided that such facilities have been adequately maintained and prudently operated, as determined by BPA.

b. *Scheduled Demand.* The scheduled demand in kilowatts shall be the largest of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) To each system for which scheduled demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing demand.

2. *Ratchet Demand.* The Ratchet Demand in kilowatts shall be the maximum demand established during a specified period of time either during or prior to the current billing period. The demand on which the ratchet is based is specified in the relevant rate schedule or in these GRSPs. For utility purchasers purchasing under the PF or NR rate schedules, the Ratchet Demand is based on the highest demand during prior billing months. For the purpose of daily demand billing for DSI and utility purchasers (see section V.C of these GRSPs), the Ratchet Demand is based on the demand during the period in which BPA supplies transitional service. When the Ratchet Demand is used as a billing factor, BPA shall have specified in the appropriate schedules and/or GRSPs:

a. The period of time over which the ratchet shall be calculated,

b. The type of demand (Measured Demand, Computed Peak Requirement, etc.) to be used in the calculation, and

c. The percentage (if any) of that demand which will be used to calculate the Ratchet Demand.

3. *Contract Demand.* The Contract Demand shall be the maximum number of kilowatts that the purchaser (utility, DSI, or other entity) agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract. BPA may agree to make deliveries at a rate in excess of the Contract Demand at the request of the purchaser, but shall not be obligated to continue such excess deliveries. Any contractual or other reference to Contract Demand as expressed in kilowatthours shall be deemed, for the purpose of these GRSPs, to refer to the term "Contract Energy."

4. *Computed Peak Requirement.* For purchasers designated to purchase on the basis of computed requirements under power sales contracts executed after December 5, 1980, the Computed Peak Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers,

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers, and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

For computed requirements purchasers with power sales contracts executed prior to December 5, 1980, the purchaser's Computed Peak Requirement for each billing month shall be the largest amount during such month by which the purchaser's actual hourly system demand, excluding any loads otherwise provided for in the contract, exceeds its assured peaking capability for such month, as determined pursuant to section IV.B.3 of these General Rate Schedule Provisions.

5. *Computed Average Energy Requirement.* For computed requirements purchasers with power sales contracts executed after December 5, 1980, the Computed Average Energy Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers,

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers, and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

For computed requirements purchasers with power sales comtracts executed prior to December 5, 1980, the purchaser's Computed Average Energy Requirement for each billing month shall be the amount during such month by which the purchaser's actual system average load exceeds its assured average energy capability, as determined pursuant to section IV.B.3 of these General Rate Schedule Provisions.

6. *Operating Demand.* The Operating Demand is that demand which is established by the DSI purchaser in accordance with section 5(b) of the DSI's power sales contract. Unless the DSI has requested, and BPA has granted, an Auxiliary Demand, the Operating Demand establishes a limit with respect to:

a. The demand which the purchaser may impose on BPA during Peak Period hours; and

b. The total amount of energy during a billing month which the DSI is entitled to purchase from BPA under the Standard and Premium Industrial Power Rates.

Any DSI whose Measured Demand during Peak Period hours exceeds the Operating Demand plus the Auxiliary Demand (if any) for the billing month shall be subject to unauthorized increase charges for each kilowatt of unauthorized increase associated with each overrun. Likewise, a DSI shall be subject to unauthorized increase charges to the extent that the DSI's energy purchases for the billing month exceeds the quantity equal to the number of hours in the billing month multiplied by the sum of the Operating Demand and the Auxiliary Demand.

7. *Curtailed Demand.* A Curtailed Demand shall be the number of kilowatts of industrial power (Industrial Firm Power or Special Industrial Power) during the billing month which results from the DSI purchaser's request for such power in amounts less than the Operating Demand therefor. Each purchaser of industrial power may curtail its demand according to the terms of its power sales contract (which permits up to 3 levels of Curtailed Demand each month). However, for the purpose of applying either the Industrial Firm Power Rate or the Special Industrial Power Rate, BPA shall permit each DSI to submit three additional Curtailed Demands applicable solely to purchases of industrial power during the Offpeak Period hours during the billing month. If the DSI does not specifically designate any Curtailed Demands for the Offpeak Period hours, the submitted Curtailed Demands shall be applied to all hours of the day. BPA shall base its curtailment charges on a weighted average for all Curtailed Demands during the billing month.

8. *Restricted Demand.* Restricted Demand shall be the number of kilowatts of industrial power (either Industrial Firm Power or Special Industrial Power) that results when BPA has restricted delivery of such power for one (1) clock-hour or more. BPA shall make such restrictions according to the terms of the purchasing DSI's power sales contract. In a given billing month, there are as many possible levels of Restricted Demand for a DSI as there are number of restrictions.

9. *Auxiliary Demand.* Auxiliary Demand is the number of kilowatts of Auxiliary Power that a DSI requests and that BPA agrees to make available to serve a portion of the DSI's load during the period specified in the DSI's request. The DSI may request up to three levels

of Auxiliary Demand for Peak Period hours and three additional levels for the Offpeak Period hours during a billing month. Except during a period of restriction, BPA will automatically approve any Auxiliary Demand if the weighted average of the DSI's Peak Period and Offpeak Period use in a given day is equal to or less than the purchaser's Operating Demand.

If BPA agrees to a request for Auxiliary Power but later becomes unable to supply such demand, the Restricted Demand for Auxiliary Power shall be deemed to be the Auxiliary Demand for such period of restriction. Auxiliary Power may be curtailed by the DSI according to the provisions of section 9(a) of the DSI's power sales contract.

BPA shall make Auxiliary Power available to Industrial Firm Power purchasers at the Standard Industrial Rate, except that the Industrial Incentive Rate shall apply if the DSI is making its purchases under the IP–85 Industrial Incentive Rate. Auxiliary Power sales to DSIs purchasing under the Special Industrial Rate will be made only at the Standard Special Industrial Power Rate.

10. *BPA Operating Level.* The BPA Operating Level is, for the purpose of these rate schedules and GRSPs, an hourly amount of industrial power (Industrial Firm Power or Special Industrial Power) for a DSI purchaser that is equal to the lowest of the following demands during that hour:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

The weighted average BPA Operating Level for the DSI can be determined by summing all those hourly BPA Operating Levels and dividing by the number of hours in the billing month

Each DSI must request service from BPA for each billing month in accordance with the terms of the power sales contract. The requested level of service will be the BPA Operating Level, provided BPA does not need to restrict the DSI and provided BPA agrees to supply any requested Auxiliary Demand. The BPA Operating Level is the basis for determining if a DSI has incurred an unauthorized increase.

During Peak Period hours the BPA Operating Level may be no greater than the Operating Demand for the billing month unless the customer has requested, and BPA has agreed to supply, the requisite Auxiliary Demand.

11. *Customer Charge Demand.* The Customer Charge Demand is established for purposes of collecting the customer charge in the IP–85 rate schedule (Sections II.A.1., II.B.1., II.C.1.). A Customer Charge Demand is determined on an individual industrial plant basis. For the direct-service industrial purchasers operating more than one plant, the total amount billed for the customer charge will be determined by summing the amount of the customer charge computed for each plant. For purposes of levying the customer charge, the direct-service industrial plants have been separated into two rate subclasses based on plant capacity. Those plants with a plant capacity greater than 100 megawatts are large direct-service industrial plants. Those plants with a plant capacity of 100 megawatts or less are small direct-service industrial plants.

12. *Plant Capacity Demand.* Plant Capacity Demand is the highest level of demand an industrial plant is capable of using under normal operations. The current Plant Capacity Demand for large direct-service industrial plants is published herein:

	Plant capacity demand(MW)
a. Aluminum Company of America	
(1) Vancouver	248
(2) Wenatchee	222
b. Arco Metals Company	325
c. Intalco Aluminum Company	450
d. Kaiser Alumunum and Chemical Corporation	
(1) Mead	466
(2) Tacoma	154
e. Martin Marietta Aluminum, Inc.	
(1) The Dalles	154
(2) Goldendale	293
f. Reynolds Metals Company	
(1) Longview	419
(2) Troutdale	267

13. *Forecasted Demand.* Forecasted Demand is the demand level forecasted in the development of BPA's rates. The Forecasted Demands for small direct-service industrial plants have been established herein for Period A (July 1, 1985 through Sept. 30, 1986), Period B (Oct. 1, 1986 through Sept. 30, 1987), and Period C (Oct. 1, 1987 through the next Rate Adjustment Date).

	Forecasted demands	
	Period A (MW)	Periods B+C (MW)
a. The Carborundum Company	0.0	0.0
b. Georgia-Pacific Corporation	25.4	25.3
c. Gilmore Steel Corporation	16.7	16.7
d. Oregon Metallurgical Corporation	7.2	8.1
e. Pacific Carbide and Alloys Company	8.0	8.0
f. Pennwalt Corporation	53.0	52.6
g. Port Townsend Paper Corporation	13.7	14.0
h. Aluminum Company of America (1) Northwest Alloys	50.0	52.8
i. Kaiser Aluminum & Chemical Company (1) Kaiser Rolling	66.7	66.7

14. *Distributed Demand.* The Distributed Demand shall be equal to the Forecasted Demand in each month, unless BPA receives by the following dates a schedule of Distributed Demand preferred by the DSI for each month: July 1, 1985, for Period A, and September 30, 1986, for Period B.

The determination of the Distributed Demand for each month of each subperiod must be such that the average of the Distributed Demands equals the Forecasted Demand for the subperiod. If the rate period extends beyond October 1, 1987, BPA shall permit the DSI to submit Distributed Demands for the additional months of the rate period, provided that the average of those demands is equal to the Forecasted Demand for subperiod B. During each subperiod, BPA will permit the DSI to make one adjustment to the submitted Distributed Demand schedule for the subperiod. Such adjustment, which shall be effective no sooner than 30 days from the date of its submission to BPA, may not be retroactive and must also comport with the requirement that the average of all Distributed Demands for the subperiod equal the Forecasted Demand.

15. *Committed Demand.* Committed Demand is the number of kilowatts of Industrial Firm Power that BPA agrees to supply and that a DSI customer agrees to purchase on a take-or-pay basis under the Industrial Incentive Rate. The Committed Demand must be established at a level greater than or equal to 90% of the purchaser's BPA Operating Level on the day that BPA first publishes its feasibility study regarding implementation of the Industrial Incentive Rate. The Committed Demand shall be established by written agreement with each DSI electing to purchase on this basis. A purchaser may specify up to three levels of Committed Demand for each billing month for Peak Period hours and three additional levels of Offpeak Period hours.

B. Billing Factors for Energy

1. *Measured Energy.* The purchaser's Measured Energy shall be determined in the manner described in this section unless the terms of a power sales contract executed after December 5, 1980, provide otherwise. Measured Energy shall be that portion of the metered and/or scheduled energy that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant

to the power sales contract. The sum of the portions of the demands so assigned shall constitute the Measured Energy for each such class of power.

The Measured Energy shall be determined from the metered energy and/or the scheduled energy, as hereinafter defined.

a. *Metered Energy.* The metered energy for a purchaser shall be the number of kilowatthours that are recorded on the appropriate metering equipment, adjusted as specified in the power sales contract, and delivered to a purchaser:

(1) At all points of delivery for which metered energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

The metered energy shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section VI.A herein.

b. *Scheduled Energy.* The scheduled energy in kilowatthours shall be the sum of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) For each system for which scheduled energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing energy.

2. *Computed Energy Maximum.* The Computed Energy Maximum equals the product of the number of hours in the billing month and the Computed Average Energy Requirement.

3. *Committed Energy.* Committed Energy is the number of kilowatthours of Industrial Firm Power that BPA agrees to supply and that a DSI purchaser agrees to purchase on a take-or-pay basis under the Industrial Incentive Rate. The Committed Energy shall be established by written agreement with each DSI electing to purchase on this basis. In lieu of providing a kilowatthour figure, BPA may permit a customer to contractually specify the load factor at which the Committed Demand will be purchased. Such load factor must be set at a level no less than 85%.

4. *Contract Energy.* The Contract Energy shall be the maximum number of kilowatthours that the purchaser (utility, DSI, or other entity) agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract.

C. Billing Adjustments

1. *Power Factor Adjustment.* The formula for determining average power factor is as follows:

$$\text{Average Power Factor} = \frac{\text{Kilowatthours}}{\sqrt{(\text{Kilowatthours})^2 + (\text{Reactive Kilovoltamperehours})^2}}$$

The data used in the above formula shall be obtained from meters that are ratcheted to prevent reverse registration.

When deliveries to a purchaser at any point of delivery either:

a. Include more than one class of power, or

b. Are provided under more than one rate schedule and it is impracticable to meter the kilowatthours and reactive kilovoltamperehours for each class or rate schedule separately, the average power factor of the total deliveries for the month will be used, where applicable, as the power factor for all power delivered to such point of delivery.

To maintain acceptable operating conditions on the Federal system, BPA may, unless specifically otherwise agreed, restrict deliveries of power to a purchaser with a poor power factor. Such restriction may be made to a point of delivery or to a purchaser's system at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 75 percent.

2. *Outage Adjustment.* To the extent that BPA is unable to provide full service to a purchaser during the billing month as a result of interruptions in service due to reasons cited in the General Contract Provisions, BPA shall adjust the charges for billing demand for such purchaser ot reflect BPA's inability to provide full service, provided such adjustment is mandated by the purchaser's power sales contract. The adjustment is mandated on a point of delivery basis and is not, therefore, applied to coincidentally-billed points of delivery unless the outage occurs over all points on the purchaser's system which are coincidentally billed.

To compute the adjustment, BPA shall determine the monthly demand charge(s) for the point(s) of delivery where the outage(s) occurred, multiply by the number of hours of outage, and divide by the total number of hours in the billing month. For partial outages (such as an outage on one feeder in a substation with several feeders), BPA shall determine an equivalent interruption in order to arrive at the number of hours to be used in the calculation of the credit.

3. *Low Density Discount*—a. *Basic LDD Principles.* A predetermined discount shall be applied each billing month to the charges for all power purchased under the Priority Firm Power Rate Schedule by eligible purchasers as defined in section b, below. The discount shall be calculated on an annual basis and shall become effective with the first billing period in the calendar year. The level of the discount shall be determined from the following ratios:

(1) The purchaser's total electric energy requirements during the previous calendar year (the purchaser's firm sales, nonfirm sales, sales for resale, and associated losses) divided by the value of the purchaser's depreciated electric plant (excluding generation plant) at the end of such year, and

(2) The average number of residential consumers during the previous calendar year divided by the number of pole miles of distribution line at the end of such year.

These calculations shall be based on data provided in the purchaser's December financial and operating report. "Residential consumers" shall include both annual and seasonal consumers, but non-residential consumers (such as barns, sheds, and pumps) reported in the residential category for accounting purposes may be excluded, providing the purchaser submits a listing of all non-residential account numbers to BPA at the time that the annual submission is first made.

In calculating these ratios BPA shall use data pertaining to the purchaser's entire electric utility system within the region. Results of the calculations shall not be rounded.

Customers who have not provided BPA with all four requisite pieces of annual data (see a.(1) and a.(2) above) by June 30 of each year shall be assumed to be ineligible for the LDD effective with their first complete billing period of following June 1 of that year. (BPA shall continue to use LDD data from the previous year up to June 30 and shall make any necessary retroactive adjustments once the new data have

been processed.) Data received after June 30 shall be used to calculate an LDD to be applied only to power bills computed and issued for months subsequent to receipt and processing of the initial data and to power bills for the previous January through June period, unless the purchaser has requested, and BPA has agreed to, a waiver of this provision. Revisions to the data used to calculate the amount of the LDD may be made by the purchaser for a period of up to two years from the first day to which the data applies. However, such revisions shall not apply to periods when the customer was ineligible for a discount due to late data submission.

b. *Eligibility Criteria.* To quality for a discount, the purchaser must meet all five of the following eligibility criteria:

(1) The purchaser must serve as an electric utility offering power for sale to ultimate consumers;

(2) The purchaser must agree to pass the benefits of the discount through to the purchaser's consumers within the region served by BPA;

(3) The purchaser's kilowatthour to investment ratio (Ration 3.a.(1)) must be less than 100;

(4) The purchaser's consumers per mile ratio (Ratio 3.a.(2)) must be less than 10; and

(5) The purchaser must qualify for a discount based on the criteria in section c, below.

c. *Discounts.* The purchaser shall be awarded the greatest discount for which that purchaser qualifies. The discounts and the qualifying criteria for those discounts are listed below.

(1) Three percent

For any purchaser for whom:

(a) The kilowatthour to investment ratio is equal to or greater than 25 but less than 35; or

(b) The consumers per mile ratio is equal to or greater than 4 but less than 6.

(2) Five percent

For any purchaser for whom:

(a) The kilowatthour to investment ratio is equal to or greater than 15 but less than 25; or

(b) The consumers per mile ratio is equal to or greater than 2 but less than 4.

(3) Seven percent

For any purchaser for whom:

(a) The kilowatt to investment ratio is less than 15; or

(b) The consumers per mile ratio is less than 2.

4. *Coincidental Billing Adjustment.* Purchasers of Priority Firm Power and New Resource Firm Power shall be billed on a noncoincidental demand basis for power purchased at each point of delivery under the applicable rate schedule(s) unless the power sales contract specifically provides for coincidental demand billing among particular points of delivery. For the purpose of these rate schedules and GRSPs, the purchaser's noncoincidental demand is the sum of the highest hourly peak demands during the billing month for each of the purchaser's noncoincidentally billed points of delivery. The purchaser's coincidental demand is the highest demand for the billing month calculated by summing, for each hour of every day, the purchaser's demands for power purchased under the applicable rate schedule at all coincidentally-billed points of delivery. Computed requirements customers for whom power is "scheduled" from BPA are not subject to a diversity charge for scheduled power.

When the purchaser's contract provides for billing on a coincidental demand basis, a charge shall be assessed for the diversity among the purchaser's conicidentally-billed points of delivery unless BPA elects to waive such charge in whole or in part. The purpose of charging the customer for diversity is to compensate BPA for lost revenue due to coincidentally combining demands from multiple points of delivery. BPA may calculate the charge by applying an existing methodology or by specifying a diversity factor in the power sales contract.

Diversity factors will be specified in the power sales contract for coincidentally-billed points of delivery of customers who are not currently assessed a diversity charge and who, by BPA's criteria, should be assessed the charge. Any changes to existing diversity charges shall be likewise reflected in the power sales contract. The diversity factor(s) specified in the power sales contract shall be multiplied by the respective coincidental demands for the coincidentally-billed points of delivery in order to determine the billing demand for those points of delivery.

The diversity factor(s) specified in the power sales contract shall be no greater than:

$$1+\frac{\text{Noncoincidental Demand}-\text{Coincidental Demand}}{\text{Coincidental Demand}}$$

Where the Noncoincidental and Coincidental Demands used in the calculation are the sum of the monthly demands for 12 months prior to the computation of the diversity factor for each of the purchaser's coincidentally-billed points of delivery. BPA shall revise the contractually-specified diversity factor(s) according to the terms of the power sales contract.

5. *Exchange Adjustment Clause.* To the extent that the accounting net cost of exchange resources (the cost of BPA of the exchange resources minus the revenue collected from the exchange loads) differs from that forecast for the development of rates, a rebate shall be given or a surcharge assessed to all those purchasing under rate schedules that include this adjustment (PF–85, IP–85, CF–85, and NR–85).

An Exchange Adjustment shall be applied for the period July 1, 1985, through September 30, 1986 (period A), another such adjustment for the period October 1, 1986 through September 30, 1987 (period B), and a third adjustment for the period October 1, 1987 until the next Rate Adjustment Date (Period C) provided BPA does not adjust its wholesale power rates on October 1, 1987.

a. *Calculation of the Exchange Adjustment.* The total amount of revenue that must be rebated or recovered in order for BPA to adjust for changes in the net accounting cost of the exchange shall be calculated for each exchange adjustment period according to the formula below.

TAR=(AEC–AER)—(FEC–FER)

where:

TAR=total amount of revenue underrecovery (if TAR is negative) or overrecovery (if TAR is positive) of the accounting net cost of the exchange for the exchange adjustment period;

AEC=actual total exchange cost for the exchange adjustment period; AEC includes exchange costs from the utilities whose average system cost (ASC) is deemed equal to the Priority Firm Power Rate (deeming utilities);

AER=actual exchange revenue for the exchange adjustment period; both AEC and AER will be calculated without considering the effect of the Exchange Adjustment Clause, but including the effect of the Supply System Adjustment Clause; AER includes exchange revenue from deeming utilities;

FEC=forecasted exchange cost; for period A, the value of FEC is equal to $1,388,669,000; for period B, the value of FEC is equal to $1,165,686,000; and for period C, the value of FEC shall be calculated after BPA has determined the number of months in period C;

FER=forecasted exchange revenue; for period A, the value of FER is equal to $1,144,844,000; for period B, the value of FER is equal to $959,021,000; and for

period C, the value of FER shall be calculated after BPA has determined the number of months in period C.

Next, the rebate or surcharge for each customer class for each period shall be calculated.

CCEA = TAR * ECP

where:

CCEA = rebate or surcharge for each customer class for the exchange adjustment period; two values of CCEA shall be calculated for Firm Capacity service, one value for contract year service and another for contract season service.

ECP = exchange cost percentage for the customer class; the value of "ECP" is provided in the rate schedule for each class of service subject to the Exchange Adjustment Clause; different values are given in the Firm Capacity Rate Schedule for the different types of Firm Capacity service.

Finally, BPA shall apply the following formula in order to calculate the exchange adjustment for an individual customer:

$$ICEA = \frac{(CCEA*ICB)}{SCB} + \left[1 + \frac{(INT*MO)}{24}\right]$$

where:

ICEA = individual customer's exchange adjustment (in dollars) for the exchange adjustment period;

ICB = sum of the individual customer's bills (in dollars and net of the LDD) associated with a given ECP for the class of power in question during the exchange adjustment period; ICB shall exclude purchases under the Industrial Incentive Rate;

SCB = sum of all the customer's bills (in dollars and net of the LDD) for the class of power in question during the exchange adjustment period; the computation of SCB for the Industrial Firm Power rate (IP-85) shall include purchases under the Industrial Incentive rate;

INT = average interest rate charged to BPA by the U.S. Treasury during the exchange adjustment period.

MO = number of months in the subperiod.

No exchange adjustment will be made to any rate schedule if the absolute value of:

$\frac{CCEA}{SCB}$ is less than .01 for that rate class.

b. *Implementation of the Exchange Adjustment.* The rebate or surcharge shall be calculated as soon as possible after:

(1) October 1, 1986, for period A,

(2) October 1, 1987, for period B, and

(3) The end of period C.

BPA shall notify affected purchasers of the impending adjustment as soon as the amount of the adjustment has been calculated. Payment of the adjustment (either the rebate or the surcharge) shall be made within 30 days of the date on the adjustment notice provided to the purchaser. Late payment shall be subject to late payment charges as described in section VI.E of these GRSPs. The Due Date for the Exchange Adjustment, as defined in section VI.E, shall be 30 days from the date on the adjustment notice.

c. *Provisions for Final Adjustment.* Approximately one year from the end of each exchange adjustment period, BPA shall recalculate the exchange adjustment rebate or surcharge for each customer. The recalculation shall be based on the most current values of the variables used in the adjustment formula. This recalculation shall be final and not subject to later modification, except pursuant to orders of FERC or the United States Court of Appeals for the Ninth Circuit.

BPA shall calculate the difference between the amount of the initial adjustment and the amount of the final adjustment. That difference shall be subject to an interest charge for the period beginning 30 days from the date of the initial adjustment notice and ending on the date of the final adjustment notice. The interest rate used in the computation of the interest charge shall be the average interest rate charged to BPA by the U.S. Treasury for the period in question.

BPA shall then notify affected customers of the amount to be rebated or surcharged. Payment shall be made within 30 days of the date on the adjustment notice provided to the purchaser. Late payment shall be subject to late payment charges as described in section VI.E.4 of these GRSPs. The Due Date, ad defined in section VI.E.3, for the Exchange Adjustment shall be 30 days from the date on the adjustment notice.

Where necessary, BPA shall later modify the recalculation to reflect any changes in average system cost determination ordered by FERC or the United States Court of Appeals for the Ninth Circuit. In making such additional adjustment, BPA shall adhere to the procedures outlined above.

6. *Supply System Adjustment Clause.* BPA shall adjust the energy charges in those rate schedules which include the Supply System Adjustment Clause (SSAC) beginning on October 1, 1986, if the SSAC is triggered as determined herein. The SSAC adjusts for differences between the total cost of Supply System ownership shares of Plants 1, 2, and 3 and the cost that was forecast for the development of the rates.

a. *Calculation of the Supply System Adjustment.* The adjustment for each rate schedule shall be calculated as follows:

$$\frac{SS*[(ACT-\$789,180,000)+(BUD1-\$894,800,000)+(BUD2-\$251,875,000)]}{BD}$$

where:

SS = the percentage of total Supply System costs allocable to the specified class of service for fiscal year (FY) 1987; the value for "SS" is provided in the rate schedule for the class of service in question;

ACT = The Net Funding Requirements (in thousands of dollars) in the Supply System Annual Budgets or amendments thereto for operating year (OY) 1986 as of June 1, 1986;

BUD1 = the Net Funding Requirements (in thousands of dollars) in the Supply System Annual Budgets or amendments thereto for OY 1987, as of June 1, 1986;

BUD2 = one quarter of the estimated Net Funding Requirements (in thousands of dollars) for OY 1988, as of June 1, 1986;

BD = for the Priority Firm Power Rate Schedule, PF-85, the sum of the winter and summer energy billing determinants (in gigawatthours) for Priority Firm service as forecasted in the Wholesale Power Rate Design Study; for the Industrial Power Rate Schedule, IP-85, the sum of the total winter and summer energy billing determinants (in gigawatthours) for Industrial Power service as forecasted in the Wholesale Power Rate Design Study; and for the CF-85 Firm Capacity Rate Schedule, the sum of the winter and summer generation capacity billing determinants (in megawattmonths); the value of "BD" is provided in the rate schedule for each class of service subject to the SSAC.

Should BPA become liable for payment of additional funds loaned to BPA or another organization created for the purpose of funding construction of Supply System projects 1, 2, or 3, the cost of BPA associated with repayment

of such funds will be included in ACT and BUD.

$$\frac{[(ACT - \$789,180,000) + (BUD1 - \$894,800,000) + (BUD2 - \$251,875,000)]}{\$1,935,855,000}$$

is less than 0.01.

b. *Implementation of the Supply System Adjustment.* During the month of August 1986, BPA shall identify:

(1) The difference between ACT and $789,180,000.

(2) The difference between BUD1 and $894,800,000, and

(3) The difference between BUD2 and $251,875,000.

If BPA determines that the Supply System Adjustment Clause will not trigger, BPA shall notify customers on or before August 15, 1986, that the SSAC will not be triggered.

If BPA expects to implement the SSAC, shall notify interested parties on or before August 15, 1986, of its findings concerning the changes in Supply System costs and the unit adjustment caused by those changes. In the notice, BPA shall request written comments regarding its fundings. Parties shall notify BPA by September 8, 1986, if they have comments regarding the calculation of the adjustment. BPA shall then evaluate all comments received and make a determination as to the appropriate calculation of the Supply System Adjustment. Purchasers affected by the Adjustment shall be notified on or before October 1, 1986 of the change in rate level due to the implementation of the SSAC.

D. Billing-Related Definitions

1. *Peak Period.* The Peak Period includes the hours from 7 a.m. to 10 p.m. on any day Monday through Saturday inclusive. There are no exceptions to this definition; that is, it does not matter whether the day is a normal working day or a holiday. Any charges based on Peak Period hours shall be computed starting with the 8 a.m. meter reading since this reading applies to the 7 o'clock hour (i.e., 7 a.m. to 8 a.m.). The 10 p.m. meter reading (for the 9 p.m. to 10 p.m. period) is the last meter reading of the day applicable to the Peak Period.

2. *Offpeak Period.* The Offpeak Period includes all hours which do not occur during the Peak Period. Thus, the Offpeak Period consists of the hours from 10 p.m. to 7 a.m., Monday through Saturday and all hours on Sunday.

Section IV. Other Definitions

A. Restriction of Deliveries

Deliveries of capacity and/or energy to any purchaser may be restricted when operation of the facilities used by BPA to service such purchaser is: 1. Suspended, 2. Interrupted, 3. Interfered with, 4. Curtailed, or 5. Restricted by the occurrence of any condition described in the Uncontrollable Forces or Continuity of Service sections of the General Contract Provisions of the power sales contract.

No Supply System Adjustment shall be made if:

B. Computed Requirements Purchasers

1. *Designation as a Computed Requirements Purchaser.* A purchaser shall be designated as a computed requirements purchaser if:

a. It is so designated in its power sales contract executed after December 5, 1980, or

b. If it meets one or more of the following conditions as described in paragraphs (1) and (2) below:

(1) Such purchaser has generation of its own which can be sold in such a way as to increase BPA's obligation to deliver firm power to that purchaser because of such sale or,

(2) Such purchaser has the ability to redistribute generation from its resources over time in such a manner as to cause losses of power or revenue on the Federal system.

When a purchaser operates two or more separate systems, only those systems designated by BPA will be covered by this section.

2. *Purpose of the Computed Requirements Designation.* Use of the computed requirements designation is intended to assure that each purchaser who purchases power from BPA to supplement its own firm resources will purchase amounts of firm capacity and firm energy substantially equal to that which the purchaser would otherwise have to provide on the basis of normal and prudent operations.

The amount of capacity and energy required for normal and prudent operations shall be determined pursuant to the purchaser's power sales contract for all computed requirements purchasers with power sales contracts executed after December 5, 1980.

For computed requirements purchasers with power sales contracts executed before December 5, 1980, the amount of capacity and energy required for normal and prudent operations is that which would be sufficient to meet the load and provide adequate reserves through the most critical water or other conditions which might reasonably be expected to occur. Purchase on a computed requirements basis for a purchaser with a power sales contract executed before December 5, 1980, depends on the relationship of the purchaser's resource capability to the purchaser's system requirements. Thus, the billing factors to be applied to such a computed requirements purchaser for any month cannot be determined until after the end of the month. As each such purchaser must estimate its own load and is in the best position to follow that load from day to day, it is the purchaser's responsibility to request scheduling of power from BPA.

3. *Definitions and Terms to Computed Requirements Purchasers with Power Sales Contracts Executed Prior to December 5, 1980.* Those purchasers whose power sales contracts were executed prior to December 5, 1980, and who are designated as computed requirements purchasers based on the abilities listed in section IV.B.1.b, above, shall be governed by the terms of this subsection.

a. *General Principles.* (1) The assured peaking capability and assured average energy capability of each of the purchaser's systems shall be determined and applied separately.

(2) As used in this section, "year" or "operating year" shall mean the 12-month period commencing July 1.

(3) The Critical period is that period, described below, during which the purchaser would have the maximum requirement for peaking or energy from BPA. That period would be determined for the purchaser's system under adverse streamflow conditions and adjusted for:

(a) Current water uses,

(b) Assured storage operation, and

(c) Appropriate operating agreements.

In determining the maximum requirement for peaking or energy from BPA, the firm capability of all resources available to the purchaser shall be utilized in such a manner as to place the least requirement on BPA.

(4) Critical water conditions are those conditions of streamflow in the operating year or years which would result in the minimum capability of the purchaser's firm resources during the critical period. These conditions of streamflow are based on historical records as adjusted for:

(a) Current water uses,

(b) Assured storage operation, and

(c) Appropriate operating agreements.

(5) Prior to the beginning of each operating year, the purchaser shall determine the assured capability of each of the purchaser's systems in terms of peaking and average energy for each month of each year or years within the critical period. The firm capability of all

resources available to the purchaser's system shall be utilized in such a manner as to place the least requirement for capacity and energy on BPA. Such assured capability shall be effective after review and approval by BPA.

(6) The pruchaser's assured average energy capability shall be determined by shaping its firm resources to its firm load in a manner which places a uniform requirement on BPA within each year of the critical period. The requirement placed on BPA may increase each year, but by no more than the sum of:

(a) The purchaser's annual load growth, and

(b) Any reductions in assured average energy capability caused by retirement or loss of one of the purchaser's firm resources.

(7) As used herein, the capability of a firm resource shall include only that portion of the total capability of such resource which the purchaser can deliver to its load on a firm basis. The capabilities of all generating facilities which are claimed as part of the purchaser's assured capability shall be determined by test or other substantiating data acceptable to BPA. BPA may require verification of the capabilities of any or all of the purchaser's generating facilities. Such verification shall not be required more often than once each year for operating plants, or more often than once each third year for thermal plants in cold standby status, if BPA determines that adequate annual preventive maintenance is performed and the plant is capable of operating at its claimed capability.

(8) In determining assured capability, the aggregate capability of the purchaser's firm resources shall be appropriately reduced to provide adequate reserves.

b. *Determination of Assured Capability.* The purchaser's assured peaking and assured energy capabilities shall be the respective sums of:

(1) The capabilities of its hydroelectric generating plants based on the most critical water conditions experienced to date on the purchaser's system,

(2) The capabilities of its thermal generating plants based on such adverse fuel or other conditions which might reasonably be expected to occur, and

(3) the firm capabilities of other resources made available to the purchaser under contracts executed prior to the beginning of the operating year. The firm capabilities of these acquired resources will be based on the capabilities after adjustment for reserves.

Assured capabilities shall be determined for each month if the purchaser has seasonal storage. The capabilities of the purchaser's firm resources shall be determined as follows:

(1) *Hydroelectric Generating Facilities.* The capability of each of the purchaser's hydroelectric generating plants shall be determined in terms of both peaking and average energy using critical water conditions. The average energy capability shall be that capability which would be available under the conditions necessary to produce the claimed peaking capability.

Seasonal storage shall mean storage sufficient to regulate all the purchaser's hydroelectric resources in such a manner that, when combined with the purchaser's thermal generating facilities, if any, and with firm capacity and energy available to the purchaser under contracts, a uniform energy requirement on BPA for a period of one (1) month or more would result.

A purchaser having seasonal storage shall, within 10 days after the end of each month in the critical period, notify BPA in writing of the assured average energy capability to be applied tentatively to the preceding month. Such notice shall also specify the purchaser's best estimate of its average system energy load for such month. If such notice is not submitted, or is submitted later than 10 days after the end of the month to which it applies, subject to the limitations stated herein, the assured average energy capability determined for such month prior to the beginning of the year shall be applied to such month and may not be changed thereafter.

If notice has been submitted pursuant to the preceding paragraph, the purchaser shall, within 30 days after the end of the month, submit final specification of the assured average energy capability to be applied to the preceding month, provided that the assured energy capability so specified shall not differ from the amount shown in the original notice by more than the amount by which the purchaser's actual average system energy load for such month differs from the estimate of that load shown in the original notice. If the assured average energy capability for such month differs from that determined prior to the beginning of the year for such month, the purchaser, if required by BPA, shall demonstrate by a suitable regulation study based on critical water conditions:

(a) That such change could actually be accomplished, and

(b) That the remaining balance of its total critical period assured average energy capability could be developed without adversely affecting the firm capability of other purchaser's resources.

The algebraic sum of all such changes in the purchaser's assured average energy capability shall be zero at the end of the critical period or year, whichever is earlier. Appropriate adjustments in the assured peaking capability shall be made if required by any change in reservoir operation as indicated by revisions in the monthly distribution of critical period energy capability.

(2) *Thermal Generating Facilities.* The capability of each of the purchaser's thermal generating plants shall be determined in terms of both peaking and average energy. Such peaking and average energy capabilities shall be based on those adverse fuel or other conditions that might reasonably be expected to occur. The effect of limitations on fuel supply due to war or other extraordinary situations will be evaluated at the time, should any such situation arise.

(3) *Other Sources of Power.* The peaking and average energy assured capability of other firm resources available under contracts to the purchaser shall be determined prior to each operating year.

Section V. Application of Rates Under Special Circumstances

A. Energy Supplied for Emergency Use

A purchaser taking Priority Firm and/or New Resource Firm Power shall pay in accordance with the Nonfirm Energy rate Schedule, NF–85, and Emergency Capacity Rate Schedule, CE–85, for any electric energy or capacity which has been supplied:

1. For use during an emergency on the purchaser's system, or

2. Following an emergency to replace energy secured from sources other than BPA during such emergency.

Mutual emergency assistance may, however, be provided and payment therefor settled under exchange agreements.

B. Construction, Test and Start-up, and Station Service

Power for the purpose of construction, test and start-up, and station service shall be made available to eligible purchasers under the Priority Firm and New Resource Firm Power Rate Schedules. Such power must be used in the manner specified below:

1. Power sold for construction is to be used in the construction of the project.

2. Power sold for test and start-up may be used prior to commercial operation both to bring the project on

line and to ensure that the project is working properly.

3. Power sold for station service may be purchased at any time following commercial operation of the project. Station service power may be used for project start-up, project shut-down, normal plant operations, and operations during a plant shut-down period.

C. Application of Rates During Initial Operation Period-Transitional Service

1. *Eligibility for Transitional Service.* For an initial operating period, as specified in the power sales contract, beginning with the commencement of operation of a new industrial plant, a major addition to an existing plant, or reactivation of an existing plant or important part thereof, BPA may agree to bill the purchaser in accordance with the provisions of this section. This section shall apply to both:

a. DSIs having new, additional or reactivated plant facilities, and

b. Utility purchasers serving industrial purchasers with power purchased from BPA. BPA will provide transitional service to utilities only for those industrial loads for which the demand can be separately metered by the utility and recorded on a daily basis.

2. *Calculation of the Daily Demand.* If BPA agrees to provide transitional service, the billing demand for the industrial load for the billing month shall be the average of the daily Ratchet Demands, as adjusted for power factor. The Ratchet Demand for each day shall be the higher of factors "a" and "b" below:

a. 100 percent of the Measured Demand for the day (regardless of whether such Measured Demand occurs during the Peak Period or the Offpeak Period), or

b. The highest daily Ractchet Demand which has occurred during the period of restoration as defined in section 4(e) of the power sales contract.

3. *Billing for Transitional Service.* Utilities receiving transitional service shall provide BPA with daily demand information for the industrial consumer for whom transitional service is provided. To compute the power bill for the point of delivery which includes the load being served with transitional service, BPA shall, at its discretion, either:

a. Determine the demand for the pertinent point of delivery without the industrial load and then add the average daily demand for such industrial load, or

b. Bill the entire point of delivery on a daily demand basis. Daily demand billing shall not affect the level of any customer charge, curtailment charge, or energy charge assessed by BPA.

For DSIs purchasing Industrial Firm Power, transitional service may be purchased only under the Standard Industrial Rate or the Premium Rate. BPA will provide transitional service to purchasers of Special Industrial Power only under the Standard Special Industrial Power Rate.

D. Charges in a DSI's BPA Operating Level

If a DSI requests a waiver regarding the notice requirements specified in the DSI's power sales contract for a voluntary change in its requested Operating Level, and if BPA does not grant the waiver, or if the DSI fails to give notice of such a change and does not request a waiver, the DSI shall be billed as if no notice has been provided until such time as the number of days in the notice period have passed. If, however, BPA agrees to waive the notice requirement, the power bill shall reflect the requested changes as of the requested effective date specified in the notice or, at BPA's discretion, a date of BPA 's choosing within the notice period.

E. Application of the Industrial Incentive Rate

The Industrial Incentive Rate shall apply solely to those DSI's purchasing under the IP-85 wholesale power rate and consenting to purchase under this special rate. BPA shall determine when and if the Industrial Incentive Rate shall be offered to purchasers of Industrial Firm Power. In order to make that determination, BPA shall use the following procedure:

1. *Industrial Incentive Rate Feasibility Study.* a. If BPA anticipates that the Industrial Incentive Rate might trigger, BPA shall conduct an Industrial Incentive Rate Feasibility Study (Study). In addition, BPA may (but is not obligated to) conduct the Study if so requested by one or more of BPA's customers.

b. BPA shall first consider the period of time for which the Industrial Incentive Rate would be effective. Such period shall be for no less than 6 months and no more than 12 months or the end of the rate period, whichever comes first. If BPA wishes to have the flexibility to extend the Industrial Incentive Rate period beyond the proposed period (but not beyond 12 months) without further public involvement, BPA shall include scenarios in its Study which use data for both the proposed period and for the projected extension.

c. To conduct the Study, BPA may use the Aluminum Smelter Model (ASM) to determine potential DSI load under the Industrial Incentive Rate. BPA may also elect to ask DSIs to provide estimates of their Committed Demand and Committed Energy levels. BPA may use information from both sources to conduct the revenue impact analysis.

d. BPA shall then analyze the effect of using different average discount levels (1 mill, 2 mills, etc.) as the basis for determining the Industrial Incentive Rate level. In forecasting DSI loads at each discount level, BPA shall take into account the risk premium associated with a take-or-pay contract for each DSI customer. The discount shall be determined by reducing the Standard Industrial Rate by X mills/kWh over the months for which the Incentive Rate is proposed to be in effect. In its Study, BPA shall use the discount level which appears to BPA to be most likely to result in triggering the Incentive Rate and maximizing BPA 's revenues.

e. BPA shall then determine if total BPA revenue would increase as a result of implementation of the Industrial Incentive Rate, using the Nonfirm Revenue Analysis program (NFRAP) and the Revenue Forecasting Model (REFORM). The Incentive Rate period determined in step b, the load information gathered in step c, the rate level selected in step d, and BPA's forecasts for Nonfirm Energy and Surplus Firm Power sales shall be used as inputs to the Study. The Study will indicate the level of DSI load required in order for BPA to break even by implementing the Incentive Rate at the specified discount.

f. BPA may then set a minimum commitment level above the "break-even" point, to ensure, to the extent possible, that the results of implementing the Incentive Rate will be an increase in total BPA revenues given that actual conditions are likely to differ from those assumed in the preparation of BPA 's studies.

2. *Contractual Arrangements Relating to Implementation of the Industrial Incentive Rate.* BPA and each interested DSI customer shall negotiate and execute a generic contract regarding the sale of Industrial Firm Power under the Industrial Incentive Rate. The information specified in (a), (b), and (c), below, shall be specified in an exhibit to the contract. Because this information will not be available until an Industrial Incentive Rate is offered to the DSIs, this exhibit shall be attached to the contract only after BPA adopts an Incentive Rate:

a. The demand and energy charges for the Industrial Incentive Rate,

b. The Committed Demand and Committed Energy for each direct-

service industrial customer electing to purchase under the Industrial Incentive Rate, and

c. The time period for which the rate is to be effective.

3. *Industrial Incentive Rate Implementation Procedure.* a. If the results of the Study indicate that the Industrial Incentive Rate might reasonably be expected to trigger given appropriate commitment levels from the DSIs, BPA shall notify its customers that it is proposing to offer the DSIs the opportunity to purchase Industrial Firm Power under the Industrial Incentive Rate providing the minimum commitment level is met. BPA shall provide a copy of the Study to all of its customers and shall make supporting documentation available to interested parties.

b. BPA shall accept comments on the proposed rate and supporting Study for a period of no less than 3 weeks (21 days) from the date of the notice to the customers. BPA may elect to seek comments on its draft contract as well.

c. BPA shall evaluate the comments received and revise its Study (if necessary) to reflect the comments. If the updated Study supports implementation of an Incentive Rate, BPA shall solicit, from each DSI, its Committed Demand and Committed Energy at the specified rate. In the solicitation, BPA shall notify the DSIs of the period for which the Industrial Incentive Rate is proposed to be effective and the level of each of the charges comprising the Industrial Incentive Rate. The DSI response to this solicitation shall be contractually binding, and the response shall be attached as an exhibit to the generic contract upon adoption of the proposed Industrial Incentive Rate.

d. If BPA receives a commitment level from the DSIs equal to or greater than the commitment level determined to be the minimum acceptable level, BPA shall implement the Industrial Incentive Rate.

e. BPA shall publish a Record of Decision regarding any decision to implement the Industrial Incentive Rate. That Record shall be made available to interested parties.

Section VI. Billing Information

A. Determination of Estimated Billing Data

If the amounts of capacity, energy, or the 60-minute integrated demands for energy purchased from BPA must be estimated from data other than metered or scheduled quantities, BPA and the purchaser will agree on billing data to be used in preparing the bill. If the parties cannot agree on estimated billing quantities, a determination binding on both parties shall be made in accordance with the arbitration provisions of the power sales contract.

B. Billing for New Large Single Loads

Any BPA customer whose total load includes one or more New Large Single Loads (NLSL) as defined by section 3.(13) of the Northwest Power Act or as determined by section 8 of the purchaser's power sales contract shall be billed for the NLSL(s) at the New Resource Firm Power Rate. The amount of power requirements associated with the NLSL shall be established in a manner consistent with the provisions of this section.

The purchaser shall warrant to BPA that NLSLs are separately metered. The metering must include provisions for determining:

1. The NLSL demand during BPA's diurnal capacity billing periods,

2. The NLSL energy during BPA's energy billing periods, and

3. The NLSL reactive energy for the billing month.

The design for the metering equipment for the NLSL must be approved by BPA. Testing and inspections of such metering installations shall be as provided in the General Contract Provisions.

On a monthly basis, each purchaser of New Resource Firm Power shall report to BPA the quantity of power used by the NLSL during the *purchaser's* billing period. Data provided to BPA by the purchaser must be submitted to BPA within 2 normal working days of the date the purchaser reads the meters. BPA may elect to adjust the NLSL data for losses from the point of metering to the closest BPA point of delivery for the purchaser.

C. Adjustment of Measured Demand to Arrive at Billing Demand

Measured demand shall be adjusted to arrive at billing demand by adjusting all measured quantities back to the most recent day on which there is a 2400 hour reading on the demand meter.

D. Billing Month

Meters normally will be read and bills computed at intervals of 1 month. A month is defined as the interval between meter-reading dates which normally will be approximately 30 days. If, for any reason, service is for less than or more than the normal billing month, the monthly charges stated in the applicable rate schedule shall be adjusted appropriately.

The calendar month in which the purchaser's meter is scheduled to be read determines the billing month. (Thus, a bill associated with a meter scheduled to be read on April 10th would be an April bill.) The charges for the winter and summer periods identified in the rate schedules apply to the purchaser's billing months. Annual changes in a purchaser's low density discounts take effect with the January billing month. (Retroactive billing for the LDD may be required if the data are not available by the January billing date.)

E. Payment of Bills

Bills for power shall be rendered monthly by BPA. Failure to receive a bill shall not release the purchaser from liability for payment. Bills for amounts of $50,000 or more must be paid by direct wire transfer. Bills for amounts under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by BPA's Office of Financial Management and updated as necessary.

1. *Computation of Bills.* Demand and energy billings for power purchased under each rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amount from 50 cents through 99 cents to the next higher dollar.

2. *Estimated Bills.* At its option, BPA may elect to render an estimated bill for that month to be followed at a subsequent billing date by a final bill. Such estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. *Due Date.* Bill shall be due by close of business on the 20th day after the date of the bill (Due Date). Should the 20th day be a Saturday, Sunday, or major holiday (celebrated by the purchaser), the Due Date shall be the next following business day.

4. *Late Payment.* Bills not paid in full on or before close of business on the Due Date shall be subject to a penalty charge which shall be the greater of one-fourth percent (0.25%) of the Unpaid Amount or $50. In addition, an interest charge of one-twentieth percent (0.50%) shall be applied each day to the sum of the Unpaid Amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the Unpaid Amount and Penalty Charge are paid in full. BPA will bill the customer for the late payment interest charge on the purchaser's next power bill.

Remittances received by mail will be accepted without assessment of the

charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the Due Date. In order to avoid assessment of late payment charges for metered mail received subsequent to the Due Date, the payment must bear a postal department cancellation which demonstrates that payment was mailed on or before the Due Date.

Whenever a power bill or a portion thereof remains unpaid subsequent to the Due Date and after giving 30 days advance notice in writing, BPA may cancel the contract for service to the purchaser. However, such cancellation shall not affect the purchaser's liability for any charges accrued prior thereto under such contract.

5. *Disputed Billings.* In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the purchaser is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

IV. Major Issues

A. Major Studies

1. Revenue Requirement Study.

The Bonneville Project Act, the Flood Control Act, the Transmission System Act, and the Northwest Power Act require BPA to design rates that are projected to return revenue sufficient to recover the cost of producing, acquiring, conserving, and transmitting the electric power that BPA markets; to recover the cost of transmitting power for other parties; and to repay with interest the Federal investment in transmission and generation facilities. The Revenue Requirement Study determines the minimum amount of revenues necessary to recover all the costs of the FCRPS over the repayment period in accordance with sound business principles. It also determines whether current rates will produce enough revenue to satisfy BPA's repayment obligation.

In an order dated January 27, 1984 (49 FR 4130), the Federal Energy Regulatory Commission (FERC) set forth a number of requirements that would enable FERC to fulfill its obligations under the Northwest Power Act and the Transmission System Act. Section 7 of the Northwest Power Act requires that transmission rates provided an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. Consequently, the January 27 order requested the development of separate repayment studies for the generation and transmission portions of the FCRPS. Pursuant to the Commmission's order this Revenue Requirement Study incorporates separate repayment studies for the generation and transmission components of the FCRPS for FY 1986 and FY 1987.

The Revenue Requirement Study for the initial rate proposal is based on revenue and cost estimates for FY 1986 and FY 1987. If actual loads and costs differ from projected loads and costs, BPA may experience a revenue surplus or deficit. The repayment methodology employed by BPA provides sufficient flexibility that small revenue deficits can be dealt with by deferring interest and amortization payments on appropriated funds, but sound business principles that this be only a temporary means of satisfying cash deficits.

It is a common utility practice for projects to be partially financed from internally generated funds or current revenue. As a self-supporting agency of the Federal Government, BPA is only able to generate funds from debt or rates. To continue its efforts to be fiscally sound, BPA has decided to raise the amount of investment service coverage financed through the application of rates from 5 percent to 7.5 percent of the BPA capital projects scheduled for completion during the rate period.

In order to meet its fiscal responsibilities (which include eliminating deficits and making planned amortization payments), BPA's Revenue Requirement Study reflects actual historical cash amortization, and assumes repayment of deferrals plus all normal schedule amortization by September 30, 1985. In addition, it reflects all of BPA's obligations under the Northwest Power Act, including exchange costs. To assist BPA in meeting its cash repayment obligations, a cash lag adjustment has been made to the revenue requirement.

BPA's total revenue requirement is determined directly from the Revenue Requirement Study. The study used for this proposal demonstrates that for the test year FY 1987, BPA's revenue requirement is $3.33 billion. The following table shows a breakdown of the revenue requirement.

TEST YEAR FY 1987 PROJECTIONS

[$000]

	Generation	Transmission
Annual Obligations	235,609	167,683
Purchase Power, Exchange	2,232,577	0
Interest	218,608	223,081
Amortization	161,602	88,729
Total	2,848,396	479,493

2. Loads and Resources Study

The Loads and Resources Study represents the preparation and accumulation of all load and resource data necessary for developing BPA's wholesale power rates. It is one of the first steps in preparing rates. This study incorporates results from load forecasts, resource analyses, and BPA's Resource Strategy.

For this rate filing, BPA developed econometric forecasts of public utility loads. These forecasts used employment data for Washington, Oregon, and Idaho as an input. A Direct-Service Industry (DSI) load forecast was also prepared using econometric models and detailed economic analyses for nonaluminum loads and a simulation model for aluminum loads. The latter model simulates the operations of each aluminum plant in the Pacific Northwest based on projections of operating costs and the price these plants received for their product. Forecasted investor-owned utility (IOU) system and residential exchange loads are as submitted to BPA by the respective utilities.

BPA's conservation savings estimates and budget estimates are developed in several stages using a variety of assumptions. This multipart process is designed to reflect expected conditions in the region regarding loads, resource expenses, contracts, and concepts of flexibility. The determination of estimates begins with the development of conservation supply curves that identify conservation availability as a function of cost, timing, current contracts, and technology. These curves then are used in BPA's least-cost mix model (LCMM), from which a least-cost schedule of year-by-year conservation targets is determined through 2002. These targets are used as a first step in developing actual program levels. The targets, in combination with contractual considerations, penetration rates, and decisions about initiation and implementation rates, determine final conservation savings and budget estimates.

The determination of conservation acquisitions reflects concepts of

capability and flexibility encouraged by the Northwest Power Planning Council's Power Plan. Use of these concepts allows BPA to plan for a variety of circumstances and uncertainties.

The load/resource balance is developed to determine the Administrator's obligation during the test year and the 42-month critical period, and to determine the magnitude of surplus firm power in the region and on the Federal system in the critical period. This entails performing a hydro regulation study that incorporates system constraints such as the Water Budget for fish operations, the operation and maintenance cycles for various thermal plants in the region, and projected resource acquisitions. For this rate filing, two 42-month (critical) hydro studies and two 40-year hydro studies are made. The first set of studies starts in July 1985, and the second set starts in July 1986. The studies are then used to determine the critical period surplus firm power and nonfirm energy for the region.

Pacific Northwest regional resources are classified as either dedicated or nondedicated to the firm loads of their respective owners. The Federal system is required to meet that portion of the load, placed on the Federal system, which is not served by dedicated resources. Using information on dedicated resources, the uniform Federal firm surplus for the two critical periods is computed. The amount of the firm surplus is used for cost allocation, rate design, and revenue forecasting.

Capacity has been analyzed relative to 1930 water conditions and results of that study are incorporated in the capacity rate development.

3. Cost of Service Analysis

The Cost of Service Analysis (COSA) apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class. The following steps are used to determine the allocated cost to serve each customer class.

a. *Functionalization.* Functionalization is the identification of revenue requirements with functions performed by the power system. These functions are defined as generation and transmission. All costs are assigned to one of these two functions:

In prior rate filings, the functionalization step was performed in the Cost of Service Analysis. In this rate filing, costs are functionalized prior to the preparation of the repayment studies. The results of the functionalized repayment studies are used in the functionalization step performed in the COSA.

In the COSA, the net repayment requirement for generation is divided into two portions—one relating to conservation investments, and the other related to all other generation investments. This is done so that a separate allocation method may be used to apportion the costs of conservation programs among the various customer classes.

b. *Classification.* BPA classifies costs to the energy and capacity components of electric power. In this rate proposal, generation costs are uniformly classified to capacity and energy in the proportions of 72 percent to energy and 28 percent to capacity. This uniform classification method adopted for the COSA is based on the results of BPA's Marginal Cost Study and reflects the relative costs of acquiring additional energy and capacity resources in both the long and the short run. Transmission costs are classified entirely to capacity.

c. *Segmentation.* Although BPA operates a regionwide transmission system, some segments of the system are not needed to provide some services. In order to identify more closely the types of service provided by the transmission system with various customer classes, the system is divided into nine segments, each providing a distinct type of service. The nine transmission system segments are: integrated network, Pacific Northwest-Southwest Intertie, Canadian Intertie, Montana Intertie, generation integration, fringe area, and delivery segment for public agency, direct service industrial and investor owned utility customers.

d. *Seasonal Differentiation.* When costs of providing electric service vary substantially, whether by time of day or season of the year, it is appropriate to reflect this variation when allocating costs among rate classes and in the subsequent rate design. The COSA includes seasonal differentiation of energy and capacity costs. Transmission costs do not vary substantially throughout the year, and are therefore not seasonally differentiated.

Generation capacity costs are seasonally differentiated on the basis of an analysis of Loss of Load Probabilities (LOLP) contained in the Marginal Cost Analysis. Energy costs are seasonally differentiated on the basis of the costs of hydroelectric storage and of the characteristics of the Federal generating system.

e. *Allocation.* The final major step in the COSA is to allocate the functionalized, segmented, classified and seasonally differentiated costs to classes of service.

Costs are allocated to classes of service on the basis of relative use of services. Costs classified to energy are allocated to customer classes on the basis of relative kilowatthour use by each class, and on the proportion of total load in each resource pool. The measure for use of peaking capacity is the monthly coincidental peak megawatt. Seasonal capacity is measured by averaging the monthly use of each class within the season. Because the power system is constructed to meet coincidental peak demand, the coincidental peak (relative to the system peak) is used as a measure for each customer's contribution to BPA's need to acquire peaking resources.

Costs of the nine Federal transmission system segments and exchange costs functionalized to transmission are allocated on the basis of coincidental peak loads that are not seasonally differentiated. The average of all 12 monthly coincidental peaks is used to allocate transmission system costs. Costs are allocated to customer classes on the basis of deemed use of the transmission system for power customers, and on the basis of actual use of the transmission system for wheeling (non-Federal transmission) customers.

BPA proposes to allocate and recover costs of conservation program funding entirely through BPA's rates applicable to users of Federal resource pools: The Federal base system and the new resources pool.

Costs not associated with resource pools, other than conservation costs, are allocated to customer classes on the basis of total use of services without regard to the resource pool that provided that power.

4. Marginal Cost Analysis (MCA)

A Marginal Cost Analysis (MCA) is conducted by BPA to identify the marginal costs BPA incurs for new generation and transmission loads on seasonal, daily, and hourly bases. The MCA provides a basis for developing rates that promote economic efficiency. Questions relating to the measurement of marginal cost, application of marginal costs to rates, and the adjustment of such rates to the revenue requirement are considered in developing the MCA.

The marginal cost of generation is based on results from BPA's resource planning models: the Least Cost Mix Model (LCMM) and the System Analysis Model (SAM). The LCMM provides information concerning the types of resources and the annual cost of those resources acquired to meet load growth. The SAM provides information on the cost of operating those resources in conjunction with the existing system

and the level of secondary revenues experienced under expected water conditions. Combining the information from these two models produces the total system cost associated with any given resource and load scenario. Taking the difference in total system cost between a base load case and a case with increased load produces the marginal cost of meeting load growth on an annual basis during the period FY 1987–FY 2004. Levelizing the annual costs over the 18-year period creates a marginal cost of generation that incorporates the short-run effects of the surplus power situation and the long-run effects of future resource acquisitions.

The marginal resources selected by the LCMM and the existing resource system analyzed by the SAM provide both generation capacity and energy. The division of the marginal cost of generation into capacity and energy components is achieved by crediting the total marginal cost with the cost of the least-cost source of capacity. A generic combustion turbine serves as the least-cost source of capacity. The marginal cost of producing energy is the amount of the total marginal cost of generation remaining after the crediting process, plus the incremental generation operation and maintenance expense and generation-integration expense associated with energy.

Two transmission segments, network and generation-integration, are considered in the MCA. The marginal cost of transmission network is based on projected transmission investments for the fiscal years 1987–1994. The marginal cost of transmission network investment and the associated operation and maintenance expense are classified to capacity and energy. The classification percentages of 76 percent to capacity and 24 percent to energy are developed from an analysis of the reasons causing the transmission network investment.

The marginal cost of generation-integration is based on the cost of integrating a generic baseload thermal plant into BPA's transmission system. The marginal cost of generation-integration and the associated operation and maintenance expense are classified to capacity and energy. The classification percentages of 28 percent to capacity and 72 percent to energy are based on the ratios of (a) the marginal cost of generation capacity and (b) the marginal cost of generation energy to (c) the total marginal cost of generation.

The marginal cost of generation energy is seasonally, but not diurnally, differentiated. The MCA incorporates and energy differential which assigns zero costs to May and spreads the marginal energy costs over the remaining 11 months. The marginal cost of transmission network energy is neither seasonally or diurnally differentiated.

Marginal capacity cost variations occur seasonally and diurnally. Based on the seasonal, hourly, and day-of-week analysis, the winter peak period for generation capacity is defined as December through April, Monday through September, 7 a.m. to 10 p.m. The summer peak period consists of the same hours of the days and days of the week during the months of May through November. The offpeak capacity hours are all other hours of the year.

There is no seasonal differentiation of the marginal cost of transmission. On a diurnal basis, however, all factors except load level are approximately constant. Therefore, the diurnal load analysis developed for generation capacity is a reasonable proxy for the transmission system. Then, the peak period for transmission network costs is Monday through Saturday, 7 a.m. to 10 p.m., and the offpeak period is all other hours for all months of the year.

After selecting the seasonal periods, cost allocation factors are developed, which indicate that 79 percent of capacity costs should be assigned to December through April and 21 percent should be assigned to May through November. Transmission capacity costs are assigned to the peak period for all months of the year.

5. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) customers) for their firm power requirements for 5-year period are no higher than the costs of power to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) customers' wholesale firm power rates from certain costs resulting from provisions of the Northwest Power Act. The rate test could result in a reallocation of costs from the 7(b)(2) customers to BPA's other rate classes. The purpose of the Sec. 7(b)(2) Rate Test Study is to describe the rationale, process, application, and results of the Sec. 7(b)(2) rate test implementation methodology.

The rate projections and the actual rate test itself are performed by BPA's Supply Pricing Model (SPM). The SPM simulates BPA's ratesetting process, using load and resource data and additional cost data consistent with that used in this rate proposal. The assumptions and ratesetting processes such as load/resource balancing, cost allocation, and rate design are also consistent with this rate proposal. The SPM calculates two sets of wholesale power rates for BPA's preference customers: (1) A set of rates for each year of the section 7(b)(2) 5-year test period (the rate case test year plus the ensuing 4 years) assuming that section 7(b)(2) is not in effect program case rates); and (2) a set for the same 5-year period considering the five assumptions listed in section 7(b)(2) (7(b)(2) case rates). Certain specified section 7(g) costs are subtracted from the program case rates. The SPM then discounts each year's rates to the test year of the relevant rate case, averages each set of discounted rates, and compares the two resulting averages rounded to the nearest tenth of a mill. If the average of the discounted program case rates less the 7(g) cost is larger than the average discounted 7(b)(2) case rates, the rate test triggers. If the rate test triggers, the amount of dollars to be reallocated in the test year is calculated by multiplying the difference between the discounted program case and discounted 7(b)(2) case rates by the general requirements loads of the preference customers. This dollar amount is used in the Wholesale Power Rate Design Study as an adjustment to the allocated costs in the rate case test year.

The rate test does not trigger for the rates calculated for 1987–1991, so no costs will be reallocated in the FY 1987 rate case test year.

6. Section 7(c)(2) Industrial Margin Study

Section 7(c)(2) of the Northwest Power Act directs the Administrator to base the rates for service to BPA's DSI customers, beginning July 1, 1985, on rates charged BPA's public agency and cooperative customers and the typical margins included by those public agency and cooperative customers in rates to their retail industrial consumers. The Northwest Power Act also provides that the Administrator shall take into account comparative load, cost, and character of service factors identified in subsections 7(c)(2) (A), (B), and (C).

BPA relied on financial and operating data submitted by its public agency and cooperative customers to quantify a historical typical margin for calendar years 1982 an 1983. Typical margins for individual utilities were derived by subtracting each utility's average power and transmission cost per kilowatthour from its average industrial revenue per kilowatthour for the historical period.

Each utility's industrial margin was then weighted by the amount of its industrial energy sales for each of the base years to derive an aggregated historical typical margin. BPA then applied an inflation factor, based on historical and forecast GNP implicit price deflators, to the aggregate typical margin to obtain a FY 1987 typical margin, unadjusted for subsections (A), (B), and (C).

BPA developed two adjustments to the FY 1987 unadjusted typical margin. The first of these adjustments was made to account for the larger size and higher load factor of the DSI loads relative to retail industrial loads. The margin for the IP–85 Premium rate was derived by subtracting this character of load adjustment from the unadjusted FY 1987 typical margin. The IP–85 Premium rate provides for firm service to all four quartiles of the DSI load. However, BPA provides nonfirm service to the first quartile of the DSI load under the IP Standard rate. Therefore, BPA made a second adjustment to derive the margin for the IP–85 Standard rate. This second adjustment recognizes the "character of service."

The character of service adjustment recognizes the degree to which the expected quality of service provided under the IP–85 Premium rate exceeds the expected quality of service provided under the IP–85 Standard rate. BPA quantified this difference by first subtracting the projected NF–85 Nonfirm Energy Standard rate from the average IP–85 Premium Rate. This difference was then reduced to reflect the fact that only first quartile service, and in fact only a portion of the first quartile service, is actually subject to the availability of nonfirm energy and that the first quartile service represents only a portion of the total expected service. This reduced amount represents the character of service adjustment by which the margin for Premium service was reduced to arrive at a margin for Standard service.

B. Wholesale Power Rates

Issues directly related to individual rate schedules are discussed in section 1, below. Issues related to more than one schedule are presented in section 2.

1. Issues Related to Individual Rate Schedules

a. *Priority Firm Power Rate, PF–85.* BPA sells Priority Firm power to public bodies, cooperatives, Federal agencies, and utilities participating in the exchange under section 5(c) of the Northwest Power Act. BPA also proposes that this rate schedule be available for the purchase of capacity, which will require the return of associated energy. This power must be used to meet firm loads within the Pacific Northwest.

The Priority Firm load is served with FBS and exchange resources. The PF–85 rate consists of a demand charge that is time-differentiated on both seasonal and diurnal bases and an energy charge that is seasonally differentiated. A low density discount is available to qualifying utilities. The rate also includes the Exchange and Supply System Adjustment Clauses and a new feature, the Council-recommended Conservation Surcharge. The billing factors for computed requirements customers taking Priority Firm power continue to be designed to enhance BPA's revenue stability.

b. *Industrial Firm Power Rate, IP–85.* The IP–85 rate schedule applies to sales of Federal power to BPA's direct-service industrial (DSI) customers. The IP–85 rate is based on two elements: the Administrator's "applicable wholesale rates" to public agency customers and the "typical margins" charged by those public agency customers to their retail industrial consumers. Customers requesting service to the first quartile with surplus firm energy load carrying capability (FELCC) will pay a higher rate, which is based on the higher costs associated with providing such service. The IP–85 rate schedule also includes an Incentive rate, designed to allow BPA to increase sales to DSI customers during periods of low economic activity without jeopardizing BPA's overall revenue collection.

Power sales contracts with the DSIs grant BPA the right to restrict the DSI loads under certain conditions. As a result, the Federal system can use these restriction rights as part of its reserve requirement. A value of reserves analysis was performed to measure the benefit resulting from the ability to restrict the DSI load and to comply with section (7)(c)(3) of the Northwest Power Act. The Federal system reserves provided by the DSI restriction rights are separated into forced outage reserves, stability reserves, and plant delay reserves. In determining the value of reserves proivided by BPA's restriction rights, BPA looked at the most feasible, least cost alternative to providing these reserves.

The IP–85 rate includes a credit for the value of reserves. This credit is based on a share-the-savings concept. First, the cost of the outages to the DSIs was determined. Then, the value of BPA of the reserves provided by the DSIs was calculated. These two figures were added and divided in half to arrive at the revenue, $45,417,000, that is credited to the DSIs for the reserves they provide. To determine the actual credit, the revenue was divided by the appropriate billing determinants. The credit is in the form of a reduction in the monthly demand and energy charges, in the same manner as in the IP–83 rate.

The industrial class has contributed significantly to BPA's revenue instability due to IP load underruns. In order to promote revenue stability, the proposed IP–85 rate includes a customer charge based on plant capacity for the larger aluminum plants, and based on forecasted operating demand for the remaining smaller DSI customers. The customer charge is set at a level that recovers approximately 29 percent of the total IP–85 expected revenues.

As with the existing rates, the demand charges for the IP–85 rate are time differentiated on both daily and seasonal bases. There is no demand charge for deliveries during offpeak hours. The energy charge is seasonally differentiated. The IP–85 rate also includes the Exchange Adjustment Clause, the Supply System Adjustment Clause, a power factor penalty, and a charge for unauthorized increase.

c. *Special Industrial Power Rate, SI–85.* This rate schedule is available to purchasers qualifying for a special class of industrial power as provided for in section 7(d)(2) of the Northwest Power Act. Section 7(d)(2) authorizes BPA to establish a special rate for any DSI using, as its primary resource, raw materials indigenous to the region.

The only customer that qualifies for this Special Industrial rate is the Hanna Nickel Smelting Company. The SI–85 Standard rate is set equal to the PF–85 rate less the value of reserves, to approximate the rate Hanna would have paid without the Northwest Power Act. The SI–85 Standard rate has seasonally and diurnally time-differentiated demand charges and seasonally differentiated energy charges. The rate includes adjustments for power factor, value of reserves, and unauthorized increase.

BPA is also proposing an SI–85 Offpeak rate if the purchaser requests special offpeak service. The Offpeak rate has a 7 mill per kilowatthour energy charge and no demand charge. BPA expects that Hanna will purchase power at this special Offpeak rate throughout the rate period.

d. *Firm Capacity Rate, CF–85.* The CF–85 rate applies to utilities purchasing firm capacity from BPA on either an annual or a seasonal basis. Annual capacity is delivered throughout the year as requested by the customer and seasonal capacity is delivered over the 5-month period of June 1 through October 31. Energy associated with this

capacity is to be returned to BPA. CF–85 loads are served with FBS and exchange resources. The rate includes the Exchange Adjustment Clause, the Supply System Adjustment Clause, the Council-recommended Conservation Surcharge, a seasonally differentiated, extended peaking surcharge for capacity taken in excess of 8 hours per day, and a seasonally differentiated surcharge for high rates of energy return (in excess of 60 percent of Contract Demand). This rate schedule will be available only to purchasers executing appropriate contracts before July 1, 1985.

The extended peaking surcharge is based on the seasonal reduction in hydro peaking capacity due to sustaining generation for an additional 10 hours per week. The returned energy surcharge is based on the reduction in seasonal hydro peaking capability due to high rates of energy being returned in any given hour, which causes a risk of spilled firm energy.

e. *Emergency Capacity Rate, DE–85.* The CE–85 rate schedule is applied to capacity used either to meet emergencies on the purchaser's system or to displace non-BPA resources. BPA provides such capacity to utilities on a weekly basis if it is requested and if excess capacity is available. The energy associated with the delivery of this capacity must be returned to BPA.

To determine the CE–85 rate, the Firm Capacity rate for a contract year was divided by the number of weeks in a year and then increased by 30 percent to cover additional administrative and general costs. Because costs associated with deliveries over the Pacific Northwest-Pacific Southwest (Southern) Intertie have not been allocated to this service category in the COSA, such deliveries are subject to an additional charge.

f. *New Resource Rate, NR–85.* The NR–85 rate is available for the purchase of firm power by investor-owned utilities under net requirements contracts for resale, direct consumption, or for use in construction, test and start-up, and station service. It is also available for service to new large single loads of public bodies, cooperatives, or Federal agencies. BPA also proposes that this rate schedule be available for the purchase of capacity, which will require the return of associated energy.

Exchange energy costs are allocated to this class of service to serve the small amount of energy load forecasted during the test year. However, the NR–85 rate is set to approximate a rate based on both allocated exchange capacity and energy costs so that is can be applied to any load that qualifies for NR–85 service. The energy charges for the NR–85 rate reflect the increased cost to be collected through the energy charges due to setting the demand charge equal to the equalized demand charge. The demand charges are set equal to the equalized Priority Firm power demand charges and are therefore seasonally and diurnally time-differentiated.

g. *Firm Displacement Power Rate, FD–85.* As part of efforts to market its firm surplus power, BPA is exploring arrangements in which BPA would sell its surplus to Pacific Northwest generating utilities to serve their firm loads. These utilities would then sell their resources that have been displaced by the BRA purchase, as well as their current surplus, to California. This strategy would have the advantage of allowing longer term guarantees concerning availability and price than BPA would be able to give for a Surplus Power sale to California.

The FD–85 rate is available for the contract purchase of Firm Displacement Power or Capacity by utilities in the Pacific Northwest, for the purpose of displacing the output of resources owned by those utilities and allowing the export of the displaced output of the resources to Pacific Southwest customers. The FD–85 rate has demand and energy charges, effective through June 30, 1990. The demand charges of FD–85 are diurnally differentiated.

The FD–85 rate is calculated based on the demand and energy components of the NR–85 rate. However, an additional amount is included in the demand component to reflect the projected rate of increase of the NR rate from 1987 through 1990. In addition, a small escalation rate will be applied to both the demand and energy charges of FD–85, beginning July 1, 1986, to represent unknow risk factors associated with a long-term firm sale.

h. *Surplus Firm Power Rate, SP–85.* The SP–85 rate is available for the purchase of Surplus Firm Power for resale or for direct consumption by purchasers other than DSI customers. SP–85 power is available for purchase inside and outside the Pacific Northwest and outside the United States. BPA also proposes that this rate schedule be available for the purchase of capacity, which will require the return of associated energy.

The SP–85 rate consists of two components: a Resource rate and a Contract rate. Both rates may be applied to contract purchases of Surplus Firm power provided the contracts are of a duration of less than 1 year and terminate on or before September 30, 1987. The Contract rate will be applied to purchases pursuant to contracts having an effective term of more than 1 year or terminating after September 30, 1987. The Contract rate consists of energy and demand charges.

The Resource rate is based on the cost of power from specified resources. These resources may be Federal system thermal resources, exchange resources, purchased power, or some combination of all three. Resource rates will be calculated to recover the costs associated with an individual contractual sale.

The Contract rate is based on the fully allocated cost of surplus resouces: Exchange resources and new resources. Demand charges are diurnally differentiated. An escalation factor is included under the contract rate in order to adjust for cost increases in contracts that are in effect for more than 1 year or extend past September 30, 1987. The Contract rate shall be adjusted each October 1 beginning October 1, 1986. Purchasers are given two options in the choice of an escalation factor.

i. *Surplus Firm Energy Rate, SE–85.* The SE–85 rate is available for the purchase of Surplus Firm energy for resale or direct consumption by purchasers other than direct-service industrial customers. As with the Surplus Firm Power rate, the SE–85 rate is available for the purchase of Surplus Firm Energy by parties inside and outside the Pacific Northwest as well as outside the United States.

The SE–85 rate is set at the same level as the SP–85 rate assuming a 100 percent load factor. Thus, the Surplus Firm Energy rate is based on the costs of surplus exchange resources and new resources that have been allocated to the Surplus Firm Power rate. The rate includes a power factor adjustment.

j. *Nonfirm Energy Rate, NF–85.* The NF–85 rate is available for the purchase of nonfirm energy both inside and outside the Pacific Northwest and outside the United States. The proposed NF–85 rate structure contains rates that are applicable under varying operating and marketing conditions. There are a Contract rate and four rates that can be applied depending on market conditions. BPA may sell nonfirm energy at one or more of the rates at the same time.

First, the Standard rate is based on the average cost of service with FBS and new resource power. The Standard rate is diuarnally differentiated. BPA will attempt to market all nonfirm energy at the Standard rate. A guaranteed delivery option is available for the Standard rate. Whenever BPA determines that nonfirm energy can be sold on that basis, guaranteed delivery nonfirm energy normally will be offered for a period of 4 days. Available

guaranteed energy may be as small as zero or as much as all the nonfirm energy BPA plans to offer for sale on such days. Any energy scheduled under the guaranteed delivery provision shall be delivered except when BPA and the purchaser mutually agree to change the scheduled amounts or when BPA must reduce NF–85 deliveries to serve firm loads because of unexpected generation loss in the Pacific Northwest.

Second, sales will be made at the Variable Displacement rate when BPA is unable to sell all available FCRPS energy at the Standard rate. To qualify for the rate, the purchaser must demonstrate that purchases under the Standard rate would not be economic. The Variable Displacement rate will help ensure that BPA displaces the greatest possible amount of thermal generation and will allow BPA to increase NF–85 revenues. The rate is flexible and equals 75 percent of the purchaser's decremental cost. It is available whenever the decremental cost of the displaced resource or purchase is less than the applicable Standard rate (peak or offpeak) plus 2.0 mills per kilowatthour. The Variable Displacement rate has a minimum of 11.0 mills per kilowatthour.

Third, the Fixed Displacement rate will be effective when the available energy exceeds available markets at the Standard and Variable Displacement rates. This rate is similar to the NF–83 Displacement rate, and will help ensure that BPA displaces the greatest possible amount of thermal generation.

Fourth, the NF–85 Incremental rate shall be applied to sales of power produced or purchased concurrently with the nonfirm sale which BPA may, at its option, not produce or purchase, and when the incremental cost is greater than the average Standard rate less 2.0 mills. The rate shall be equal to the incremental cost of the power plus 2.0 mills per kilowatthour.

k. *Energy Broker Rate, EB–85.* In October 1981, BPa entered into an agreement with the Western Systems Coordinating Council (WSCC) to participate in WSCC's Energy Broker Program. The Broker Program offered by WSCC is a communication and scheduling procedure for matching potential sellers of electric energy with potential buyers. The proposed EB–85 rate offered by BPA is available for both sale and purchase of nonfirm energy among participants in the WSCC Energy Broker System, between whom agreements for energy transmission have been transacted.

1. *Reserve Power Rate, RP–85.* The proposed RP–85 rate schedule is available for the purchase of:

(1) Firm power to met a purchaser's unanticipated load growth as provided in a purchaser's power sales contract; (2) power for which BPA determines no other rate schedule is applicable; or (3) power to serve a purchaser's firm power loads in circumstances where BPA does not have a power sales contract in force with such a purchaser, and BPA determines that the rate should be applicable.

This rate schedule applies to purchasers inside and outside the United States BPA expects that the RP–85 rate schedule will be used primarily to meet emergency power shortages on a purchaser's system and to charge, pursuant to the power sales contract, for unauthorized increases in the case of minimal power overruns.

The Reserve Power rate is based directly on the results of the Marginal Cost Analysis. The proposed RP–85 rate will provide BPA's customers with price signals that reflect the cost of producing additional kilowatts and kilowatthours, regardless of BPA's revenue requirement. An adjustment for power factor and a charge for unauthorized increase are also included in the RP–85 rate schedule.

2. *Other Rate Issues*—a. *Sequencing.* Because of new provisions of the Northwest Power Act, the sequence of rate design adjustments, calculations, and comparisons has become an issue. The rate schedules contained herein are based on the following sequence of adjustments to costs allocated in the COSA. First, excess revenues are detemined and allocated. Second, the revenue deficiencies associated with the value of reserves credit, surplus firm power sales, fized contract rates, and the Special Industrial (Hanna) rates are determined and allocated. Third, the DSI "markup rate" is calculated. This rate is the sum of the average PF–85 rate at this point in the rate design process and the "typical industrial margin," which is determined in the section 7(c)(2) Industrial Margin Study. The cost allocated to the IP class differs from the revenue that would be received from the DSIs under the DSI markup rate. This difference, the 7(c)(2) delta, is allocated to firm power classes of service. Fourth, any adjustment required by the results of the section 7(b)(2A) Rate Test Study is performed. If the 7(b)(2) test had triggered, the full amount of the adjustment would have been credited to the general requirements loads of public body, cooperative and Federal agency customers, and the 7(b)(2) cost would have been allocated to power sold to all other customers. Fifth, the demand charges for PF–85 and CF–85 are equalized by dividing the total allocated capacity and transmission costs for these classes by the total billing determinants. Sixth, the DIS rate is compared with the OY 1985 "floor rate," pursuant to section 7(c)(2) of the Northwest Power Act. This ensures that the DSI rate does not fall below the level in effect for the year ending June 30, 1985. Had the DIS rate been less than the floor rate at this point, it would have been raised to the floor, and the excess revenues thus generated would have been allocated to other customers, thus reducing their rates. Seventh, the resulting FY 1987 rates are scaled to ensure that neither a surplus nor a deficit occurs for the 27-month rate period. The DSI floor rate is checked again after scaling.

b. *Scaling Factor.* A 1987 test year (fiscal year 1987) is used in the development of the rates. The resulting rates will provide revenues sufficient to meet BPA's test year repayment obligation. However, if these rates were also applied to forecasted sales for the 15-month period extending from July 1, 1985, until the beginning of the test year, BPA would recover more revenue than required to meet the total 27-month repayment requirement. Consequently, BPA applies a scaling factor to the test year rates to adjust the rates downward. This scaling factor is based on costs and revenues from all of BPA's rates, both wholesale power and transmission. The factor is applied to each test year 1987 rate to yield a rate applicable to the entire 27-month rate period. Because BPA must account separately for FCRTS cost, two scaling factors are developed: one for FCRTS costs and one for all other (referred to as "generation") costs. These scaling factors are applied to the transmission and generation components of the scaleable rates developed for the 1987 test year.

c. *Adjustment Clauses.* BPA has studied different forms of automatic adjustment clauses as a means of alleviating its cash flow problems and recovering sufficient revenue to cover uncontrollable expenses. In the rate proposal, BPA is including an Exchange Adjustment Clause and a Supply System Adjustment Clause in the applicable rates.

An Exchange Adjustment Clause (EAC) is included in the Priority Firm, Industrial Firm, Firm Capacity, and New Resource Firm rate schedules. Exchange resources are assigned to loads served under these rates. The adjustment is in form of a rebate or surcharge if the actual average cost of selected exchange resources during the period July 1, 1985, through September 30, 1987, differs from that forecast. The EAC is based on the

average cost of exchange resources acquired by BPA from the region's publicly-owned and investor-owned utilities whose individual average system costs are greater than the Priority Firm Power rate. The EAC will be implemented on two dates during the 27-month rate period: October 1, 1986, and October 1, 1987. Each of these adjustments shall be subject to a final recalculation approximately 1 year later to reflect modifications in the data used in the adjustment formula.

A Supply System Adjustment Clause has been included in the Priority Firm Power and Firm Capacity rate schedules, which are based in part on the costs of Federal base system resources. Also subject to the Supply System Adjustment Clause is the Industrial Power rate schedule, because of its relationship to the Priority Firm Power rate schedule, as defined by section 7(c)(2) of the Northwest Power Act. Any adjustment will be made to the Priority Firm Power and Industrial Firm Power energy charges and the Firm Capacity demand charges effective October 1, 1986, based on the sum of:

(1) The difference between the actual operating year (OY) 1986 Supply System net funding requirement for WNP-1, -2, and 70 percent of -3 and the costs in the revenue requirement for FY 1986; and

(2) The difference between the OY 1987 Supply System Annual Budget for WNP-1, -2, and 70 percent of -3 and the costs in the revenue requirement for FY 1987.

For each customer, the adjustment will be the product of the percentage of Supply System costs allocable to that customer class and the changes in Supply System costs for FY 1986 and FY 1987, divided by the class's energy or capacity billing determinants for FY 1987. No adjustment will be calculated if the change in Supply System costs for FY 1986 and FY 1987 is less than or equal to 1 percent.

d. *Revenue Deficiencies From Surplus Sales.* It was assumed for purposes of the rate filing that 850 average megawatts of Surplus Firm Power will be sold at the SP-85 contract rate, of a total surplus of 1152 average megawatts. The remaining 302 average megawatts are assumed to be sold under the NF-85 rate, which is less than the fully allocated cost of the surplus firm power. BPA differentiates between revenue from nonfirm energy sales resulting from the presence of surplus firm power resources that cannot be sold at their fully allocated costs and revenue from nonfirm energy sales resulting from better-than-critical water conditions.

To calculate the revenue deficiency, BPA assumed that the power that cannot be sold at the fully allocated cost of surplus firm power resources is sold at the Nonfirm Energy rates. This sale results in a revenue deficiency that is allocated to firm classes of service.

e. *Excess Revenue Determination and Revenue Uncertainty.* BPA's projected revenues are subject to significant variations due to both individual customer load variations and variations in hydrological conditions. To measure these variations, BPA performed a Revenue Uncertainty Analysis for this filing. The Analysis indicated that the probability of underrecovery is greater than that of overrecovery. To reflect this revenue uncertainty, the excess revenues from nonfirm energy were determined based on the assumption of 1939 water conditions instead of the average of the 40 water years 1929 to 1978, as has been assumed in previous years.

f. *Revenue Stability.* BPA has in the past experienced a significant revenue volatility from the DSIs and computed requirements purchasers. In order to enhance revenue stability and promote equity of cost recovery, BPA continues to reflect in the IP-85 customer charge and in the billing determinants for computed requirements purchasers (in both the PF-85 and NR-85 rate schedules) the costs that BPA incurs in being ready to serve a specified load.

These rate components are designed to share the risks of load variations between BPA and the above customer groups in a manner that is equitable in relation to the risk assumed for other customers. The IP-85 customer charge billing factor for large direct-service industrial plants has been changed from the forecasted operating demand to plant capacity. The Priority Firm Power rate schedule, PF-85, and the New Resource Firm Power rate schedule, NR-85, contain the billing factors for computed requirements customers that reflect BPA's readiness to serve. The effect of the billing factor is to compensate BPA for costs incurred in being ready to meet loads under critical water planning. The implementation of the billing factor ameliorates the problem of revenue underrecovery due to displacement and resolves the inequity between computed requirements customers and those customers with fewer options under the power sales contract.

For customers designed by BPA to purchase energy on a computed requirements basis, the energy billing factor is a weighted average of the customer's monthly Computed Energy Maximum and its measured energy. The weighting factor is calculated on a seasonal basis and is based on changes in nonfirm energy revenues, with and without displaced purchases, compared to the projected amount of displaced BPA Priority Firm Power. The monthly Computed Energy Maximum is the amount of energy equal to the product of the number of hours in the month and the purchaser's Computed Average Energy Requirement, i.e., the amount by which the purchaser's actual firm energy load for the month exceeds its assured energy capability for the month.

Issued in Portland, Oregon, August 28, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84-23507 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Proposed Transmission Rate Adjustment, Public Hearings, and Opportunities For Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Proposed Transmission Rate Adjustment, Notice of Public Hearings, and Opportunities for Review and Comment. *BPA File No:* TR-85.

SUMMARY: On July 25, 1984, BPA published in the **Federal Register** (49 FR 30009) a "Notice of Intent to Revise Transmission Rates" because revenue from the current rates is insufficent to recover increased costs of the Federal Columbia River Transmission System (FCRTS). BPA's proposed transmission rates are expected to produce an overall revenue increase of 1.0 percent. BPA anticipates filing the final transmission rate proposal with the Federal Energy Regulatory Commission (FERC) on or about May 1, 1985. It is anticipated that BPA's new transmission rates will become effective on an interim basis on July 1, 1985.

The current 1983 transmission rates were approved by FERC on an interim basis, effective February 1, 1984, through such additional time as is required by FERC to review the information filed by BPA on its separate accounting of costs, and for FERC to issue a further order. BPA's separate accounting of the transmission component of the FCRTS was filed in a Compliance Report with FERC on May 29, 1984. The Compliance Report is required by FERC's order approving the 1983 transmission rates on an interim basis. The revenues now being collected under these rates are subject to refund, pending a final ruling by FERC.

The process of developing transmission rates provides

opportunities for interested persons to make recommendations and to participate in public hearings. Any written comments or recommendations received until the end of the hearings will become part of the Official Record. The final rate proposal will be developed after consideration of the Official Record, and it therefore may differ substantially from the rates proposed in this notice.

Responsible Officials: Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The notification must be received by September 21, 1984, and should be addressed as follows: Hon. Seymour Wenner, Hearing Officer, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Customers of BPA who provide notice are parties of right. Others may become parties by demonstrating in their notice and at the Prehearing Conference that they would represent a significant and otherwise unrepresented interest. The notice should contain: (1) The name of the person or entity claiming status as a party; (2) the person who will be representing the party; (3) whether the person or entity claiming status as a party has a contractual relationship with BPA that could be affected by the proposed rates; and (4) if no contractual interest exists, the interest the person believes would be served by their being a party. All timely applications will be ruled on by the Hearing Officer.

A Prehearing Conference, required by the rate procedures, will be held before the hearing Officer at 9 a.m. on September 24, 1984, in the Cafeteria, Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m.

It is expected during the Prehearing Conference that hearing dates will be set for the presentation of direct cases, rebuttal cases, cross-examination, oral argument, and briefs. A notice of the dates and times of the hearings will be mailed to all parties of record. All formal hearing sessions will be held in the Cafeteria, Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon.

Two series of public field hearings regarding BPA's proposal will be held at various regional locations. At the first series, BPA will provide information concerning the ratemaking process and the issues in this rate case, and a synopsis of the rate proposal. Both the public's comments contained in a verbatim transcript of the hearings and all written comments received will be made a part of the official record. The public's oral comments will be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings. Registration for the hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. The dates and locations are:

October 16—Holiday Inn at the Coliseum, XJS Room, 10 N. Weidler, Portland, Oregon

October 17—Seattle Center, Shaw Room, North Court, Seattle, Washington

October 18—City Council Chambers, 777 Pearl Street, Eugene, Oregon

October 22—Burley Inn, 800 N. Overland Avenue, Burley, Idaho

October 23—Red Lion Village Inn, 100 Madison Street, Missoula, Montana

October 24—Cavanaugh's River Inn, Clearwater Room, N. 700 Division Street, Spokane, Washington

October 25—Richland Federal Building, 825 Jadwin Avenue, Richland, Washington

October 29—Virginian Motel, Buffalo Room, 750 W. Broadway, Jackson, Wyoming

A second series of field hearings will be scheduled near the end of the formal hearings. These field hearings will provide the public an additional opportunity to comment based on their review of the evidence presented in the formal hearings. BPA will consider the public's comments in the evaluation of the Record. The hearing schedule and locations will be announced in newspapers in the region.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Written comments submitted by the close of the hearing will be made part of the record.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, Public Involvement Office, at the address listed above, 503-230-3478. Oregon callers outside of Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

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I. Background

A. Applicable Legislation

BPA operates and maintains the FCRTS in order to (a) integrate and transmit electric power from existing or additional Federal or non-Federal generating units; (b) provide service to BPA customers; (c0 provide interregional transmission facilities; and (d) maintain the electrical stability and electrical reliability of the Federal system. BPA is required by law to establish rates having regard to the recovery, in accordance with sound business principles, of the costs associated with the acquisition,

conservation, and transmission of electric power, including amortization of the Federal investment (with interest) in the transmission and generation facilities of the Federal system over a reasonable number of years and the Administrator's other costs and expenses. Such rates are to be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act, sec. 5 of the Flood Control Act of 1944, and the provisions of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). Pursuant to sec. 7(a)(2) of the Northwest Power Act, authority to confirm and approve BPA's transmission rates is vested in the Federal Energy Regulatory Commission (FERC).

In 1974, the Federal Columbia River Transmission System Act (Transmission Act) was passed. This legislation placed BPA on a "self-financing" basis by authorizing the use of sale receipts and the proceeds of revenue bonds to finance the operation, maintenance, and construction of transmission facilities. Section 6 of the Transmission Act requires the Administrator to make available to all utilities on a fair and nondiscriminatory basis any capacity of the Federal transmission system which he determines to be in excess of capacity required to meet Federal requirements.

Section 9 of the Transmission Act requires that schedules of rates and charges for transmission of non-Federal power shall be established with a view to: (a) Encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles; (b) recovering the cost (based upon the application of rate schedules to the capacity of project electric facilities) of producing and transmitting electric power, including the amortization of the capital investment allocated to power over a reasonable period of years; and (c) producing additional revenue to cover the cost of bonds sold to the Treasury. Section 10 of the Northwest Power Act allows for uniform rates and further requires that "recovery of the cost of the Federal Transmission System shall be equitably allocated between Federal and non-Federal power utilizing such system." Section 7(a)(2)(c) of the Northwest Power Act also requires that BPA rates "equitably allocate the costs of the Federal Transmission System between Federal and non-Federal power utilizing such system."

With regard to transmission lines connecting the Pacific Northwest with Canada or any area outside the Northwest, the Regional Preference Act (Pub. L. 88–552) provides that capacity not required for the transmission of Federal or other specified energy shall be made available for transmission of other energy between such areas. Section 9 of the Northwest Power Act provides further criteria for non-Federal wheeling. Transmission rates for such wheeling transactions shall be equitable.

B. Contracts

Many transmission agreements were negotiated prior to the 1974 Transmission Act and reflect conditions and policies prevalent at the time of negotiation. Provisions differ in agreements include type of facilities available, type of service, frequency of rate adjustments, determination of losses, and calculation of billing determinants. Some agreements, for example, specify that transmission rates can be changed annually while other agreements limit rate adjustments to once every 3 years.

Many agreements prescribe the method and factors to be used in determining the cost of providing service and in the designing of rates. Many are "formula power" agreements and the factors specified in these agreements are the forerunners of the current FPT rate schedules. Applicable legislation requires transmission system costs to be equitably allocated between Federal and non-Federal power utilizing the system. BPA's Cost of Service Analysis (COSA) determines the equitable allocation of costs. Contractual provisions that stipulate methods to be used in determining cost of service in formula power agreements do not address the equitable allocation methodology. In cases where BPA is required by contractual provisions to use a specific rate design method, such methods are used in this rate proposal. This approach is similar to the 1983 transmission rate filing wherein formula power transmission tariffs were scaled back to match the COSA revenue requirements (COSA level rates).

Some transmission agreements do not permit changes in rate methodology. In some cases, the rates proposed in this notice will not be applicable to such agreements. BPA intends to apply its historical rate schedules to these agreements, as required.

C. Transmission Policy

Concurrent with the 1981 transmission rate filing, BPA announced its intent to revise its intraregional transmission policy. That effort continued through the 1982 rate filing. After extensive public comment was received and considered by BPA, an initial proposed transmission policy was published in the **Federal Register** on June 1, 1983 (48 FR 24421). That policy has not yet been made final. However, extensive comment has been received and generic agreements have been drafted and reviewed. The transmission rates proposed herein are developed taking into account the comments received on the proposed policy and generic agreement drafts.

The proposed policy is consistent with several key principles relevant to transmission rate development, including the following:

1. BPA's goal is that the region's transmission system be planned and constructed to achieve as nearly as possible the maximum efficiency, reliability, economy and other benefits, as if the region's system were owned by a single utility. The short distance demand charge, available with the IR–83 rate schedule, and continued in the IR–85 rate schedule for certain connection points which use specific FCRTS facilities for a distance of less than 75 miles, is intended to serve the "one-utility standard."

2. The proposed policy considers equity among customers within a customer class by recognizing that revenue responsibility should correspond to the relative degree of use made of the FCRTS. This is reflected in the choice of demand and energy as IR–85 billing factors. Use of these billing factors tends to shift revenue responsibility toward the wheeling customers that make the heaviest sustained use of FCRTS facilities.

D. Intertie Access Policy

BPA has developed a proposed Near Term Intertie Access Policy which will govern allocation and use of the Southern Intertie. The intended effective period for the policy is approximately 2 years, with initial adoption for approximately 6 months of that 2-year period. During the effective period, development of a long-term policy will proceed.

The near-term policy proposes to provide assured access to the Intertie for certain firm power sales contracts between Northwest sellers and Southwest purchasers. It also proposes to provide nonfirm access to the remaining Southern Intertie capacity under three different conditions.

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act provides procedures for encouraging the participation of the public in the

development of BPA's rates. In order to give the public notice of how it could participate in BPA's rate adjustments and to elaborate on the procedures set out in section 7(i), BPA published "Procedures Governing Bonneville Power Administration (BPA) Rate Adjustments" by **Federal Register** notice (46 FR 6240, February 10, 1982). These procedures were used in the 1983 wholesale power and transmission rate filings. On March 23, 1984, BPA published its Interim Amendment of procedures Governing BPA Rate Adjustments (49 FR 1090) and requested comments from interested parties. This amendment was necessary in order to comply with a judicial determination that BPA ratemaking proceedings are subject to the *ex parte* communication restrictions found in section 557(d) of the Administrative Procedure Act. BPA is in the process of evaluating comments on the Interim Amendment and will finalize the Interim Amendment as soon as possible. BPA's procedures, as amended, will be applicable to the section 7(i) hearings on BPA's 1985 rate case. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

The Northwest Power Act prescribes a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments outside the hearings; and a decision by the Administrator based on the record developed during the rate process. BPA procedures expand these requirements. They provide for publication of a notice of intent to revise rates followed by a Notice of the proposed rates, a prehearing conference, hearing, receipt of written comments, preparation of decision documents, a decision, and the transmittal of the decision with supporting documentation to the FERC.

The process begins with publication of the notice of intent to revise rates. This is followed by publication of this notice of the proposed rates, which includes the proposed rates, a discussion of the research, studies, analyses, and other available information in support of the proposed rates, the deadline for claiming status as a "party," and the beginning date for the hearing.

The procedures further provide for a Prehearing Conference if scheduled by the Hearing Officer. A Prehearing Conference has been scheduled before the Hearing Officer at 9 a.m. on September 24, 1984, in the cafeteria at Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m., and the conference will commence at 9 a.m. with the Honorable Seymour Wenner presiding.

Issues for discussion at the prehearing conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at the prehearing conference.

BPA will also convene a series of public hearings at certain locations throughout the region. The purpose of these hearings is to present to interested members of the public a synopsis of BPA's rate proposal and to receive comments, views, and opinions from the general public. The public's oral comments will be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties will not be allowed at these sessions. The hearings will be held at the times and locations previously listed. The conduct of these hearings will be substantially the same as that of the public field hearings held for BPA's 1981, 1982, and 1983 rate proceedings. BPA staff will present a synopsis of the proposed rates followed by comments from the public. The public will have an opportunity to present their comments, views, and opinions about the proposed rates.

BPA finds it necessary to distinguish between "participants in" and "parties to" the hearings. During the field hearings, PBA will receive comments, views, opinions, and information from "participants," category of interest in the procedures as interested persons who may express their views at a hearing, but who may not cross-examine other witnesses, participate in the prehearing conference, or serve or be served with documents. Participants, however, will be provided regular letters during the rate hearings summarizing the proceedings and are provided the opportunity to request materials presented during the hearings. Participants' written comments will be made part of the Official Record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon the "parties."

The second category of interest is that of a "party." A party may be either a party of right because of its legal and/or contractual relationship with BPA, and hence, its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in prehearing conferences, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interests and positions, the Hearing Officer may, to expedite the hearing, order appropriate limitations on the number of attorneys (or parties appearing *pro se*) who will be permitted to cross-examine witnesses as well as file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. BPA expects that the clarification sessions will be followed by the presentation of the parties' direct cases, the presentation of rebuttal cases, cross-examination, oral argument, and briefing. The times for these proceedings will be established by the Hearing Officer at the prehearing conference and will be announced in a subsequent order that will be served upon all parties of record.

After the close of the hearings, BPA will file an Evaluation of the Record. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the law through briefs. The Evaluation of the Record will provide a written evaluation of the Record addressing significant technical issues. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the Record. Written comments may be included in the Record if they are submitted before the close of the hearings. Written views, supporting information, question, and arguments should be submitted to BPA's Public Involvement Manager.

The Record will include, among other things, the transcripts of the hearings, wirtten material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the Record by the Hearing Officer. The Hearing Officer then will review the Record, will

supplement it if necessary, and will certify the Record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire Record, including the Record certified by the Hearing Officer, comments received from participants in the field hearings, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rates together with the Record with FERC for confirmation and approval.

III. Rate Schedules

Schedule FPT–85.1. Formula Power Transmission

Section I. Availability

This schedule supersedes schedule FPT–83.1 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once a year. It is available for firm transmission of electric power and energy using the FCRTS. This schedule is for full-year and partial-year service and for either continuous service or intermittent service so long as firm availability of service is required.

Section II. Rate

A. Full-Year Service

The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge, the Secondary System Charge, and Intertie Charge, as applicable and as specified in the Agreement.

1. *Main Grid Charge.* The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor—The amount computed by multiplying the Main Grid Distance by $0.0275 per mile;

b. Main Grid Interconnection Terminal Factor: $.32;

c. Main Grid Terminal Factor: $.28;

d. Main Grid Miscellaneous Facilities Factor: $1.24.

2. *Secondary System Charge.* The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor—The amount determined by multiplying the Secondary System Distance by $.1923 per mile;

b. Secondary Transformation Factor: $2.15;

c. Secondary System Intermediate Terminal Factor: $.91;

d. Secondary System Interconnection Terminal Factor: $.52.

3. *Intertie Charge.* For use of Pacific Northwest—Pacific Southwest Intertie facilities: $4.87.

B. Partial-Year Service

The monthly charge per kilowatt of billing demand shall be as specified in section II.A for all months of the year except:

1. For unplanned firm service, such as emergency station service when a generating unit is down, the yearly charge shall be equal to one monthly charge as defined in section II.A so long as the use during each year does not exceed 730 hours. If the use during each year exceeds 730 hours, the yearly charge shall be as specified in section II.A.

2. For agreements whose term is 5 years or less and which specify service for fewer than 12 months per year, the charge shall be:

a. during months for which service is specified, the monthly charge defined in section II.A, and

b. during other months, the monthly charge defined in section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. the Transmission Demand;

B. the highest hourly Scheduled Demand for the month; or

C. the Ratchet Demand.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

Schedule IR–85. Integration of Resources

Section I. Availability

This schedule supersedes IR–85 and is available for firm transmission service for electric power and energy using the FCRTS, exclusive of the Eastern, Northern, and Southern Intertie segments.

Section II. Rate

The monthly charge shall be the sum of A and B where:

A. The Demand Charge is

1. $0.3003 per kilowatt of billing demand; or

2. for Points of Integration (POI) specified in the Agreement as being short distance POI, for which FCRTS facilities are used for a distance of less than 75 circuit miles, the demand charge shall be:

[.2+.8/75 (transmission distance) ($0.3003 per kW of billing demand)],

Where: The billing demand for a short distance POI is the demand level specified in the Agreement for such POI, and the transmission distance is the circuit miles between the POI for a generating resource of the customer and a designated Point of Delivery (POD) serving load of the customer.

B. The Energy Charge is

1.09 mills/kWh of billing energy.

Section III. Billing Factors

To the extent that the Agreement provides an option for the customer to be billed for transmission in excess of the Total Transmission Demand, as defined in the Agreement, at the nonfirm transmission rate (currently ET–85), such service *shall not* contribute to either the Billing Demand or the Billing Energy for the IR rate, *provided that* the customer exercises the option in accordance with the prescribed scheduling provisions in the Agreement.

All other nonfirm service which is not scheduled in advance as nonfirm service and which is not otherwise covered by a signed agreement *shall* contribute to both the Billing Demand and the Billing Energy for the IR rate.

A. Billing Demand

The billing demand shall be the largest of:

1. the Transmission Demand, except under General Transmission Agreements where a Total Transmission Demand is defined;

2. the highest hourly Scheduled Demand for the month; or

3. the Ratched Demand.

B. Billing Energy

The billing energy shall be the monthly sum of scheduled kilowatthours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

Schedule IS–85. Southern Intertie Transmission

Section I. Availability

This schedule supersedes IS–83 and is available for all transmission on the Southern Intertie.

Section II. Rate

The charge for transmission of non-Federal power on the Southern Intertie shall be 2.34 mills/kWh.

Section III. Billing Factors

A. Billing Energy

1. The billing energy shall be the monthly sum of scheduled kilowatthours; except

2. For deliveries qualifying for assured access as defined by the Intertie Access Policy, the billing energy shall be the monthly sum of kiolowatthours allocated for Assured Delivery.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended, and as interpreted by BPA in its policies: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to aggreements.

Schedule IN–85. Northern Intertie Transmission

Section I. Availability

This schedule supersedes IN–83 and is available for all transmission on the Northern Intertie.

Section II. Rate

The charge for transmission of non-Federal power on the Northern Intertie shall be 1.59 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of the scheduled kilowatt hours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

Schedule IE–85. Eastern Intertie Transmission

Section I. Availability

This schedule supersedes IE–83 and is available for all nonfirm transmission on the Eastern Intertie.

Section II. Rate

The charge for transmission of nonfirm energy on the Eastern Intertie shall be 1.88 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of the scheduled kilowatt hours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Tranmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the tranmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

Schedule ET–85. Energy Transmission

Section I. Availability

This schedule supersedes Schedule ET–83, unless otherwise specified in the Agreement, with respect to delivery using FCRTS facilities other than the Southern Intertie, Eastern Intertie, or the Northern Intertie, and is available for nonfirm transmission between points within the Pacific Northwest upon BPA's determination of available capacity. BPA may interrupt service which is provided under this rate schedule.

Section II. Rate

The charge for such nonfirm transmission of non-Federal electric energy shall be 2.12 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of scheduled kilowatt hours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

IV. General Transmission Rate Schedule Provisions

Section I. Adoption of Revised Transmission Rate Schedule Provisions General Transmission Rate Schedule Provisions

A. Approval of Rates. These rate schedules and General Transmission Rate Schedule Provisions (GTRSP) shall become effective following confirmation and approval by the Federal Energy Regulatory Commission. If the rates and GTRSP are first approved on an interim basis, they shall not be considered final until the Commission has issued an order confirming and approving them on a final basis.

B. General Provisions. BPA's Transmission Rate Schedules and associated GTRSP, effective July 1, 1985, supersede in their entirety through adjustment or extension BPA's Transmission Rate Schedules and GTRSP effective February 1, 1984; however, they do not supercede prior rate schedules required by agreement to remain in force.

C. Interpretation. If a provision in the executed Agreement is in conflict with a provision contained herein, the former shall prevail.

Section II. Availability of Transmission Service

Any capacity in the Federal Columbia River Transmission System (FCRTS) which BPA determines to be in excess of required capacity to transmit Federal obligations will be made available to all utilities by application of schedules identified in the 1985 Transmission Rate Schedules, or as subsequently revised.

Section III. Billing Factor Definitions and Billing Adjustments

A. Billing Factors

1. Scheduled Demand. The largest of hourly amounts wheeled which are scheduled by the customer during the time period specified in the rate schedules.

2. Metered Demand. The Metered Demand in kilowatts shall be largest of the 60-minute clock-hour integrated demands measured by meters installed at each POD during each time period specified in the applicable rate schedule. Such measurements shall be made as specified in the Agreement. BPA, in determining the Metered Demand, will exclude any abnormal readings due to or resulting from (a) emergencies or breakdowns on, or maintenance of, the FCRTS; or (b) emergencies on the customer's facilities, provided that such facilities have been adequately maintained and prudently operated as determined by BPA. If more than one class of power is delivered to any POD, the portion of the metered quantities assigned to any class of power shall be as agreed to by the parties. The amount so assigned shall constitute the Metered Demand for such class of power.

3. Transmission Demand. The demand, as defined in the Agreement.

4. Total Transmission Demand. The demand, as defined in the General Transmission Agreement.

5. Ratchet Demand. The maximum demand established during the previous 11 billing months.

B. Billing Adjustments

Average Power Factor. The adjustment for average power factor, when specified in a transmission rate schedule or in the Agreement, shall be made in accordance with the average power factor section of the General Wheeling Provisions.

To maintain acceptable operating conditions on the Federal system, BPA mayt restrict deliveries of power at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 85 percent.

Section IV. Other Definitions

Definitions of the terms below shall be applied to these provisions and the Transmission Rate Schedules, unless otherwise defined in the Agreement.

A. Agreement

An agreement between BPA and a customer to which these rate schedules and provisions may be applied.

B. Eastern Intertie

The segment of the FCRTS for which the transmission facilities consist of the Townsend-Garrison double-circuit 500-kV transmission line segment including terminals and, prior to extention of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer and related terminals at Garrison.

C. Electric Power

Electric peaking capacity (kW) and/or electric energy (kWh).

D. Firm Transmission Service

Transmission service which BPA provides for any non-BPA power, as specified in the Agreement, except for transmission service which is scheduled as nonfirm.

E. Integrated Network

The segment of the FCRTS for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest, excluding facilities not segmented to the network in the Cost of Service Analysis used in BPA's rate development.

F. Main Grid

As used in the FPT rate schedules, that portion of the FCRTS with facilities rated 230-kV and higher, exclusive of those designated as Interties.

G. Main Grid Distance

As used in the FPT rate schedules, the distance in airline miles on the Main Grid between the POI and the POD, multiplied by 1.15.

H. Main Grid Interconnection Terminal

As used in the FPT rate schedules, Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

I. Main Grid Miscellaneous Facilities

As used in the FPT rate schedules, switching, transformation, and other facilities of the Main Grid not included in other components.

J. Main Grid Terminal

As used in the FPT rate schedules, the Main Grid terminal facilities located at the sending and/or receiving end of a line exclusive of the Interconnection terminals.

K. Nonfirm Transmission Service

Interruptable transmission service which BPA will provide for non-BPA power, if and when BPA determines that capacity is available.

L. Northern Intertie

The segment of the FCRTS for which the transmission facilities consist of two 500-kV lines between Custer substation and the United States-Canadian border, one 500-kV line between Custer and Monroe substations, and two 230-kV lines from Boundary substation to the United States-Canadian border, and the Associated substation facilities.

M. Point of Integration (POI)

Connection points between the FCRTS and non-BPA facilities where non-Federal power is made available to BPA for wheeling.

N. Point of Delivery (POD)

Connection points between the FCRTS and non-BPA facilities where non-Federal power is delivered to a customer by BPA.

O. Pacific Northwest—Pacific Southwest Intertie

The segment of the FCRTS for which the major transmission facilities consist of two 500-kV AC lines from John Day Substation to the Oregon-California border, a portion of the 500-kV AC line from Buckley Substation to Summer Lake Substation, and one 800-kV DC line between Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

P. Secondary System

As used in the FPT rate schedules, that portion of the FCRTS facilities with operating voltage of 115-kV of 69-kV, exclusive of Main Grid facilities, Intertie facilities, and all FCRTS facilities which are recovered on a use-of-facility basis.

Q. Secondary System Distance

As used in the FPT rate schedules, the number of cricuit miles of Secondary System transmission lines between the secondary POI or the Main Grid and the POD or the lower voltage FCRTS facilities which may be used on a use-or-facility basis.

R. Secondary System Interconnection Terminal

As used in the FPT rate schedules, the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA facilities.

S. Secondary System Intermediate Terminal

As used in the FPT rate schedules, the First and final terminal facilities in the Secondary System transmission path exclusive of the Secondary System Interconnection terminals.

T. Secondary Transformation

As used in the FPT rate schedules, transformation from Main Grid to Secondary System facilities.

Section V. Billing Information

A. Computation of Bills

The Transmission Billing Determinant is the electric power quantified by the method specified in the Transmission Agreement or Transmission Rate Schedule. Schedules power or metered power will be used.

The transmission customer shall furnish BPA necessary information for making any computation required for the purposes of determining the proper charges for the use of the FCRTS and shall cooperate with BPA in exchanging such additional information as may be reasonably useful for respective operations.

Billings under each rate schedule application will be rounded to whole dollar amounts by eliminating any amount less than 50 cents and increasing any amount from 50 cents through 99 cents to the next higher dollar.

B. Payment of Bills

Bills for transmission service will normally be computed and rendered monthly, generally on a calendar month basis. Failure to receive a bill shall not release the purchaser from liability for payment. Bills for amounts of $50,000 or more must be paid by direct wire transfer. Bills for amounts under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or other location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

C. Estimated Bills

At its option, BPA may elect to render an estimated bill for that month to be followed at a subsequent billing date by a final bill. Such estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

D. Late Payment

Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge which shall be the greater of one-fourth (0.25) percent of the unpaid amount or $50.00. In addition, an interest charge of one-twentieth (0.05) percent shall be applied each day to the sum of the unpaid amount and penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. In order to avoid assessment of late payment charges for metered mail received subsequent to the due date, the payment must bear a postal department cancellation which demonstrates that the payment was mailed on or before the due date.

Whenever a bill or a portion thereof remains unpaid subsequent to the Due Date and after giving 30 days advance notice in writing, BPA may canel the contract for service to the purchaser. However, such cancellation shall not affect the purchaser's liability for any charges accrued prior thereto under such contract.

E. Disputed Billings

In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the purchaser is entitled to the disputed amount, BPA shall refund the disputed amount with interest.

V. Major Concepts and Issues

BPA has prepared several studies in the process of developing the transmission rates presented in this Notice. They are the Load and Resource Study, Marginal Cost Analysis, Revenue Requirements Study, Cost of Service Analysis, and the Transmission Rate Design Study. The three latter studies have the most direct bearing on the rates filed in this Notice and are described in some detail below. Also described are the scaling factor and BPA Separate Accounting Compliance Report.

A. Revenue Requirement Study

Adequacy of revenue from existing power and transmission rates to meet the repayment criteria is determined by preparing a power system Revenue Requirement Study. This study compares projected revenue with projected costs over the entire repayment period to determine whether there will be enough revenue to recover all costs. The generation system and the transmission system are treated separately in this filing.

In order to meet its fiscal reponsibility, which includes making planned amortization payments, BPA's Revenue Requirement Study reflects actual historic cash amortization, and all amortization scheduled due by September 30, 1987. In addition, it reflects all of BPA's obligations under the Northwest Power Act, including exchange costs. To assure that BPA will meet its repayment obligations, a cash lag has continued to be added to the revenue requirement.

B. Cost of Service Analysis

The Cost of Service Analysis (COSA) apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class. The COSA is the principal mechanism used to equitably allocate FCRTS costs between Federal and non-Federal power utilizing the FCRTS.

The following steps are used to determine the allocated cost to serve each customer class.

1. Functionalization

Functionalization is the identification of revenue requirements with functions performed by the power system. These functions are defined as generation and transmission. All costs are assigned to one of these functions.

In prior rate filings, the functionalization step was performed in the Cost of Service Analysis. In this rate filing, costs are functionalized prior to the preparation of the repayment studies. The separate repayment studies determine the net repayment requirement (NRR) of generation and transmission. The results of the functionalized repayment studies are used in the COSA.

2. Classification

BPA classifies costs to energy and capacity components of electric power. Transmission costs are classified entirely to capacity.

3. Segmentation

Although BPA operates a regionwide transmission system, some segments of the system are not needed to provide some services. In order to more closely identify the types of service provided by

the transmission system with various customer classes, the system is divided into nine segments, each providing a distinct type of service. The nine transmission system segments are: integrated network, Pacific Northwest-Southwest Intertie, Canadian Intertie, Montana Intertie, generation integration, fringe area, and delivery segments for public agency, direct service industrial and investor owned utility customers.

4. Allocation

The final major step in the COSA is to allocate the functionalized and segmented costs to service classes.

Costs are allocated to service classes on the basis of relative use of services. The measure for use of peaking capacity is the monthly coincidental peak megawatt. Because the power system is constructed to meet coincidental peak demand, the coincidental peak (relative to the system peak) is used as a measure for each customer's contribution to BPA's need to acquire peaking resources.

Costs of the nine Federal transmission system segments and exchange costs functionalized to transmission are allocated on the basis of coincidental peakloads. The average of all 12 monthly coincidental peaks is used to allocate transmission system costs. Costs are allocated to customer classes on the basis of deemed use of the transmission system for power customers, and on the basis of actual use of the transmission system for wheeling (non-Federal transmission) customers. For wheeling service, costs are allocated from the Integrated Network, Southern Intertie, and Northern Intertie segments. Costs of the Eastern Intertie are paid by users of that segment through contractual agreements.

C. Scaling Factor

This rate filing develops rates for a 27-month period ending on September 30, 1987. The FY 1987 test year used in the rate documents develops costs for the final 12 months of the period. To adjust rates to reflect differences between the test year and the rate period revenue requirement, a scaling factor for the FCRTS revenues is developed. The factor is calculated as the ratio of the combined FY 1986 and FY 1987 COSA revenue requirement from adjustable rates to the revenues from the test year rates over the same period. Revenues from the FCRTS components of all the adjustable power and wheeling rates are scaled to recover the combined 2-year requirements from adjustable rates. Adjustable wheeling rates are FPT/IR, ET-85, IS-85, IN-85, and IE-85. For the wheeling customer class, the calculated factor (.99) is multiplied by each of the FY 1987 adjustable rates to yield rates applicable to the entire rate period.

D. Separate Accounting Compliance Report

As required by the FERC order of January 27, 1984, which approved BPA's proposed 1983 transmission rates on an interim basis, BPA submitted a Compliane Report to FERC demonstrating the development of a separate accounting of the transmission component of the FCRTS.

The Compliance Report explains the following:

1. BPA's development of, and plan to maintain, separate books of account for the FCRTS,

2. BPA's accounting for surpluses and deficits for Federal and non-Federal usage of the FCRTS, and

3. BPA's assignment of surpluses and deficits to Federal and non-Federal usage of the FCRTS.

The report addresses all concerns the FERC raised in its orders on separate accounting. Those concerns are also reflected by BPA's preparation of separate repayment studies for the FCRTS and the generation system in this rate filing.

E. Transmission Rate Design Study

1. Transmission System Revenue Requirement Adjustment

Prior to the design of transmission rates, the COSA-derived network wheeling (IR and FPT) revenue requirement must be adjusted to account for revenue in excess of allocated costs. Revenue received from the ET-85 and the Nonfirm Energy rate (NF-85) are credited against the allocated costs of service derived in the COSA. The credit from the NF-85 rate is functionalized between generation and transmission by considering the transmission portion of the rate as the average cost per kilowatthour of transmitting energy for wholesale power services. The transmission credit is obtained by multiplying this average cost by the estimated nonfirm energy sales. It is then divided among those segments of the transmission system which carry nonfirm energy sales, except the three interties, in proportion to their allocated costs. The anticipated revenue associated with the ET-85 rates are credited against Network costs.

2. Proposed Wheeling Rate Schedules

a. Formula Power Transmission (FPT). The FPT-85 rate schedule is available for the firm wheeling of power. The form of this rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula which has been prescribed historically by contract provisions.

In the design of the FPT-85 rate, the first step is to quantify cost for the specific types of transmission facilities treated in the rate components. Estimates of the use of these facilities are determined from a power flow of the projected peakload period for the test year. The power flow study assumes certain resource and load conditions that BPA believes are reasonable for normal hydro conditions. Unit costs for the FPT rate components are derived by dividing facility cost by power flow facility use. The FPT tariffs are then scaled back to match the COSA revenue requirements (COSA level rates).

b. Integration of Resources (IR). The IR-85 rate involves a more flexible and comprehensive transmission service designed to reflect BPA's transmission policy. The IR service does not recognize specific contract paths, but rather provides Network-wide access to the FCRTS.

The IR-85 rate is calculated by dividing the adjusted revenue requirement for the class into two equal parts to reflect a 50-50 classification of costs to capacity and energy. The quotient of these costs and the appropriate billing determinant (contract demand for capacity-related costs and total energy usage for energy) yields the rates.

While the IR rate schedule is meant to effectuate BPA's policy for future firm wheeling service, FPT contracts are still abundant and many remain in effect for some time. Utilities, therefore, may choose to remain on the FPT service or enter into long-term contracts which incorporate the concepts included in the IR-85 schedule. It is anticipated that this process could result in a revenue deficiency, since utilities may choose the rate schedule which yields the lower total charge for transmission service. BPA has estimated the amount of this revenue deficiency and adjusted the firm wheeling revenue requirement to recover those costs.

Another potential contributor to a revenue deficiency is the short distance discount, which is described as a part of the IR-85 rate schedule. Utilization of this discount would cause an underrecovery of costs which must be adjusted for in the firm wheeling revenue requirement.

c. Incidental Energy Transmission (ET) and Intertie (IN, IE, IS) Transmission. For this rate filing, rate

schedules are again offered on the Northern, Eastern, and Southern Interties which apply to all wheeled power on these segments, whatever the characteristics of the power. The ET rate will be limited to intraregional FCRTS facilities which excludes the interties.

Since the schedule for Energy Transmission (ET–85) class of service is not allocated costs in the COSA, it is necessary to determine the level of the rate by other means. The ET–85 rate is designed to approximate the rate level of firm wheeling charges on the network by dividing the COSA revenue requirement for the firm wheeling class by expected energy usage of firm wheeling on the system. This rate level is approximately equal to twice the energy rate under IR–85.

In the 1983 rate filing, the IS rate was developed using an indirect calculation because costs were not allocated to nonfirm wheeling in the COSA. Revenues from this rate were distributed among other classes of customers that use the Southern Intertie to reduce their revenue requirement.

Recognizing that nonfirm wheeling has become a significant portion of Southern Intertie use, BPA has allocated Southern Intertie costs to this class of service in the current COSA. The IS–85 rate development is now simplified. Allocated costs are divided by the projected nonfirm wheeling energy to determine a rate in mills per kilowatthour. Two adjustments are made. Transactions under the Exportable agreement are contractually limited to the ET–2 rate during the test period, and PP&L receives a 0.5 mill credit for a portion of its wheeling. Several other changes have been made in this proposal which increase the IS–85 rate. Segmentation of the Buckley-Summer Lake line to the Southern Intertie was increased from 30 percent to 57 percent. Additionally, the full cost of the DC line uprating is included in the COSA for the first time. Wheeling projections on the Southern Intertie are reduced due to the assumption of less than average water conditions. One other major change reduces the rate, allocation of cost to nonfirm wheeling in conjunction with the new rate calculation results in a significantly lower rate than if the 1983 methodology were retained. All of the above factors contribute to increasing the IS–85 rate 51 percent above the IS–83 rate. For transactions qualifying for assured access to the Intertie, as defined by the Intertie access Policy, BPA has proposed that the IS rate be utilized on a take-or-pay basis.

The Northern Intertie (IN–85) rate schedule is calculated by dividing segment costs by projected wheeling energy. The return of obligation energy for the account of California utilities is now treated as being subject to the rate.

The Eastern Intertie (IE–85) rate is developed by dividing total costs by estimated generation of Colstrip energy.

Other Issues. BPA is examining the environmental impacts of the proposed transmission rate increase. An appropriate environmental review under DOE's NEPA guidelines will be prepared and integrated into the development of transmission rates, and will be made available at least 30 days before the effective date of this year's final rate proposal.

Issued in Portland, Oregon, August 28, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84–23506 Filed 9–5–84; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–FC–84–011; OFC Case No. 64010–9248–20–24]

Acceptance of Petition for Exemption and Availability of Certification by CoGen Lynchburg, Inc. for its La Porte TX, Facility

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by CoGen Lynchburg, Inc. for its La Porte, Texas, Facility.

SUMMARY: On April 20, 1984, CoGen Lynchburg, Inc. (CGL) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for a new cogeneration facility to be located 15 miles East of Houston near the city of La Porte, Harris County, Texas. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed electric power and steam plant facility (hereafter referred to as La Porte) will consist of four 75MW combustion gas turbine generators, four unfired waste heat boilers, and one extraction-induction-condensing steam turbine generator. La Porte is designed to burn natural gas or oil. La Porte's electric capacity will be 425.0 mega-watts at a system heat rate of 7595 Btu per kWh (74° F) Approximately 374,000 pounds per hour of process steam from the waste heat boilers will be delivered to chemical plants in the Upjohn La Porte, Texas, Chemical Complex. And, approximately 410MW of electric power from the gas and steam generators will be delivered to the Houston Lighting & Power Company (HL&P); HL&P is interconnected with the Electric Reliability Council of Texas regional grid. Accordingly, La Porte will be selling more than 50 percent of the annual electric power generation of the turbine generators to HL&P making the cogeneration facility an electric powerplant in accordance with the definition of "electric generating unit" contained in 10 CFR 500.2.

Within thirty days of the receipt of the petition, ERA found it to be incomplete due to minor deficiencies and so notified CGL. CGL was granted ninety days to satisfy the defects. On June 13, 1984, additional data and information addressing the deficiencies were received from CGL. ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent cogeneration exemption as adequate for filing. ERA retains the right to request additional relevant information from CGL at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below:

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, D.C. 20585, from 8:00

a.m. to 4:00 p.m. Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any such extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before October 22, 1984. A request for a public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-011 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Robert A. McCann, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-1649

Steven E. Ferguson, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW.,
Room 6D-033,
Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: CGL's proposed La Porte power complex will occupy approximately 15 acres and will consist of the following major equipment and systems: Two buildings to be used for administrative, maintenance, and system control purposes; one electrical substation, including power transformers; one boiler water, compressed air, lube oil system; one steam delivery and condensate return piping system; one cooling tower, one steam surface condenser; one condensing steam turbine generator; four combustion gas turbine generators; and four heat recovery steam generators. The CGL La Porte project construction is scheduled to begin in 1984, with the first gas turbine generator unit start-up slated in August 1985; start-up of additional units will follow at one month intervals. Start of the entire La Porte complex for commercial operation is scheduled for December 1985. Accordingly, CGL has petitioned ERA for a cogeneration exemption that would permit La Porte to operate with natural gas or oil as its primary energy source.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of §503.37(a)(1), CGL has certified to ERA that:

1. The oil or gas to be consumed by the cogeneratioin facility will be less than that which would otherwise be consumed in the absence of La Porte, where the calculation of savings is in accordance with 20 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in La Porte, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of §503.37(c) [and in addition to the certifications discussed above], CGL has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.3.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that CGL is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on August 29, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-23620 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-013; OFP Case No. 55393-9247-01-12]

Order Granting to Owens-Illinois, Inc. an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to Owens-Illinois, Inc. an Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to Owens-Illinois, Inc. (Owens-Illinois) a permanent emergency purposes exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") for a new package emergency standby natural gas-fired boiler, a major fuel burning installation (MFBI), to be located at its unbleached kraft linerboard pulp and paper mill at Orange, Texas. The exemption granted permits the use of natural gas as the primary energy source for the emergency standby unit.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on November 5, 1984.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Bldg., Room GA-093, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6002

Steve E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue, SW.,

Washington, D.C. 20585, Phone (202) 252–6947.

SUPPLEMENTARY INFORMATION: On June 1, 1984, Owens-Illinois filed a petition with ERA requesting a permanent emergency purpose exemption for a new boiler from the prohibitions of Title II of FUA.[1] The petition requests an exemption to permit the use of natural gas as the primary energy source in the proposed new package, emergency standby boiler to be located at its unbleached kraft linerboard pulp and paper mill at Orange, Texas. The new emergency standby unit will operate during periods when any of the four boilers at the existing facility are shutdown or turned down in order to ensure continued facility production which would otherwise be reduced due to interruption of alternate fuel supplies, equipment failures, imminent equipment failures, temporary environmental restrictions, and other qualifying emergency conditions. The unit will generate 170,000 lbs/hr steam at 850 psig.

Basis for Exemption Order

The permanent exemption granted by ERA to the new boiler is based upon Owens-Illinois' certification, pursuant to section 212(e) of FUA and 10 CFR § 503.39(a), that:

1. It will operate and maintain the proposed unit for emergency purposes only; and
2. The use of mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR § 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.39(c) (and in addition to the certifications discussed above), Owens-Illinois has included as part of its petition:

1. Exhibits containing the basis for the certifications described above, and
2. Environmental certifications, as required under 10 CFR 503.13(b).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed unit in the **Federal Register** on June 21, 1984 (49 FR 25514), commencing a 45 day public comment period pursuant to section 701(c) of FUA. As required by section 701 (f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency and the Federal Trade Commission, respectively, for comments. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on August 6, 1984. No comments were received and no hearing was requested.

NEPA Compliance

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for emergency purposes, is among the classes of actions the DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Owens-Illinois has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. ERA has reviewed the completed environmental checklist submitted by Owens-Illinois pursuant to 10 CFR 501.15(b), together with other relevant information, and has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Order Granting Permanent Emergency Purposes Exemption

Based upon the entire record of this proceeding, ERA has determined that Owens-Illinois has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.39(a). Therefore, pursuant to section 212(e) of FUA, ERA hereby grants a permanent emergency purposes exemption to Owens-Illinois to permit the use of natural gas as the primary energy source for its new emergency standby boiler to be located at its unbleached kraft linerboard pulp and paper mill at Orange, Texas.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this action may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., August 29, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–23621 Filed 9–5–84; 8:45 am]

BILLING CODE 6450–01–M

[1] Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the emergency purposes exemption are found at 10 CFR § 503.39.

Application for Presidential Permit PP–82: Vermont Electric Power Company, Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Presidential Permit for a 345 kV International Transmission Line (to be operated at 120 kV) which has been filed by Vermont Electric Power Company, Inc.

SUMMARY: Vermont Electric Power Company, Inc., has filed an application for a Presidential Permit, PP–82, to construct, connect, operate and maintain a 345 kV international interconnection (to be operated at 120 kV) at the United States-Canadian Boundary.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Division of Coal and Electricity, Economic Regulatory Administration, Room GA–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–5935

Lise Courtney M. Howe, Office of General Counsel, Department of Energy, Room 6A–141, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2900.

SUPPLEMENTARY INFORMATION: On August 6, 1984, Vermont Electric Power Company, Inc. (VELCO), filed an application with the Economic Regulatory Administration (ERA) for a Presidential Permit, pursuant to Executive Order No. 10485, as amended. VELCO requests authority to construct, connect, operate and maintain a 345 kilovolt interconnection at the United States-Canadian border which will be operated at 120 kV. In addition, VELCO proposes to construct 7.5 miles of overhead transmission line from a 200 megawatt back-to-back converter station facility in Highgate, Vermont, to

interconnect with a similar line owned and operated by Hydro-Quebec.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Economic Regulatory Administration, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with section 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protests should be filed on or before September 28, 1984. Protests will be considered by ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the ERA Division of Coal and Electricity, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C., 20585.

Issued in Washington, D.C. on August 28, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-23622 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EL84-37-000]

Aquenergy Systems, Inc.; Petition for Declaratory Order

August 30, 1984.

Take notice that on August 16, 1984, Aquenergy Systems, Inc. (Aquenergy) submitted for filing its declaratory order petition pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure.

Aquenergy requests that this Commission issue an order declaring that (1) its Apalache hydroelectric generating facility (Project) will not involve the construction of any dam or project works across, along, over, in or on a "navigable water of the United States" as defined in the Federal Power Act (Act) and (2) Aquenergy will not be engaged in any "post-1935 construction" as that term has been defined by the Commission and the courts and/or the Project will not "affect the interests of interstate or foreign commerce" within the meaning of Act.

Therefore, Aquenergy states that it is not subject to the Commission's jurisdiction under the Act and is not required to file a declaration of intention with the Commission or to obtain a license or exemption before Aquenergy may restore, operate and maintain the project.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23472 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-481-011]

Arizona Public Service Co.; Filing

August 30, 1984.

The filing Company submits the following:

Take notice that on August 13, 1984, Arizona Public Service Company (Arizona) tendered for filing revised rate schedules, revised cost-of-service study, and associated workpapers in compliance with the Federal Energy Regulatory Commission's (Commission) Opinion No. 219 in FERC Docket No. ER82-481-000.

This filing was made in accordance with the findings and conclusions expressed in Opinion No. 219 issued by the Commission as a result of the proceedings in this Docket.

Copies of this filing have been served upon all parties to the above docketed rate proceeding and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23472 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-128-005]

Colorado Interstate Gas Co.; Petition To Amend

August 30, 1984

Take notice that on August 14, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP79-128-005 a petition to amend the Commission's order issued June 15, 1979, in Docket No. CP79-128, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the continued development of the Flank Storage Field in Baca County, Colorado, until November 30, 1989, and to authorize an increase in the number of observation wells in the storage field, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

By Commission order issued in Docket No. CP79-128, CIG was authorized among other things to acquire the working interests in the Flank Field of Baca County, Colorado, together with 37[1] existing wells and convert the field to storage. It was indicated that development of the Flank Field for the storage of natural gas involved the reentry of 12 producing or shut-in wells and converting them to injection/withdrawal use and the drilling of 21 wells for injection/withdrawal. The abandoned and dry holes were intended to be converted to observation wells, it is submitted. CIG indicates that of the original 12 producing wells, 5 wells have continued to produce oil and gas, 4 wells were converted to observation wells and 3 wells were converted to injection/withdrawal use. CIG states that it has drilled 19 wells intended for the injection/withdrawal of gas; however, one well encountered oil and has not been used for storage uses. In addition, it is stated, one dry hole originally intended as an observation well was converted to injection/withdrawal use. It is explained that currently CIG has 22 injection/withdrawal wells, rather than the 33 originally authorized, and 25 observation wells operating in the Flank

[1] These wells consisted of 12 producing or shut-in, 8 abandoned and 17 dry holes.

Field. Also, it is submitted operating in the storage area are 10 oil wells of which 3 are CIG wells and 7 wells are owned and operated by Horizon Oil and Gas Company (Horizon). CIG states that additional oil wells would be drilled in the Flank Field as the pressure of the gas in storage is a driving force that would continue to produce the oil reserves in the rock formation that is used to store the gas. CIG explains that when the oil reserves are depleted or when the storage gas breaks through into the well bores of the oil wells indicating the oil has migrated past a particular well, these wells would then be converted to either injection/withdrawal wells or observation wells depending upon the physical need of the geographic area. The estimated number of oil wells to be drilled at this time is unknown. CIG requests authority to convert up to 11 oil wells to injection/withdrawal use and 10 oil wells to observation use. CIG states that these conversions would bring the total injection/withdrawal wells to the originally certificated number of 33 and increase the observation wells to 35, ten more than originally certificated. To provide sufficient time to deplete the remaining oil reserves and complete the full development of the Flank Storage Field, CIG requests the Commission further amend its order in Docket No. CP79-128 and extend the period for development to November 30, 1989.

CIG estimates the cost of the 10 additional observation wells would be $659,000.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23473 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-609-000]

Dayton Power and Light Co.; Filing

August 30, 1984.

Take notice that on August 20, 1984, Dayton Power and Light Company (DP&L) submitted for filing (1) an executed "Service Agreement for Partial Requirements and/or Transmission Wheeling Service to Municipalities for Resale" (Service Agreement) between DP&L and the Village of Mendon (Mendon) dated as of October 1, 1984, (2) "Tenth Revised Sheet No. 13" to DP&L's FERC Electric Tariff, Original Volume No. 1, and (3) "Tenth Revised Sheet No. 26" to DP&L's FERC Electric Tariff, Original Volume No. 2.

The purpose of the proposed Service Agreement is to permit Mendon to receive service under DP&L's FERC Electric Tariff, Original Volume No. 2 (Volume No. 2) instead of its FERC Electric Tariff, Original No. 1 (Volume No. 1). Volume No. 2 provides for full-requirements or partial requirements and/or transmission wheeling service, whereas Volume No. 1 is essentially a full requirements tariff.

By its section 8, the new Service Agreements for Mendon supercedes and cancels as of October 1, 1984 the previous Service Agreement dated October 6, 1971. The previous Service Agreement had provided for service under Volume No. 1.

Implementation of the proposed Service Agreement is reflected in changes to the Index of Purchasers contained in DP&L's FERC Electric Tariffs. "Tenth Revised Sheet No. 13" to Volume No. 1 reflects the discontinuance of service to Mendon under Volume No. 1. "Tenth Revised Sheet No. 26" to Volume No. 2 reflects the commencement of service to Mendon under Volume No. 2.

Pursuant to the terms of the Service Agreement, service to Mendon under Volume No. 2 will commence on October 1, 1984, as mutually agreed upon by the parties. Accordingly, DP&L requests waiver of the Commission's notice and filing requirement to permit the effective date of October 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23474 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-605-000]

Iowa Power and Light Co.; Filing

August 30, 1984.

The filing company submits the following:

Take notice that Iowa Power and Light Company ("Iowa Power") on August 7, 1984, tendered for filing a Rate Schedule ("Schedule"), between Iowa Power, Iowa Southern Utilities Company ("ISU") and Associated Electric Cooperative, Inc. ("AEC"), dated June 1, 1984.

The Schedule provides for the sale of participation power and energy from Iowa Power to AEC between June 1, 1984, and May 31, 1985. The Schedule also provides for Iowa Power and ISU to provide transmission capacity for the sale of such power and energy.

Iowa Power and ISU request that the Commission waive its prior notice requirements and accept the Schedule for filing with an effective date of June 1, 1984.

Copies of this filing were served upon each affected party and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23475 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-607-000]

Public Service Electric and Gas Co.; Filing

August 28, 1984.

The filing Company submits the following:

Take notice that Public Service Electric and Gas Company of New Jersey, on August 21, 1984, tendered for filing proposed changes in its FERC Electric Tariff, Original Vol. No. 1. The proposed changes would increase revenues from jurisdictional sales and service by $921,744 based on year ended December 31, 1983 (Period I). In addition, the proposed filing also modified Public Service Electric and Gas Company's existing fuel adjustment clause in the above tariff to conform to Section 35.14 of the Commission's Regulations.

Public Service states that despite all efforts by it to combat increased costs, the underlying effect of inflation has affected practically all its operations. Due to these increased costs, Public Service states that it is becoming increasingly difficult for it to provide adequate and reliable service for the growing needs of its customers. The Company also contends that the rate increase is necessary to assure continued confidence in its financial integrity to provide earnings which will attract additional capital at reasonable cost to enable the Company to finance its electrical construction program.

Copies of the filing were served upon the public utility's jurisdictional customers, Atlantic Electric and the Boroughs of Milltown, South River, Park Ridge, and the New Jersey Board of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23466 Filed 9-5-84 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-604-000]

Southwestern Public Service Co., Filing

August 30, 1984.

The filing Company submits the following:

The notice that Southwestern Public Service Company (Southwestern), on August 16, 1984, tendered for filing proposed changes in its FERC Electric Service Tariffs to all full requirements customers and all partial requirements customers as follows:

Names of customer	Rate schedule FERC No.
Full Requirements Customers	
Bailey County Electric Cooperative	86
Central Valley Electric Cooperative	87
Deaf Smith Electric Cooperative	88
Farmers Electric Cooperative	89
Greenbelt Electric Cooperative	90
Lamb County Electric Cooperative	91
Lea County Electric Cooperative	103
Lighthouse Electric Cooperative	92
Lyntegar Electric Cooperative	93
Midwest Electric Cooperative	105
Northfork Electric Cooperative	94
Roosevelt County Electric Cooperative	95
South Plains Electric Cooperative	96
Swisher Electric Cooperative	97
Rita Blanca Electric Cooperative	98
North Plains Electric Cooperative	99
Tri County Electric Cooperative	100
Texas-New Mexico Power Co	75
Public Service Co. of New Mexico (Clayton)	58
Partial Requirements Customers	
City of Brownfield,TX	81
City of Floydada, TX	83
Lubbock Power & Light Co	85
City of Tulia, TX	101
Texas-New Mexico Power Co	N/A

Southwestern proposes a two step increase for their full requirements customers and a single step increase for their partial requirements customers. The proposed full requirements customer changes would result in an increase of $8,292,235 under the Phase I rate and an additional $3,944,939 under the Phase II rate for Period II year ended August 31, 1985, resulting in a 5.24 percent increase and a 2.50 percent increase, respectively, above the existing full requirements rate.

Copies of the filing were served on the affected customers, the Public Utility Commission of Texas, The Public Service Commission of New Mexico, and the Oklahoma Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23476 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-564-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

August 28, 1984.

Take notice that on July 11, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-564-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to exchange natural gas with Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to exchange natural gas with Northern pursuant to the terms of a gas exchange agreement between Applicant and Northern dated May 11, 1984 (Agreement).

Applicant states that, pursuant to the Agreement, it has the right to make available to Northern at the existing point of interconnection between the pipeline systems of Northern and Trailblazer Pipeline Company (Trailblazer) in Gage County, Nebraska, a quantity of natural gas, not to exceed 25,000 Mcf per day, as exchange gas. It is stated that, to the extent Applicant makes volumes of natural gas available, Northern would, on a firm basis, make thermally equivalent volumes of natural gas available to Applicant, or for the account of Applicant, at (1) Applicant's existing Compressor Station No. 47 in

West Monroe, Ouachita Parish, Louisiana, (2) Applicant's Muskrat line near Bayou Sale, St. Mary Parish, Louisiana, (3) Applicant's line in Jefferson Davis Parish, Louisiana, and (4) Applicant's line in Newton County, Texas. Additionally, it is stated that Applicant has the right to tender, at the Tennessee Exchange Point, volumes of gas in excess of 25,000 Mcf per day and that Northern has agreed to make available, on a best efforts basis, at the Northern exchange points, a thermally equivalent volume of such gas.

It is stated that the exchange would be performed on a no fee basis. Applicant states that the proposed exchange would be beneficial to it in that it would provide, at no cost to Applicant's customers, a means of moving a portion of Applicant's gas from the terminus of the Trailblazer system to Applicant's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23467 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-633-000]

Tuscaloosa Pipeline Co.; Application

August 28, 1984.

Take notice that on August 6, 1984, Tuscaloosa Pipeline Company (Applicant), P.O. Box 1352, Alexandria, Louisiana 71301, filed in Docket No. CP84-633-000 an application pursuant to section 1(c) of the Natural Gas Act for a declaration of exemption from the provisions of the Natural Gas Act and the Regulations of the Commission thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant has entered into a transportation agreement with Trans Louisiana Gas Company, Inc. (Trans La), dated May 1, 1984, to transport natural gas for Trans La which Trans La purchases for resale from United Gas Pipe Line Company (United). It is further stated that the gas would be received by Applicant within the State of Louisiana and would be wholly consumed within the State of Louisiana.

Applicant asserts that it owns and operates approximately 30 miles of pipeline within the State of Louisiana, comprised primarily of 3, 4, 6 and 8-inch diameters, a major part of which was acquired from Louisiana Intrastate Gas Corporation (LIG). It is further asserted that on May 14, 1984, the Louisiana Public Service Commission expressed its non-opposition to the transfer of certain facilities of LIG to Applicant and certified that with the transfer of these facilities, the Louisiana Public Service Commission would regulate the rates and services of Applicant in conjunction with its sales for resale.

It is stated that by letter dated June 15, 1984, the Commissioner of Conservation of the Office of Conservation of the State of Louisiana certified that the Commissioner has the power to regulate the facilities, rates and services of Applicant and that such regulatory jurisdiction is being exercised.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23468 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-655-002]

Wisconsin Public Service Corp.; Refund Compliance Filing

August 30, 1984.

Take notice that on August 9, 1984, Wisconsin Public Service Corporation (WPSC) submitted for filing its refund report pursuant to the Commission's letter order issued July 3, 1984.

WPSC states that the refunds were made to three partial requirements W-Z customers: Consolidated Water Power Corporation and the Cities of Manitowoc and Marshfield; two W-1 all requirements tariff customers, the City of Wisconsin Rapids and Wisconsin Public Power Inc., SYSTEM; and five all requirments W-1 customers who are served under individually applicable rate schedules: Alger Delta Electric Association, Village of Daggett, City of Stephenson, Village of Stratford and Washington Island Electric. The Alger Delta Association, the Village of Daggett and the City of Stephenson are located in Michigan. Each of the other customers is located in Wisconsin.

WPSC states that it has refunded amounts collected in excess of the settlement rate levels.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before September 13, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23477 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS84-91-000, et al.]

Wytex Production Corporation, et al.; Applications for "Small Producer" Certificates [1]

August 28, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before September 13, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385. 211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No.	Date filed	Applicant
CS84-91-000	July 16, 1984	Wytex Production Corp., P.O. Box 3632, Fort Smith, AR 73913.
CS84-97-000	July 5, 1984	Lyco Acquisition 1983-I Ltd., 12700 Park Central Dr., #1201. Dallas, TX 75251.
CS84-105-000	July 26, 1984	Calvert Drilling Co., P.O. Box 54589, Oklahoma City, OK 73154.
CS84-106-000	July 30, 1984	Cinco, Ltd., P.O. Box 451, Albuquerque, NM 87103.
CS84-109-000	August 8, 1984	Plains Resources Inc., 1601 Northwest Expressway, Citizens Plaza, Oklahoma City, OK 73118.
CS84-110-000	August 19, 1984	Bengall, Inc., 1049 Harrison, Corpus Christi, TX 78404.
CS84-111-000	August 20, 1984	Lakeside Exploration Corp., P.O. Drawer 56328, Houston, TX 77256.
CS84-98-000	August 9, 1984	Guide Exploration, Inc., 519 South Broadway, Suite 201, Wichita, KS 67202.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 84-23469 Filed 9-5-84 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6827-001]

Jackson Falls Hydroelectric Power Co.; Surrender of Preliminary Permit

August 31, 1984.

Take notice that Jackson Falls Hydroelectric Power Company, Permittee for the Jackson Falls Project No. 6827 has requested that its preliminary permit be terminated. The Permittee has stated that the project is not economically feasible. The preliminary permit for Project No. 6827 was issued on July 29, 1983, and would have expired on December 31, 1984. The project would have been located on Wildcat Brook, in Carroll County, New Hampshire.

The Permittee filed the request on July 5, 1984, and the surrender of the preliminary permit for Project No. 6827 is deemed accepted as of July 5, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-23571 Filed 9-5-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ST81-79-002, et al.]

Mississippi River Transmission Corp., et al.; Extension Reports

August 29, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before September 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-79-002	Mississippi River Transmission Corp., 9900 Clayton Rd., St. Louis, MO 63124	El Paso Natural Gas Co	08-15-84	G	11-15-84
ST81-105-002	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	El Paso Natural Gas Co	08-01-84	D	10-24-84
ST81-129-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Panhandle Eastern Pipe Line Co	08-01-84	G	10-31-84
ST83-69-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Northern Natural Gas Co	08-01-84	G	11-01-84
ST83-86-001	do	Mississippi River Transmission Corp	08-10-84	G	11-10-84
ST83-91-001	do	Transcontinental Gas Pipe Line Corp	08-01-84	G	11-01-84
ST83-96-001	Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32790	Dow Pipeline Co	08-06-84	B	11-19-84
ST83-97-001[1]	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Esperanza Transmission Co	08-07-84	B	11-04-84
ST83-98-001	Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Texas Eastern Transmission Corp	08-13-84	C	11-19-84
ST83-100-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	South Carolina Electric and Gas Co	08-10-84	B	11-08-84
ST83-117-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Northern Natural Gas Co	08-02-84	G	11-05-84
ST83-122-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	United Gas Pipe Line Co	08-13-84	G	11-11-84
ST83-125-001[1]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77002	Texas Eastern Transmission Co	08-14-84	G	11-11-84
ST83-127-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Houston Pipe Line Co	08-06-84	B	11-04-84
ST83-151-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Acadian Gas Pipeline System	08-10-84	B	11-08-84
ST83-199-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Louisiana Intrastate Gas Corp	08-15-84	B	12-21-84
ST83-260-001	Acadian Gas Pipeline System, 1200 Milam, Suite 2700, Houston, TX 77002	Columbia Gas Transmission Corp., *et al*	08-03-84	C	12-23-84
ST83-303-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Natural Gas Pipeline Co. of America	08-01-84	G	11-01-84
ST83-306-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Tennessee Gas Pipeline Co	08-01-84	G	11-01-84
ST84-1162-001[1]	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Tennessee Gas Pipeline Co	08-15-84	G	12-10-83

[1]These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
NOTE:—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-23572 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST84-901-000]

Northwest Pipeline Corp.; Filing

August 29, 1984.

Take notice that on August 20, 1984, Southwest Gas Corporation (Southwest) filed a "Motion To Intervene, Protest To Certain Part 284 Transportation Activity, And Request For Hearing."

Southwest is questioning Northwest Pipeline Corporation's (Northwest) Initial Full Report (report) filed on June 8, 1984 in the above-captioned docket. The report concerns Northwest's transportation of natural gas for Panhandle Eastern Pipe Line Company (Panhandle) pusuant to Section 284.221 of the Federal Energy Regulatory Commission's (Commission) regulations and the blanket certificate issued to Northwest in Docket No. CP80-163. Southwest questions, *inter alia*, whether Northwest and its customers are providing Panhandle with volume of gas to replace those volumes of Panhandle's gas consumed or lost as fuel and shrinkage gas during processing at Northwest's Opal plant. Southwest indicates that Northwest assumes that the gathering portion of its transportation service to Panhandle is non-jurisdictional, which Southwest would assert is erroneous. Southwest further states that the report is unclear as to how Northwest will treat the revenues derived from the transportation and gathering service. Because of Commission regulations and because Northwest has not offered any out-of-pocket cost information in connection with the Panhandle service, Southwest believes that the Commission should require Northwest to credit to its Account No. 191 all revenues derived from the Part 284 service in excess of one cent per MMBtu. For the above reasons, Southwest feels compelled to protest and request a hearing.

Southwest, being dependent upon Northwest for supplies of natural gas and being subject to the rates the Commission authorizes Northwest to collect, requests that it be permitted to intervene in the above-captioned proceeding with full rights of a party.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23573 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST84-967-000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Self-Implementing Transactions

August 29, 1984.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Kenneth F. Plumb,

Secretary.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST84-967	Transcontinental Gas Pipe Line Corp	Celanese Fibers Operations, et al	07-02-84	F(157)		
ST84-968	Mid Louisiana Gas Co	Louisiana Intrastate Gas Corp	07-02-84	B		
ST84-969	Columbia Gulf Transmission Co	Pontchartrain Natural Gas System	07-02-84	B		
ST84-970	Mountain Fuel Resources, Inc	Reichhold Chemicals, Inc	07-02-84	F(157)		
ST84-971	do	Northwest Pipeline Corp	07-02-84	G		
ST84-972	do	United Gas Pipe Line Co	07-02-84	G		
ST84-973	do	Northern Natural Gas Co	07-02-84	G		
ST84-975	do	Utah Gas Service Co	07-02-84	B		
ST84-976	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	07-03-84	G		
ST84-977	Oklahoma Natural Gas Co	Northern Natural Gas Co	07-03-84	C	11-30-84	24.32
ST84-978	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	07-03-84	G		
ST84-979	Tennessee Gas Pipeline Co	Eastern Shore Natural Gas Co	07-05-84	G		
ST84-980	Mountain Fuel Resources, Inc	Pacific Gas and Electric Co	07-02-84	B		
ST84-981	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	07-06-84	G		
ST84-982	Delhi Gas Pipeline Corp	Louisiana Indust. Gas Supply System	07-05-84	C		
ST84-983	do	Natural Gas Pipeline Co. of America	07-05-84	C		
ST84-984	ANR Pipeline Co	Lukens Steel Co	07-05-84	F(157)		
ST84-985	Northern Natural Gas Co	Pantera Energy Corp	07-05-84	B		
ST84-986	Northern Utilities, Inc	Montana-Dakota Utilities Co	07-05-84	C		
ST84-987	K N Energy, Inc	Northern Utilities, Inc	07-05-84	B		
ST84-988	Northern Natural Gas Co	Panhandle Eastern Pipe Line Co	07-05-84	G		
ST84-989	Mountain Fuel Resources, Inc	Northwest Pipeline Corp	07-02-84	G		
ST84-990	do	NGL Production Co	07-02-84	F(157)		
ST84-992	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	07-18-84	B		
ST84-994	Tennessee Gas Pipeline Co	Esperanza Transmission Co	07-02-84	B		
ST84-995	National Fuel Gas Supply Corp	UGI Corp. Gas Utility Division	07-02-84	B		
ST84-996	Louisiana Intrastate Gas Corp	Faustina Pipe Line Co	07-06-84	C	12-03-84	20.00
ST84-997	United Gas Pipe Line Co	Tennessee Gas Pipeline Co	07-06-84	G		
ST84-998	Tennessee Gas Pipeline Co	Cincinnati Gas & Electric Co	07-09-84	B		
ST84-999	do	THC Pipeline Co	07-09-84	B		
ST84-1000	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp., et al	07-09-84	B		
ST84-1001	Northern Natural Gas Co	Esperanza Transmission Co	07-09-84	B		
ST84-1002	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	07-09-84	B		
ST84-1003	do	United States Steel Corp	07-16-84	F(157)		
ST84-1004	National Fuel Gas Supply Corp	Wheatland Tube Co	07-09-84	F(157)		
ST84-1005	Dow Intrastate Gas Co	Louisiana Indust. Gas Supply System	07-09-84	C		
ST84-1006	Equitable Gas Co	Columbia Gas Transmission Corp	07-09-84	G		
ST84-1007	Consolidated Gas Transmission Corp	American Refining Group	07-09-84	F(157)		
ST84-1008	Texas Gas Transmission Corp	Georgia-Pacific Corp	07-09-84	F(157)		
ST84-1009	do	Cincinnati Gas & Electric Co	07-10-84	B		
ST84-1010	Valero Transmission Co	Valero Interstate Transmission Co	06-29-84	C		
ST84-1011	Northern Natural Gas Co	Public Service Electric And Gas Co	07-10-84	B		
ST84-1012	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	07-11-84	B		
ST84-1013	Acadian Gas Pipeline System	ANR Pipeline Co	07-11-84	C		
ST84-1014	Mississippi River Transmission Corp	Western Gas Corp	07-11-84	B		
ST84-1015	Oklahoma Natural Gas Co	Bridgeline Gas Distribution Co	07-11-84	C	12-08-84	10.00
ST84-1016	Channel Industries Gas Co	Tennessee Gas Pipeline Co	07-12-84	C		
ST84-1017	Transcontinental Gas Pipe Line Corp	Baltimore Gas & Electric Co	07-12-84	B		
ST84-1018	Natural Gas Pipeline Co. of America	Western Gas Corp	07-12-84	B		
ST84-1019	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	07-12-84	G		
ST84-1020	Consumers Power Co	Panhandle Eastern Pipe Line Co	07-13-84	G/F(157)		
ST84-1021	Michigan Gas Storage Co	Consumers Power Co	07-13-84	B		
ST84-1022	Northern Utilities, Inc	K N Energy, Inc	07-13-84	E		
ST84-1023	United Gas Pipe Line Co	IMC Pipeline Co	07-13-84	B		
ST84-1024	do	Acadian Gas Pipeline System	07-13-84	B		
ST84-1025	Valero Transmission Co	El Paso Natural Gas Co	07-13-84	C		
ST84-1026	Arkansas Louisiana Gas Co	International Paper Co	07-13-84	F(157)		
ST84-1027	Transcontinental Gas Pipe Line Corp	Valero Transmission Co	07-13-84	B		
ST84-1028	National Fuel Gas Supply Corp	Special Metals Corp	06-29-84	F(157)		
ST84-1029	United Gas Pipe Line Co	Shell Oil Co	07-16-84	F(157)		
ST84-1031	Northern Natural Gas Co	Center Plains Industries, Inc	07-16-84	F(157)		
ST84-1032	ANR Pipeline Co	Faustina Pipe Line Co	07-17-84	B		
ST84-1033	Tennessee Gas Pipeline Co	Louisiana State Gas Corp	07-17-84	B		
ST84-1034	Transcontinental Gas Pipe Line Corp	James River-Norwalk, Inc	07-19-84	F(157)		
ST84-1035	Texas Eastern Transmission Corp	Columbia Gas Transmission Corp	07-19-84	G		
ST84-1036	ANR Pipeline Co	Trunkline Gas Co	07-19-84	G		
ST84-1037	ANR Pipeline Co	Spindletop Gas Distribution System	07-19-84	B		
ST84-1038	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	07-18-84	G		
ST84-1039	ANR Pipeline Co	Faustina Pipe Line Co	07-19-84	B		
ST84-1040	Panhandle Eastern Pipe Line Co	Anchor Glass Container Corp	07-19-84	F(157)		
ST84-1041	Columbia Gas Transmission Corp	Wheeling-Pittsburgh Steel Corp	07-24-84	F(157)		
ST84-1042	Trunkline Gas Co	Panhandle Eastern Pipe Line Co	07-23-84	G		

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST84-1043	Northern Natural Gas Co	Termac Gathering Co	07-19-84	B		
ST84-1044	Panhandle Eastern Pipe Line Co	Western Gas Supply Co	07-19-84	B		
ST84-1045	Colorado Interstate Gas Co	St. Luke's Hospital, et al	07-23-84	F(157)		
ST84-1046	Columbia Gas Transmission Corp	Allied Corp., Fiber and Plastics Co	07-24-84	F(157)		
ST84-1047	do	Glass Containers Corp	07-24-84	F(157)		
ST84-1048	do	Newport Steel Corp	07-24-84	F(157)		
ST84-1049	do	PPG Industries, Inc	07-24-84	F(157)		
ST84-1050	do	Ohio Brass Co	07-24-84	F(157)		
ST84-1051	do	Jim Walter Corp	07-24-84	F(157)		
ST84-1052	do	Cincinnati Gas & Electric Co	07-24-84	B		
ST84-1054	do	Baltimore Gas & Electric Co	07-24-84	B		
ST84-1055	do	Columbia Gas of New York, Inc	07-24-84	B		
ST84-1056	do	Columbia Gas of Ohio, Inc	07-24-84	B		
ST84-1057	do	Columbia Gas of Pennsylvania, Inc	07-24-84	B		
ST84-1058	Natural Gas Pipeline Co. of America	Pioneer Transmission Corp	07-27-84	B		
ST84-1059	Columbia Gas Transmission Corp	Columbia Gas of Virginia, Inc	07-24-84	B		
ST84-1060	do	Roanoke Gas Co	07-24-84	B		
ST84-1061	do	UGI Corp	07-24-84	B		
ST84-1062	do	do	07-24-84	B		
ST84-1063	do	do	07-24-84	B		
ST84-1064	do	Washington Gas Light Co	07-24-84	B		
ST84-1065	Northwest Central Pipeline Corp	Cities Service Oil & Gas Corp	07-24-84	F(157)		
ST84-1066	Tennessee Gas Pipeline Co	Laurel Fuel Co	07-24-84	B		
ST84-1067	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	07-24-84	B		
ST84-1068	Northwest Central Pipeline Corp	National By-Products, Inc	07-24-84	F(157)		
ST84-1069	Natural Gas Pipeline Co. of America	Louisiana Indust. Gas Supply System, et al	07-27-84	B		
ST84-1070	Delhi Gas Pipeline Corp	UGI Corp	07-27-84	D		
ST84-1071	ANR Pipeline Co	Pioneer Transmission Corp	07-27-84	B		
ST84-1072	Consumers Power Co	Panhandle Eastern Pipe Line Co	07-30-84	G/F(157)		
ST84-1073	Michigan Gas Storage Co	Consumers Power Co	07-30-84	B		
ST84-1074	Panhandle Eastern Pipe Line Co	Illinois Power, et al	07-30-84	F(157)		
ST84-1075	United Gas Pipe Line Co	First Chemical Corp	07-30-84	F(157)		
ST84-1076	Columbia Gulf Transmission Co	Mountain Fuel Resources, Inc	07-30-84	G		
ST84-1077	do	United Gas Pipe Line Co	07-30-84	G		
ST84-1078	Northern Natural Gas Co	Endevco Pipeline Co	08-01-84	B		
ST84-1079	El Paso Hydrocarbons Co	El Paso Natural Gas Co	07-31-84	C		
ST84-1080	Natural Gas Pipeline Co. of America	Archer-Daniels-Midland Co	07-31-84	F(157)		
ST84-1081	Panhandle Eastern Pipe Line Co	UGI Corp	07-31-84	B		
ST84-1082	do	Simpson Paper Co	07-31-84	F(157)		
ST84-1083	do	B.F. Goodrich Co	07-31-84	F(157)		
ST84-1084	do	PPG Industries, Inc	07-31-84	F(157)		
ST84-1085	Northern Border Pipeline Co	Natural Gas Pipeline Co. of America	07-31-84	G		
ST84-1086	El Paso Natural Gas Co	El Paso Hydrocarbons Co	07-31-84	B		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 84-23574 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 10 through August 17, 1984

During the Week of August 10 through August 17, 1984, the applications 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 30, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED WEEK OF AUGUST 10 TO AUGUST 17, 1984

Date	Name of refund proceeding/name of refund applicant	Case No. assigned
8/13/84	Gulf/Jim's Gulf Service Stations, Inc.	RF40-44
8/13/84	Gulf/Jim's Gulf Service Stations, Inc.	RF40-45
8/13/84	Gulf/Jim's Gulf Service Stations, Inc.	RF40-46
8/13/84	Gulf/Kelis Corp	RF40-47
8/13/84	Gulf/Greyhound Lines, Inc	RF40-48
8/13/84	Amoco/Raymond H. Dreifuss	RF21-12354
8/13/84	Willis/Whipple-Allen Construction Co.	RF41-1
8/14/84	Amoco/Blackie's Amoco	RF21-12355
8/14/84	Gulf/Ed Dunston	RF40-49
8/14/84	Gulf/American Fabrics Co	RF40-50
8/14/84	Willis/Gene's Transmission Service.	RF41-2
8/14/84	Gulf/W.L. Angerer	RF40-51
8/14/84	Gulf/Jay D. Moss	RF40-52
8/15/84	Gulf/James L. Gohlston	RF40-53
8/16/84	Gulf/Joe's Gulf Service	RF40-54
8/16/84	Gulf/Kenneth Veselak	RF40-55
8/17/84	Gulf/Bill F. Gardner	RF40-56
8/17/84	Gulf/Dallee Oil Co., Inc	RF40-57

NOTICE OF OBJECTION RECEIVED WEEK OF AUGUST 10 TO AUGUST 17, 1984

Date	Name and location of applicant	Case No.
8/16/84	Otis Ainsworth	HEE-0066

[FR Doc. 84-23624 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 3 Through August 10, 1984

During the Week of August 3 through August 10, 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. A submission inadvertently omitted from an earlier list has 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 28, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 3 through Aug. 10, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 1, 1984	Economic Regulatory Administration/Clark Oil & Refining Corporation & Apex Oil Company, Washington, D.C.	HRX-0105	Supplemental Order. If granted: The November 5, 1979 Decision and Order (Case No. DRS-0235) staying the Proposed Remedial Order proceeding involving Clark Oil & Refining Corporation would be lifted and the firm would be afforded the opportunity to contest the Proposed Remedial Order issued to it.
Aug. 6, 1984	Casson, Calligaro & Mutryn, Washington, D.C.	HFA-0237	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Office of Fuels Programs would be rescinded, and Casson, Calligaro & Mutryn would receive access to a Department of Energy document relating to legislation on newly discovered crude oil.
Aug. 6, 1984	Norge, Herrin, Illinois	HEE-0099, HEL-0099	Exception from the Energy Conservation Program for Consumer Products. If granted: Norge would receive a temporary exception and an exception from the provisions of 10 CFR Part 430 which would permit the firm to modify the energy efficiency test procedures applicable to Magic Chef Model W20DN-4.
Aug. 8, 1984	International Systems Marketing, Inc., Washington, D.C.	HFA-0238	Appeal of an Information Request Denial. If granted: The July 25, 1984 Freedom of Information Request Denial issued by the Office of Procurement Operations would be rescinded, and International Systems Marketing, Inc. would receive access to a memorandum entitled "Analysis of Response to IFB No. DE-FB01-84MA32572."
Aug. 8, 1984	Kalama Chemical, Inc., Washington, D.C	HEF-0507	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 a March 12, 1984 Consent Order issued to Kalama Chemical, Inc.
Aug. 8, 1984	Sutherland, Asbill & Brennan, Washington, D.C.	HFA-0239	Appeal of an Information Request Denial. If granted: The July 9, 1984 Freedom of Information Request Denial issued by the Office of Special Counsel would be rescinded, and Sutherland, Asbill & Brennan would receive access to the firm names on 24 ERA-69 forms entitled "Crude Oil Reseller's Self-Reporting Form."
Aug. 8, 1984	Traco Petroleum Company, Houston, Texas	HRS-0044	Request for Stay and Temporary Stay. If granted: Traco Petroleum Company would be granted a stay and temporary stay pursuant to the provisions of 10 CFR 205.120 pending a final determination on the Statement of Objections (Case No. HRO-0212) which the firm intends to file.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 3 to Aug. 10, 1984]

Date	Name of refund proceeding and name of refund applicant	Case No.
8/6/84	Gulf/Paul B. Bergeron	RF40-24
8/6/84	Palo Pinto, Belridge, Amoco, Northeast Pet./Maine.	RQ5-110, RQ8-111, RQ21-112, RQ25-113
8/6/84	Gulf/Gas-N-Glo No. 7, Inc	RF40-25
8/6/84	Gulf/Davis W. Jones	RF40-26
8/6/84	Gulf/Hamilton Taxi & Baggage Co.	RF40-27
8/6/84	Gulf/Storey Oil Company, Inc	RF40-28
8/6/84	Gulf/Eckstein Company	RF40-29
8/6/84	Marion/Conoco, Inc	RF37-13
8/7/84	Gulf/Schmidt Baking Co., Inc.	RF40-30
8/7/84	Gulf/William W. Stevenson	RF40-31
8/7/84	Marion/Joes Seafood, Inc	RF37-14
8/8/84	Gulf/Hilltop Auto Laundry	RF40-32
8/8/84	Gulf/Hilltop Auto Laundry	RF40-33
8/8/84	Gulf/Farmers Co-Operative Grain Co.	RF40-34
8/8/84	Gulf/Marshall E. Matteson	RF40-35
8/8/84	Gulf/Calco MFG Co., Inc	RF40-36
8/8/84	Marion/Chevron, USA, Inc	RF37-16
8/8/84	Marion/Defense Logistics Agency	RF37-15
8/9/84	Gulf/Anthony Pierulla	RF40-38
8/9/84	Gulf/Martyn M. Jackson	RF40-37
8/10/84	Gulf/Reedy Creek Utilities Co., Inc.	RF40-39
8/10/84	Gulf/Joe's Gulfland	RF40-40
8/10/84	Gulf/Lewis L. Klabin	RF40-41
8/10/84	Gulf/Marc A. Vogel	RF40-42
8/10/84	Gulf/Jack Feinstein	RF40-43

[FR Doc. 84-23514 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Filed; Week of August 6 Through August 10, 1984

During the week of August 6 through August 10, 1984, the notice of objection to proposed remedial order listed in the Appendix to this Notice were 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 28, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Apex Oil Company, St. Louis, MO, HRO-0241 Crude Oil

On August 10, 1984, Apex Oil Company of St. Louis, Missouri, filed a Notice of Objection to a Proposed Remedial Order which the DOE Tulsa, Oklahoma Office of the Economic Regulatory Administration issued to the firm on July 5, 1984. In the PRO, the ERA found that during the period from April 1978 through January 1979, Apex resold crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart L.

According to the PRO the Apex violation resulted in $3,520,819.79 of overcharges.

[FR Doc. 84-23515 Filed 9-5-84; 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.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding $45,475.06 in

consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc. These affiliated firms were reseller-retailers of refined petroleum products with their main office located in Springfield, Missouri.

DATE AND ADDRESS: Applications for refund must be postmarked by December 5, 1984, should conspicuously display a reference to case number HEF-0195, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Suggested formats for refund may be obtained by writing to:

Mrs. Margaret A. Slattery, Public Docket Room Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Other information may be obtained by contacting:

Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

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 relates to a consent order entered into by the Webster Oil Company, Inc. which settled possible pricing violations in the sales of propane, motor gasoline, and Nos. 1 and 2 fuel oils by Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc. to their customers during the period November 1, 1973 (October 1, 1973 for propane) through May 20, 1974.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by December 5, 1984, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made availabe for public inspection between the hours of 1:00 and 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 20, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Webster Oil Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0195.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Deparment of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Webster Oil Company, Inc.

Webster Oil Company, Inc. and its affiliated companies were marketers of petroleum products to resellers and end-users during the period of federal price controls, and were therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. Their main office was in Springfield, Missouri. A DOE audit of Webster's records revealed possible violations of DOE price regulations with respect to sales of propane, motor gasoline, and Nos. 1 and 2 fuel oils by Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc., during the period commencing November 1, 1973 (October 1, 1973 for propane) and ending for each product on May 20, 1974 (hereinafter referred to as the audit period). These five corporate entities (hereinafter referred to as the Webster companies) were each under the common control of Ernest Jack Webster, Jr.

In order to settle all claims and disputes between the Webster companies and DOE regarding the firms' sales of propane, motor gasoline and fuel oils during the audit period, Webster Oil Company, Inc. and DOE entered into a consent order on January 19, 1981. Under the terms of the consent order Webster Oil Company, Inc. agreed to remit $110,304 plus accrued interest to DOE in five installments. To date, Webster Oil Company, Inc. has paid only $40,000 of the $110,304 which it agreed to pay to DOE, and is in arrears in its payments. The $40,000, together with $566.30 in late payment fees which Webster Oil Company, Inc. has paid DOE, is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of July 31, 1984, the Webster escrow account had earned $5,318.28 in interest.(*1*)

On June 15, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by the Webster companies' alleged violations. 49 FR 28101 (July 10, 1984). In the proposed decision we described a two-stage process for the distribution of the funds made available by the Webster consent order. In the first stage, we will refund money to identifiable purchasers of the propane, motor gasoline and Nos. 1 and 2 fuel oils who were injured by the Webster companies' pricing practices during the audit period. After meritorious claims are paid in the first stage, a second stage of the refund procedure may be necessary if funds remain. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

This decision establishes procedures for filing claims in the first stage of the Webster refund proceeding. We will describe the information that a claimant should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the June 15 decision. We will not, however, determine procedures for a second stage of the refund process in this decision. Our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund. It is therefore premature for us to address the issues raised by commenters regarding the disposition of funds remaining after all the first-stage claims have been paid.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that

it is appropriate to establish such a proceeding with respect to the Webster consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jursidiction over the distribution of the Webster consent order funds.

II. First-Stage Refund Procedures

A. Refunds to Injured Purchasers. The Webster consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by the Webster companies' alleged violations. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of propane, motor gasoline and Nos. 1 and 2 fuel oils for the period November 1 (October 1, 1973 for propane) through May 20, 1974. If the product was not purchased directly from a Webster company, the claimant must include a statement setting forth the reasons for believing the product originated with one of the Webster companies. In addition, a reseller or retailer of motor gasoline that files a claim will be required to establish that it absorbed the alleged overcharges and was thereby injured. A demonstration of injury can be made in two ways. First, each claimant that is a reseller or a retailer must show as an initial matter that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. (*2*) *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). These two groups of claimants will also have to demonstrate that, at the time they purchased the product from a Webster company, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges.

Second, a reseller or retailer may rely on a presumption of injury and supply no further proof of injury. As in many prior special refund cases, we will adopt a presumption that small purchasers were injured to some extent by the pricing practices which led to the issuance of the consent order. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). A reseller or retailer claimant will not be required to submit any further proof of injury if its refund claim is based on a monthly purchase level below a threshold level of 200,000 gallons. (*3*) The adoption of a particular level of purchases below which a claimant need not submit any additional evidence of injury is based on several considerations. First, the cost of compiling information sufficient to show injury may be expensive. Second, our experience indicates that many refund applicants will be small businesses, such as single outlet retailers, who generally maintain a less sophisticated record keeping system than larger firms. The threshold level is set to minimize unnecessary burdens on small businesses who might otherwise be precluded from receiving refunds to redress their injuries. We considered these factors in setting the threshold level at 200,000 gallons per month, as well as the per-gallon refund amount in conjunction with the length of the audit period, that is, the amount a successful claimant would be entitled to receive if it purchased the threshold amount each month of the audit period. A successful claimant who purchased 200,000 gallons of Webster motor gasoline during each of the seven months of the audit period will receive a refund of $2,898 excluding interest.

A reseller or retailer which made only spot purchases from a Webster company probably sustained no injury, and must clearly demonstrate injury if it files a refund application. We have previously noted that spot purchasers "tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases * * * at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers." *Vickers* at 85,396–97. We believe that this rationale holds true in the present case. A spot purchaser therefore should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for the Webster petroleum products it purchased during the audit period. *See Amoco* at 88,200.

Claimants who were ultimate consumers of Webster petroleum products had no opportunity to pass on the costs associated with the alleged overcharges, and therefore will not be required to submit any further proof of injury in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various documented purchase volumes). Therefore, in this proceeding an end-user consumer need only document the specific quantities of Webster petroleum products it purchased during the audit period in order to receive a refund.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by ERA's estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.0020697 per gallon ($40,566.30 received from Webster Oil Company, Inc., divided by 19,600,000 gallons, which is ERA's estimate of the volume of petroleum products sold by the Webster companies during the audit period), exclusive of interest. Successful claimants, refunds will be calculated by multiplying their eligible pruchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrured on the consent order fund since it was remitted to DOE.

As in prevrious cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *See also* 10 CFR 205.286(b).

B. Application for Refund. After having considered all the comments received concerning the first-stage proceedings tentatively adopted in our June 15 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased propane, motor gasoline, and Nos. 1 and 2 fuel oils from the Webster companies during the audit period. An application must be in writing, signed by the applicant, and specify that it pertains to the Webster Consent Order Fund, Case Number HEF–0195.

An applicant should indicate from whom the product was purchased and, if the applicant was not a direct purchaser from a Webster company, it should also indicate the basis for its belief that the product which it purchased originated from a Webster company. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Webster product, such as whether it was a reseller or ultimate user. If the applicant is a reseller, it should state

whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1, 1973 (October 1, 1973 for propane), through January 27, 1981. (4) The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). 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, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

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, Forrestal Buildings, Room IE-234, 1000 Independence Avenue, 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 confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Webster Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the Webster consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It is therefore ordered that:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF-0195 be granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by Webster Oil Company pursuant to the consent order executed on January 19, 1981, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: August 20, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Notes

1. If DOE receives additional funds from Webster Oil Company, successful refund applicants in this proceeding will receive a pro rata increase in the amount of their refund.

2. The price rules applicable to sales of motor gasoline by retailers were amended effective July 16, 1979. 44 FR 42542 (July 19, 1979). The amended regulation, 10 CFR 212.93(a)(2), provided for a fixed per-gallon markup of 15.4 cents (later increased) for retail sales of motor gasoline, and eliminated the "banking" provisions formerly in effect. The use of banking remained optional for larger resellers of motor gasoline. Therefore, no showing of cost banks will be required of motor gasoline retailers after July 16, 1979. Resellers of motor gasoline that elected to continue cost banking will be required to submit this information throughout the audit period if they apply for refunds based on purchases greater than 200,000 gallons per month.

3. Claimants whose purchases exceed 200,000 gallons per month during the period for which a refund is claimed, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 200,000 gallons-per-month threshold amount without being required to submit evidence of injury. *See* Office of Enforcement, 8 DOE ¶82,597 at 85,396 (1981) (hereinafter *Vickers); see also Ada* at 88,122.

4. *See* note 1 *supra.*

[FR Doc. 84-23513 Filed 9-5-84; 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.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $400,000.00 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Richards Oil Company, a reseller-retailer of refined petroleum products located in Savage, Minnesota.

DATE AND ADDRESS: Comments must be filed within 30 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 Ave., SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0165.

FOR FURTHER INFORMATION CONTACT: Gary Comstock, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

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 Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Richards Oil Company, which settled possible pricing violations in the firm's sales of refined petroleum products to customers during the period November 1, 1973, through January 31, 1976.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Richards pursuant to the consent order. The DOE has tentatively decided that the consent order funds should be distributed to thirty-two first purchasers which a DOE audit indicated may have been overcharged. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 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. All 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 Ave., SW., Washington, D.C. 20585.

Dated: August 20, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Richards Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0165.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process is typically used in situations where DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *See Office of Enforcement,* 9 DOE ¶ 82,508 (1982), *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, ERA, on October 13, 1983, filed a Petition for the Implementation of Special Refund Proceedings in connection with a consent order entered into with Richards Oil Company (Richards). Richards is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Savage, Minnesota. A DOE audit of the firm's records revealed possible pricing violations amounting to $1,026,222.50 with respect to sales of No. 2 fuel oil and Nos. 4, 5, and 6 residual fuel oil, during the period November 1, 1973 through January 31, 1976. In order to settle all claims and disputes between Richards and the DOE regarding the firm's sales of these refined petroleum products during the audit period, Richards and the DOE entered into a consent order on June 15, 1979 (modified on March 17, 1980). According to the Richards consent order, the firm agreed to deposit $400,000, plus interest, into an interest bearing escrow account for ultimate distribution by DOE. This decision concerns the distribution of the consent order amount plus accrued interest to date. (*1*)

II. Proposed Refund Procedures

The basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have determined to rely substantially on the information contained in the ERA audit file. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of the firm's products are identified in the audit file, *see, e.g., Marion Corp.,* 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination with respect to the identity of the allegedly overcharged parties and the amount of the alleged overcharges which they bore is possible.

During DOE's audit of Richards, 34 first purchasers were identified by ERA as having allegedly been overcharged. While the DOE audit file represents only preliminary determinations, does not necessarily reflect actual overcharges, nor provide conclusive evidence as to the identity of possible refund recipients or the amount of money that they should receive in a Subpart V proceeding, it is reasonable to use the information contained in the audit file for guidance. *See Armstrong and Associates/City of San Antonio,* 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion,* we stated that "the information contained in the * * * audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit. *See e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Brown Oil Co.,* 12 DOE ¶ 85,028 (1984); *and Reinhard Distributors, Inc.,* Case No. HEF-0163 (July 13, 1984) (proposed decision). It would seem that the most efficient method of accomplishing restitution in this proceeding would be simply to distribute the escrow funds to those firms identified by the audit as injured by Richard's pricing practices. The 34 first purchasers identified by the audit, along with the share of the settlement amount allotted to each, are listed in the Appendix. On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to 32 of the first purchasers identified by ERA.

We are not prepared, however, based on the information now available to us, to distribute any of the Richards consent order funds to Boswell Oil (Boswell) or Midwest Industrial Fuels (Midwest). Since the purpose of a Subpart V proceeding is to make restitution for alleged injuries, in previous refund proceedings we have determined that firms which made only spot purchases of petroleum products are generally not eligible for refunds from consent order funds. *See Tenneco Oil Co./Imperial Oil,* 10 DOE ¶ 85,002 (1982); *Tenneco Oil Co./Eastern of New Jersey, Inc.,* 10 DOE ¶ 85,028 (1982); *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). Those determinations were based on the rationale that spot purchasers are presumed not to have been injured by a particular supplier's pricing violations. *See Vickers* at 85,396-97.

The record in this proceeding reveals that Boswell and Midwest made what appear to be only spot purchases of No. 6 residual fuel oil from Richards during the consent order period. Based on our previous experience in similar cases, it would appear that both of these firms were in a position to purchase this product from other suppliers, and, presumably, passed the full amount of the alleged overcharge through to their own customers. We have therefore tentatively determined that the Richards consent order funds should not be distributed to Boswell or Midwest. We propose, however, to give Boswell and Midwest an opportunity to present evidence to rebut this presumption by establishing the extent to which each was injured as a result of its purchase of No. 6 residual fuel oil from Richards during the consent order period.

On the basis of the information in the record at this time, refunds will be authorized to the purchasers listed in the Appendix (with the exceptions of Boswell and Midwest) for the shares of the settlement amount indicated, plus accrued interest to date. (*2*) Since the record indicates that these purchasers are the parties most likely to have been injured by Richards' pricing practices, we have tentatively decided that this would be the most equitable and administratively efficient method of accomplishing restitution. This approach is consistent with our experience in previous Subpart V cases. Purchasers who appear to be end users of Richards products (*e.g.,* Duluth Air Force Base, Ford Motor Company, Munsingwear, Inc., St. Paul-Ramsey Hospital, and the State of Minnesota, etc.) will not be

required to make a special showing of injury in order to qualify for a refund. *See, e.g., Standard Oil Co. (Indiana)/ Union Camp Corp.*, 11 DOE ¶ 85,007 (1983), *and Standard Oil Co. (Indiana)/ Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983). In addition, in many special refund cases, we have presumed that small purchasers were injured to some extent by the pricing practices which led to the issuance of the consent order. *See, e.g., Uban Oil Co.*, (Uban) 9 DOE ¶ 82,541 (1982). We have also determined that applications for refund based on purchases below an average of 50,000 gallons per month typically come from firms which are small, independent retailers and resellers. *Uban* at 85,223. We have, therefore, exempted small firms from making a further demonstration of injury since the cost of compiling the data required, if such data even exists, could exceed the refund to be gained. *See, e.g., Webster Oil Co., Inc.*, Case No. HEF-0195 (June 5, 1984) (proposed decision). In the present case, the audit indicates that all of the purchases made by the 34 first purchasers (with the exception of the State of Minnesota) were below an average of 50,000 gallons per month (or 1,350,000 gallons for the entire consent order period). While Minnesota made larger average monthly purchases, as we stated above, the state appears to be an end user. We therefore will not require that any of these purchasers demonstrate that they absorbed the alleged overcharges in order to receive a refund.

We recognize, however, that there may have been other first purchasers not identified by the ERA audit, as well as downstream purchasers, who may have been injured as a result of Richards' pricing practices during the audit period and who would therefore be entitled to a portion of the consent order funds. If additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims. (*3*) Finally, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban* at 85,225. *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases from Richards of No. 2 fuel oil, and Nos. 4, 5 and 6 residual fuel oil, or to submit a statement verifying that it purchased petroleum products from the consent order firm during the audit period and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period, and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. *Distribution of the Remainder of the Consent Order Funds*

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that: The refund amount remitted to the Department of Energy by Richards Oil Company, pursuant to the consent order executed on June 15, 1979, and modified on March 17, 1980, will be distributed in accordance with the foregoing determination.

Footnotes

1. Richards paid $444,412.22, including interest, to the DOE. The escrow account, along with accrued interest, totaled approximately $625,163.10 as of August 1, 1984.

2. The share of the escrow fund which the listed purchasers are to receive represents 39% of the amount each was allegedly overcharged, and is consistent with the terms of the consent order, which settled for 39% of the total amount of alleged overcharges identified by the audit.

3. Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive larger refunds than those indicated in the Appendix.

APPENDIX

First purchasers	Portion of settlement amount [1]
A & L Laboratories, 1001 Glenwood Avenue, Minneapolis, MN 55405	$98.22
American Linen Services, 700 Industrial Blvd., N.E., Minneapolis, MN 55413	2,676.69
Armour Food Company, 238 Chester Street, St. Paul, MN 55107	315.53
Boswell Oil, Central Trust Tower, Cincinnati, OH 45202	6,888.39
Brown Company, Post Office Box 330, Eau Claire,WI 54701	15,211.79
Cargill, Inc., Post Office Box 1139, Burnsville, MN 55337	10,033.94
Dayton's, 7th Nicollet Mall, Minneapolis, MN 55402	5,819.13
Donaldson's 621 Nicollet Mall, Minneapolis, MN 55402	3,016.67
Duluth AFB (Defense Fuel Supply Center), Cameron Station, Alexandria, VA 22314	35,065.46
Farmers Co-op, Eyota, MN 55934	1,125.25
Flour City Architectural Metals, 2637 27 Ave. South, Minneapolis, MN	1,844.76
Ford Motor Company, 966 S. Mississippi River Blvd., ST. Paul, MN 55116	14,571.83
Fremont Creamery, Utica, MN 55979	1,593.22
Honeymead Products, 704 Minneapolis Road, Mankato, MN 56001	11,471.17
Hyatt Lodge, 41 North 10th, Minneapolis, MN 55429	80.44
Joslyn Man. Co., 49th & France North, Minneapolis, MN 55429	339.09
Local Roofing, Eau Claire, WI 54703	8,298.06
MN and S Railway, 911 Hennepin Avenue, Minneapolis, MN 55414	174.21
A.Y. McDonald Co., 8225 3rd Street, Minneapolis, MN 55415	2,034.07
Mid American Dairy, 2424 Territorial Road, Winsted, MN 55395	13,447.02
Midwest Industrial Fuels, 614 Summer Street, La Cross, WI 54601	563.51
Munsingwear, Inc., 718 Glenwood Avenue, Minneapolis, MN 55440	13,898.55
New London Concrete, New London, MN 56273	1,020.37
Owatonna Public Utilities, 208 S. Walnut Street, Owatonna, MN 55060	2,159.34
Owens Illinois, Shakopee, MN 55379	1,523.00
Paper Calmenson, Highway 280 & Highway 36, St. Paul, MN 55165	3,060.67
St. Francis Campus Service, 8th Avenue & 2nd Street, Little Falls, MN 56345	6,621.30
St. Paul-Ramsey Hospital, c/o Ramsey County Attorney, 40 Jackson, St. Paul, MN 55101	8,828.69
Sears, 2929 Elliot Avenue South, Department 206, Minneapolis, MN 55407	8,463.39
State of Minnesota, 50 Sherburne Avenue, St. Paul, MN 51555	258,879.89
Stevens County Court House, Morris, MN 56207	2,623.37
Waste Research, Eau Claire, WI 54703	339.09
Western Electric, 3100 East 28th Street, Minneapolis, MN 55406	1,102.59
Ziegler, Inc., 901 W. 94th Street, Minneapolis, MN 55420	1,223.02

[1] Includes both principal and interest as of January 2, 1982. Actual refunds will also include the additional interest which has accrued on these amounts since DOE received the Richards consent order funds

[FR Doc. 84-23512 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Rio Grande Project; Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a Rate Order—Rio Grande Project.

SUMMARY: Notice is given Rate Order No. WAPA-25 of the Deputy Secretary of the Department of Energy (DOE) for

placing increased power rates into effect on an interim basis for Rio Grande Project power marketed by the Western Area Power Administration (Western).

The wholesale firm power rate consists of a demand charge of $6.545 per kW-month and an energy charge of 15.45 mills per kWh. This represents a composite rate of 30.85 mills per kWh. The wholesale nonfirm excess energy rate consists of an energy charge of 22.0 mills per kWh for excess winter generation. The rates are being put into effect on an interim basis beginning on the first day of the October 1984 billing period.

The rate order further explains the rate adjustment and discusses the principal factors leading to the decisions on the rate increase and responds to the major comments, criticisms, and alternatives offered during the rate adjustment proceeding.

EFFECTIVE DATE: The rates will become effective on the first day of the October 1984 billing period.

FOR FURTHER INFORMATION CONTACT:

Ms. Marlene Moody, Assistant Area Manager for Power Marketing, Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite #2, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524-5493

Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1535

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Forrestal Building, Room 8G061, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-5581

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664, December 14, 1983), the Secretary of Energy delegated to the Administrator of Western the authority to develop power and transmission rates; to the Deputy Secretary of DOE the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates.

The proceeding on a proposed rate adjustment and a 30-day customer consultation and comment period was initiated on November 10, 1983, with an announcement of the proposed rate adjustment published in the **Federal Register** at 48 FR 51680. The November 10 notice also announced a public meeting on December 6, 1983. A November 14, 1983, press release also announced the proposed rate adjustment and the public meeting. On November 16, 1983, letters were sent to customers and other interested parties to announce the proposed rate adjustment and the meeting, and to transmit copies of the rate brochure dated November 1983. On November 25, 1983, letters were sent to customers and other interested parties with copies of the November 10, 1983, **Federal Register** notice and the December 6, 1983, meeting agenda. Written comments were accepted through December 28, 1983.

Public comments received have been considered in the preparation of the rate order.

Rate Order No. WAPA-25 confirming and approving increased power rates on an interim basis is hereby issued, and the rates will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued at Washington, D.C., August 28, 1984.

Danny J. Boggs,
Deputy Secretary.

Department of Energy Deputy Secretary

[Rate Order No. WAPA-25]

Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

August 28, 1984.

In the matter of Western Area Power Administration—Rio Grande Project Power Rates.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act (42 U.S.C. 7101 et seq.), the power marketing functions of the Secretary of the Interior for the Bureau of Reclamation (BuRec) under the Reclamation Act of 1902 (43 U.S.C. 372 et seq.), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and acts specifically applicable to the Rio Grande Project (RGP), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664, December 14, 1983), the Secretary of Energy delegated the authority to: (1) The Administration of the Western Area Power Administration (Western) to develop power and transmission rates; (2) the Deputy Secretary of Energy to confirm, approve, and place in effect such rates on an interim basis; and (3) the Federal Energy Regulatory Commission (FERC) to confirm, approve and place in effect on a final basis, to remand or to disapprove rates developed by the Administrator under the delegation. This rate order is issued pursuant to the delegation to the Administrator and the Deputy Secretary and the rate adjustment procedures at 10 CFR Part 903 (1984).

Background

Existing and Increased Rates

The existing firm power Rate Schedule RGP-F1 established new rates in two phases. The first phase, at a composite rate of 21.4 mills per kWh, assuming a 58.2 percent seasonal load factor, became effective September 1, 1982, and the second phase, at a composite rate of 27.0 mills per kWh, assuming a 58.2-percent seasonal load factor, became effective September 1, 1983.

The rates which are the subject of this order will supersede the rates specified in Rate Schedule RGP-F1 and in contract documents.

The increased rate of 15.45 mills per kWh for energy and $6.545 per kW-month for capacity (30.85 mills per kWh composite rate at a seasonal load factor of 58.2 percent) will become effective the first day of the October 1984 billing period as specified in Rate Schedule RGP-F2.

When excess water is available at the Elephant Butte Reservoir during the winter season (October through March), the excess energy generated is sold as nonfirm energy. A rate of 22.0 mills per kWh for excess nonfirm winter season energy will become effective the first day of the October 1984 billing period as specified in Rate Schedule RGP-EE1. The existing 5-percent discount to customers who had the capability to receive power and energy at transmission voltage has been eliminated because both RGP customers are receiving the discount.

Project History

The RGP initially was authorized as an irrigation project by the Act of February 25, 1905 (Ch. 798, 33 Stat. 814). Elephant Butte Dam was completed in 1916. The construction of Caballo Dam, a flood control and reregulating structure located downstream from Elephant Butte, took place in accordance with the Convention of Rectification of the Rio Grande, February 1, 1933 (48 Stat. 1621), and the Acts of August 29, 1935 (Ch. 805, 48 Stat. 961), and June 4, 1936 (Ch. 500, 49 Stat. 1463). The Caballo Dam was completed in 1938.

The Act of August 9, 1937 (Ch. 570, 50 Stat. 564), allowed for power facility construction and provided for the application of power revenues toward repayment of the project. The Elephant Butte Powerplant and a 115-kV transmission system were constructed between 1938 and 1940. Additional transmission features were added between 1941 and 1952. Parts of the transmission system were sold in FYs 1973, 1979, and 1983 so that now the power system consists of the Elephant Butte Switchyard and the Elephant Butte Powerplant. The project is operated primarily as an irrigation water supply project, and power generation is incidental and secondary in priority.

The project power system is connected to the system of Plains Electric Generation and Transmission Cooperative (Plains) at the Elephant Butte Switchyard.

Present customers for the project power are Plains and the City of Truth or Consequences, New Mexico (T or C).

During the first 10 years of operation (1941–1950), when the water supply was adequate, the project repaid $1,696,207 of the power investment and $1,004,680 in interest on the investment. Beginning in 1951 and continuing through 1979, the project has had annual deficits mainly due to a long-term shortage of water supply for generation.

The project power system was designed to operate year-round; however, due to the low water from 1950 through 1979, generation was confined to about 8 months a year, from February through September. In the mid-1960's, Colorado River Storage Project (CRSP) power became available for sale in New Mexico. Joint RGP and CRSP power sales contracts were negotiated with the RGP preference customers, and agreements between the projects were made. As a result of these agreements, RGP power has been firmed up by CRSP power during the summer season. This has made it possible for RGP to sell 24 MW of power during the summer season at firm rates, compared to roughly 9 MW previously. Through seasonal agreements, about 51,345,000 kWh have been sold to Plains as excess nonfirm winter season energy during the past 3 years at rates from 20–22 mills per kWh.

Power Repayment Studies

The power repayment studies for the RGP are prepared by Western with the cooperation of the BuRec. These studies are prepared in accordance with applicable Federal laws and regulations and DOE Order No. RA 6120.2. The studies array historic income, expense, and investment to be repaid from power revenues, along with estimates for future years, and portray the annual repayment of power production and transmission costs of a power system, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project facilities. The studies show, among other items, estimated revenues and expenses year-by-year through FY 2034, the estimated amount of Federal investment repaid during each year, and the total estimated amount of Federal investment remaining to be repaid each year. The studies do not deal with rate design.

The FY 1983 power repayment study (PRS) using current rates indicated that the current rates are not sufficient to meet repayment requirements. A preliminary revised FY 1983 PRS was prepared using estimated revenues and expenses and, due to computer program limitations, a prior year interest rate on deficits. This study was used to initiate the rate adjustment and was included in the rate brochure. A revised FY 1983 PRS, dated January 5, 1984, included actual figures for FY 1983 revenues and expenses and current interest rates on deficits and is the basis for this rate adjustment.

Basis of Rates

Western has not conducted a rate design study. Western has continued the practice of collecting approximately 50 percent of firm revenue from the demand charge and approximately 50 percent from the energy charge. The excess nonfirm energy rate is based on the customer's alternative costs. Rate Schedule RGP–EE1 formalizes the 22.0 mills/kWh rate that has been in effect the past two winter seasons. The firm power rate recognizes the revenues derived from sales of excess nonfirm energy.

Public Notice and Comments

Published "Procedures for Public Participation in Power and Transmission Rate Adjustments" for power marketed by Western and other power marketing administrations have been followed in the development of this rate. The following discussion summarizes the steps Western took to assure involvement of interested parties in the rate process:

1. A **Federal Register** notice (48 FR 51680, November 10, 1983) announced the proposed power rate adjustment and the public meeting.

2. A press release was issued on November 14, 1983, to announce the proposed rate adjustment and the public meeting.

3. On November 16, 1983, letters were sent to customers and other interested parties to announce the proposed rate adjustment and the meeting and to transmit copies of the rate brochure dated November 1983.

4. On November 25, 1983, letters were sent to customers and other interested parties with copies of the November 10, 1983, **Federal Register** notice and the December 6, 1983, meeting agenda.

5. A public meeting was held on December 6, 1983, in Albuquerque, New Mexico. Western explained the need for a rate increase and presented the results of power repayment studies reflecting the needed rate increase at that meeting. Representatives from Plains and T or C asked questions and made some comments. Some questions were answered later in writing.

6. Written comments were accepted through December 28, 1983.

Certification of Rates

In accordance with power marketing law, Western transmits and disposes of power and energy in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. With the new rates in effect, the Administrator has certified that RGP power will be sold at the lowest possible rates consistent with sound business principles. Rates have been developed in accordance with administrative policy and statutory requirements.

Discussion

The discussion below relates to PRS Issued, several customer requests, and to procedural matters. No changes in the PRS were made as the result of comments received. However, the effective date of the rate adjustment was changed.

Operation and Maintenance Expenses

The power customers expressed concern about the large increase in operation and maintenance (O&M) expenses, particularly in FY 1983. The FY 1980 PRS projected O&M and other expenses for the period FY 1981–1983 at $2,284,000 which was $459,716 less than the actual, for an increase of 20 percent.

The FY 1981 PRS Projection for future years FY 1984–1988 was $3,675,000 compared to the FY 1983 PRS projection for those years of $4,208,000, for an increase of 14.5 percent.

There was a significant increase in actual O&M expense in FY 1983 over the amount projected ($276,376 or 32 percent), primarily due to the BuRec taking advantage of the money that was appropriated for the Government's Jobs Bill program. By doing this, the BuRec

was able to accelerate $433,626 of the future years 1984–1988 equipment purchases and O&M repairs. Western has given the customers breakdowns of the Jobs Bill funds and the related O&M expenses. The BuRec did not make any unnecessary repairs or purchases.

Annual Expense Deficits

Power customers expressed a desire to have the repayment of accumulatd annual expense deficits pushed out beyond the repayment period for the project, which would be inconsistent with the policy stated in RA 6120.2. Paragraphs 8c (2) and (3) state that annual expenses are to be paid each year, and any deficit amount not paid is accumulated with interest and must be paid before revenues are available for repayment of investment. The RGP has accrued $3,055,000 of such deficits, and interest on this deficit during FY 1983 amounted to $143,025. Annual expenses have first call on operating revenue, and under normal circumstances must be paid when they occur. Deferring payment of the deficits beyond the repayment period for original project investments has the effect of extending the payout period. Since project payout requirements are not met, the suggestion was not considered to be appropriate. The PRS establishing revenue requirements on which the new rates are based, inadvertently applied some revenues to repayment of investment prior to complete repayment of the deficit. This inadvertent revenue application will be corrected in the FY 1984 PRS, but was not considered to be significant enough to warrant a delay in implementing this rate adjustment.

Methods of Calculating Administrative and General Expenses

Power customers requested a clarification on the methodology used to calculate administrative and general expenses (A&GE). The customers' concern centers on the high A&GE for 1983 and the rate at which A&GE are increasing. Western provided the customers with available A&GE calculations. The BuRec charges were based on the percentage of their work that was done for the project, plus charges for specific work performed. Western charges were based on a flat rate of $20,000 for FY 1980, FY 1981, and FY 1982. FY 1983 charges were based on direct labor hours used.

A&GE are proportionally higher in a project with a relatively small investment because of certain base costs that occur regardless of the size of the project. Western thinks the A&GE are justified. These expenses have increased due to expanded work on the RGP by both BuRec and Western for automation of the powerplant, post-1989 marketing studies, and rate adjustment studies and meetings. In addition, better methods of keeping track of actual time expended on each project have been established which have resulted in a more accurate reflection of the expenses that should be charged to the project.

Automation of RGP Powerplant

The power customers asked general questions about the automation of the powerplant, such as when will it be completed, how will it be operated when completed and, more specifically, how much will it reduce the operating expenses due to reduction of personnel costs. The customers also requested that the O&M be reduced by $70,000 after FY 1987 due to the reduction of personnel resulting from the automation.

The BuRec informally estimated that they will realize a savings of that magnitude through reduction of from two to three persons, but the savings have not yet been reflected in BuRec budget documents. Western has not made this reduction in the PRS because: (1) It is less than 10 percent of the projected O&M and could easily be within the margin of error of the estimate; (2) there is a potential for unforeseen events in the completion of the automation which is still 3 years away from estimated completion; and (3) the BuRec will reflect any expected savings in their budget documents when there is sufficient assurance they will materialize, which in turn will be reflected in the PRS.

Increase in Project Additions and Replacements

The power customers requested further categorization of plant additions for the period 1981–1990 that relates major expenditures with the purpose of the addition and an itemization of the additions to the project that were accelerated due to the Jobs Bill. They also requested that the total expenditures accelerated because of the Jobs Bill (including installation and overhead costs that will be capitalized) be classified in a manner consistent with the categories of the PRS, and indicate the amount and year in which reductions were made, if any, in estimates of future expense or investment (by PRS category).

Western has submitted all of the above information that is available to the customers, and the BuRec intends to maintain records in the future that will provide this type of information in more detail.

Request for Change in Effective Date

Western initially proposed April 1, 1984, as the effective date for the proposed rate adjustment. The power customers requested that the effective date of the proposed increase be delayed until September 1, 1984, or 12 months after the second step of the previous rate adjustment to permit the second phase of the existing rate schedule to actually be applied for one season.

Western concurs that this is a reasonable request and has set the first day of the October 1984 billing period as the effective date for the proposed rate adjustment, which is also the beginning of the winter season. The customers are aware that this short delay resulted in a slight increase in the rate.

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969 and section D of the DOE Guidelines (45 FR 20693) and as amended of February 23, 1982 (47 FR 7975), Western conducted an environmental evaluation of the rate adjustment.

DOE guidelines relate the size of the rate increase and the rate of inflation to the level of NEPA documentation required. The Consumer Price Index (published by the Department of Labor) was used to determine the rate of inflation from the date of the last rate increase to the planned date of the new increase. That rate is expected to be 9.8 percent. The power rate increase is 14.26 percent. However, from analysis of residential power rates of RGP customers and the effect of "passing through" the RGP rate increase, it was determined that the effect on the ultimate consumer will be approximately a .32-percent increase for Plains' customers and approximately a 2.31-percent increase for customers of T or C.

The rate increase will have no effect on the hydrologic operation of the Rio Grande River. Consequently, there will be no change in reservoir fluctuations and river flows. Air quality, flora, and fauna will not be affected, nor will there be any effect on the cultural and/or recreational resources of the Rio Grande River Basin. Since the RGP rate is below the cost of the wholesale or self-generated firm capacity and energy in the RGP market area or any other alternative sources of energy, it is unlikely that either of the customers will switch to another source of energy.

Section D of the DOE Guidelines states that the level of documentation

required under NEPA for rate increases which exceed the rate of inflation in the period since the last increase normally requires the preparation of an environmental assessment. However, based on the above and consultation with the DOE Office of Environmental Compliance, Western has determined that the proposed rate adjustment is not a major Federal action significantly affecting the quality of the human environment and; therefore, an environmental assessment is not required. This determination is on file in Western's offices.

Request for Integration of Projects

The power customers requested that the RGP be integrated with other projects in the Salt Lake City Area (CRSP, Collbran, and Provo River Projects) for marketing and rate purposes. This is a topic of consideration in the development of the Salt Lake City Area Post-1989 Marketing Plan, but the customers are requesting that it be done as early as 1985, if possible. Western will give this request consideration in the proper forum, but it is not an issue directly relevant to this rate adjustment.

Executive Order 12291

The DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of that order. In addition, Western has received an exemption from sections 3, 4, and 7 of Executive Order 12291 and, therefore, will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, and other supporting material, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84111; Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and Office of Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Submission to the FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy. I hereby confirm and approve on an interim basis, effective with the beginning of the October 1984 billing period, Rate Schedules RGP-F2 and RGP-EE1. These rates shall remain in effect pending the FERC confirmation and approval of them or substitute rates, on a final basis, or until they are superseded.

Issued in Washington, D.C. August 28, 1984.

Danny J. Boggs,

Deputy Secretary.

[Schedule RGP-F2 (Supersedes Schedule RGP-F1)]

Schedule of Rates for Wholesale Firm Power Service

Effective

Beginning on the first day of the October 1984 billing period.

Available

In the area served by the Rio Grande Project.

Applicable

To wholesale power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the points and voltages established by contract.

Monthly Rate

Demand Charge: $6.545 per kilowatt of billing demand.

Energy Charge: 15.45 mills per kilowatthour of use.

Billing Demand: The billing demand will be the greater of: (1) The highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustments

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[Schedule RGP-EE1]

Rate Schedule for Excess Nonfirm Winter Season Energy

Effective

Beginning on the first day of the October 1984 billing period.

Available

In the area served by the Rio Grande Project.

Applicable

To Plains Electric Generation and Transmission Cooperative under the terms of Contract No. 14-06-500-1120 dated May 17, 1985, as amended, and any others supplied excess winter season energy service.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the points and voltages established by contract.

Monthly Rate

Energy Charge: 22.00 mills per kilowatthour of use.

Adjustments

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[FR Doc. 84-23511 Filed 9-5-84; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-47002B and 42050; FRL-2665-3]

Chlorinated Benzenes; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meeting.

SUMMARY: The EPA will hold a public meeting to announce and discuss its preliminary findings regarding the need to require further testing of the chlorinated benzenes under section 4(a) of the Toxic Substances Control Act (TSCA). Specifically, the Agency will address oncogenicity testing of 1,2,4-trichlorobenzene (1,2,4-TCB) and health and environmental effects testing of

1,2,4,5-tetrachlorobenzene (1,2,4,5-TCB) and other tetrachlorobenzene isomers.

DATE: The meeting will be held on Tuesday, September 25, 1984, from 9:30 a.m. to noon.

Meeting: The location of the meeting will be: Rm. S-355 WSM, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

COMMENTS: Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such materials will become part of EPA's record for these test rule actions.

Written comments should bear the document control numbers [OPTS-47002B if addressing health concerns and OPTS-42050 for environmental concerns] and be submitted in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: EPA will hold a public meeting to discuss the health and environmental effects testing needs of some of the chlorinated benzenes.

I. Background

In the **Federal Register** of December 7, 1983 (48 FR 54836), EPA issued a **Federal Register** notice that proposed an approach for determining the need for 1,2,4-trichlorobenzene oncogenicity testing based on test data soon to be received. Also, in this and a later **Federal Register** notice (January 13, 1984; 49 FR 1760), the Agency requested information and comment on the production, use, chemical fate, and health and environmental effects of 1,2,4,5-tetrachlorobenzene and other tetrachlorobenzene isomers. EPA announced that it planned to hold a public meeting to discuss these testing concerns.

The Agency has now scheduled a public meeting to announce its preliminary findings regarding the need to require oncogenicity testing of 1,2,4-TCB, and health and environmental effects testing of 1,2,4,5-tetrachlorobenzene and other tetrachlorobenzene isomers. Attendees will be encouraged to comment and discuss EPA's preliminary findings at that time or present their comments for consideration by that Agency.

The Agency will transcribe the meeting and will include the written transcript in the public record for the chlorinated benzenes (i.e., docket numbers OPTS-47002B and OPTS-42050).

II. Public Record

EPA established a public record for these test rule decisions under section 4 of TSCA [docket numbers OPTS-47002B (health) and OPTS-42050 (environmental)]. At this time EPA is supplementing these records with one additional piece of information.

Health Assessment Document for Chlorinated Benzenes—Parts 1 and 2. External Review Draft prepared by EPA's Office of Health and Environmental Assessment of the Office of Research and Development. EPA-600/8-84-0154. April 1984.

These records, which include the basic information considered by the Agency in developing these decisions, are available for inspection from 8 a.m. to 4 p.m., Monday through Friday except legal holidays, in Rm. E-107, 401 M St. SW., Washington, D.C. 20460. The Agency will supplement the record with additional relevant information as it is received.

(Pub. L. 94-469, Sec. 4, 90 Stat. 2003; 15 U.S.C. 2601)

Dated: August 20, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-23502 Filed 9-5-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2665-4]

Pretreatment Implementation Review Task Force; Open Meeting

August 29, 1984.

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Pretreatment Implementation Review Task Force (PIRT) will be held on September 24, 25 and 26, 1984, in Washington, D.C. On September 24 the Task Force will meet as separate subcommittees at the Waterside Mall, 401 M Street, SW. The Technical Implementation Subcommittee will meet from 10:30 a.m. to 5:00 p.m. in Room 2123. The Program Development and Approval Subcommittee will meet from 1:00 p.m. to 5:00 p.m. in Room S-355. The Reporting and Monitorng Subcommittee will meet from 10:30 a.m. to 5:00 p.m. in Room S-359. The agenda for the subcommittees involves the completion of work begun during the July and August subcommittee meetings. (See **Federal Register**, 6/25/84, p. 25904.)

The full Task Force will meet on September 25 and 26 from 9:00 a.m. to 5:00 p.m. each day in The Hall of States, Best Western Skyline Inn, South Capitol and I Streets, SW. The agenda involves a consideration of the subcommittee reports as well as a report from the Agency concerning its assessment and implementation of the PIRT Interim Report.

Any member of the public wishing to make comments is invited to submit them in writing to Mr. Richard Kinch no later than October 1, 1984. All sessions will be open to the public. Any member of the public wishing additional information should contact Mr. Richard Kinch or Dr. Jerry Parker (EN-336), U.S. EPA, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0750.

FOR FURTHER INFORMATION CONTACT Dr. Jerry Parker (202) 755-0750.

Dated: August 28, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84-23503 Filed 9-5-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 84-30]

Inquiry Concerning Interpretation of Section 18(a)(4) of the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission solicits comment on the interpretation to be given to the requirement of section 18(a)(4) of the Shipping Act of 1984 which requires the Commission to report to Congress the "cost" of major regulatory proceedings. Specifically, the Commission solicits comment as to the meaning and extent of the term "cost."

DATES: Comments (original and twenty copies) on or before October 9, 1984.

ADDRESS: Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUMMARY: Section 18(a)(4)[1] of the Shipping Act of 1984 requires the

[1] Sections 18(a)(1), 18(a)(2) and 18(a)(3) of the Act may be the subject of a separate proceeding.

Commission to collect and analyze data on ". . . the length of time, frequency, and cost of major types of regulatory proceedings. . . ." The length and frequency of proceedings are, of course, readily ascertainable by the Commission. The term "major regulatory proceeding" will be defined in a policy statement to be issued by the Commission.

There remains the question of what constitutes "cost." The term obviously includes costs expended by the Commission in the conduct of its proceedings, e.g., salaries, travel and transcripts. However, it is not clear whether the term encompasses costs of all parties to proceedings before the Commission. For example, would it include attorneys' fees, travel of witnesses, etc?

There is no legislative history upon which to rely to resolve this question. Accordingly, the Commission is soliciting comments on the following questions:

1. Does the term "cost" as used in section 18(a)(4) of the Shipping Act of 1984 encompass costs to all parties to the proceeding or just costs to the Federal Government?

2. If the answer to question 1., above, is to the effect that the term "cost" applies to all parties, in what manner should the Commission obtain this data?

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23550 Filed 9-5-84; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as 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.

Cimpex Ltda. Co., 8347 N.W. 36th Street, Miami, FL 33166. Officers: Melquised Martinez, President, Gilma Forrero de Martinez, Vice President, Alfonso Rojas, Treasurer, Augustin Goytisolo, Secretary.

Sunrise International Co., Inc., 155-06 South Conduit Avenue, Jamaica, NY 11434. Officers: Tahir S. Ashraf, President, Sarah Reynolds.

Intrepid Shipping Corporation, 32 Broadway, Room, 1210, New York, NY 10004. Officer: Alex Oshinsky, President.

By the Federal Maritime Commission.

Dated: August 31, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23522 Filed 9-5-84; 8:45 am]

BILLING CODE 6730-01-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
2301	Universal Air Freight, Inc., d.b.a. Universal Ocean Freight Forwarders, 7356 N.W. 12th Street, Miami, FL 33126.	Aug. 22, 1984.
885	Master Shipping Agency, Inc., 170 Broadway, Suite 1010, New York, NY 10038.	Aug. 23, 1984.
2677	International Service Associates, Inc., 6960 Martin Drive, Suite L, New Orleans, LA 70126.	Aug. 25, 1984.
118	Halperin Shipping Co., Inc., 93 Nassau Street, New York, NY 10038.	Aug. 28, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-23523 Filed 9-5-84; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010420-001.

Title: American Flag Common Carrier Charter Agreement.

Parties:

American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.
Waterman Steamship Corporation

Synopsis: The proposed amendment would expand the capacity-available chartering under the agreement to allow parties to reserve or dedicate vessel capacity for charter to other agreement parties, extend the agreement indefinitely and eliminate its semi-annual reporting requirement. The amendment would also make other non-substantive changes in wording and organization.

Agreement No.: 217-010635.

Title: Space Charter and Sailing Agreement by and Between Compagnie Generale Maritime, Hapag-Lloyd AG and Intercontinental Transport (ICT) B.V.

Parties:

Compagnie Generale Maritime
Hapag-Lloyd AG
Intercontinental Transport (ICT) B.V.

Synopsis: The proposed agreement would permit the parties to cross charter space to and from each other and to agree on the number and frequency of sailings in the trade between United States South Atlantic and Gulf Ports and ports in Europe and the East Coast of Mexico including inland points served via such ports. The proposed agreement would also allow the interchange of equipment and joint terminal and stevedoring contracts.

By Order of the Federal Maritime Commission.

Dated: August 31, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23580 Filed 9-5-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Northern Neck Bankshares Corporation, 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. 1342(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 27, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Northern Neck Bankshares Corporation*, Warsaw, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of successor by merger to Northern Neck State Bank, Warsaw, Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW, Atlanta, Georgia 30303:

1. *First American Bancshares, Inc.*, New Orleans, Louisiana; to become a bank holding company by acquiring 95.07 percent of the voting shares of American Bank & Trust Company, New Orleans, Louisiana.

2. *First National Bankshares, Inc.*, Houma, Louisiana; to become a bank holding company by acquiring 50 percent of the voting shares of First American Bancshares, Inc., New Orleans, Louisiana.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Kentucky National Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of the Third National Bank of Ashland, Ashland, Kentucky.

2. *Meade Bancorp, Inc.*, Brandenburg, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Meade County Bank, Brandenburg, Kentucky.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Allied Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Allied Bank Austin, Austin, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23536 Filed 9-5-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 155; 4-D-VA-624 D&E]

Cape Charles Air Force Station and Communications Facility Annex and Family Housing, Northampton County, VA

Transfer of Property

Pursuant to section 2 of the Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By transfer letter from the General Services Administration dated July 31, 1984, the property, consisting of 162.15 fee acres and 6.68 easement acres improved with 54 buildings of the Communications Facility Annex and 11.77 fee acres improved with 27 buildings of the Family Housing, known as the Cape Charles Air Force Station, Northampton County, Virginia (4-D-VA-624 D&E), has been transferred to the Department of the Interior, U.S. Fish and Wildlife Service.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: August 20, 1984.

Earl E. Jones,

Acting Commissioner.

[FR Doc. 84-23517 Filed 9-5-84; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

Correction

In FR Doc. 84-20237, beginning on page 30798, in the issue of Wednesday, August 1, 1984, make the following corrections:

1. On page 30799, in the first column, in the **ADDRESS** paragraph, in the fourth line, "(HEN-32)" should read "(HFN-32)".

2. Also in the first column, in the **SUPPLEMENTARY INFORMATION** section, in the eleventh line, "allergic or" should read "allergies or".

3. On page 30799, in the second column, the FR Doc. number should read "84-20237".

BILLING CODE 1505-01-M

[Docket No. 84F-0246]

Nuodex, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nuodex, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane, 5-hydroxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane, and 5-hydroxypoly[methyleneoxy]methyl-1-aza-3,7-dioxabicyclo[3.3.0]-octane as a microbicide in aqueous mixtures used in the manufacture of paper and paperboard that contact food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3799) has been filed by Nuodex, Inc., Turner Place, P.O. Box 365, Piscataway, NJ 08854, proposing that § 176.170 (21 CFR 176.170) components of paper and paperboard in contact with aqueous and fatty foods be amended to provide for the safe use of 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane, 5-hydroxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane, 5-hydroxypoly[methyleneoxy]methyl-1-aza-3,7-dioxabicyclo[3.3.0]-octane as a microbicide in aqueous mixtures used in the manufacture of paper and paperboard articles that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21

CFR 25.40(c) (proposed Dec. 11, 1979; 44 FR 71742).

Dated: August 29, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-23488 Filed 9-5-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0057; DESI 1626]

Drugs for Human Use; Drug Efficacy Study Implementation; Certain Combination Prescription Drug Products Containing a Xanthine Derivative; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug applications (NDA's) for Amodrine Tablets and Phedorine Tablets and declaring Asminyl Tablets unlawful. FDA is withdrawing approval because there is a lack of substantial evidence that these combination drugs are effective for controlling bronchospastic disorders.

EFFECTIVE DATE: October 9, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with Docket No. 76N-0057 and reference number DESI 1626 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Margery Erickson, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 29, 1984 (49 FR 7454), the Director of the Center for Drugs and Biologics revoked a temporary exemption for the three drug products described below which permitted these products to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. The notice also offered an opportunity to request a hearing on a proposal to withdraw approval of the NDA's for two of these products and declare the third product with no approved NDA unlawful. The proposal was based on the lack of substantial evidence that these combination drugs are effective as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.111(a)(5) and 300.50. The three products are as follows:

1. Amodrine Tablets containing 100 milligrams (mg) aminophylline, 8 mg phenobarbital, and 25 mg racephedrine hydrochloride (NDA 2-384); G.D. Searle & Co., P.O. Box 5110, Chicago, IL 60080 (Searle).

2. Phedorine Tablets (formerly Thephedrine with Phenobarbital) containing 130 mg theophylline, 3 mg phenobarbital, and 24 mg ephedrine hydrochloride (NDA 1-626); Cooper Laboratories, Inc., 2900 North 17th St., Philadelphia, PA 19132 (Cooper).

3. Asminyl Tablets containing 2 grains (gr) theophylline, 8 mg sodium phenobarbital, and ½ gr ephedrine sulfate (no NDA); O'Neal, Jones & Feldman, Inc., 2510 Metro Blvd., Maryland Heights, MO 63043 (O'Neal).

Searle, Cooper, and O'Neal did not submit a hearing request for these three products. Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing. Accordingly, FDA is now withdrawing approval of NDA 2-384 for Amodrine Tablets and NDA 1-626 for Phedorine Tablets and declaring Asminyl Tablets unlawful.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). This notice does not apply, however, to those products that are the subjects of hearing requests submitted in accordance with the February 29, 1984 notice. These hearing requests may be the subject of future **Federal Register** notices. Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the combination products named above will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 2-384 for Amodrine Tablets and NDA 1-626 for Phedorine Tablets and all their amendments and supplements is withdrawn, and Asminyl Tablets is hereby declared unlawful. The effective date of this announcement is October 9, 1984. Shipment in interstate commerce of the products above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: August 29, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-23487 Filed 9-5-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of Three Mississippi State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA). HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on October 16, 1984 in Atlanta, Georgia, to reconsider our decision to disapprove Mississippi State Plan Amendments 84-6, 84-7 and 84-8.

DATE: Closing Date: Requests to participate in the hearing as a party must be received by September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove three Mississippi State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice,

in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Mississippi's request to eliminate Medicaid coverage of SNF and ICF care for one day each full calendar month for each recipient is in violation of Medicaid regulations at 42 CFR 440.230(b). The amendments would apply to skilled nursing facility (SNF) services for patients age 21 and older, SNF services for patients under 21 years of age and intermediate care facility (ICF) services. Under these amendments, when a patient is in a SNF or ICF for an entire calendar month, the State would eliminate coverage of the patient's last day of care for that month. Medicaid coverage would be limited to one day less than the number of days in each full calendar month.

Regulations at 42 CFR 440.230(b) require that each service be "sufficient in amount, duration and scope to reasonably achieve its purpose." This requirement prohibits States from imposing limitations on a covered service before it has been provided in sufficient amount, duration and scope to reasonably achieve its purpose. In order to be sufficient, the number of covered days must meet the *full* needs of most Medicaid SNF or ICF recipients. Recipients requiring SNF or ICF services usually need the benefit continuously for an extended period of time. By allowing the State to limit the number of covered days after providing a patient with SNF or ICF services for only one calendar month, the proposal would permit the State to restrict coverage before providing the service in sufficient amount, duration and scope to reasonably achieve its purpose for most patients. Therefore, HCFA has determined that the proposed amendment would be in violaton of the comparability of services requirement in Medicaid regulations at 42 CFR 440.240.

The notice to Mississippi announcing an administrative hearing to reconsider our disapproval of its State Plan Amendments reads as follows:

Mr. B. F. Simmons,
Director, Mississippi Medicaid Commission, P.O. Box 16786, Jackson, MS

Dear Mr. Simmons: This is to advise you that your request for reconsideration of Mississippi State Plan Amendments 84-6, 84-7, and 84-8 was received on August 7, 1984. You have requested a reconsideration of whether these plan amendments conform to the requirements for approval under the Social Security Act and pertinent Federal regulations.

I am scheduling a hearing on your request to be held on October 16, 1984, at 10 a.m., in the 5th Floor Conference Room, 101 Marietta Tower Spring and Marietta Streets, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,
Carolyne K. Davis,
Ph.D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: August 31, 1984.

Carolyne K. Davis,
Administrator, Health Care Financing Administration.

[FR Doc. 84-23561 Filed 9-5-84; 8:45 am]
BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register**, Vol. 46, No. 223, pp. 56911-56934, dated Thursday, November 19, 1981, **Federal Register**, Vol. 48, No. 3, pp. 512-518, dated Wednesday, January 5, 1983, **Federal Register**, Vol. 48, No. 198, pp. 46434-46448, dated Wednesday, October 12, 1983, and **Federal Register**, Vol. 49, pp. 28112-28122, dated Tuesday, July 10, 1984) is amended to reflect the organizational changes described below:

- Abolish the Office of Management Services (OMS) including the Offices' three subordinate divisions.

All organizational changes shown below are within the Office of Management and Budget, Office of the Associate Administrator for Management and Support Services.

- Abolish the Office of Human Resources and Administrative Services (OHRAS) including the Offices' four subordinate divisions.
- Abolish the Performance Management Staff (PMS).
- Establish the Office of Management and Human Resources (OMHR). OMHR will be organizationally structured with two divisions, the Division of Personnel and the Division of Management, Organizational Analysis, and Planning. Functions formerly assigned to the abolished OMS, OHRAS, and PMS are transferred to OMHR.
- Establish the Office of Administrative Services (OAS). OAS will also be structured with two divisions, the Division of General Services and the Division of Procurement Services. Both divisions are responsible for functions formally assigned to the abolished OHRAS.

Functional statements have been changed to reflect the changes noted above.

The specific amendments to the **Federal Register** are as follows:

- Section FH.20.The Office of the Associate Administrator for Management and Support Services (FH) (Functions) is amended by the following actions:
- Section FH.20.A. Office of Management and Budget (FHA) is amended by deleting Section FH.20.A.1. Performance Management Staff (FHA-1), including the organizational title, functional statement, and administrative code, in its entirety.
- Section FH.20.A.1. will then be retitled Office of Management and Human Resources (FHA4). The organizational titles, functional statements, and administrative codes for the new office and subordinate divisions are presented below:

1. Office of Management and Human Resources (FHA4)

Provides HCFA-wide policy direction, coordination, and control in the areas of personnel, performance management, management planning, management analysis, management evaluation, paperwork reduction, and public-use data collection. Develops and promulgates HCFA policy in these functional areas and executes these policies throughout HCFA.

a. Division of Personnel (FHA41)

Provides services, leadership, direction, and control with respect to personnel and related services within HCFA. Serves as the principle advisor to the Director of the Office of Management and Budget on the operation of HCFA's personnel system, including recruitment and placement, position classification, personnel management evaluation, performance appraisal, employee development and training, employee relations, and labor

relations. Administers the Agency special emphasis placement and executive personnel programs. Serves in a leadership role in providing authoritative advice and assistance to management officials in carrying out their position management responsibilities. Provides for an employee counseling service for employees in HCFA central office.

b. Division of Management, Organizational Analysis, and Planning (FHA42)

Provides services, policy direction, and coordination with respect to HCFA's management program, including the planning and execution of management planning and analysis, management processes, workplanning, organizational analysis, position management, management control systems, consultant contracting, Commercial-Industrial activities, paperwork reduction, clearance of public use data collections. Develops HCFA policy in these areas and assures the implementation of these policies throughout HCFA.

• Section FH.20.A Office of Management and Budget (FHA) is amended by deleting section FH.20.A.3. Office of Management Services, including organizational titles, functional statements, and administrative codes, in their entirety. The deletion of this office includes deleting the three subordinate divisions in their entirety; Division of Management Analysis and Review (FHA21), Division of Organizational Analysis (FHA22), and Division of Public Information Collection (FHA23).

Section FH.20.A.3. will then be retitled Office of Administrative Services (FHA5). The organizational titles, functional statements, and administrative codes for the new office and subordinate divisions are presented below:

3. Office of Administrative Services (FHA5)

Provides services, policy direction, coordination, and broad operational control of HCFA's voice telecommunication policies, administrative services, printing and distribution services, records and mail services, telecommunications services, procurement (excluding Medicare contractors and Medicaid State Agencies), facilities management, and related support services. Develops and promulgates HCFA-Side policy for these areas, and coordinates with the Bureau of Data Management and Strategy (BDMS) on the relationship of voice and data telecommunication policies.

a. Divison of General Services (FHA51)

Provides direct service and establishes policy for other HCFA components with respect to facilities and property management, supply, security and personal services, including space acquisition, management, and maintenance; conference facilities; occupational safety and health; emergency preparedness planning; parking; and other activities related to environmental and health matters. Provides or secures labor, warehouse, shipping, moving services, equipment loans, machine repairs, rentals, etc. Develop comprehensive budget estimates for and management of centralized facilities management funds. Provides general administrative support to Washington, D.C. components. Provides service, leadership, direction, and control of HCFA's publications, printing, records management, mail management and services, library services, forms management, in-house graphic, reprographics, and telecommunications and the operation of the Baltimore teleconferencing room. Responsible for the direction, control, and maintenance of centralized publications, including storage, distribution, printing and reproduction of publications; processing, control, and distribution of incoming and outgoing mail. Manages the national Medicare forms printing and distribution program.

b. Division of Procurement Services (FHA52)

Provides procurement services for other HCFA components including project grant, contract, and small purchase solicitation, award, and administration; cost and advisory function; and procurement-related training. Monitors annual HCFA contract plan and prepares and submits required reports. Solicits, negotiates, analyzes, and coordinates proposal evaluation and prepares and awards contracts. Provides HCFA cost advisory and audit services on pre-award and post-award grant and procurement actions to ensure conformance to legal and regulatory requirements. Performs all HCFA cost/price analysis and evaluation required for the review, negotiation, award administration, and close-out of grants and contracts. Provides field audit capability during the pre-award and close-out phases on contract and grant activities. Coordinates and acts as liaison with Defense Contract Audit Agency, Department of Health and Human Services (HHS) Audit Agency, Office of the General Counsel, and other HHS offices and agencies to obtain required audit support and resolution. Coordinates and/or conducts training for contract and grant personnel and project officers in HCFA components.

• Section FH.20.A. Office of Management and Budget is amended by deleting Section FH.20.A.4. Office of Human Resources and Administrative Services (FHA3), including organizational titles, functional statements, and administrative codes, in their entirety. The deletion of this office includes deleting the four subordinate divisons in their entirety; Division of Human Resources (FHA31), Division of Procurement Services(FHA32), Divison of General Services (FHA33), and Division of Communication Services (FHA34). There will be no replacement for Section FH.20.A.4.

The revised numerical order and organizational title designation for the office structure under Section FH.20.A. Office of Management and Budget is as follows:

1. FH.20.A.1. Office of Management and Human Resources
2. FH.20.A.2. Office of Financial Management Services (no change)
3. FH.20.A.3. Office of Administrative Services

Dated: August 24, 1984.

Carolyne K. Davis, Ph.D.,

Administrator, Health Care Financing Administration.

[FR Doc. 84-23535 Filed 9-5-84; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Sections F.30., 40., 50., 60., and 70. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA) (42 FR 57351, November 2, 1977 and 43 FR 26350, June 19, 1978) are hereby replaced by these new Sections, which update the delegations of authority to the Administrator, HCFA, and the HCFA Order of Succession. These revisions are necessary to reflect changes in the statutes which have obsoleted various provisions in the current sections F.30. thru 60., as well as to add new authorities that have been delegated. The new authorities, for example, include: authority pertaining to the licensure of clinical laboratories engaged in interstate commerce; authority to conduct demonstration projects for the training and employment of eligible AFDC recipients as home health aides; authority to make disallowance, penalty, and waiver

determinations under the Medicaid Quality Control system; authority to determine that an organization is an alternative health maintenance organization; and authority to conduct demonstration of physician-directed clinics in urban medically uderserved areas. Also, references to fraud and abuse activities which have been transferred to the Office of the Inspector General have been deleted. Any previous actions taken which are consistent with the delegations contained herein are hereby affirmed and ratified. The Order of Succession (F.70.) is being updated to reflect HCFA's current organizational structure. The new Sections read as follows:

F.30. Delegations of Authority

Except as provided in Sections AA.3., F.40., and F.50. of this Statement, the Administrator, Health Care Financing Administration, shall exercise:

A. The authority vested in the Secretary under sections 226 and 226A of the Social Security Act (42 U.S.C. 426 and 426–1) pertaining to the determination of entitlement to hospital insurance benefits, and in the case of certain individuals medically determined to have End-Stage Renal Disease, to the determination of entitlement to supplementary medical insurance benefits.

B. The authority vested in the Secretary under Title VII of the Social Security Act (42 U.S.C. 902 et seq.) insofar as such title pertains to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement.

C. The authority vested in the Secretary under Part A of Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) insofar as such provisions pertain to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement including, but not limited to:

1. The authority under section 1106 (42 U.S.C. 1306) pertaining to disclosure of information.

2. The authority under section 1110 (42 U.S.C. 1310) to make grants to States and public and private nonprofit organizations and agencies for payment of part of the cost of research and demonstration projects as they pertain to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement, and to enter into agreements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters. (See also F.40.3.a.)

3. The authority under section 1112 (42 U.S.C. 1312) to develop guides and recommend standards regarding the level, content, and quality of general medical care and services for the use of the States in evaluating and improving public assistance medical care programs and the State programs of medical assistance.

4. The authority under section 1115 (42 U.S.C. 1315) to approve and make grants for experimental, pilot, or demonstration projects as they pertain to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement, to waive compliance with any of the requirements of section 1902 (42 U.S.C. 1396a) to the extent and for the period he or she finds necessary to enable a State or States to carry out such projects, and to specify the extent of and the period during which costs of such projects which would not otherwise be included as expenditures under section 1903 (42 U.S.C. 1396b), shall be regarded as expenditures under the State's or States' Title XIX plan(s) or for the administration of such plan(s). (See also F.40.3.a.)

5. The authority under section 1116 (a), (b), and (c) (42 U.S.C. 1316 (a), (b), and (c)) to approve or disapprove (subject to the limitations contained at F.50.3.a.) State plans or amendments thereto under Title XIX.

6. The authority under section 1121 (42 U.S.C. 1320a) pertaining to uniform reporting systems for health services facilities and organizations.

7. The authority under sections 1122 (d) and (e) (42 U.S.C. 1320a–1 (d) and (e)) to identify and deny payment of those amounts to be excluded from reimbursement to health care facilities under Titles XVIII and XIX when such exclusions have been found necessary under section 1122.

8. The authority under section 1122(f) (42 U.S.C. 1320a–1(f)) to reconsider determinations made under sections 1122 (d) and (e) (see also regulations at 42 CFR 405.1890).

9. The authority under section 1123 (42 U.S.C. 1320a–2) to develop and conduct a program for determining qualifications for certain health care personnel. (See also F.50.1.a.)

10. The authority under section 1124 (42 U.S.C. 1320a–3) pertaining to disclosure of ownership and related information by providers, carriers, intermediaries, and similar organizations as it pertains to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement.

11. The authority under section 1126 (42 U.S.C. 1320a–5) pertaining to disclosure by institutions, organizations, and agencies of owners and certain other individuals who have been convicted of certain offenses.

12. The authority under section 1129(a) (42 U.S.C. 1320a–8(a)) to require coordinated audits and authority to reduce payments otherwise due under Title XIX to States that decline to participate in coordinated audits.

13. The authority under section 1131(a)(1)(C) (42 U.S.C. 1320b–1(a)(1)(C)) to transmit Part A entitlement information regarding deferred vested benefits (see also F.50.1.d.).

14. The authority under section 1132 (42 U.S.C. 1320b–2) which prescribes the period during which States may submit claims for Federal payments and which permits late claims to be paid, as it pertains to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement.

15. The authority under section 1134 (42 U.S.C. 1320b–4) pertaining to determinations of whether gifts to nonprofit hospitals are to be deducted from the operating costs of such hospitals.

D. The authority vested in the Secretary under Part B of Title XI of the Social Security Act (42 U.S.C. 1320c et seq.) and in section 150 of Pub. L. 97–248 (42 U.S.C. 1320c note) to administer the Professional Standards Review program and the Utilization and Quality Control Peer Review program.

E. The authority vested in the Secretary under Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

F. The authority vested in the Secretary under section 103 of Pub. L. 89–97 (42 U.S.C. 426a) pertaining to the transitional provision concerning the eligibility of certain individuals otherwise uninsured to become entitled to hospital insurance benefits (Part A of the Medicare program).

G. The authority vested in the Secretary under section 104(b)(1) of Pub. L. 89–97 (42 U.S.C. 13951 note) pertaining to the suspension of payments of Supplementary Medical Insurance benefits under Part B of Title XVIII of the Social Security Act, otherwise payable to or on behalf of individuals whose benefits under Title II of the Social Security Act are suspended by reason of section 202(t) of that Act (42 U.S.C. 402(t)).

H. The authority vested in the Secretary under section 104(b)(2) of Pub. L. 89–97 (42 U.S.C. 1395o note) pertaining to the denial of enrollment under Title XVIII of the Social Security Act to individuals convicted of certain subversive activities.

I. The authority to conduct experiments and demonstration projects

and authority to waive compliance with the requirements of Title XVIII and XIX of the Social Security Act, under section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248, as amended by section 222(b) of Pub. L. 92–603, and as subsequently amended), under sections 222(a) and 245 of Pub. L. 92–603, and under section 3 of Pub. L. 95–210, as they pertain to Titles XVIII and XIX of the Social Security Act. (42 U.S.C. 1395b–1, 1395b–1 note, 1395x note.) (See also F.40.3.a.)

J. The authority in section 21(b) of Pub. L. 95–142 (42 U.S.C. 1395x note), and in section 8(c) of Pub. L. 95–292 (42 U.S.C. 1396d note) to define those costs which may be charged to the personal funds of patients in skilled nursing facilities or intermediate care facilities who are individuals receiving benefits under Title XVIII, or medical assistance under a State plan approved under Title XIX of the Social Security Act, and authority to define those costs which are to be included in the reasonable cost or reasonable charges for extended care services, skilled nursing services, and intermeidate care facility services, as determined under the appropriate provisions of such Titles.

K. The authority vested in the Secretary under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

L. The authority to administer the Maximum Allowable Costs of Drugs Program for the Department, including responsibility for administrative support to the Pharmaceutical Reimbursement Board. (See also F.50.4.a.)

M. The authority vested in the Secretary under the Federal Claims Collection Act (31 U.S.C. 3711) to collect claims in any amount; to compromise, suspend, or terminate collection action on claims of $20,000 or less, exclusive of interest; and to refer claims to the General Accounting Office or the Department of Justice for further collection action, insofar as such authority pertains to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement.

N. The authority vested in the Secretary under section 7(c)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(c)(2)) to certify to the Secretary of the Treasury amounts to be transferred to or subtracted from the Railroad Retirement Account from the Federal Hospital Insurance Trust Fund for the purpose of equalizing the proportion of funds used from that Trust Fund and the Railroad Retirement Account to pay benefits to certain individuals who have completed less than 10 years of service under the Railroad Retirement Act.

O. The authority vested in the Secretary under section 7(d)(5) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(d)(5)) to exchange with the Railroad Retirement Board such information, records, and documents as may be necessary to the administration of the Railroad Retirement Act (45 U.S.C. 231 et seq.).

P. The authority vested in the Secretary under section 353 of the Public Health Service Act (42 U.S.C. 263a) pertaining to the licensure of clinical laboratories in interstate commerce. (See also F.50.5.a.)

Q. The authority under section 1526 of the Public Health Service Act (42 U.S.C. 300m–5) to provide grants to State agencies to demonstrate the effectiveness of having the States regulate rates for the provision of health care, and the authority under section 1533(d) of that Act (42 U.S.C. 300n–2) to establish various uniform systems for institutional providers of health care, and the authority under Section 1533(a) of that Act (42 U.S.C. 300n–2) to make grants for the establishment of such uniform systems.

R. The authority under section 966 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) (42 U.S.C. 632a) pertaining to the conduct of demonstration projects for the training and employment of eligible AFDC participants as homemakers of home health aides.

S. The authority vested in the Secretary under sections 1902(a)(4) and 1903(u) of the Social Security Act (42 U.S.C. 1396a(a)(4) and 1396b(u)) to make disallowance, penalty, and waiver determinations under the Medicaid Quality Control system (in a manner specified in regulations at 42 CFR Part 431, Subpart P) (42 CFR 431.800 et seq.).

T. The authority under section 6(e) of the Orphan Drug Act (Pub. L. 97–414) (42 U.S.C. 255 note) pertaining to demonstration projects related to home health services.

U. The authority under section 1903(m)(1)(B) of the Social Security Act (42 U.S.C. 1396b(m)(1)(B)) to determine that an organization, which is not qualified as defined in section 1310(d) of the Public Health Service Act, is a Health Maintenance Organization because it meets the following conditions (as established by sections 1903(m)(1)(A) (i) and (ii) of the Social Security Act (42 U.S.C. 1396b(m)(1)(A) (i) and (ii)):

1. Makes services it provides to individuals eligible for benefits under this Title accessible to such individuals, within the area served by the organization, to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization, and

2. Has made adequate provision against the risk of insolvency, which provision is satisfactory to the State and which assures that individuals eligible for benefits under this Title are in no case held liable for debts of the organization in case of the organization's insolvency (see also F.50.3.b.)

V. The authority under section 3 (a) and (b) of Pub. L. 95–210 (42 U.S.C. 1395b–1 note) to conduct demonstrations, on a cost reimbursement basis, for services provided by physician-directed clinics in urban medically underserved areas. Such projects may include reimbursement for services of physician assistants or nurse practitioners employed by such clinics, if such services would otherwise be covered under Title XVIII if provided by a physician.

F.40. Reservations of Authority

1. Under Part B of Title XI of the Social Security Act (42 U.S.C. 1320c et seq.)

The Secretary shall exercise the authority in section 1161 of the Social Security Act (42 U.S.C. 1320c–10) pertaining to reports to Congress.

2. Under Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)

a. The Secretary shall serve as a member of the Board of Trustees of the Federal Hospital Insurance Trust Fund pursuant to section 1817(b) of the Social Security Act (42 U.S.C. 1395i(b)). During the absence of the Secretary, the Under Secretary or the Assistant Secretary for Legislation shall serve. During the absence of the Secretary, the Under Secretary, and the Assistant Secretary for Legislation, the Administrator, Health Care Financing Administration shall serve.

b. The Secretary shall serve as a member of the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund pursuant to section 1841(b) of the Social Security Act (42 U.S.C. 1395t(b)). During the absence of the Secretary, the Under Secretary or the Assistant Secretary for Legislation shall serve. During the absence of the Secretary, the Under Secretary, and the Assistant Secretary for Legislation, the Administrator, Health Care Financing Administration shall serve.

c. The Secretary shall exercise the authority in section 1813(b)(2) of the Social Security Act (42 U.S.C.

1395e(b)(2)) pertaining to the annual determining and promulgation of the inpatient hospital deductible.

d. The Secretary shall exercise the authority in section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)) pertaining to the annual determining and promulgation of the amount of monthly premiums for hospital insurance.

e. The Secretary shall exercise the authority in section 1839(a) of the Social Security Act (42 U.S.C. 1395r(a)) pertaining to the annual determining of monthly actuarial rates for the aged and disabled, and to the annual determination and promulgation of the amount of monthly premiums for supplementary medical insurance.

f. The Secretary shall exercise the authority to terminate agreements entered into pursuant to section 1864 of the Social Security Act (42 U.S.C. 1395aa).

3. General Reservations

a. Any experiment, pilot, demonstration, or other project, all or any part of which is wholly financed with Federal funds made available under the Social Security Act (without any State, local, or other non-Federal financial participation), must be personally approved by the Secretary or the Under Secretary. (Section 1120 of the Act (42 U.S.C. 1320).)

b. The Secretary shall exercise, in accordance with the provisions of section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and the Federal Advisory Committee Act (5 U.S.C. App. I), the authority to establish and appoint advisory councils and other advisory groups.

c. Nothing in sections F.30., F.40., F.50. (except 1.b. and 2.a.), or F.60. shall be construed as limiting the Secretary's right to exercise the authorities otherwise delegated.

F.50. Limitations of Authority

1. Under Parts A and B of Title XI of the Social Security Act (42 U.S.C. 1320a et seq.)

a. The authority under section 1123 (42 U.S.C. 1320a-2) to develop and conduct a program for determining qualifications for certain health care personnel shall be exercised exclusively by the Administrator, Health Care Financing Administration (or his or her delegate).

b. The hearings and review under section 205(b) of the Social Security Act (42 U.S.C. 405(b)) as incorporated by sections 1155 and 1156(b)(4) of the Social Security Act (42 U.S.C. 1320c-4 and 1320c-5(b)(4)) shall be conducted by the Appeals Council, its members, and the Administrative Law Judges located in the Office of Hearings and Appeals of the Social Security Administration in accordance with the delegations of authority found in Section S.D.3. of this Statement.

c. The authorities for controlling fraud and abuse in the health care financing programs under sections 1128, 1128A, 1156(b), and 1160(b) of the Social Security Act (42 U.S.C. 1320a-7, 1320-7a, 1320c-5(b), and 1320c-9(b)) shall be exercised by the Office of the Inspector General.

d. The authority under section 1131(a)(1)(C) (42 U.S.C. 1320b-1(a)(1)(C)) to transmit Part A entitlement information regarding deferred vested benefits shall be exercised exclusively by the Administrator, Health Care Financing Administration (or his or her delegate).

2. Under Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)

a. The hearings and review under section 205(b) of the Social Security Act (42 U.S.C. 405(b)) as incorporated by sections 1862(d)(3), 1869 (b) and (c), 1876(c)(5)(B), and 1879(d) of the Social Security Act (42 U.S.C. 1395y(d)(3), 1395ff (b) and (c), 1395mm(c)(5)(B), and 1395pp(d)) shall be conducted by the Appeals Council, its members, and the Administrative Law Judges located in the Office of Hearings and Appeals of the Social Security Administration in accordance with the delegations of authority found in Section S.D.2. of this Statement.

b. The authorities for controlling fraud and abuse in the health care financing programs under sections 1862(d) (1) and (2); 1866(b)(2) (D), (E), and (F); and 1866(c)(1) with respect to termination actions only under sections 1866(b)(2) (D), (E), and (F) of the Social Security Act (42 U.S.C. 1395y(d) (1) and (2); 1395cc(b)(2) (D), (E), and (F); and 1395cc(c)(1)) shall be exercised by the Office of the Inspector General.

Note.—The Administrator of HCFA retains the authority under sections 1866(b)(2) and 1866(c)(1) (42 U.S.C. 1395cc(b)(2) and 1395cc(c)(1)) to terminate provider agreements for nonfraud and abuse reasons.

c. The authority conferred by sections 1816(g)(2) and 1842(b)(4) of the Social Security Act (42 U.S.C. 1395h(g)(2) and 1395u(b)(4)) to terminate an agreement or contract with an intermediary or carrier shall be exercised only by the Administrator or the Deputy Administrator, Health Care Financing Administration. (Note: This limitation does not apply to the authority under sections 1816 and 1842 to nonrenew existing agreements and contracts with organizations serving as intermediaries and carriers.) This authority may be exercised only after:

i. Such intermediary or carrier has been given an opportunity to request (within such time as is provided for by regulations) the Secretary to review the Administrator's conclusions and findings; and

ii. If such a request has been made, the Secretary has declined to review or has concurred in the Administrator's proposal to terminate such agreement or contract.

d. The Assistant Secretary for Health shall exercise the authority to determine whether an entity is an "eligible organization" within the meaning of section 1876(b) of the Social Security Act (42 U.S.C. 1395mm(b)) (See 48 FR 17395, 4/22/83 and 48 FR 19081, 4/27/83.)

e. The Assistant Secretary for Health shall exercise the authority pertaining to facilities of the Indian Health Service contained in sections 1880 (c) and (d) of the Act (42 U.S.C. 1395qq (c) and (d)).

3. Under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)

a. No State plan or amendment thereto submitted pursuant to any statute administered by the Health Care Financing Administration shall be finally disapproved without prior consultation and discussion by the Administrator with the Secretary.

b. Except as provided in section F.30.V. above, the Assistant Secretary for Health shall exercise the authority contained in sections 1903(m) (1)(B) and (2)(C) of the Social Security Act (42 U.S.C. 1396b(m) (1)(B) and (2)(C)) to determine whether an organization qualifies as a Health Maintenance Organization.

c. The authority under sections 1903 (a)(6), (b)(3), and (q) (42 U.S.C. 1396b (a)(6), (b)(3), and (q)) of the Social Security Act pertaining to the certification, recertification, and funding of State Medicaid fraud control units shall be exercised by the Inspector General.

4. Under the Maximum Allowable Costs of Drugs Program for the Department

a. This authority shall be exercised consistent with the authority of the Pharmaceutical Reimbursement Board.

5. Under the Public Health Service Act

a. The Public Health Service shall exercise those authorities under section 353 of the Public Health Service Act (42 U.S.C. 263a) (the Clinical Laboratories Improvement Act of 1967) pertaining to matters specifically assigned to it under

interagency agreements with HCFA, such as developing and interpreting regulations dealing with technical and scientific standards (including personnel standards); developing and administering laboratory proficiency testing programs; conducting proficiency examinations for clinical laboratory personnel; monitoring the clinical laboratory standards of the States and nongovernmental organizations; and holding hearings on such matters.

F.60. Redelegation of Authority

Authority contained in Part F.30. of this Statement may be redelegated by the Administrator to such officers and employees of the Health Care Financing Administration and other such officers and employees of the Department as he or she may deem appropriate, except as otherwise provided therein, and as follows:

a. The authority in sections 1816(g)(2) and 1842(b)(4) (42 U.S.C. 1395h(g)(2) and 1395u(b)(4)) pertaining to the termination of agreements and contracts with intermediaries and carriers may not be redelegated. (Note: This restriction does not apply to the authority under sections 1816 and 1842 to nonrenew existing agreements and contracts with organizations serving as intermediaries and carriers.)

b. The authority in section 1878(f) (42 U.S.C. 1395oo(f)) may only be redelegated to the Deputy Administrator, Health Care Financing Administration.

F.70. Order of Succession

During the absence or disability of the Administrator of the Health Care Financing Administration, or if that position becomes vacant, the first available official listed below will act as Administrator. However, during a period of planned absence, the Administrator may choose to designate a different order. The order of succession is as follows:

a. Deputy Administrator;

b. Associate Administrator for Operations;

c. Associate Administrator for Policy;

d. Associate Administrator for Management and Support Services;

e. Associate Administrator for External Affairs; and

f. Deputy Associate Administrator for Operations.

The above order of succession also applies upon the activation of the Emergency Health and Human Services Plan upon the order of the Secretary.

Dated: June 28, 1984.

Margaret Heckler,

Secretary of Health and Human Services.

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Public Health Services

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to reflect revisions in Chapter HA (Office of the Assistant Secretary for Health), Chapter HD (Public Health Service Regional Offices), and Chapter HB (Health Resources and Services Administration). Specifically:

(1) The statement for the office of the Assistant Secretary for Health (42 FR 61318, December 2, 1977, as amended most recently at 49 FR 18625, May 1, 1984), is amended to reflect a new functional statement for the Division of Health Facilities Planning/Office of Resource Management/Office of Management to include responsibility of management oversight for nationwide architectural and engineering activities for direct Federal construction for PHS.

(2) The statement for the Public Health Service Regional Offices (HD1-HDX), (44 FR 21711, April 11, 1979, as amended most recently at 49 FR 20377, May 14, 1984), is revised to reflect a new Mission, Organization and Functions. These revisions include provisions for a nationwide responsibility of assigned facilities engineering, construction and management carried out in three regional office locations (Region II—New York, Region VI—Dallas, and Region X—Seattle); the deletion of the Office of Regional Health Maintenance Organizations (HD*G), the deletion of the Division of Alcoholism, Drug Abuse, and Mental Health Programs (HD*T), and the addition of a Division of Federal Employee Occupational Health (HD*H).

(3) The statement for the Health Resources and Services Administration (47 FR 38409-24, August 31, 1982, as amended most recently at 49 FR 36938, January 30, 1984), is amended to revise the functional statement for the Office of Operations and Management (HBA4), Office of the Administrator, to reflect responsibility for its facilities engineering, construction and management activities performed by the PHS Regional Offices.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health, Section HA-20 Functions, delete the statement for the *Division of Health Facilities Planning (HAU43),* Office of Management, and insert a new statement as follows:

Division of Health Facilities Planning (HAU43). The Director of the Division of Health Facilities Planning serves as the principal advisor for, and establishes policies related to facilities planning, acquisition, operation, maintenance and disposal; assures development of long-range plans and the annual review of facilities plans for the construction, maintenance, repair, improvement, and disposal of real property; manages or provides oversight in the design and construction of PHS facilities; provides technical assistance in planning, design, and construction of facilities projects, and in the acquisition, management, and disposition of PHS owned or leased real property; operates the safety management program for the PHS; operates the Federal Real Property assistance program on behalf of the Department; administers the Federal Buildings Fund for all the General Services Administration (GSA) assigned space; administers an integrated facilities engineering management system nationwide; and in PHS facilities related matters serves as the principal liaison with the Office of the Assistance Secretary for Management and Budget, GSA, other Federal agencies, and organizations outside the Government.

Public Health Service Regional Offices

Under Part H, Chapter HD, Public Health Service (PHS) Regional Offices, delete in its entirety *Sections HD-00 Mission, HD-10 Organization, and HD-20 Functions* and substitute the following:

Section HD-00 Mission. The Public Health Service (PHS) Regional Offices support the PHS mission of improving the health of the Nation's population by administering regional health programs and activities to assure a coordinated regional effort in support of national health policies and State and local needs within each region including: Assessing regional health requirements, assuring integration of health programs, and addressing cross-cutting program issues and initiatives to achieve program goals and meet overall regional health needs; providing a PHS focal point for responding to the needs of State and local governments, community agencies, and others involved in the

planning or provision of general health and mental health services; providing a PHS focal point for emergency preparedness and emergency medical services in the regions; supporting the Department of Health and Human Services (DHHS) intergovernmental relations activities and responding to health issues emanating from State and local concerns; and administering health activities and programs to provide for prevention of health problems, improved systems and capacity for providing health care, and assuring access to and quality of general health services.

Section HD-10 Organization. The Public Health Service Regional Offices (HD1-HDX) consist of:

Office of Regional Health Administrator (HD1-HDX)
Office of Engineering Services (HD*E)[1]
Office of Grants Management (HD*J)
Division of Preventive Health Services (HD*U)
Division of Health Services Delivery (HD*V)
Division of Health Resources Development (DH*W)
Division of Federal Employee Occupational Health (HD*H)

Section HD-20 Functions. Public Health Service (PHS) Regional Office (HD1-HDX). The Public Health Service (PHS) Regional Offices are headed by a Regional Health Administrator (RHA) who serves as the regional representative of the Assistant Secretary for Health (ASH), directs and administers Regional Office activities, and is responsible for integrating health and medical expertise with regional program efforts. The RHA and principal staff comprise the immediate Office of the Regional Health Aministrator which: (1) Directs PHS Regional Office programs and activities in order to assure a coordinated regional effort in accordance with national policies and State and local needs within the region; (2) establishes regional priorities, consistent with ASH and agency guidance, for the development of a coordinated regional work program; (3) administers all PHS program authorities delegated to the RHAs including award of grants, assignment of personnel, provision of services, monitoring program performance, promoting the quality of services, evaluation of the impact of PHS program, and provision of professional and technical assistance; (4) assures the accomplishment of priority PHS and DHHS initiatives; (5) provides regional input to formulation and analysis of national policies, program priorities and plans, and PHS budget and staffing allocation processes; (6) serves as the regional focal point for health liaison with State, territorial and local health officials as well as private and professional organizations in the region, providing assistance on improving State and local health plans and programs, providing information and guidance on PHS health policies and programs which may impact upon local programs, and facilitating access to and receipt of services from PHS programs; (7) provides management direction and control of all resources allocated to the region including appointment and supervision of regional staff, allocation of funds within the region, directing systems for controlling and accounting for use of regional resources, implementation of EEO and provision of administrative services, in coordination with the Office of the Regional Director, necessary to support PHS regional programs; (8) serves as the regional focal point for regional emergency preparedness activities; (9) provides expertise and leadership to regional program efforts as the principal coordinator for medical representation of PHS in the region; (10) cooperates with the Regional Director in coordinating health programs with other DHHS programs and with respresentatives of other Federal agencies with programs impacting on the health needs within the regions; (11) coordinates activities as required with programs administered by the Food and Drug Administration; and (12) for Regional Office IX and II, conducts activities and monitors liaison with the Department of the Interior and other Federal agencies in promoting health programs in the U.S. Insular areas.

*Office of Engineering Services (HD*E).*[2] (1) Administers regional facilities engineering and construction; (2) assures the delivery of total architectural and engineering services in support of assigned federally assisted and direct Federal construction programs; (3) carries out property management activities relating to PHS owned and utilized facilities; (4) serves as the source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS Headquarters on technical programmatic areas; (5) provides for development, implementation and monitoring of the annual work plan related to assigned program areas including setting objectives responsive to national and regional priorities and assigning offices resources required to attain these objectives; and (6) coordinates with other staff within the regional office to develop and consolidate objectives which cross program, division and office lines.

*Office of Grants Management (HD*J).* The Office of Grants Management: (1) Serves as the focus for grants management activites in the PHS Regional Office; (2) receives and refers grant applications to the appropriate program; (3) maintains a control record of review process; (4) reviews grant applications from a management point of view for conformity to laws, regulations, and policies; (5) identifies problem areas and collaborates with other staff in their resolution; (6) maintains central grant files for the PHS Regional Office; (7) issues grant awards, negotiates, computes, prepares, and signs award notices; (8) secures necessary clearances and distributes grant award statements; (9) provides continuing surveillance of financial and administrative aspects of grant supported activities through site visits to assure compliance with appropriate DHHS and PHS policies; (10) gives technical assistance, where indicated, to improve the mangement of grant supported activities; (11) develops, implements, and manages regional grants management procedures and policies; (12) provides for the collection, accurancy and reporting of business management data and analyzes and monitors business management data on grants; (13) provides for development, implementation, and monitoring of the annual regional work plan related to responsibilities assigned to the office, including setting objectives responsive to national and regional priorities and assignment of office resources required to attain these objectives; (14) conducts studies and provides assistance to improve the operation of grantee management systems and grant review procedures; (15) responds to requests for grants management information from headquarters and regional staffs and from the public; (16) develops business management methods to improve cost effectiveness and financial systems of PHS regional project grants; and (17) implements business management principles and financial plans in all appropriate projects.

*Division of Preventive Health Services (HD*U).* The Division of Preventive Health Services: (1) Directs and coordinates programs and activities designed to improve health by preventing or controlling diseases, including environmentally induced health problems; (2) provides liaison with special national impact programs, such as childhood immunization and venereal disease control, and assures access to headquarters epidemiologic

[1] Offices located in Regions II, VI, and X.

[2] Regions II, VI and X.

and laboratory specialists and other specialized assistance; (3) provides or arranges professional consultation, guidance, and technical assistance to State and local health departments and agencies, communities and industries on disease prevention, preventive health services, health education, environmental and occupational health services; (4) verifies accuracy and analyzes programmatic data with respect to preventive health services; (5) reviews and recommends action on grant applications and contract proposals, and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (6) provides a locus of responsibility for supervision of personnel assigned from the Centers for Disease Control to State and local health departments; (7) provides for development, implementation, and monitoring of the annual regional work plan related to assigned program areas, including setting objectives responsive to national and regional priorities and assignment of division resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (9) serves as a source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS Headquarters on technical programmatic areas; (10) establishes effective communication and working relationships with health related organizations of the States and other jurisdictions; and (11) serves as a focal point for information on health promotion and related efforts within the region, including voluntary, professional and other private sector activities.

*Division of Health Services Delivery (HD*V).* The Division of Health Services Delivery: (1) Directs and coordinates program and activities designed to promote and provide quality health services within the region; (2) provides or arranges professional consultation, guidance, and technical assistance in assigned program areas, including interpretation of national policies and guidelines to contractors and applicants for Federal assistance; (3) promotes and directs activities designed to increase health care capacity and to increase access to quality health services for the medically underserved; (4) serves as regional focal point for promoting and directing efforts to integrate services delivery projects in a more comprehensive manner to maximize services available in health scarcity areas; (5) verifies accuracy and analyzes programmatic data with respect to health service programs; (6) reviews and recommends action on grant applications and contract proposals, and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (7) provides for development, implementation, and monitoring of the annual regional work plan related to assigned program areas, including setting objectives responsive to national and regional priorities and assignments of division resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (9) serves as a source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS headquarters on technical programmatic areas; (10) establishes effective communication and working relationships with health related organizations of States and other jurisdictions; and (11) serves as a focal point for information on health service programs and related efforts within the region including voluntary, professional and other private sector activities.

*Division of Health Resources Development (HD*W).* The Division of Health Resources Development: (1) Directs and coordinates regional implementation of programs and activities designed to increase the capacity and capability of health care systems in the region; (2) reviews and recommends action on grant and loan applications and contract proposals providing continuous programmatic monitoring of division grants, contracts and loans for compliance with applicable laws, regulations, policies and performance standards; (3) reviews and recommends appropriate action on project applications and State plans based on compliance with laws and regulations, technical adequacy of proposal, and effectiveness of project and plans in meeting specific programmatic objectives; (4) verifies accuracy and analyzes programmatic data with respect to health resources, program impact and costs; (5) assures the implementation of all loan officer functions for division loan programs; (6) provides or arranges professional consultation, guidance, and technical assistance in assigned program areas, including the interpretation and explanation of national policies and guidelines; (7) provides for the development, implementation and monitoring of the annual regional work plan related to assigned program areas, including setting objectives responsive to regional and national priorities and assignment of division resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (9) serves as source of expertise in the PHS Regional Office on specific program areas, and as regional program liaison with PHS headquarters on technical programmatic matters; and (10) establishes effective communication and working relationships with health related organizations of States and other jurisdictions; and (11) serves as a focal point for information on health resource development and related efforts within the region, including voluntary, professional and other private sector activities.

*Division of Federal Employee Occupational Health (HD*H).* The Division of Federal employee Occupational Health: (1) Directs and coordinates programs and activities designed to improve Federal employee occupational health and safety programs in the region; (2) administers employee occupational health programs, including employee assistance programs, for other Federal agencies on a reimbursable basis; (3) promotes activities designed to protect the working health and safety of Federal employees in the region in order to maximize their productivity; (4) provides or arranges professional consultation, guidance and technical assistance in assigned program areas, including interpretation of national policies and guidelines; (5) verifies accuracy and analyzes programmatic data with respect to Federal employees health programs; (6) takes action as necessary on contrat proposals, and provides continuous programmatic monitoring of Division contracts for compliance with applicable laws, regulations, policies and performance standards; (7) provides for development, implementation and monitoring of the annual work plan related to assigned program areas including setting objectives responsive to national and regional priorities and assigning office resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program, division and office lines; and (9) serves as the source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS headquarters on technical programmatic areas.

Health Resources and Services Administration

Under Part H, Chapter HB, Health Resources and Services Administration, Section HB-20, Functions, revise the statement for *Office of Operations and Management (HBA4),* Office of the Administrator, to delete the "and" after item (4), change the period after item (5) to a semicolon, and add the following:

and (6) administers regional facilities engineering and construction activities performed by PHS Regional Offices.

These revisions are effective September 1, 1984.

Dated: August 21, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 84-23534 Filed 9-5-84; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. N-84-1443; FR-2024]

Inventory of Commercial Activities

AGENCY: Office of the Assistant Secretary for Administration, Department of Housing and Urban Development (HUD).

ACTION: Notice of OMB Circular No. A-76 schedule for cost comparison studies.

SUMMARY: Notice is hereby given that under Office of Management and Budget (OMB) Circular No. A-76, the Department of Housing and Urban Development (HUD) is publishing its schedule for conducting cost comparison studies of commercial activities currently performed by the Department.

The location of activities to be studied is identified in the table below as follows: "HQ" if the activity is performed only at HUD headquarters in Washington, D.C.; "F" if the activity is located in Field Offices throughout the United States; or "HQ/F" if the Activity is both a headquarters and field office function.

Contracts may or may not result from the review of each activity. Results of the review of an activity will be made available upon request to all interested parties.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755-5294. (This is not a toll-free number.)

Dated: August 17, 1984.

Judith L. Tardy,

Assistant Secretary for Administration.

Activity	Estimated start date	Estimated completion date	Location
1. Computer Operations Support	5/84	11/84	HQ.
2. Production & Data Control	5/84	3/85	HQ.
3. ADP Systems Development and Maintenance	1.85	8/85	HQ.
4. Distribution Management	8/84	FY '85	HQ.
5. Property	8/84	FY '85	HQ.
6. Warehouse	8/84	FY '85	HQ.
7. Mail Operations	3/85	FY '86	HQ.
8. Motor pool	12/86	FY '87	HQ.
9. Visual Arts	FY '86	FY '87	HQ.
10. Space Management	FY '86	FY '87	HQ.
11. Telecommunications	FY '85	FY '87	HQ.
12. Photocopying Center	FY '87		HQ.
13. Single-Family Property Disposition	11/82	9/84	HQ/F.
14. Multifamily Property Disposition	FY '86	FY '87	HQ/F.

[FR Doc. 84-23540 Filed 9-5-84; 8:45 am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-84-1442; FR-2031]

National Manufactured Home Advisory Council

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Meeting of the National Manufactured Home Advisory Council.

SUMMARY: This Notice announces the next meeting of the National Manufactured Home Advisory Council. The meeting will be held October 10-12, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Worthy, Office of Manufactured Housing and Regulatory Functions, HUD, 451 7th Street SW., Room 9158, Washington, D.C. 20410; telepone (202) 755-5210. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), 42 U.S.C. 5401 et seq., requires the Secretary of the Department of Housing and Urban Development to establish Federal construction and safety standards for manufactured homes. The Act also requires that the Secretary appoint a National Manufactured Home Advisory Council composed of 24 members. The membership of the Council is selected equally from each of the following categories: (a) The manufactured home industry and related groups, including at least one representative of small business; (b) consumer organizations, community organizations, and recognized consumer leaders; and (c) government agencies including, Federal, State and local governments. The purpose of the National Manufactured Home Advisory Council is to advise the Department, t the extent feasible, prior to the establishment, amendment or revocation of any manufactured home construction and safety standard.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a)(2), announcement is made of the following meeting:

The National Manufactured Home Advisory Council will meet on October 10 and 12, 1984, in the HUD Building, 451 7th Street SW., Departmental Conference Room, Room 10233, Washington, D.C. 20410. On October 11 the Subcommittees of the Advisory Council will meet at the Channel Inn, 650 Water Street SW., Washington, D.C. 20024. The meetings are open to the pulic and will convene at 9 a.m. each day.

The Advisory Council will primarily discuss the energy issues involved in the Manufactured Home Construction and Safety Standards.

The final agenda will be available at the meeting. Inquiries concerning the agenda may be made after September 10, 1984, by contacting the Office of Manufactured Housing and Regulatory Functions, HUD, at (202) 755-5210. (This is not a toll-free number.)

Authority: National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5404; and Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a)(2).

Dated: August 7, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-23541 Filed 9-5-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet Tuesday and Wednesday, September 18 and 19, 1984. The September 18 meeting will be held at the National Defense University, Fort Lesley J. McNair, Washington, D.C. This meeting will consist of briefings on certain national security and emergency mobilization topics that Committee members need to consider to discharge their responsibilities. Briefings will be classified SECRET and higher. Under the provisions of 5 U.S.C. 552b this meeting will be closed to the public for national security reasons, and only members of the Committee and other authorized observers with validated security clearances will be admitted.

The September 19 meeting will convene from 9:00 a.m. to 2:30 p.m. in the first-floor auditorium of the Main Interior Building (C Street entrance) at 18th and C Streets, NW., Washington, D.C. This meeting will be open to the public.

The proposed agenda for the September 19 meeting is:

9:00–12:00: Reports from the members on their assessments of materials and minerals priorities, and recommendations for consideration by the full Committee.

1:00–2:00: Evaluation by the Committee of members' recommendations and discussion of which recommendations, if any, are sufficiently well-developed for submission to the Secretary; discussion and planning for future efforts.

FOR FURTHER INFORMATION CONTACT: Wayne Marchant, Department of the Interior, Washington, D.C., Room 6649, (202) 343–5791.

Dated: August 31, 1984.

Wayne N. Marchant,

Executive Director.

[FR Doc. 84–23489 Filed 9–5–84; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

New Mexico; Filing of Plat of Survey

August 23, 1984.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on August 22, 1984.

New Mexico Principal Meridian

The survey of lots 40 through 45 in section 23, T. 1 S., R. 1 W., NMPM, under Group 768 NM, and was accepted August 9, 1984.

This survey was executed to meet certain administrative needs of this Bureau.

The plat will be placed in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 84–23492 Filed 9–5–84; 8:45 am]

BILLING CODE 4310–FB–M

Office of the Secretary

Garrison Diversion Unit Commission; Revised Notice of Meeting

Procedures for witnesses giving testimony at the first public hearing of the Garrison Diversion Unit Commission, scheduled for September 10–11, 1984, in Bismarck, North Dakota, have been modified. The length of time permitted for individual oral testimony will not necessarily be limited to 5 minutes but will be set at the discretion of the Commission Chairman.

Time and place of the hearing, published in FR Doc. 84–22653, appearing on pages 33728–33729 in the issue of Friday, August 24, 1984, remain unchanged.

Dated: August 31, 1984

Robert N. Broadbent,

Federal Representative.

[FR Doc. 84–23504 Filed 9–5–84; 8:45 am]

BILLING CODE 4310–09–M

Minerals Management Service

Development Operations Coordination Document; Diamond Shamrock Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Diamond Shamrock Exploration Company has submitted a DOCD describing the activities it proposes to conduct on lease OCS–G 4757, Block 192, West Cameron 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 28, 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 section 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 § 250.34 of Title 30 of the CFR.

Dated: August 28, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23557 Filed 9-5-84; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Superior Oil Co.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Superior Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0797, Block 105, Eugene Island 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 27, 1984.

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).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

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 Section 250.34 of Title 30 of the CFR.

Dated: August 27, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23544 Filed 9-5-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

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 Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Service clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Pretest of the 1985-86 Federal Estate Visitor Survey (FEVS).

Abstract: The proposed collection is a pretest of the 1985-86 FEVS—a detailed on-site survey of a representative sample of recreation visitors to Federal lands. Visitors are asked about their activities, experiences and expenditures; and invited to suggest improvements. The results are reported to Congress and used in planning.

Service Form No. (None).

Frequency: On occasion.

Description of Respondents: Individuals visiting Federal lands for recreation purposes.

Annual Responses: 375.

Annual Burden Hours: 158.

Service clearance officer: Russell K. Olsen, 202-523-5133.

Dated: August 27, 1984.

Russell K. Olsen,

Chief, Administrative Services Division.

[FR Doc. 84-23543 Filed 9-5-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[TA-503(a)-12 and 332-187]

President's List of Articles Which May Be Designated or Modified As Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Expansion of scope of intestigation to include hot air popcorn poppers provided for in item 684.20 of the Tariff Schedules of the United States.

EFFECTIVE DATE: August 24, 1984.

FOR FURTHER INFORMATION CONTACT:

(1) Mr. Aaron Chesser (202-523-0353) of the Commission's Office of Industries.

(2) Mr. William Gearhart (202-523-0487) of the Commission's Office of the General Counsel.

Background and Scope of Investigation

On August 2, 1984, the Commission initiated investigation No. TA-503(a)-12 and 332-187 at the request of the USTR to provide advice with respect to certain articles as to the probable economic effect on U.S. industries and consumers of the modification of the list of articles eligible for duty-free treatment under the United States Generalized System of Preferences (GSP), set forth in Title V of the Trade Act of 1974 (hereinafter referred to as "the Act"). The initial notice of the investigation, including information on contact persons, a public hearing, and written submissions from interested parties, was contained in the **Federal Register** of August 8, 1984 (49 FR 31780).

On August 13, 1984, the Commission received a request from the USTR to expand the scope of the investigation to provide advice with respect to whether products like or directly competitive with hot air popcorn poppers provided for in item 684.20 of the Tariff Schedules of the United States were produced in the United States on January 3, 1975. The President must consider whether this item should be eligible for an exemption from the 50 percent competitive need limit in section 504(c) of the Act, pursuant to section 504(d), as ordered by the U.S. Court of International Trade. This item is currently eligible for GSP duty-free treatment from all GSP beneficiary countries. Imports of the item from Hong Kong were denied GSP treatment from March 30, 1980 to March 30, 1981.

Issued: August 27, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23605 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-162]

Certain Cardiac Pacemakers and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) by the Commission's presiding officer (ALJ) to terminate the above-captioned investigation as to all remaining respondents and issues.

SUPPLEMENTARY INFORMATION: On July 23, 1984, complainant Medtronic Inc. moved (Motion No. 162-95) to terminate the investigation as to all remaining issues and respondents. The motion was supported by the Biotroniks respondents and the Commission investigative attorney (IA) and was not opposed by the Telectronics respondents. All respondents and the IA urged that the investigation be terminated with prejudice.

On July 26, 1984, the ALJ issued an ID (Order No. 78) granting the motion and terminating the investigation with prejudice. He found that terminating the investigation was in the public interest. He further found that since the parties had expended considerable time and effort in litigation and since termination was sought on the eve of trial, termination with prejudice is appropriate. He further found that all remaining undecided motions (including a motion by the Telectronics respondents to terminate the investigation for inequitable conduct on the part of complainant) were rendered moot.

A petition for review of the ID was timely filed by the Telectronics respondents urging that the Commission review the ID to the extent that it did not rule on their motion to terminate for inequitable conduct. However, the Telectronics respondents did not oppose the complainant's motion to terminate all remaining issues in this investigation before the ALJ. The Commission having determined not to review the ALJ's initial determination terminating all remaining issues in this investigation, the Commission also determines not to review the ID to the extent that it found respondents' motion moot. Accordingly, the ID has become the opinion of the Commission pursuant to 19 CFR § 210.53(h).

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons III, Office of the General Counsel, telephone 202-523-0493.

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (c) and (h).

Issued: August 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23619 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

Request for Public Comment on Termination of Countervailing Duty Investigation Concerning Ferroalloys From Spain

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone 202-523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On April 23, 1982, the Commission received a request from the Government of Spain for the review of the countervailing duty order on ferroalloys from Spain (T.D. 80-11), notice of which was published on January 2, 1980, in the **Federal Register** (45 FR 25).

The Commission received a letter on August 16, 1984 from the Ferroalloys Association, the original petitioner for the countervailing duty order, stating that it withdraws its request for the imposition of countervailing duties under the above-referenced countervailing duty order.

The legislative history of section 704(a) of the Tariff Act of 1930, as amended by the Trade Agreements Act, indicates that the Commission should solicit public comment prior to termination of an investigation and approve the termination only if it is in the public interest. In light of the Commission's duty to consider the public interest, the Commission requests written comments from persons concerning the proposed termination of the investigation on ferroalloys from Spain. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the **Federal Register.**

Issued: August 27, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23616 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-203]

Certain Floppy Disk Drives and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S. 1337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on August 1, 1984, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Tandon Corporation, 20320 Prairie Street, Chatsworth, California 91311. A supplement to the complaint was filed on August 13, 1984. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain floppy disk drives and components thereof into the United States, or in their sale, by reason of alleged (1) breach of fiduciary duty and conspiracy to breach fiduciary duty; (2) misappropriation of trade secrets and proprietary information; (3) violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961-68; (4) industrial espionage and sabotage of equipment and property; (5) fraud, conspiracy to defraud and constructive fraud; (6) breach of contract, tortious breach of implied covenant of good faith and fair dealing and interference with contract and prospective advantage; and (7) theft of property and conversion. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an efficiently and economically operated domestic industry and to prevent the establishment of an industry in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and temporary cease and desist orders. After a full investigation, the complainant requests that the Commission issue a permanant exclusion order and permanent cease and desist orders.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 27, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain floppy disk drives and components thereof into the United States, or in their sale, by reason of alleged (1) breach of fiduciary duty and conspiracy to breach fiduciary duty; (2) misappropriation of trade secrets and proprietary information; (3) industrial espionage and sabotage of equipment and property; (4) fraud, conspiracy to defraud and constructive fraud; (5) breach of contract, tortious breach of implied covenant of good faith and fair dealing and interference with contract and prospective advantage; and (6) theft of property and conversion, the effect or tendency of which is to destroy or substantially injure an efficiently and economically operated domestic industry and/or to prevent the establishment of an industry in the United States.

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on August 1, 1984, shall be forwarded to the presiding officer for an initial determination pursuant to § 210.53(b) of the rules.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Tandon Corporation, 20320 Prairie Street, Chatsworth, California 91311.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

The Lucky-Goldstar Group, 537 Namdaemun-ro 5-ga, Jung-gu, Seoul 100, Korea.
Gold Star Tele-Electric Co., Ltd., 60–1 Chungmu-ro 3-ga, Jung-gu, Seoul 100, Korea.
Gold Star Co., Ltd., 537 Namdaemun-ro 5-ga, Jung-gu, Seoul 100, Korea.
Lucky-Goldstar International Corp. (formerly known as Bando Sangsa Co., Ltd.), 537 Namdaemun-ro 5-ga, Jung-gu, Seoul 100, Korea
Lucky-Goldstar International (Pacific), Inc. (formerly known as Bando California, Inc.), 13013 East 166th Street, Cerritos, California 90701
Lucky-Goldstar International, Inc. (formerly known as Bando International, Inc.), 1050 Wall Street West, Lyndhurst, New Jersey 07071
Format Corporation, 2630 Townsgate Road, Building A, Westlake Village, California 91307
Felix Markhovsky, 23447 Mobile Street, Canoga Park, California 91307
Mikhail Anisimov (a.k.a. Michael Anisimov), 22345 Hackney Street, Canoga Park, California 91304
Herbert Berger, 766 East Lakefield Road, Westlake Village, California 91361
G. Edward Wilka, 3480 Brokenhill, Newbury Park, California 91320
Jay J. Ahn, c/o Lucky Goldstar Imports/Exports, 1281 Oakmead Parkway, Sunnyvale, California 94086

(c) Victoria L. Partner, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Acting Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding officer shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, D.C. 20436, telephone 202/523–0471.

FOR FURTHER INFORMATION CONTACT: Victoria L. Partner, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202/523–1088.

By order of the Commission.

Issued: August 30, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23600 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-184]

Certain Foam Earplugs; Commission Decision Not To Review Initial Determination Terminating Inoue MTP

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (I.D.) to terminate Inoue MTP as a respondent in the above-captioned investigation based on a settlement agreement.

Authority: 19 U.S.C.1337; 19 CFR 210.53(a), (c) and (h).

SUPPLEMENTARY INFORMATION: Notice of the I.D. was published in the Federal Register of August 8, 1984, 49 FR 31782. No petition for review was filed, nor were any comments from Government agencies or the public received.

Copies of the I.D. and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

Issued: August 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23546 Filed 9-5-84; 8:45 am]

BILLING CODE 2020-02-M

[332-191]

Nonrubber Footwear Quarterly Statistical Reports

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing quarterly reports on nonrubber footwear.

EFFECTIVE DATE: August 28, 1984.

FOR FURTHER INFORMATION CONTACT: Reuben Schwartz (202-523-0114) or Gail Burns (202-523-0200), Textiles, Leather Products, and Apparel Division, U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

In a letter dated August 8, 1984, the Senate Committee on Finance requested that the Commission, pursuant to section 332 of the Tariff Act of 1930, prepare and publish quarterly reports containing the following statistical information with respect to nonrubber footwear: (1) production and/or shipments; (2) imports; (3) exports; (4) apparent consumption; (5) market share; (6) employment; and (7) unemployment. In addition, data on plant closings will be provided on an annual basis.

Pursuant to the request, the Commission will submit the first quarterly report to the Committee on Finance by October 15, 1984.

Issued: August 29, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23608 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-201]

Certain Products With Gremlin Character Depictions; Erratum to Notice of Investigation

In the Notice of Investigation in the above-captioned investigation issued by the Commission on August 24, 1984, on the first page under the section entitled **"SUMMARY:"**, in line 7, the August 14, 1984 date should be changed to August 17, 1984 so that the sentence, as corrected, reads as follows:

Supplemental information was also filed on August 17, 1984.

Issued: August 29, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23618 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-148/169]

Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product; Extension of Time for Commission Decision on Whether To Order Review of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the date by which the Commission must decide whether to review the initial determination (ID) finding a violation of sections 337 and 337a of the Tariff Act of 1930 in the above-captioned investigation has been changed from August 31, 1984, to September 21, 1984.

SUPPLEMENTARY INFORMATION: The presiding officer's ID finding a violation of sections 337 and 337a in these consolidated investigations was filed on August 1, 1984. Under § 210.53(h) of the Commission's rules, the ID becomes the determination of the Commission within 30 days after the date of filing of the ID unless the Commission orders a review or extends the deadline for deciding whether to review. The 30-day deadline prescribed by the rules would have been August 31, 1984. The Commission has determined to change the deadline to September 21, 1984, in order to allow time for the parties and interested Government agencies to respond to petitions for review and to allow the Commission adequate opportunity to consider the issues raised therein.

Copies of the nonconfidential version of the initial determination, petitions for review, any responses thereto (when received), and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-3395.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in sections 210.53-.57 of the Commission's Rules of Practice and Procedure (19 CFR 210.53-57 as amended. 48 FR 20226, 21115).

Issued: August 28, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23602 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-202]

Certain Telephone Base Housings and Related Packaging and Printed Materials; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 26, 1984, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of GTE Communication Systems Corp., 2500 West Utopia Road, Phoenix, Arizona 85027. A supplemental complaint was filed on August 14, 1984. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain telephone base housings and related packaging and printed materials into the United States, or in their sale, by reason of alleged (1) infringement of the claim of U.S. Letters Patent Des. 267,716; (2) misappropriation of trade dress; (3) passing off; and (4) false marking. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 22, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain telephone base housings and related packaging and printed materials into the United States, or in their sale, by reason of alleged (1) infringement of the claim of U.S. Letters Patent Des. 267,716; (2) misappropriation of trade dress; (3) passing off; and (4) false marking, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

GTE Communications Systems Corp., 2500 West Utopia Road, Phoenix, Arizona 85027.

(b) The respondent is the following company, alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Keytronics, Inc., 13620 Gramercy Place, Gardena, California 90249.

(c) Robert D. Litowitz, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Acting Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondent in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Robert D. Litowitz, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4693.

Issued: August 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23599 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-161]

Certain Trolley Wheel Assemblies; Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a general exclusion order in the above-captioned investigation.

SUPPLEMENTARY INFORMATION: The presiding officer issued an initial determination on May 31, 1984, in which he determined that there has been a violation of section 337 of the Trade Act of 1930 (19 U.S.C. 1337) in the unauthorized importation or sale of certain trolley wheel assemblies. As a result of its review of that initial determination, a majority of the Commission on August 13, 1984, determined that a violation of section 337 exists in the unauthorized importation or sale of certain trolley wheel assemblies which infringe U.S. Letters Patent 4,109,343, owned by complainant C.L. Frost & Son, Inc., the tendency of which unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Copies of the Commission's Action and Order, its Opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

Authority: 19 U.S.C. 1337.

Issued: August 29, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23603 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: American Machine & Tool Co.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 30, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW.,

Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: August 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–23601 Filed 9–5–84; 8:45 am]

BILLING CODE 7020–02–M

Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to Serve as members of Performance Review Boards.

SUPPLEMENTARY INFORMATION: The Chairwoman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board.

Chairman of PRB—Susan W. Liebeler, Vice Chairman
Member—Commissioner Alfred Eckes
Member—Commissioner Seeley G. Lodwick
Member—Commissioner David B. Rohr
Member—Charles W. Ervin
Member—E. William Fry
Member—Lorin L. Goodrich
Member—Norris A. Lynch
Member—Eugune A. Rosengarden
Member—Michael H. Stein
Member—John Suomela

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Terry P. McGowan, Director of Personnel, U.S. International Trade Commission (202) 523–0182.

Issued: August 29, 1984.

By Order of the Chairwoman.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–23617 Filed 9–5–84; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Attorney General

Certification of the Attorney General

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners are necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Monroe County, Alabama. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: August 31, 1984.

Theodore B. Olson,

Acting Attorney General of the United States.

[FR Doc. 84–23614 Filed 9–4–84; 9:00 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Application No. D–3335 et al.]

Proposed Exemptions; Alaska National Bank of the North (ANBN)

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The application contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Alaska National Bank of the North (ANBN) Located in Fairbanks, Alaska

[Application Nos. D–3335, D–3336 and D–3337]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in

accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) as follows:

(I) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the past and proposed sale, exchange or transfer between ANBN and certain employee benefit plans (the Plans) of multi-family residential and commercial mortgage loans (the Mortgages) or participation interests therein (the Participation Interests) which are originated by ANBN provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of ANBN who has authority to manage or control those Plan assets being invested in Mortgages or Participation Interests;

B. The terms of all transactions between the Plans and ANBN involving the Mortgages or Participation Interests are not less favorable to the Plans than the terms generally available in arm's-length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to ANBN with regard to such sale, exchange or transfer;

D. The decision to invest in a Mortgage or Participation Interest is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of ANBN, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan; and

E. ANBN shall maintain for the duration of any Mortgage or Participation Interest which is sold to a Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

(II) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act) solely because of the ownership of a Mortgage or Participation Interest by such Plan.

Summary of Facts and Representations

1. ANBN is a federally chartered commercial bank with its principal offices in Anchorage and Fairbanks, Alaska. It maintains branch offices throughout the State of Alaska in smaller communities. ANBN is engaged in the type of banking activities customarily transacted by national commercial banks as authorized under federal law and regulations pertaining to such institutions. ANBN is regulated by the Office of the Comptroller of the Currency and is a member of the Federal Reserve System. It is insured and also regulated by the Federal Deposit Insurance Corporation.

Since January 1, 1975, ANBN has sold Participation Interests and Mortgages to the Plans and other investors. The past sales of Participation Interests and Mortgages involving employee benefit plans were to the Alaska Teamsters Employer Pension Trust and the Alaska Electrical Pension Fund. With respect to prospective transactions, sales between ANBN and the Plans include the above-mentioned multiemployer pension funds and other interested plan investors. The Mortgages consist of multi-family residential or commercial permanent first mortgages loans originated by ANBN in the ordinary course of its business.

ANBN has also requested an exemption for transactions involving the past and proposed sale of single family residential first mortgage loans and participation interests there in by ANBN to the Plans. On May 18, 1982, the Department issued a class exemption involving residential mortgage financing arrangements (Prohibited Transaction Exemption (PTE) 82–87, 47 FR 21331). PTE 82–87 provides retroactive and prospective relief for the acquisition of residential mortgages and participation interests therein by employee benefit plans. Accordingly, no relief is provided by this exemption for the past or proposed sale of single family first mortgage loans or participation interests therein by ANBN to the Plans.

2. ANBN sells either the entire Mortgage or a Participation Interest therein. ANBN had no pre-existing relationships with any of the Plans to which it initially sold a Participation Interest or Mortgage. However, by virtue of ANBN servicing the Mortgages and Participation Interests, it becomes a party in interest with respect to the Plans, so that any subsequent sale of Mortgages or Participation Interests becomes a prohibited transaction under section 406(a) of the Act. The applicant represents that the transactions do not involve a conflict of interest or present a situation where advantage could be taken of the Plans or the trustees of the Plans because all decisions regarding investment in the Mortgages or Participation Interests are made by Plan fiduciaries who are independent of ANBN.[1]

3. ANBN, concurrent with or after issuing a commitment to, or actually consummating a loan to a borrower, submits a formal proposal to a Plan fiduciary or investment manager to sell a Participation Interest in the loan or the whole Mortgage to the Plan. ANBN only orginates those loans that meet its strict underwriting guidelines. The proposal includes terms and conditions such as interest rate, loan duration, interest and principal payment schedule, commitment fee, security, and all other documentation necessary to meet accepted national banking standards. In all loan purchases, Plans are only bound upon signing the Participation Agreement. The Plan fiduciary or investment manager, who has exclusive discretion as to the placement of Plan assets, agrees to the loan participation, making a commitment and agreeing to all relevant specifications, terms and conditions.[2]

[1] While stating affirmatively that ANBN would not make investment decisions regarding the Mortgages or Participation Interests, the applicant was silent about who would make such decisions. In some situations it is possible that investment decisions have been or will be made by trustees of the Plans. The Department notes that where the construction on the property which secures the Mortgage was by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the Mortgage, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction would not be covered by this exemption. See also condition D of Part I of this exemption which has the effect of precluding relief under section 406(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

[2] The Department notes that the application does not address the seperate prohibited transactions under section 406(a) (1) (B) of the Act which would exist should any of the Mortgages originated by ANBN and subsequently purchased by the Plans involve loans to any party in interest with respect to the purchasing Plan. Accordingly, no relief is afforded by this proposed exemption for such transactions. However, ANBN will request from the date of the grant of this excemption potential borrowers to list in their loan application their relationship to any pension plan in an effort to assist a potential purchasing plan in determining whether the borrower may be a party in interest.

4. The proposal will generally provide that ANBN will service the loan under the provisions of a Service Agreement entered into by ANBN and the Plan.[3] The Service Agreement will be combined with or work in conjunction with a Participation Agreement made between ANBN (as seller) and the Plan (as buyer) covering the terms of the Plan's purchase of the Participation Interest or the Mortgage. The Participation/Service Agreements are subject to full Plan review prior to any Plan decision to purchase a loan. The sales proposal, the commitment, and the Participation/Service Agreements will provide that the yield on the loan to the extent of the Plan's interest will be at the then prevailing market interest rates. The warranties and representations made by ANBN regarding the Mortgages and Participation Interests are standard for these types of transactions. ANBN will be able, if it so chooses and with the concurrence of the Plan, to retain some percentage of participation in the Mortgage.

5. The Plans pay no investment management, investment advisory, sales commission or underwriting fee to ANBN with respect to the acquisition or sale of the Mortgages or Participation Interests. The applicant represents that the Plans have paid and will pay no more for the Mortgages or the Participation Interests than have been or would be paid by an unrelated party in an arm's-length transaction.

6. ANBN's role as servicer and administrator of the loan will be remunerated via a servicing fee established in the Participation/Servicing Agreements. The fee shall be at the standard rate applied for such service, generally ¼ of one percent. The servicing functions shall include receipt of all principal and interest payments and processing thereof; remittance of such payments promptly after receipt; insuring that all conditions of the loan are met; and, in the event of default, institution of such legal proceedings as are necessary and appropriate to collect the indebtedness due on the loan and enforce the security therefor, and to fully protect the respective rights and interests of the parties to the Participation Agreement.[4]

7. With respect to past transactions, the Participation Agreements provided that ANBN would have discretion only in the event the loan were to go into default. In such instances, ANBN would be empowered to take those steps it deemed necessary to collect the indebtedness due on the loan. ANBN could, under the Agreements, act on its own initiative or upon written request of the purchaser of the Mortgage in event of default. However, ANBN represents that in all past transactions, whenever loans went into default, ANBN notified the Plans and made recommendations, but took no action without first obtaining the approval of the Plans. ANBN represents that in its opinion, it never exercised discretion over Plan assets nor acted as a fiduciary with respect to the Plans. ANBN, despite its apparent authority in the Participation Agreements, never initiated foreclosure proceedings or took other related actions to collect indebtedness on loans in default without prior knowledge and direction from the Plans. With respect to prospective transactions, decisions regarding foreclosure options and determinations as to property management during foreclosure and until disposition, and related asset-significant decisions, shall be made by the Plans. ANBN shall have no discretion in default to take any actions that will generate fees for ANBN, such as property management fees.

8. ANBN represents that as a result of being a party in interest with respect to a Plan by virtue of servicing the Mortgages it would be prohibited from engaging in other commercial transactions with a Plan, such as the making of loans, which have nothing to do with the Mortgages or Participation Interests held by the Plan. The Department has considered ANBN's request for relief for such transactions and has decided that because the servicing relationship is established as a necessary result of the purchase of a Mortgage or Participation Interest by a Plan, subsequent transactions between the parties otherwise prohibited by section 406(a) are not likely to present an inherent abuse potential. Accordingly, the Department has determined it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

9. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The transactions were and will be between the Plans and ANBN (a federally regulated institution) and are transactions made in the regular course of ANBN's business; (b) all Plan decisions to invest in Mortgages and Participation Interests were and will be made by Plan fiduciaries who are independent of ANBN; (c) the Plans have paid and will pay no more for the Mortgages or Participation Interests than would be paid by an unrelated party in an arm's-length transaction; (d) ANBN's servicing fee has been and will continue to be similar to fees charged other investors in the Mortgages or Participation Interests and have been and will be consistent with that charged in the open market; (e) the Mortgages were and will at all first liens on commercial and multi-family residential property; and (f) the warranties and representations made by ANBN regarding the Mortgages and Participation Interests are standard for these type transactions.

Notice to Interested Persons: In addition to the notice requirement outlined in the general provisions of this notice, ANBN agrees to provide a copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom ANBN may contract in the future to provide services as described herein. Such notification will be provided prior to ANBN entering into a contract to provide such services.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Calvert Group, Ltd, Employee Stock Ownership Plan and Trust (the Plan) Located in Washington, D.C.

[Application No. D-5064]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan on January 3, 1984, to Acacia Financial Corporation (Acaia), a party in interest with respect

[3] No exemption from section 406 of the Act is being granted for transactions pursuant to the Service Agreement beyond that which is provided by the statutory exemption pursuant to section 408(b) (2) of the Act.

[4] The Department notes that the application does not address the separate prohibited transaction under section 406(a)(1)(A) of the Act which would exist where upon foreclosure the Plan acquires title to real property and such property or a portion thereof is leased to a party in interest with respect to a Plan. Moreover, if the party in interest under such lease is an employer of employees covered by the Plan, the acquisition of real property by the Plan would result in the acquisition of employer real property which may violate the provisions of sections 406(a)(2) and 407 of the Act. Accordingly, no relief is afforded by this proposed exemption for such transactions.

to the Plan, of shares of stock of the Calvert Group, Ltd. (Calvert), the employer of Plan participants, in exchange for an initial cash payment and subsequent contingent payments, provided the terms of the transaction are at least as favorable to the Plan as those obtainable in a similar transaction between unrelated parties.

Effective Date: If the proposed exemption is granted, the exemption will be effective January 3, 1984.

Summary of Facts and Representations

1. Calvert is a Delaware corporation which, through its various subsidiaries, operates five registered investment companies (the Funds) and offers transfer agency, shareholder services, portfolio evaluation and accounting with respect to each Fund. Calvert has established three registered investment advisers which manage the Funds: Government Services Management Company, Inc., and Calvert Asset Management Company, Inc. (CAMC) are Delaware Corporations, and Calvert Municipal Management Company (CMMC) is a partnership in which CAMC is a 50% general partner. Mr. Wayne B. Bardsley, Calvert's general counsel, and Mr. David R. Rochat were both 25% general partners of CMMC. Calvert's authorized capital stock consists of 2,000,000 shares of common stock, each with a par value of one cent per share, of which 796,046 shares were outstanding on January 3, 1984 (including 376,146 shares issued during the period June 1, 1983 to January 3, 1984).

2. The Plan is an individual account plan designed to invest primarily in employer securities. As of December 9, 1983, the Plan's assets consisted of 46,300 shares of common stock of Calvert and cash assets of approximately $1,925. The Plan is administered by a Plan Committee consisting of Messrs. D. Wayne Silby, John G. Guffey, Jr., and James C. Howard, and by the Trustees, Messrs. Silby and Guffey, who were also controlling shareholders of Calvert and directors and officers of Calvert and its affiliates. Mr. Howard was also an officer of Calvert and its affiliates and a shareholder of Calvert. The Plan Committee is responsible for supervising the investments of the Plan and authorizing investments by the Trustees. As of November 1, 1983, there were approximately 95 participants in the Plan.

3. Acacia is a District of Columbia corporation and a wholly owned subsidiary of the Acacia Mutual Life Insurance Company, a mutual life insurance company organized in the District of Columbia by special act of Congress. Prior to the sale described below, Acacia and its affiliates were not related to Calvert and its stockholders, including the Plan.

4. On August 24, 1983, an Acquisition Agreement between Acacia and all of the stockholders of Calvert (the Sellers) was executed whereby Acacia would purchase a controlling interest in the issued and outstanding stock of Calvert. The Acquisition Agreement provides that, upon the closing, Acacia will purchase all of the outstanding stock of Calvert other than shares issued pursuant to the exercise of options granted under the Calvert Group, Ltd. 1982 Incentive Stock Option Plan (93,628 shares) and the Calvert Group, Ltd. Non-Qualified Stock Option Plan (80,000 shares). Each of the holders of these 173,628 shares (the Option Stockholders) has entered into an agreement with Acacia giving Acacia the right to purchase the Option Stockholder's shares at any time during the period September 11, 1984 through November 30, 1984, and giving each Option Stockholder the right to sell his or her shares to Acacia at any time during the period December 1, 1984 through February 28, 1985.

5. The date of closing was January 3, 1984. On that date the Sellers received an initial price of $13.50424287 per share for each share of stock sold pursuant to the Acquisition Agreement. The Acquisition Agreement further provides for three additional contingent payments for each such share, determined in accordance with specified formulae, if, during the years ending May 31, 1984 and May 31, 1985, Calvert and its subsidiaries accrue advisory fees exceeding $5,500,000 and $6,500,000, respectively, and if the aggregate operating profit of Calvert and its subsidiaries for the two-year period ending May 31, 1985 exceeds $1,000,000. The Acquisition Agreement also provides that if Acacia or any Seller disputes the amount of advisory fees or operating profit, or both, Acacia will pay the Sellers the undisputed amount and will submit the disputed matter for resolution to an independent certified public accountant to be mutually agreed upon by Acacia and Messrs. Silby and Guffey (see 2, above). Resolution of the disputed matters will be accomplished within 60 days of referral to such accountant, and such resolution will be binding upon the parties. Any controversy or claim relating to the Acquisition Agreement will be settled by arbitration in accordance with the rules of the American Arbitration Association.

The price to be paid by Acacia upon its purchase of shares issued to the Option Stockholders pursuant to the stock option plans mentioned in 4, above, is the same as that described in the preceding paragraph, which, according to the applicant, resulted from arm's-length negotiation between Acacia and the Sellers. The closing date of such purchases shall be within 30 days of notice from Acacia of its intention to purchase such shares or within 30 days of notice from an Option Stockholder of his/her intention to sell such shares, whichever is applicable. The initial payment of $13.50424287 per share and any portion of the contingent payments that is determinable on such closing date will be paid on said date. Payment of the remainder of the purchase price will be made within 92 days after the amount of such payment is determinable.

6. The Acquisition Agreement further provides that each Seller will reimburse Acacia on demand for all damages resulting from any misrepresentation contained in the Acquisition Agreement or from any breach of the Acquisition Agreement and will, at his/her own expense, defend Acacia against and hold Acacia harmless from the after-tax expense and damage arising out of any alleged or threatened misrepresentation or breach of any of the terms of the Acquisition Agreement. In addition to any other remedy it might have, Acacia may reduce any of the additional contingent payments to the Sellers by the amount of any such expense or damage incurred. Any such reduction will be allocated among the Sellers in the same manner in which additional payments are to be allocated (i.e., in proportion to the number of shares sold by each Seller). Messrs. Silby and Guffey (see 2, above) have agreed to assume any liability which the Plan might otherwise incur pursuant to the terms of the Acquisition Agreement and to hold the Plan harmless against any such liability, except for any liability regarding any misrepresentation contained in the Acquisition Agreement concerning the Plan's ownership of stock transferred by it.[5]

7. As a Seller under the Acquisition Agreement, the Plan transferred all of its Calvert shares to Acacia on January 3, 1984. The Plan will share pro rata with all of the Sellers in the receipt of contingent payments and has received cash for the initial price described in 5,

[5] Please note that in their capacities as Plan trustees, Messrs. Silby and Guffey will also be liable under the Acquisition Agreement for any misrepresentation thereunder concerning the Plan's ownership of stock transferred by it.

above. No notes or other evidence of indebtedness will be issued obligating Acacia to make future payments to the Sellers as such obligations exist solely in the Acquisition Agreement. It is anticipated that the Plan will be operated as a "frozen" plan until all possible contingent payments have been made. After all contingent payments are made, the Plan will be terminated and the assets distributed to its participants.

8. The Riggs National Bank of Washington, D.C. (the Bank) has been appointed to serve as the fiduciary for the Plan with regard to the subject transaction. The Bank is a full-service commercial bank and trust company incorporated under the national banking laws of the United States and, as of June 30, 1983, served as trustees for employee benefit plan assets totalling over $785,325,000, of which the Bank had discretionary management responsibility for funds totalling over $566,604,000. It is represented that the Bank is independent of Calvert and Acacia. The average balances of deposits of Calvert, Acacia, and their affiliates in the Bank represent, with respect to each party, no more than 1% of the total deposits of the Bank. The Bank serves as the custodian of the assets of the Funds (see 1, above) and the prototype IRA and Keogh plans sponsored by one of the Funds. For the year ended December 31, 1983, the Bank received custodial fees from the Funds amounting to approximately 0.05% of the Bank's total gross income. The Bank has extended a $50,000 line of credit to Calvert, representing less than 0.1% of the total lines of credit extended by the Bank. The Bank has extended no line of credit to Acacia or any of its other affiliates. There are three common directors among the parties: Messrs. Vincent C. Burke, Jr., of counsel, Steptoe & Johnson Chartered; W. Reid Thompson, Chairman of the Board and President, Potomac Electric Power Company; and Mandell J. Ourisman, Chairman of the Board, Ourisman Chevrolet Co., Inc.—each of whom serves as an outside director of Acacia and of the Bank's parent company, Riggs National Corporation. Mr. Burke also serves as an outside director of the Bank. Messrs. Burke, Thompson, and Ourisman had no role in the Bank's determination regarding the subject transaction, according to the applicant.

9. Before January 3, 1984, the Bank, in its capacity as fiduciary to the Plan with respect to the subject transaction, reviewed, among other items: the Acquisition Agreement; Calvert's consolidated financial statements as of June 1, 1982, and as of May 31, 1983; valuations of Calvert as of September 21, 1982, and as of May 31, 1983; certain additional internal information provided by Calvert's management; and the Plan and its related trust documents. The Bank had compared the proposed financial terms of the sale of Calvert stock with the financial terms of certain other sales of stock. The Bank specifically considered, among other matters, the fixed component of the purchase price payable upon closing and the contingent payment components of the purchase price of Calvert stock. Based upon its review, the Bank found, before the closing date, that the proposed sale of Calvert stock by the Plan would be appropriate and in the best interests of Plan participants and beneficiaries because (a) the sale of Calvert stock, including the stock held by the Plan, was negotiated on an arm's-length basis between unrelated parties; (b) the Plan will receive the same consideration for its Calvert stock as all other stockholders will receive for selling their Calvert stock; and (c) the proposed financial terms of the sale of Calvert stock compared favorably with the financial terms of certain other sales of stock reviewed by the Bank.

10. The Bank has also considered the 376,146 shares of Calvert stock issued during the period June 1, 1983 to January 3, 1984, comprised of the following:

22,500 shares purchased by the Plan with the contributions made by its participating employers for the plan year ended May 31, 1982;

173,628 shares issued to the Option Stockholders upon the exercise of their respective options granted pursuant to the stock option plans mentioned in 4, above;

180,018 shares issued in conversion of Calvert's outstanding convertible debentures which had been issued upon the organization of Calvert on May 31, 1982; and

50,000 shares issued to Acacia in exchange for $675,212.14 which was then transferred to Mr. Bardsley and Mr. Rochat as partial payment for their partnership interests in CMMC (see 1, above).

It is the Bank's understanding that adequate consideration was given for all these shares, that Calvert has been authorized to issue a total of 2,000,000 shares of stock since its inception, and that there were no restrictions on Calvert's ability to issue these additional authorized shares. Accordingly, the Bank states that it does not believe the Plan's interest in Calvert was improperly diluted by the issuance of shares between June 1, 1983 and the closing date.

11. It is represented that the Bank will monitor the subject transaction for compliance under the Acquisition Agreement on behalf of the Plan and will take appropriate action to protect the Plan's interest.

12. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the sale of the Calvert stock, including the stock held by the Plan, was negotiated on an arm's-length basis between unrelated parties; (b) the Plan will receive the same consideration for its stock as all other stockholders will receive for selling their stock; (c) the Bank, an independent fiduciary to the Plan and an experienced manager of employee benefit plan assets, had reviewed the subject transaction and determined that it is appropriate and in the best interests of the Plan participants and beneficiaries; and (d) the Bank will monitor the subject transaction for compliance under the Acquisition Agreement on behalf of the Plan and will take appropriate action to protect the Plan's interests thereunder.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Helene Curtis Industries, Inc. Employees' Profit Sharing Retirement Plan (the Plan) Located in Chicago, Illinois

[Application No. D-5195]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continuation past June 30, 1984 of a lease of certain improved real property by the Plan to Helene Curtis Industries, Inc. (the Employer), the sponsor of the Plan; provided that the terms and conditions of such lease are at least equivalent to those which the Plan could expect in an arm's-length transaction with an unrelated party.

Effective Date: This exemption, if granted, will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with 837 participants and total assets of $15,271,585 as of December 31, 1983. Investment decisions on behalf of the Plan are made by

trustees (the Trustees) who are employees and/or directors of the Employer. The Employer is a public corporation engaged in the manufacture and marketing of cosmetics, hair care products, adhesives and sealants.

2. Among the Plan's assets is a parcel of improved real property (the Property) located at 3123 North Pulaski Road in an industrial district of Chicago, Illinois. The Property is improved with a 55,000 square foot building which is utilized by the Employer as a facility for manufacturing, storage and office space. As of December 31, 1983, the Property had a fair market value of $411,044, according to an update of an appraisal performed by Mr. Morris Yanoff (Yanoff), an independent licensed real estate broker whose office is located in Chicago, Illinois. The Employer has leased the Property from the Plan continuously since June 30, 1984. The Employer represents that the Lease met the requirements of section 414(c)(2) of the Act and therefore was statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act.[6] The Employer is requesting an exemption to permit the Plan to continue leasing the Property to the Employer beyond June 30, 1984 pursuant to a six-month extension of the Lease effective July 1, 1984.

3. The Lease is a triple net lease under which the Employer pays all costs of repairs and maintenance and all taxes related to the Property. For the duration of the extension of the Lease beyond June 30, 1984, the Employer will provide that the Property is fully protected with fire, extended coverage and public liability insurance with the Plan named as an additional insured. Under the Lease the Employer is required to indemnify the Plan and hold the Plan harmless against all claims, demands, and liabilities arising from the Employer's use of the Property.

4. Yanoff has appraised the Property for its fair market rental value and represents that for the period of January 1, 1984 to December 31, 1984, the Property's annual fair market rental value is $59,796 or $4,983 a month. Pursuant to Yanoff's appraisal and a determination of prevailing conditions affecting the Property's fair market rental value by an independent fiduciary (see 5 below) immediately prior to June 30, 1984, the rental under the Lease during its extension to December 31, 1984 is set at $4,983 per month. The Lease will not be subject to further extension or renewal beyond December 31, 1984, at which time the Employer intends to relocate its manufacturing operations currently conducted within the Property.

5. The interests of the Plan for all purposes under the Lease during its extension will be represented by an independent fiduciary, B.P. Pai (Pai), president of Institutional Portfolio Services of Chicago, Illinois, to whom the Trustees have delegated total management discretion with respect to the Property. Pai represents that he has substantial fiduciary experience under the Act, he has performed investment advisory services for the Plan for fifteen years, and his only relationship with the Employer is that of fiduciary with respect to the Plan.

6. Pai will represent the Plan in the enforcement of all terms and conditions of the Lease and on behalf of the Plan will monitor the Employer's performance thereunder for the duration of the Lease's extension to December 31, 1984. After a review and analysis of the proposed extension of the Lease, Pai represents that it is and will remain in the best interests of the participants and beneficiaries of the Plan. Pai has determined that the Lease provides a favorable rate of return in comparison to the returns on other Plan assets and that the rental under the Lease will provide the Plan with a return as high or higher than could be expected in renting the Property to an unrelated party. Pai notes that the Property constitutes only 2.7 percent of the assets of the Plan as of December 31, 1983 and that the Plan's return on the Property will be net of all expenses. Pai represents that in light of the Employer's intention to relocate its manufacturing operations elsewhere, the Lease extension benefits the Plan by providing an additional six-month period under the Lease to secure a new tenant or possible purchaser for the Property.

7. In summary, the applicant represents that the extension of the Lease satisfies the criteria of section 408(a) of the Act because: (1) The interests of the Plan under the Lease are represented by Pai, a qualified independent fiduciary; (2) the Lease is a triple net lease under which the Employer will pay all expenses related to the Property and will protect the Plan's investment in the Property with fire and extended coverage insurance; (3) during the extension of the Lease the Plan will receive the Property's fair market rental value; (4) Pai has determined that the extension of the Lease will provide the Plan with an additional six-month period in which to secure future arrangements for the Property while receiving income under the Lease.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Winchester Optical Company Pension Plan (the Winchester Plan); Winchester Optical Company of Geneva, New York, Inc. Pension Plan (the Geneva Plan); Winchester Optical Company of Rochester, New York, Inc. Pension Plan (the Rochester Plan); and Winchester Optical Company of Williamsport, Pennsylvania, Inc. Pension Plan (the Williamsport Plan, collectively, the Plans) Located in Elmira, New York; Geneva, New York; Rochester, New York; and Williamsport, Pennsylvania

[Application No. D–5307]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loans (the Loans) of 25% of the assets of each Plan to Winchester Optical Company (the Employer), a party in interest with respect to the Plans provided that the terms and conditions of the Loans are no less favorable to the Plans than those obtainable in a similar transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined benefit pension plans maintained separately by the Employer and three subsidiaries. As of May 31, 1984, the Winchester Plan, which is the Plan sponsored by the Employer, had 127 participants and assets of $481,048.23. As of May 31, 1984, the Geneva Plan had 31 participants and assets of $150,022.72. As of May 31, 1984, the Rochester Plan had 19 participants and assets of $60,492.02. As of May 31, 1984, the Williamsport Plan had 50 participants and assets of $443,055.08. The trustee of the Plans is Chemung Canal Trust Company (the Bank). The Bank is solely responsible for the investment decisions of the Plans.

2. On February 28, 1974, the Employer executed a mortgage (the Mortgage),

[6] The Department expresses no opinion as to whether the Lease met the requirements of section 414(c)(2) of the Act.

which was recorded, covering a parcel of improved real property located in Elmira, New York (the Property) in the amount of $438,000 to secure a loan of like amount from the Marine Midland Bank (Marine Midland). The face amount of the Mortgage became due on March 1, 1984. Pursuant to an agreement between the Employer and Marine Midland, the Mortgage has been continued. As of August 1, 1984, the balance due on the Mortgage was $304,590.07.

3. It is proposed that the Plans loan 25% of the value of each Plan's assets to the Employer. The Employer shall use the proceeds of the Loans to repay its debt to Marine Midland. In the event that the sum total of the Loans is less than the balance due Marine Midland, the Employer shall pay any such difference from its own assets. The Loans will be represented by four promissory notes (the Notes) and will be secured by the Mortgage, which will be assigned to the Plans by Marine Midland contemporaneously with the making of the Loans. The assignment will be duly recorded in the Chemung County Clerk's office.

4. The Notes require that the Loans be repaid over a ten year term in 120 monthly installments of principal and interest. For the first five years of the Loan, the interest rate will be 13.5% per annum. On the fifth anniversary of the making of the Loans, the Bank shall adjust the interest rate to the then prevailing rate for five year fixed rate mortgages in Chemung County, New York, or if there is no such rate, to the most nearly equivalent commercial mortgage rate then afforded by the Bank in its separate corporate capacity at its main office in Elmira, New York.

5. On May 15, 1984, Clayton A. Ambrose, a licensed real estate broker appraised the Property and determined that it had a fair market value of $660,000 as of that date. The Mortgage contains warranties by the Employer to the effect that it has full right, title and interest to the property and that the Employer shall procure and maintain insurance against loss or damage to the Property, for the benefit of the Plans, until the Loans are repaid in full.

6. The Bank, acting as trustee of the Plans represents that it reviewed the terms and conditions of the Loans, including the Notes, the Mortgage and assignment documents, the annual reports for the Plans, the financial statements of the Employer for 1982 and 1983, the appraisal of the Property and loan proposals from two local banks. The Bank further represents that based upon its review and evaluation of this information, it believes that the Loans are in the best interests and protective of the Plans and their participants and beneficiaries. The Bank represents that it has no relationship with the Employer other than as trustee of the Plans and that it has no relationships with any of the principals of the Employer.

7. The Bank represents that (a) it will monitor and enforce the terms and conditions of the Loans and foreclose on the Loans in case of default; (b) it will require additional collateral if at any time the value of the Property falls below 150% of the balance due on the Loans; (c) it will not liquidate any assets of the Plans that are earning a 13.5% or greater annual rate of return in order to fund the Loans; (d) the Bank has reviewed the liquidity demands of each Plan and determined that for each Plan there are more than sufficient assets available following the proposed Loans to meet any foreseeable pension payments and the Bank can envision no liquidity problems after said transactions; (e) the Notes are structured with a renegotiation of the interest rate after five years rather than a ten year fixed rate based on the Bank's investment philosophy and its belief that a locked in interest rate for ten years is not prudent given the interest markets in the recent past; and (f) a comparison of the loan proposals from the two local banks with the terms of the proposed Loans and Mortgage demonstrate that the terms of the Loans and Mortgage are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

8. In summary, the applicant represents that the Loans meet the statutory criteria of section 408(a) of the Act because (a) the Loans are secured by the Property, whose appraised fair market value is more than 150% of the amount of Loans; (b) the Loans will at all times be secured by property with a value of at least 150% of the balances of the Loans; (c) the Bank, acting as independent fiduciary of the Plans, has reviewed the terms and conditions of the Loans and determined that the Loans are in the best interest and protective of the Plans and their participants and beneficiaries; and (d) the Bank will monitor and enforce the terms and conditions of the Loans on behalf of the Plans.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Thermo Industries, Inc. and Affiliated Companies Profit Sharing Plan and Trust (the Plan) Located in Charlotte, North Carolina

[Application No. D-5321]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (B)(1) and (b)(2), and 407 (a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c) (1) (A) through (E) of the Code shall not apply to the continued leasing, beyond June 30, 1984, of certain improved real property by the Plan to Thermo Industries, Inc. and Affiliated Companies (the Employer), provided the terms of the transaction are no less favorable to the Plan than those available in an arm's length transaction with an unrelated third party.

Effective Date: If granted, the exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which had 89 participants and net assets of approximately $3,754,032 as of September 30, 1983. The trustee (the Trustee) of the Plan and the decision-maker with respect to Plan investments is Mr. E.C. Hunt, Jr., who is also an officer and shareholder of the Employer. The Employer is a wholesale distributor of air conditioner products.

2. Among the Plan's assets is a parcel of improved real property (the Property) located at 1424 South Bloodworth Street, Raleigh, North Carolina. The Property consists of approximately 125,000 square feet of land improved by an offfice building and warehouse. The Property is currently leased to the Employer pursuant to renewals of a binding written lease agreement which was executed on February 23, 1970 (the 1970 Lease). The applicants represent that the 1970 Lease and its subsequent renewals have been provided relief by the transitional rules of section 414 (c) (2) of the Act. The applicants state that rent under the lease renewals since July, 1976, has been adjusted periodically so that the net annual rental payable to the Plan has been ten percent of the appraised fair market value of the Property. The Employer is currently

paying rent to the Plan of $5,875 per month.[7]

3. In December, 1983, Messrs. Martin Winfree, Jr., M.A.I. and Neil C. Gustafson of Worthy & Wachtel, an independent appraisal, consulting, construction and brokerage firm in Raleigh, North Carolina, determined that the fair market value of the Property as of September 30, 1983, was $705,000. This amount represents approximately 19% of the Plan's current assets. On June 22, 1984, Mr. Winfree and an associate determined that the fair market rental value of the Property, as of July 1, 1984, would be $78,716 per annum, or about $6,559.66 per month, assuming that the Property was leased under an absolute net lease.

4. The Plan has entered into a new lease (the New Lease) with the Employer which took effect on July 1, 1984. The New Lease is for a five-year term ending on June 30, 1989, and provides for rental of $78,720 per annum or $6,560 per month for the year commencing July 1, 1984 and ending June 30, 1985. For each year thereafter the rental will be adjusted upward, but not downward, to reflect any increase in the fair market rental value of the Property as determined annually by an M.A.I. appraiser selected by an independent fiduciary (see below) on behalf of the Plan. The terms of the New Lease are absolute net, providing that the Employer, as lessee, will pay for all utilities, maintenance, taxes and insurance on the Property.

5. Mr. John D. Richards (Mr. Richards) of E.F. Hutton & Company, Inc. (E.F. Hutton), with offfices in Charlotte, North Carolina, has been appointed to act as an independent fiduciary for the Plan with respect to the New Lease. Mr. Richards, who is also the president and chief executive officer of Plan Administration, Inc., a corporation whose principal business is the administration of qualified retirement plans, states that he has been involved with the administration of retirement plans under the Act since the Act's passage in 1974,. As an employee of E.F. Hutton, he is currently involved with the investment of assets of qualified employee benefit plans totaling approximately $100,000,000. Mr. Richards represents that he is independent of the Employer and is well acquainted with the liabilities and responsibilities of an independent fiduciary under the Act. Prior to the July 1, 1984 effective date of the New Lease, Mr. Richards reviewed the Plan's investment portfolio, the appraisals of the Property, the terms and conditions of the New Lease and the Property itself, and determined that the retention of the Property by the Plan and the leasing of the Property to the Employer under the terms and conditions of the New Lease are in the best interest of the Plan's participants and beneficiaries. Mr. Richards notes specifically that the Property is the only real estate owned by the Plan, that all other investments of the Plan are very liquid, that the New Lease will provide the Plan with a fair rate of return based upon annual independent appraisals and that the Property constitutes an excellent investment for the Plan with substantial opportunity for capital appreciation as well as continued rental. Mr. Richards will monitor all terms and conditions of the New Lease and make any decisions for the Plan with respect to the New Lease, including supervising the retention of an independent appraiser to provide appraisals of the fair market rental value of the Property annually, and will take any enforcement actions necessary to protect the rights of the Plan with respect to the Property.

6. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act have been satisfied because: (1) The New Lease was approved prior to its execution and will be monitored and enforced by Mr. Richards, the independent fiduciary for the Plan; (2) the terms of the New Lease ensure that the Plan will receive at least the fair market rental value of the Property as determined annually by an M.A.I. appraiser selected under the supervision of the independent fiduciary for the Plan; (3) the current fair market value of the Property represents approximately 19% of Plan assets and the Property is the only real estate investment held by the Plan; and (4) the independent fiduciary for the Plan has represented that the retention of the Property by the Plan and the leasing of the Property to the Employer under the terms of the New Lease are in the best interests of the Plan's participants and beneficiaries and will allow the Plan to maintain a sufficiently liquid and diversified investment portfolio.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (this is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 31st day of August, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-23626 Filed 9-5-84; 8:45 am]

BILLING CODE 4510-29-M

[7] The Department expresses no opinion as to the applicability of the transitional rules of section 414 (c) (2) of the Act to the 1970 Lease and its renewals.

[Prohibited Transaction Exemption 84-131; Exemption Application No. D-4994 et al.]

Grant of Individual Exemptions; Stove Plumbers Supplies Co.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Stove Plumbers Supplies Co. Profit Sharing Plan (the Plan) Located in Oakland, California

[Prohibited Transaction Exemption 84–131; Application No. D–4994]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of five years, to the proposed loans by the Plan of up to 25% of its assets to Stove Plumbers Supplies Co. and to the guarantee of repayment by Mr. Jack N. Soloman, Sr., provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27849.

Temporary Nature of Exemption

This exemption is temporary and will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this five year period until the loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

The Martin Sprocket & Gear, Inc. Employees Profit Sharing Trust (the Plan) Located in Arlington, Texas

[Prohibited Transaction Exemption 84–132; Exemption Application No. D–5121]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the continued leasing of certain real property (the Property) by the Plan to Martin Sprocket & Gear, Inc. (the Employer), a party in interest with respect to the Plan, and (2) the possible future cash sale of the Property by the Plan to the Employer if, upon termination of the lease, the Employer exercises its option under the lease to purchase the Property, provided the terms of each transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; and that any purchase by the Employer is at the then fair market value of the Property and fully paid in cash on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27851.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Hastings Construction Co., Inc. Profit Sharing Plan (the Plan) Located in Hastings, Minnesota

[Prohibited Transaction Exemption 84–133; Exemption Application No. D–5205]

Exemption

The restrictions of section 406(a), 406 (b)(1) and 406 (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of six years to: (1) The proposed sales by Hastings Construction Co., Inc. (the Employer), the sponsor of the Plan, of its interests in contracts for deed or residential first mortgage loans (collectively, the Contracts) to the Plan, provided that the terms and conditions of such sales are at least as favorable to the Plan as those which the Plan could receive in similar transactions with an unrelated party; and (2) the guarantee of the Contracts by the Employer, Donald Gustafson and his wife and Paul W. Lawrence and his wife.

Effective Date: The effective date of this exemption is May 15, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27855.

For Further Information Contact: Richard Small of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

George Kadian, M.D. and Herbert W. Rossin, M.D., P.C. Employees' Pension and Profit Sharing Plans (the Plans) Located in Birmingham, Michigan

[Prohibited Transaction Exemption 84–134; Exemption Application Nos. D–5221 and D–5222]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of sections 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the

proposed cash sale of an unimproved parcel of real property in which each of the Plans has an ownership interest to a partnership, as described in the notice of proposed exemption, which will be a party in interest with respect to the Plans; provided that the price paid for the property is no less than its fair market value at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27856.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Bell, Orr, Ayers and Moore P.S.C. Profit Sharing Plan (the Plan) Located in Bowling Green, Kentucky

[Prohibited Transaction Exemption 84-135; Exemption Application Nos. D-5221 and D-5237]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of sections 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1984, to the lease of space in an office building by the Plan to Bell, Orr, Ayers, and Moore, P.S.C., the sponsor of the Plan, provided that the terms and conditions of the lease are on terms not less favorable than those terms available with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27857.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive or whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject or the exemption.

Signed at Washington, D.C., this 31st day of August, 1984.

Elliott I. Daniel,

Acting Assistant Adminstrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-23625 Filed 9-5-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Committee Management Technical Review Committee for Advanced Scientific Computing; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Technical Review Committee for Advanced Scientific Computing is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to Section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of committee: Technical Review Committee for Advanced Scientific Computing.

Purpose: To provide technical assistance in reviewing proposals for the establishment of and access to advanced scientific computing centers that will be available to university based scientists and engineers in the United States. The Committee or Committee members may also be called upon to advise the Foundation on overall management and operation of Foundation supported advanced computing centers.

Effective date of establishment and duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Committee will operate for an initial period of one year.

Membership: The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be chosen so as to be reasonably representative of the advanced computing center community. Due consideration will be given to achieving representation from women and minority scholars, the handicapped, and different geographical regions of the country.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), Foundation policy and procedures, GSA Interim Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

Dated: August 31, 1984.

Richard Nicholson,

Acting Director.

[FR Doc. 84-23577 Filed 9-5-84; 8:45 am]

BILLING CODE 7555-01-M

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date, time and place:

September 24, 1984, 2:00 pm-6:00 pm

September 25, 1984, 9:00 am-12:00 noon, 1:30 pm-4:40 pm

National Science Foundation, 1800 G Street, N.W., Room 642, Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. Harvey B. Willard, Head, Nuclear Science Section, National Science Foundation, Washington, D.C. 20550, 202/357-7993.

Summary minutes: May be obtained from: Mrs. Shirley Goulart, National Science Foundation, 1800 G Street, N.W., Room 341, Washington, D.C. 20550.

Purpose of committee: To provide advice on a continuing basis to both DOE and NSF on the management of and long range planning for basic nuclear science in the United States.

Agenda:

Monday, September 24, 1984, 2:00 pm-6:00 pm: Discussion of the report from the special subcommittee addressing scientific issues connected with the construction of a

4 GeV continuous beam electron accelerator.

Tuesday, September 25, 1984, 9:00 am–12:00 noon: Discussion of the Long Range Plan for Nuclear Science.

1:30 pm–4:30 pm: Report on the DOE and NSF Budgets for FY 1985, discussion of stable isotopes production, reports from subcommittees, and other business.

Dated: August 31, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-23578 Filed 9-5-84; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Recommendation Responses

Responses From

Aviation—*Federal Aviation Administration: May 5: A-82-75:* Change 33 to FAA Order 8440.5A, General Aviation Operations Inspector's Handbook, issued January 9, 1984, transmits Operations Bulletin No. 84-1 which addresses the operation of flaps when landing on very wet or slush covered runways with specific models of the Hawker Siddeley HS-125. *May 5: A-84-4:* Cessna has elected to replace all rod ends in the field with new New Hampshire Ball Bearing (NHB) parts designed to MIL-B-81935 specification with the 35-degree bearing head angle, in order to catch all the discrepant Nippon Micro Bearing (NMB) rod ends. Cessna has eliminated all P/N 9910139 actuators with the NMB rod ends from their parts inventory. *A-84-5:* Is preparing an Airworthiness Directive that will require installation of the rod end kits as provided by Cessna Service Letters and Service Kits PJ-84-10 and SK-441-76 dated March 2, 1984, and NE-84-10, and SK-421-121 dated March 9, 1984. *A-84-6:* The operational load requirements of the Cessna Model 400 series flap actuators, flap control rod assemblies, and landing gear doors are significantly below the nose landing gear actuator loads. *May 7: A-84-10:* Is preparing a General Aviation Airworthiness Alert (Advisory Circular 43-16) to encourage all owners and operators of Piper PA-28 series aircraft that are being operated in extremely cold weather conditions to immediately protect the engine oil breather tube from icing. *A-84-11:* Evaluated the design of crankcase breather line installations of all Piper model 28 airplanes and Piper models with similar engine installations and found that the design of the installation is adequate for all but abnormal accumulation of water or ice blockage. *May 7: A-82-168:* Has completed the first half of the expanded FAA and NASA research program to correlate runway friction measuring devices with airplane stopping performance. *A-82-169:* The Society of Automotive Engineers has established an ad hoc committee charged with providing technical documentation and criteria including minimum performance standards for takeoff acceleration monitoring systems. The committee will be composed of representatives of the aviation industry and of the FAA. *May 14: A-84-7:* Rolls-Royce Modification 1719 is not an acceptable modification at this time due to flame tube buckling and distress experienced by high time engines incorporating this design change. Airworthiness Directive 77-18-02 needs to be revised to clarify flame tube suspension system inspection requirements and incorporate the manufacturer's most current service instructions to eliminate this potential source of operator confusion. *May 14: A-82-57:* The November 1983 issue of the General Aviation Airworthiness Alerts, Alert No. 64 (Advisory Circular 43-16) calls attention to concerns relative to isopropyl alcohol deice systems. Has reviewed and evaluated the design of all isopropyl alcohol windshield deicing systems on aircraft to verify compliance with FAA regulations pertaining to flammable fluid fire protection. *May 24: A-81-23, A-76-36, and A-74-14:* Change 7 to the FAA Air Traffic Control Handbook 7110.65C, effective March 15, 1984, outlines the procedures for the handling of Center Weather Advisories. *May 24: A-78-35:* On January 12, 1981, revised 14 CFR 21.23, the regulatory basis for the certification of gliders, so that an applicant may comply with those airworthiness requirements (14 CFR Part 23 or 14 CFR Part 27) that the FAA considers appropriate and applicable to the specific type design or with such other airworthiness requirements that the FAA may find to provide an equivalent level of safety to those parts. *May 24: A-82-118:* Has prepared a draft Advisory Circular, "Ice Protection for Small Airplanes" which will stress that pilots should be provided with appropriate flight precautions for flight during icing conditions. *Jun. 4: A-84-12:* A special requirement in paragraph (d) of the Technical Standard Order C69a establishes December 3, 1984, as a cutoff date which is intended to promote the introduction of new heat-resistant slides into service. Is conducting a survey of slides intended for installation on new airplanes to determine if the cutoff date will produce the desired results and whether or not regulatory action is necessary. *A-84-13:* The cost estimate for replacement of the nearly 14,000 slides in the fleet was $74 million. *Jun. 4: A-84-16:* Change 28 to FAA Order 8440.5A, General Aviation Operations Inspector's Handbook, Section 5, Waiver of Section 91.79 (b) & (c) for Motion Picture and Television Filming Production, which was issued on March 23, 1982, specifically addresses all types of aircraft. Will amend Order 8440.5A, Chapter 14, Section 5 to clarify and emphasize that helicopter low-level movie-making operations do require a Certificate of Waiver. *Jun. 6: A-81-162:* Is amending the appropriate flight test guides to reflect that a person will be required to demonstrate pilot competency in instrument procedures in the class of airplane for which the privileges are sought. If the applicant elects not to demonstrate competency in instrument flight, the applicant's multiengine privileges will be limited to visual flight only. *Jun. 12: A-82-130 and -131:* The Engine and Propeller Certification Directorate is working with the small Airplane Certification Directorate and various airplane manufacturers to study the requirement for a means of assuring that a carburetor mixture control lever will move automatically to the full-rich position in the event it becomes disconnected from the mixture control linkage. *Jun. 12: A-84-14:* Will issue a Notice to reemphasize the requirements of the Code of Federal Regulations regarding air carrier maintenance/inspection functions and duties. *A-84-15:* Will issue a Notice to emphasize the importance of aircraft maintenance logbook and records inspections. *Jun. 21: A-83-66:* Issued Airworthiness Directive 84-09-07 on April 27, 1984, applicable to certain models of Maule M-4 and M-5 series airplanes, requiring the replacement of the plugs installed in the sumps of the main and auxiliary fuel tanks with quick drain valves, and must be accomplished within the next 50 hours time-in-service. *Jul. 2: A-84-10:* A General Aviation Airworthiness Alert (Advisory Circular 43-16) has been prepared to encourage owners/operators of Piper PA-28 series airplanes operating in extremely cold weather conditions to immediately protect the engine oil breather tube from icing. *Jul. 2: A-83-50 and -51:* Piper Aircraft Corporation expects to issue shortly Service Bulletin No. 771, which will affect approximately 29,000 airplanes of nine different model number series, to provide for a placard to be installed near the parking break control and will state the proper sequence for operation of the parking brake. *Jul. 2: A-83-54:* Is developing an

article for the *FAA General Aviation News* that will contain and stress information on the visual scan techniques contained in Advisory Circular 90-48C, Pilots' Role in Collision Avoidance, and also information extracted from the Aircraft Owners and Pilots Association's film titled, "Take Two and See." *A-83-55:* As of March 1, 1984, the FAA published a new series of written test question books for which the FAA written tests are administered. In each of the appropriate series of tests are questions and multiple choice answers pertaining to visual scanning and collision avoidance. *Jul. 9: A-83-3 through -7:* Issued on May 4, 1984, Airworthiness Directive 84-10-01 applicable to certain models and series of Cessna airplanes which requires inspection and modification of the fuel system. *Jul. 9: A-83-61:* FAA and Fairchild are finalizing a service bulletin to be used in a Notice of Proposed Rulemaking that, if adopted, will require certain hydraulic tube assemblies be replaced in Fairchild SA 226 airplanes. *Jul. 16: A-83-34:* Will reexamine the data of its investigation and its decision not to issue an Airworthiness Directive to make compliance with Cessna Service Letter SE69-16 compulsory. *Jul. 23: A-84-8:* Is developing a service difficulty reporting program under the Aviation Safety Analysis System (ASAS), which will improve its data gathering, trend forecasting, and communicating capabilities. *A-84-9:* Will issue a Notice to emphasize the importance of FAA Order 8320.12, Section 28, Special Field Reporting Requirements, pages 915 through 924, and to stress the need for followup action to ensure the effectiveness of corrective actions taken. *A-84-17:* Will review Eastern Air Lines manuals and take appropriate action to ensure consistency of its procedures and checklists in regard to emergencies. *A-84-18:* Is drafting an air carrier operations bulletin which addresses emergency procedures and communications between the flightcrew and the cabin crew during emergency situations. *A-84-19:* Is initiating a research and development project regarding means of improving specifications for life preserver donning characteristics. *A-84-20:* Is completing a comprehensive water survival research and development program, the final report of which will be published for public comment. The report will address the merits of life vests and flotation cushions. *Jul. 31: A-83-44:* Will issue a General Aviation Airworthiness Alerts (Advisory Circular No. 43-16) article describing the incident of a cracked main landing gear trunnion on Cessna N6866C. *Jul. 31: A-77-16:* Is developing a Notice of Proposed Rulemaking to amend 14 CFR Part 139 in which the subject of runway safety areas will be addressed. *Aug. 6: A-84-21:* Pertinent wording in 14 CFR 139.65 will be revised to read ". . . appropriate safeguards against entry of nonessential persons or large animals on to the airport operations area . . . ." In addition, words will be added to the paragraph to state clearly that Part 139 will be applicable where Part 107 requires no control measures. *A-84-22:* Believes that FAA Order 5280.5, paragraph 203, gives sufficient criteria for the types of fencing and other restrictive measures which are considered acceptable to satisfy 14 CFR Part 139. *A-84-23:* Will revise FAA Order 5280.5 to include specific criteria for monitoring ground vehicle activities to be used during the certification inspection of the airport. *A-84-24:* Believes the concept of an airport directorate having technical resources and authority to provide leadership for the airport certification program and consistent application of 14 CFR Part 139 has considerable merit. *A-84-25 and -26:* Will issue a Notice of Proposed Rulemaking concerning certificating fueling personnel at certified airports and establishing designated fueler certification examiners. *A-84-27 and -28:* Will revise FAA Order 5280.5, paragraph 110j to provide appropriate guidance concerning training of fueling personnel, fuel storage area inspections, and facility acceptability criteria, and will include a reference to Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling and Dispensing on Airports. *A-84-29:* Advisory Circular 150/5200-18, Airport Safety Self-Inspection, will be amended to include fuel facility inspections. *A-84-30:* Will amend Advisory Circular 150/5300-4B, Utility Airports-Air Access to National Transportation, and/or Advisory Circular 150/5300-12, Airport Design Standards-Transport Airports concerning design and construction standards for fuel storage area site selection and safety devices at airport fuel storage facilities. *A-84-31:* Plans to amend 14 CFR Part 139 to substitute aqueous film forming foam in lieu of the currently specified protein foam agent in 14 CFR 139.49(b) crash-fire-rescue index requirements for water and extinguishing agents without changing the required quantity. *A-84-32:* Will continue to accept the number of operators for which a crash-fire-rescue vehicle is designed. *A-84-33:* Is studying clothing standards for crash-fire-rescue personnel. *A-84-34:* Plans to revise 14 CFR Part 139 to require full-scale demonstration of emergency plans and procedures where practicable. FAA Order 5280.5, paragraph 184, will be revised to include means for handling situation where demonstration is not practicable. *A-84-35:* Will incorporate in a 14 CFR Part 139 rulemaking proposal calling for a reduction in crash-fire-rescue capability at index A and B airports a list of affected airports, a list of types and schedules of air carrier aircraft serving these airports, and a description of the effect of such a reduction on the firefighting posture of the airports. *A-84-36:* Is planning a project to develop a computer analytical model for predicting behavior and evaluating low-impact resistance structures. ICAO's Frangible Aids Study Group is working on the revision and updating of Annex 14. *A-84-37:* Will study the interrelationships of several factors in determining the feasibility of an aircraft arresting system using soft ground or a layer of uncompacted sand or gravel at the end of runways bordering water. *A-84-38 through -40:* Is continuing to study the recommendations concerning obstructions on aircraft operations. *A-84-41:* Cognizant FAA management is maintaining a close and continuing surveillance to assure that maintenance services for existing navigational facilities will continue during the period of transition to the new generation of equipment. *Aug. 6: A-79-103:* The FAA and a task force of aviation industry groups have reviewed regulations regarding major repairs and have concluded that present regulations are adequate. *Aug. 13: A-77-63:* Provided current status of FAA's efforts designed to improve weather detection and display, including remoting color weather radar data to air traffic control centers and en route flight advisory service locations, doppler weather radar, color weather radar in terminal facilities, meteorologist/center weather service units, and weather radar displays for ARTCC sector controllers. *Aug. 14: A-84-52:* Has examined the operating procedures of commercial sightseeing tours in the Grand Canyon, and has initiated discussions with tour operators to establish standardized procedures for the use of tour operators and for public dissemination. *Aug. 21: A-79-93:* The manufacturer has revised the Beech Model 99 Airplane Flight Manual, Procedures Before Takeoff Section, to include a stabilizer out-of-trim warning system check. The Model 100 Pilot's Operating Manual is being revised to move the stabilizer out-of-trim warning system check from Section

10, Systems, to Section 2, Normal Procedures.

Department of Defense: Aug. 8: A-82-159: DOD controllers comply with FAA Handbook 7110.65, paragraph 943, which encompasses the recommendation to require that Automatic Terminal Information Service broadcasts be updated promptly after receipt of reports of braking conditions worse than those reported in the current broadcast, and when conditions are conducive to deteriorating braking action, include a statement that braking action advisories are in effect. *A-84-61:* DOD installations meet or exceed requirements of 14 CFR 139.69. *A-84-62:* Will distribute copies of NTSB Special Investigation Report—"Large Airplane Operations on Contaminated Runways" to appropriate DOD airport facilities. *A-82-157:* Current DOD regulations, in accordance with FAA handbook 7110.65, require personnel to relay runway braking action reports to base operations and arriving/departing aircraft when reports indicate braking action is less than good. DOD air traffic controllers are required to issue braking action advisories (good, fair, poor, nil) to arriving aircraft whenever "advisories" are in effect. Advisories are required whenever weather conditions are conducive to deteriorating or rapidly changing runway conditions, or a pilot report of "poor" or "nil" has been received. *A-82-158:* The requirements to disseminate "poor" and "nil" braking action reports in a timely fashion is stressed in initial and recurring air traffic controller training. FAA Handbook 7110.65 now requires appending braking action reports where the "type of aircraft or vehicle from which the report is received." Considers informing departing and arriving pilots when no recent landing by a comparable aircraft has been made to be an extraneous transmission and subject to excessive interpretation.

Aircraft Owners and Pilots Association: Jun. 6: A-84-51: AOPA has disseminated information on the dangers of alcohol use in connection with flying for many years through articles in *AOPA Pilot* magazine, and in the monthly newsletter to more than 265,000 members. The topic has been included in many of the training courses and seminars conducted for pilots throughout the country.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Dated: August 31, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84-23551 Filed 9-5-84; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Ad Hoc Advisory Committee for Review of Enforcement Policy; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the Administrator, General Services Administration, the Nuclear Regulatory Commission has determined that the establishment of the Ad Hoc Committee for Review of Enforcement Policy is necessary and in the public interest in order to obtain independent advice and recommendations concerning NRC enforcement policy and practice.

The purpose of the Committee is to review NRC's current enforcement policy, which was promulgated in March 1982 (47 FR 9978), to determine whether it achieved defined purposes and provide the Commission with recommendations on any changes it believes advisable. The present policy provides a range of strong enforcement measures to encourage licensee compliance and dissuade violations of safety and environmental requirements.

The Committee will operate for a period of four to six months.

Dated at Washington, DC, this 31st day of August 1984.

[FR Doc. 84-23566 Filed 9-5-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Written Comments on the Harmonized Commodity Description and Coding System

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting public comments on changes which it has made in the draft conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System), which was prepared by the U.S. International Trade Commission and submitted to the President on June 30, 1983. Comments must be filed with the TPSC by the close of business, November 5, 1984.

SUPPLEMENTARY INFORMATION:

1. Background

The Harmonized System is a new international product nomenclature which has been developed under the auspices of the Customs Cooperation Council and is being proposed for world-wide use in the classification, description, and coding of goods for customs purposes, the collection of statistical data on imports and exports, and the documentation of transactions in international trade. The Harmonized System will be implemented by an international convention that obligates Contracting Parties to use the six-digit Harmonized System nomenclature as the basis for their national customs tariff and statistical nomenclatures for imports and exports.

The United States participated in the technical work of developing the Harmonized System in accordance with section 608(c) of the Trade Act of 1974. As requested by the President on August 24, 1981, the U.S. International Trade Commission prepared a draft conversion of the TSUS into the nomenclature structure of the Harmonized System and submitted its draft to the President on June 30, 1983 (USITC Publication 1400). After giving public notice in the **Federal Register** (Vol. 48, No. 148, August 1, 1983, pages 34822 and 34823), the Trade Policy Staff Committee held public hearings on the draft conversion on November 15-16, 1983 in New York, and on November 21-23, 1983 in Washington. After considering the information presented in connection with the public hearings, the TPSC made appropriate changes in the Commission's draft conversion as summarized in the next section.

2. Summary of Changes

In general, the TPSC made the types of changes described below throughout the draft conversion:

(1) Editorial amendments and corrections of typographical errors;

(2) Changes in rates of duty for technical reasons;

(3) Insertion of additional tariff rate lines in order to preserve existing rate treatment;

(4) Elimination of all classification provisions based on the component material in chief value;

(5) Substitution of a single flat rate (or, in some cases, two or three flat rates) for all rate provisions based on the

highest rate applicable to any component material;

(6) Deletion of additional U.S. notes which were throught to be unnecessary;

(7) Elimination of certain textual adaptations in order to better align the conversion on the internationally agreed legal text;

(8) Other changes designed to shorten or clarify the text or to simplify the application of the tariff.

In the individual sectors of the draft conversion, the TPSC made some additional changes as outlined below:

Agriculture—reinstatement of most seasonal distinctions, of most tariff/quota provisions, and of the distinction between fish imported in bulk and not in bulk.

Chemicals—reinstatement of the Chemical Appendix and elimination of the automatic penalty provision in additional U.S. note 3 to Section VI.

Textiles—reinstatement of most of the end-use provisions for wool and elimination of all of the distinctions between ornamented and non-ornamented wearing apparel.

Footwear—substitution of a new text defining "unfinished footwear" for the present test of additional U.S. Note 5, insertion of new subheadings in heading 6405 to provide for unfinished footwear, and deletion of additional U.S. note 6, requiring that rubber and plastics be treated as a single material for the prupose of determining chief value (consequent upon elimination of the "chief value" concept from heading 6404).

Watches—simplification of the special marking requirements and simplification of certain rates of duty in headings 9101 and 9102.

3. Publication of Draft Conversion

The TPSC is publishing the draft conversion in order to reflect the changes which it made as outlined above plus additional changes which were necessary to reflect legal changes made to the TSUS through December 31, 1983. Such changes are indicated by the number one in white on a black circle appearing next to each tariff item in which a change was made.

Respondents should be aware that the TPSC did not act on requests for new statistical breakouts unless such breakouts were incidental to other changes made to the tariff structure. All requests for breakouts which were not approved will be referred to the Committee for the Statistical Annotation of the Tariff Schedules (the 484(e) Committee) for its consideration. The revised pages therefore show only those statistical breakouts which were included in the current TSUSA or which were included in the Commission's draft conversion, plus those few new breakouts made by the TPSC.

4. Copies of Revised Conversion

Copies of the revised draft of the proposed new U.S. Tariff Schedule will be mailed automatically to all persons who received copies of the ITC's draft conversion (ITC Publication 1400, June 1983). Others may obtain copies from the Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (701 E Street, NW., Washington, D.C. 20436, telephone (202) 523-5764).

Submission or Written Comments

Interested persons are invited to submit written comments on the revised text of the draft conversion. Such comments must be submitted in twenty copies by November 5, 1984 to Carolyn Frank, Secretary, Trade Policy Staff Committee (Office of the U.S. Trade Representative, Room 500, 600 17th Street, NW., Washington, D.C. 20506).

FOR FURTHER INFORMATION CONTACT: Sandra J. Kristoff, Director, Tariff Affairs, Office of the U.S. Trade Representative, Room 509, 600 17th Street, NW., Washington, D.C. 20506; telephone: (202) 395-3063.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 84-23491 Filed 9-5-84; 8:45 am]

BILLING CODE 3190-01-M

PENSION BENEFIT GUARANTY CORPORATION

Approval of Special Withdrawal Liability Rules; Maryland Race Track Employees Pension Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The Pension Benefit Guaranty Corporation has granted the request of the Maryland Race Track Employees Pension Fund for approval of a plan amendment providing for special withdrawal liability rules under sections 4203(f) and 4208(e)(3) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for approval was published on March 19, 1984 (49 FR 10208). The purpose of this notice is to advise the public of the decision on the request.

ADDRESS: The request for approval and the PBGC's response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Steven Rothenberg, Attorney, Corporate Policy and Regulations Department (611), 2020 K Street NW., Washington, D.C. 20006; (202) 254-4860. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1383(f), the Pension Benefit Guaranty Corporation ("PBGC") may authorize plans in industries other than construction and entertainment to adopt special complete withdrawal rules similar to those in sections 4203 (b) and (c) for the construction and entertainment industries. ERISA section 4208(e)(3) provides that the PBGC may permit plans to adopt special partial withdrawal liability rules upon a finding by the PBGC that the rules are consistent with the purposes of Title IV of ERISA. Under ERISA section 4203(f) and § 2645.4(a) of the PBGC's regulation on procedures for the extension of special withdrawal liability rules (29 CFR Part 2645), the PBGC will approve a plan amendment establishing special withdrawal rules if the PBGC determines that the plan amendment—

(A) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(B) Will not pose a significant risk to the insurance system.

The statute provides that the characteristics necessary for appropriateness must be "clearly shown." In order for the PBGC to determine whether a special withdrawal rule is appropriate, § 2645.3(d)(7) of the regulation requires that plans provide information on the industry which is the subject of the rule. This includes information on the effects of withdrawals on the plan's contribution base, as well as information sufficient to demonstrate the existence of industry characteristics which would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base.

Under § 2645.2(a) of the regulation, a special partial withdrawal rule must be consistent with the rule the plan has adopted on complete withdrawals. The regulation also requires that a plan indicate how its special rules will

operate in the event of a sale of assets by a contributing employer or the withdrawal from the plan of all employers [§ 2645.3(d)(4)]. Finally, § 2645.4(b) requires the PBGC to publish a notice of the pendency of a request for approval of special withdrawal rules in the **Federal Register** and to provide interested parties with an opportunity to comment on the request.

The Request

On March 19, 1984 (49 FR 10208), the PBGC published a notice soliciting public comment on a request from the Maryland Race Track Employees Pension Fund (the "Fund") for approval of a plan amendment providing for special withdrawal liability rules. The comment period ended on May 3, 1984. No comments were received in response to the notice.

The Fund is a multiemployer pension plan that is maintained pursuant to collective bargaining agreements between employers operating thoroughbred racetracks in the state of Maryland and the United Food and Commercial Workers Union, Local 27 ("Local 27"). A total of five employers contribute to the Fund: Laurel Race Course, Inc. ("Laurel"), the Maryland Jockey Club of Baltimore City ("Pimlico"), the Southern Maryland Agricultural Association ("Bowie"), the Maryland State Fair and Agricultural Association ("Timonium"), and Local 27. Fund trustees establish the level of benefits. The Fund covers all persons employed by thoroughbred racetracks in Maryland, including pari-mutuel clerks, admissions and security personnel and members of the jockeys' room and the starting gate crew. The Fund does not cover trainers or jockeys who are not employees of the racetrack. Furthermore, the Fund does not cover employees involved in standardbred racing (or "trotting", as it is commonly known).

During the plan year ending December 31, 1982, the Fund had 913 active participants, 281 retirees and beneficiaries and 53 terminated participants with vested benefits. At the end of that year, the Fund had assets of about $9.7 million.

Thoroughbred racing in Maryland is highly regulated. Race track operators must obtain licenses from the Maryland Racing Commission, and the total number of racing dates in a year is set by law, with each racetrack getting a share of those dates as determined by a statutory scheme of allocation and the Maryland Racing Commission. Approximately 306 racing days are licensed to be run each year. The schedule of racing dates for 1982 ranged from seven weeks for Timonium to 18 weeks for Laurel.

Under Maryland Law, each racetrack is required to pay 0.25% of the mutuel betting (*i.e.*, the daily amount wagered at the racetrack) to the Fund. That amount constitutes the employer's contribution to the Fund.

A thoroughbred racetrack is in operation for only a portion of a year, noramlly 7 to 18 weeks. According to the request, most employees covered under the Fund work for a particular racetrack for only the duration of the track's racing meet, then become employees of the next track on the racing schedule. Because thoroughbred races are held on almost every weekday and Saturday of the year, employees work continuously, albeit for different employers. During its racing meet, a track employs a full complement of personnel (*e.g.*, pari-mutuel clerks, admissions personnel, ushers, and parking attendants). When the meet ends, employment at that track ceases for the vast majority of employees, and they move on to next track. Only a small number of maintenance and office personnel are retained throughout the year.

According to the Fund, the cessation of contributions by a race track operator, which under the regulatory system can occur only if the operator closes its racetrack, would have virtually no effect on the Fund's contribution base. The closed track's racing dates would be reallocated to other Maryland tracks, and contributions would continue to be made for those dates. Thus, the contribution base of the Fund is not dependent on the existence of any one employer, but instead is a function of the number of racing dates allocated and the pari-mutuel handle. Over the 1978–1982 period, both the number of racing dates and pari-mutuel handle have been stable. The number of racing dates ranged from a low of 297 in 1979 to a high of 308 in 1980; the pari-mutuel handle ranged from $284 million in 1979 to $309 million in 1981.

The request states "there has been no consistent pattern of entry and withdrawals by employers in the industry . . . the number of employers in this industry is fixed by law; approval of the State Legislature is required to change the number."

As part of its request, the Fund submitted Form 5500's for five years 1978–1982, the January 1, 1982 actuarial valuation report and a certification report for the January 1, 1980 valuation. Pertinent participant and financial data are summarized in Table 1.

Plan costs for minimum funding purposes are calculated using the entry age normal level dollar method. As reported in the 1982 valuation report, investment and decrement experience each contributed to the Fund's net actuarial gain for the year, relative to the pertinent assumptions.

The plan's normal retirement age is 65, with a reduced benefit payable at 62 with 15 years of service. Under plan provisions in effect during 1982, a participant's monthly retirement benefit is equal to $5.50 times credited service before 1971 (20-year maximum) plus $16 times service after 1970. Effective January 1, 1983, those units were increased to $7.50 and $17.50, respectively; a five percent increase to retirees' benefits was also granted. Those changes increased the minimum contribution requirement by 15 to 20 percent.

As summarized in Table 1, plan participation has been relatively stable. Moreover, assets exceed the liability for vested benefits, and plan contributions have consistently been well in excess of benefit and expense outflow.

TABLE 1.—SUMMARY OF DATA FROM FORM 5500's [1]

	1982	1981	1980	1979	1978
A. Number of participants:					
1. Active	913	849	900	900	911
2. Retirees and beneficiaries	281	277	264	257	187
3. Terminated vested	53	71	52	52	52
B. Financial (000's)					
1. Employer contributions	$752	$775	$762	$713	$658
2. Benefits paid	454	405	329	237	222
3. Administrative expenses	90	78	73	64	57
4. Market value of assets [2]	9,668	7,860	7,146	5,944	4,928
5. Liability for vested benefits [3]	8,022	6,704	(4)	6,009	(4)

[1] Reported data is for year ending December 31.
[2] Assets at year-end.
[3] Based on 6% interest assumption as reported in the January 1, 1982 report and January 1, 1980 certification.
[4] Unavailable.

Complete and Partial Withdrawal Rules

On May 2, 1983, the Fund adopted an amendment prescribing special withdrawal rules to take effect as of January 1, 1983. The amendment was subsequently modified twice by the Fund. The second modification was made after notice of the request was published in the **Federal Register**. That modification revised the partial withdrawal rule to make it consistent with the complete withdrawal rule. The amendment would apply to any contributing employer under the Fund. The proposed complete and partial withdrawal rules read as follows:

"(a)(1) A complete withdrawal occurs under the same conditions and as a result of the same events as it does under the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), except that if the number of thoroughbred racing dates awarded by the Maryland Racing Commission in the State of Maryland for the year following the year in which such conditions or events occurrred is equal to at least ninety-five percent (95%) of the number of thoroughbred racing dates awarded for the year of the occurrence of such conditions or events, then notwithstanding any other provision of this Plan or of MPPAA, a complete withdrawal occurs only if an Employer ceases to have an obligation to contribute to the Fund and either:

"(A) Continues to conduct thoroughbred race meetings in the State of Maryland; or,

"(B) Resumes the conduct of thoroughbred race meetings in the State of Maryland within five (5) years after the date the Employer's contribution obligation ceased without renewing or becoming bound by the obligation to contribute to the Fund at that time.

"(2) If a complete withdrawal of an Employer occurs, the date of such complete withdrawal is the date the Employer's obligation to contribute permanently ceases.

(b)(1) Nothwithstanding any other provision of this Plan, a partial withdrawal occurs under the same conditions and as a result of the same events as it does under MPPAA, except that no partial withdrawal shall be deemed to occur with respect to an Employer if:

(A) The number of thoroughbred racing dates awarded by the Maryland Racing Commission in the State of Maryland for the year following the year in which such conditions or events occurred is equal to at least ninety-five percent (95%) of the number of thoroughbred racing dates awarded for the year of the occurrence of such conditions or events; and

(B) The Employer continues to have an obligation to contribute to the Fund for all work of the type for which it was formerly obligated to contribute for all thoroughbred race meetings it conducts in the State of Maryland for a period of five (5) years after the year of such conditions or events.

"(2) If a partial withdrawal of an Employer occurs, the date of such partial withdrawal is the last day of the calendar year during which the partial withdrawal occurs."

The Fund's amendment does not contain rules specifically pertaining to sales of assets or withdrawal by all employers. The Fund has acknowledged that a withdrawal would not occur as a result of a sale of assets that complies with ERISA section 4204. The request states that a mass withdrawal rule is not necessary due to the nature of the industry that is covered by the Fund.

Decision

In order to approve a request for special withdrawal liability rules, the PBGC must make two independent determinations, as provided in ERISA section 4203(f)(2) and § 2645.4(a) of its regulations. First, on the basis of a clear showing by the plan, the PBGC must determine that the plan amendment will apply only to an industry that has characteristics that would make use of the special rules appropriate. Second, the PBGC must determine that the plan amendment will not pose a significant risk to the insurance system.

The legislative history of the Multiemployer Act indicates that the basic consideration in determining the appropriateness of special rules is the effect of cessations of contributions by employers on the plan's contribution base. The PBGC believes that the withdrawal of employers from this industry will not typically have an adverse effect on the Fund's contribution base. This conclusion is based on the unique regulatory structure governing the industry.

Maryland law, which controls the operations of employers in the industry, guarantees that employers will continue to contribute a fixed percentage of their revenues to the Fund. State law also ensures that total revenue, and thus total contributions to the Fund, will be relatively unaffected by the withdrawal of one or more employers from the industry. This is accomplished by fixing a relatively constant number of days during which the industry will operate and allocating those days among the employers in the industry. If an employer or employers withdraw from the industry, their days of operation will be reallocated to the remaining employers, insuring that the number of racing dates for the industry will remain virtually constant from year to year, regardless of the number of employers conducting operations and changes in the number of dates operated by particular employers. Contributions to the Fund will vary only with changes in the amount wagered, which result primarily from changes in the number of days operated by the industry as a whole.

The Fund's request provides evidence of the stability provided by this regulatory scheme. During the period from 1978 to 1982, the number of days operated by the industry ranged from 297 to 308, a variation of less than 4 percent. During that same period, operations by individual employers varied as much as 83%, with three of the four employers experiencing changes of at least 67% in the number of days they operated from their least active to most active year. In spite of these fluctuations in the number of days that individual employers operated from year to year, the amount bet per year, and thus contributions to the Fund, remained almost constant during this period. The annual parimutuel handle varied by less than 9 percent between the year of the least betting and the year in which the most was wagered.

The regulatory system governing this industry clearly gives it characteristics that would make the use of special withdrawal rules appropriate, because the cessation of a particular employer's obligation to contribute will normally have no significant adverse effect on the plan's contribution base. The Corporation therefore need not determine whether the industry also possesses the characteristics set forth in § 2645.3(d)(7) as indicative that withdrawals in an industry do not typically have an adverse effect on the plan's contribution base. The PBGC has in the past noted that the existence or non-existence of one or even several of those characteristics is not necessarily determinative of appropriateness. (Notice of Approval of Special Withdrawal Liability Rules: International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan, 49 FR 6043 at 6047). Indeed, the request makes no expres assertion regarding the existence of most of those characteristics.

To determine whether the use of the special rules will pose a significant risk to the insurance system, the PBGC has reviewed the financial and actuarial

information submitted by the Fund. That information suggests that the Fund is in healthy financial condition. With liabilities valued at six percent, assets valued at market exceeded vested liabilities by more than twenty percent ($9.7 million vesus $8.0 million) as of December 31, 1982. Moreover, active and retired participant levels have remained relatively stable and plan contributions continue to exceed benefit and expense payout by a comfortable margin. With the added protection provided by the State regulatory system, this information indicates that use of the special rules will not pose a significant risk to the insurance system.

The plan amendment also includes special rules which protect the Fund against changes in State regulatory policy eliminating the requirement that employers contribute to the Fund. They do this by providing that a complete withdrawal occurs if an employer continues to conduct thoroughbred race meetings in the State of Maryland without an obligation to contribute to the Fund or resumes such operations within five years after its obligation ceased without renewing or becoming bound by the obligation to contribute to the Fund at that time and that a partial withdrawal occurs if an employer ceases to contribute for a type of work which was previously covered by the Fund while continuing to perform that type of work within a five year period. This protection further reduces the risk to the insurance system posed by the special rules.

In conclusion, based on the facts of this case and the representations and statements made in connection with the request for approval, the PBGC has determined that the Fund amendment (i) will apply only to an industry that has characteristics that would make the use of special withdrawal rules appropriate and (ii) will not pose a significant risk to the insurance system. The PBGC also finds that the proposed partial withdrawal rule is consistent with the rule that the Fund proposes for complete withdrawals. Therefore, the PBGC hereby grants the Fund's request for approval of the special withdrawal liability rules set forth above. Should the Fund later wish to amend these rules at any time, PBGC approval of the amendment will be required.

Issued at Washington, D.C. on this 28th day of August 1984.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-23549 Filed 9-5-84; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 23406; 70-7011]

Middle South Utilities, Inc. and Middle South Services, Inc.; Proposed Guaranty by Holding Company of Subsidiary Service Company's Performance Under Computer Leasing Agreement

August 30, 1984.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and Middle South Services, Inc. ("Services"), a subsidiary service company of Middle South, have filed a proposal with this Commission pursuant to section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

By prior orders in File No. 70-6806 dated December 21, 1982, and January 19, 1983 (HCAR Nos. 22793 and 22822), Middle South was authorized to guarantee the performance by Services of obligations under computer equipment leasing arrangements between Services and Comdisco, Inc. ("Comdisco"), a nonaffiliated corporation. Services now intends to enter into new computer equipment leasing arrangements with Comdisco with respect to certain model upgrading ("Model Upgrading") for the IBM 3081 computer system and related equipment ("Computer System") currently being used by Services at its data processing center in Gretna, Louisiana. In order to effectuate these transactions, Middle South proposed to guarantee the performance by Services of its lease obligations without recourse to Services first being required.

Comdisco will purchase the Model Upgrading for the Computer System from International Business Machines Corporation ("IBM") at the IBM purchase price therefor (estimated at approximately $4,285,887 and, concurrently therewith, lease the Model Upgrading to Services under leasing arrangements coterminous with the lease of the existing Computer System (the initial term of which expires on December 31, 1986), except that the commencement date of the leasing arrangements for the Model Upgrading will be approximately October 1984, which is when the Model Upgrading is expected to be installed. The Lease will be a net lease conferring responsibility for operation, maintenance, and various expenses upon Services. The Lease will be non-cancellable through the initial term ending December 31, 1986 ("Initial Term") except in the event of: (a) irreparable damage, loss, or destruction of the Model Upgrading or (b) default by Services thereunder. Monthly rental payments by Services for the Model Upgrading during the Initial Term will be approximately $157,000, with payments beginning in November 1984. Rental payments may be adjusted in the event that, under certain circumstances, the lessor loses certain tax benefits incident to its ownership and leasing of the Model Upgrading. Services intends to charge the payments under the Lease to operating expense. The rental payments are such that Services will not acquire any equity in the Model Upgrading, and, consequently, the Lease will be accounted for by Services as a lease.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 24, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service by (affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23595 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 23405; 70-6999]

The Southern Co.; Proposal To Issue Common Stock to Employee Stock Ownership Plan; Exception From Competitive Bidding

August 30, 1984.

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has proposed a transaction subject to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and rule 50(a)(5) thereunder.

Southern proposes to issue up to a maximum of $8,000,000 of its unissued shares of common stock, $5 par value, authorized by prior Commission Order (HCAR No. 23253, March 29, 1984). The purpose of the issuance is to provide common stock funding by Southern's subsidiaries for The Employee Stock Ownership Plan of The Southern Company System ("Plan"), approved on September 8, 1977 (HCAR No. 20165). Funding is for the 1983 Plan year, and includes reinvestments of cash dividends on such stock, by direct purchases of common stock from Southern. The exact number of shares to be issued by Southern will be determined by the trust established pursuant to the Plan ("Trust") in respect to the Plan year and the purchase price per share of Southern's common stock determined as set forth below. Southern proposes to apply the proceeds it receives from the sale of the common stock for further equity investments, and for other corporate purposes.

The Plan was amended effective January 1, 1983 to qualify contributions made to it for payroll-based tax credit treatment under the Economic Recovery Tax Act of 1981. Common stock contributions are limited to one-half of one percent of aggregate compensation paid or accrued in 1983, unless the subsidiaries of Southern as purchasers of such stock for the Plan, elect an investment-based tax credit basis of one and one-half percent. The purchase price per share of common stock acquired from Southern by the Trust will be the fair market value as of the date of acquisition. Southern common stock had a market value of $16.37 at the close of 1983, representing 95% of book value.

Under the Plan, the Trust is required to reinvest cash dividends paid on shares of Southern's common stock allocated to a participant's account in additional shares of common stock, unless the participant elects to have such cash dividends distributed currently. In reinvesting these cash dividends, the Trust may purchase common stock under Southern's Dividend Reinvestment and Stock Purchase Plan (at the price provided for in such plan), on the open market or by private purchase, including purchases directly from Southern (at the stock's fair market value).

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 24, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy of the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specificaly the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23596 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Form SR
No. 270-120

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of clearance Form SR under the Securities Act of 1933. Form SR is the report of sales of securities and use of proceeds required to be filed by issuers with respect to their first effective registration statement. A copy of this submission is available for inspection and copying at the Commission's Public Reference Room, 450 5th St. NW., Washington, D.C. 20549. Interested parties should refer to File No. 270-120.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23627 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a-10
No. 270-154

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a-10 (19 CFR 240.17a-10) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which generally requires all brokers and dealers to file a report of revenue and expenses with the Commission on an annual basis.

Submit comments to OMB Desk Officer: Ms. Katie Lewin (202) 395-7321, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23628 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 12d1-3
No. 270-116

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Rule 12d1-3 under the Securities Exchange Act of 1934. This rule relates to procedures to be followed for certification for listing of securities on national securities exchanges. A copy of this submission is available for inspection and copying at the Commission's Public Reference Room, 450 5th St. NW., Washington, D.C. 20549. Interested parties should refer to File No. 270-116.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23629 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 15c1-7
No. 270-146

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15c1-7 (17 CFR 240.15c1-7) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*) (the "Act") which requires broker-dealers to record certain information with respect to transactions occurring within discretionary accounts. Rule 15c1-7 also states that the terms "manipulative, deceptive, or other fraudulent device or contrivance" in section 15(c) of the Act apply to transactions occurring in discretionary accounts.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23630 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Form 12b-25
No. 270-71

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Form 12b-25 (17 CFR 249.322) under the Securities Exchange Act of 1934. Form 12b-25 provides notice to the Commission and to the marketplace that a public company will be unable to file timely a required periodic report. If certain conditions are met, the public company will be granted an automatic extension of time for filing.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23582 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Form 8-K
No. 270-50

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchanges Commission has submitted for extension of clearance Form 8-K under the Securities Exchange Act of 1934. Form 8-K provides a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly-traded securities provde to investors and the marketplace adequate current information about certain material events and developments. A copy of this submission is available for public inspection and copying at the Commission's Public Reference Room, 450 5th St., NW., Washington, D.C. 20549. Inquiring parties should refer to File No. 270-50.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23583 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Form 8-A
No. 270-54

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Form 8-A under the Securities Exchange Act of 1934. Form 8-A provides a basis for the Commission to fulfill its statutory responsibility to ensure that issuers subject to the periodic reporting requirements of the Exchange Act that are proposing to register additional classes of securities on a national securities exchange or otherwise pursuant to section 12 of the Exchange Act provide investors and the marketplace with adequate information concerning those securities.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23584 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Regulation 14C
No. 270-57

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Regulation 14C under the Securities Exchange Act of 1934. Regulation 14C provides a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of securities registered pursuant to section 12 of the Exchange Act provide to security holders who are entitled to vote on, or give an authorization in regard to, any matter to be acted upon at an annual or other meetings, adequate information to

make an informed voting decision or decision to give an authorization.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23585 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17Ad-2 (c), (d) and (h)
No. 270-149

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ad-2 (c), (d) and (h) (17 CFR 240.17Ad-2 (c), (d) and (h)) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which generally requires transfer agents to file certain notices of non-compliance with the Commission and other appropriate regulatory authority, if any, within 10 days after the end of any month in which they fail to meet the minimum performance standards of Rule 17Ad-2 (a).

Submit comments to OMB desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, D.C. 20503.

Dated: August 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23586 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a-19 and Form X-17A-19
No. 270-148

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a-19 and Form X-17A-19 (17 CFR 240.17a-19 and 17 CFR 249.635) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires reports by National Securities Exchanges and Registered National Securities Associations of changes in membership status of any of their members.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7321, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23587 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17Ac-1 and Form TA-W
No. 270-96

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ac3-1 and Form TA-W (17 CFR 240.17Ac3-1(a) and 17 CFR 249b.101 respectively) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which generally require transfer agents seeking to withdraw from registration with the Commission as transfer agents to complete and file with the Commission Form TA-W.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

Dated: August 29, 1984.

[FR Doc. 84-23588 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a-7
No. 270-147

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a-7 (17 CFR 240.17a-7) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*) which generally requires brokers and dealers registered or registering with the Commission to maintain copies of their books and records in the United States or to file an undertaking agreeing to make them available upon request.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7321, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23589 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0239]

Brentwood Capital Corp.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Brentwood Capital Corporation (BCC), 11661 San Vicente Boulevard, Los Angeles, California 90049, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*), has filed an application with the Small Business Administration pursuant to § 107.903 (b)(1) of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of a conflict of interest transaction falling within the scope of the above Sections of the Act and Regulations.

BCC intends to provide financing up to $200,100 to Protype Corporation, 8655 Tamarack Avenue, Sun Valley, California 91352. Other Brentwood entities (Associates) have prior investments in this small business

concern. SBA's prior written approval is required pursuant to § 107.903 of SBA Regulations because Associates own 10 or more percent of the small concern's equity securities and these are not initial joint financings with Associates.

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 Sun Valley, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 28, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-23565 Filed 9-5-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0349]

Camden Investments, Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR § 107.102 (1984)), for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

Applicant Address: Camden Investments, Inc., 9560 Wilshire Boulevard, Suite 310, Beverly Hills, California 90212.

The proposed officers, directors and stockholders of the Applicant are as follows:

Edward G. Victor—President & Director, 134 N. Carmelina, Los Angeles, CA 90049.

Richard A. German—Chief Financial Officer, Officer & Director, 2793 Woodwardia Drive, Los Angeles, CA 90077.

Craig M. Cogut—Vice President, Secretary and Director, 1835½ Beverly Glen, Los Angeles, CA 90025.

Cambrent Financial Group, Inc.—Investment Advisor.

Camden Investment Associates, Inc.—100% Stockholder.

The Applicant, a California corporation, with its principal place of business at 9560 Wilshire Boulevard, Suite 301, Beverly Hills, California 90212 will begin operations with $1,210,000 paid-in surplus. Both the Investment Advisor and the stockholder are located at the above address.

The applicant will conduct its activities principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and probability of successful operations of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 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 should be published in a newspaper of general circulation in the Beverly Hills, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-23563 Filed 9-5-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2166]

California; Declaration of Disaster Loan Area

Kern County and the adjacent Counties of Inyo and San Bernardino in the State of California constitute a disaster area because of damage caused by thunderstorms, heavy rainfall, and flash flooding which occurred July 13, 1984 through August 23, 1984. Applications for loans for physical damage may be filed until the close of business on October 29, 1984, and for economic injury until the close of business on May 29, 1985, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Sacramento, CA 95825, or other locally announced locations.

Interest rates are:

Homeowners with credit available elsewhere—8.000%

Homeowners without credit available elsewhere—4.000%

Businesses with credit available elsewhere—8.000%

Businesses without credit available elsewhere—4.000%

Businesses (EIDL) without credit available elsewhere—4.000%

Other (non-profit organizations including charitable and religious organizations)—10.500%

The number assigned to this disaster is 216606 for physical damage and for economic injury the number is 620300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 29, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-23566 Filed 9-5-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2167]

Pennsylvania; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 27, 1984, I find that the Counties of Bedford, Somerset, Armstrong, Allegheny, Blair, McKean, and Westmoreland constitute a disaster loan area because of damage from severe storms and flooding beginning on August 3, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on October 26, 1984, and for economic injury until May 27, 1985, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell, Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates are:

Homeowners with credit available elsewhere—8.000%

Homeowners without credit available elsewhere—4.000%

Businesses with credit available elsewhere—8.000%

Businessse without credit available elsewhere—4.000%

Businessse (EIDL) without credit available elsewhere—4.000%

Other (non-profit organizations including charitable and religious organizations)—10.500%

The number assigned to this disaster is 216706 for physical damage and for economic injury the number is 620400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 28, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-23564 Filed 9-5-84; 8:45 am]

BILLING CODE 8025-01-M

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing; Proposed Comprehensive Plan Additions, Pennsylvania; Department of Environmental Resources (DER) Local Flood Protection Projects

The Susquehanna River Basin Commission (SRBC) will hold a public hearing to receive comments from citizens, government agencies and others on the proposed addition of three Pennsylvania Department of Environmental Resources (DER) local flood protection projects to its *Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin.* The three projects are located respectively at Moosic, Huntingdon and Cherry Tree, Pa. The hearing has been schedule for Thursday, October 11, 1984 at the Commission Headquarters Building, 1721 North Front Street, Harrisburg, Pa. following the regular business meeting of the Commission which begins at 9:00 a.m.

The Susquehanna River Basin Compact, Pub. L. 91–575, 84 Stat. 1509 et seq., requires the Commission to maintain a Comprehensive Plan for the immediate and long-range use, management and development of the water and related resources of the basin. Section 12.2 (2) of the Compact requires that all projects of a signatory state affecting water resources of the basin be included in that Plan. Initially adopted in December 1973, the Plan provides a basinwide strategy to guide the Commission and others in the management, use and conservation of the basin's resources. The Plan is also used to evaluate proposed water resource developments that the Commission must, by law, approve.

The Huntingdon Project will include approximately 1700 lineal feet of earthen levee construction. It will provide 100-year flood protection to the Borough of Huntingdon for high stages on the Juniata River and subsequent interior flooding from Muddy Run. Estimated cost of the project is $1,700,000.

The Moosic Project will include improvements along Spring Brook at Spike Island and levee construction at Belian Village. The purpose of this project is to provide flood protection to the communities of Spike Island and Belian Village, located along Spring Brook in the Borough of Moosic. The project will provide protection for a flood equal in magnitude to the 1955 flood, which is equal to the estimated 100-year flood. Estimated cost of the project is $1,500,000.

The Cherry Tree Project will consist of raising approximately 3,600 feet of existing levee along the West Branch Susquehanna River and construction of a combined levee-concrete wall system totalling approximately 1,800 feet along Cush Creek to replace the existing spoil levee. The purpose of this project is to provide flood protection from the river to the community of Cherry Tree and improve interior drainage. The project will provide protection to the estimated 100-year flood level.

At its regular meeting on July 12, 1984, the Commission agreed to consider these projects for adoption into the SRBC Comprehensive Plan. Adoption into the Comprehensive Plan will affirm the projects' compliance with the goals and objectives of the Comprehensive Plan, thus clearing the way for implementation by the Commonwealth of Pennsylvania.

The October 11th hearing will be informal in nature. Interested parties are invited to attend the hearing and to participate by making oral or written statements presenting their data, views and comments on the proposed additions. Those wishing to personally appear to present their views are urged to notify the Commission in advance that they desire to do so. However, any person who wishes to be heard will be given opportunity to be heard, whether or not they have given such notice. After the hearing, the Commission will evaluate all relevant material and decide whether to adopt the project into the Comprehensive Plan.

More detailed descriptions of these projects are available upon request to Richard A. Cairo, Secretary, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pa. 17102–2391, 717–238–0423. Additional information on the projects may also be obtained from Mr. Jim McNaney, Bureau of Water Projects, Pennsylvania Dept. of Environmental Resources, P.O. Box 1467, Harrisburg, Pa., 717–783–7917.

Dated: August 29, 1984.

Robert J. Bielo,

Executive Director.

[FR Doc. 84–23558 Filed 9–5–84; 8:45 am]

BILLING CODE 7040–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Grant Assurance and Agreement for Airport Improvement Program

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of grant assurances to be used in the Airport Improvement Program.

SUMMARY: This notice provides copies of the grant assurances and grant agreement which will be used in the Airport Improvement Program after September 30, 1984.

DATE: These grant assurances and agreement will be used on and after October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. David, APP–3, Office of Airport Planning and Programming (Room 619), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, Telephone (202) 426–8248.

Background

Under the provisions of the Airport and Airway Improvement Act of 1982, as a condition to approval of a grant application, the Secretary must receive certain assurances from the sponsor (applicant). These assurances are submitted as Part V of the application for Federal assistance. The FAA has reviewed the assurances currently being used and updated them to reflect the requirements of current law. The assurances have also been revised to reflect that under the Airport Improvement Program grants can be made for the improvement of privately owned airports and for noise program implementation.

Two sets of assurances are included in this notice. The first set (FAA Form 5100–100) contains assurances to be made by airport sponsors in their applications requesting funds for airport development, airport planning and noise program implementation and by planning agencies in their applications requesting funds for integrated airport system planning. The second set (FAA Form 5100/100.1) be made by sponsors in their application requesting funds for noise program implementation when the sponsor does not own or operate the airport.

The assurances submitted with the application are incorporated into the grant agreement by reference. For this reason, the grant agreement (FAA Form 5100–37) is also included as part of this notice. The assurances published herein, or as amended to, reflect the individual contractual circumstances at particular airports, or to reflect problems arising in the grant program are made a part of the grant agreement and must submitted with all applications for assistance under the Airport Improvement Program beginning in Fiscal Year 1985 (October 1, 1984). Similar assurances have been

applied to sponsors prior to that date under the terms of the 1982 Act and related laws.

Issued is Washington, DC, on August 22, 1984.

Paul L. Galis,

Acting Associate Administrator for Airports.

Part V—Assurances

Airport and Planning Agency Sponsors

A. General

1. These assurances shall be complied with in the performance of the following grant agreements:

a. Airport development, airport planning, and noise program implementation grants to airport sponsors.

b. Integrated airport system planning grants to planning agencies.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982 or the Aviation Safety and Noise Abatement Act of 1979. A sponsor may be a public agency with control of a public-use airport or it may be a private owner of a public-use airport (hereinafter referred to as "private sponsor".)

3. These assurances also are required to be submitted as part of the project application by a sponsor which is both a public agency and a planning agency requesting funds for integrated airport system planning under the provisions of the Airport and Airway Improvement Act of 1982.

4. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability

1. *Airport Development or Noise Program Implementation Projects undertaken by a public agency (airport sponsor).* The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise program implementation project, or throughout the useful life of the project items installed within a facility under a noise program implementation project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurance against exclusive rights or the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

2. *Airport Development or Noise Program Implementation Projects undertaken by a private sponsor.* The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of facilities developed or equipment acquired under an airport development or noise program implementation project shall be no less than 10 years from the date of the acceptance of Federal aid for the project.

3. *Airport Planning undertaken by a sponsor.* Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, and 30 in Section C apply to planning projects. The terms, conditons and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification

The sponsor hereby assures and certifies, with respect to ths grant that:

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Hatch Act—15 U.S.C. 1501, *et seq.*[2]

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*[1]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—Titles II and III, 42 U.S.C. 4621–4655.[1 2]

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).[1]

g. Archeological and Historic Preservation Act of 1961—16 U.S.C. 461, *et seq.*[1]

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4001, note.[1]

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d, *et seq.*

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*[1]

n. Airport and Airway Improvement Act of 1982—49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.[1]

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*[1]

q. Copeland Kickback Act—18 U.S.C. 874.[1]

r. National Environmental Policy Act of 1969—42 U.S.C. 4321, *et seq.*[1]

s. Endangered Species Act—16 U.S.C. 668(a), *et seq.*[1]

Executive Orders

Executive Order 12372, Intergovernmental Review of Federal Programs.

Federal Regulations

a. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

c. 49 CFR Part 25—Relocation Assistance and Land Acquisition for Federal and Federally Assisted Programs.

d. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.

e. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.

f. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

g. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

h. 41 CFR Part 60—Office of Federal Contract Compliance Programs. Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).

i. 14 CFR Part 150—Airport Noise Compatibility Planning.

j. Reserved.

Office of Management and Budget Circulars

a. A–87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.*

[1] These laws do not apply to planning projects.

[2] These laws do not apply to private sponsors.

*OMB Circulars A–87 and A–102 contain requirements for state and local governments receiving Federal assistance. Any requirement levied upon state and local governments by those

Continued

b. A-102—Uniform Requirements for Assistance to State and Local Governments.*

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. *Responsibility and Authority of the Sponsor*—a. *Public Agency Sponsor:* It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. *Private Sponsor:* It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative, and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with the application; and to provide such additional information as may be required.

3. *Sponsor Fund Availability.* It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. *Good Title.* It holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

For noise program implementation projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. *Preserving Rights and Powers*—a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise program implementation project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise program implementation projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise program implementation project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government there is substantial non-compliance with the terms of the agreement.

d. For noise program implementation projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangment is made for management and operation of the airport by an agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance with the Airport and Airway Improvement Act of 1982, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

6. *Consistency with Local Plans.* The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise program implementation projects, other than land acquisition, to be carried out on property not owned by the airport and over which property another public agency has land use control or authority, the sponsor shall obtain from each such agency a written declaration that such agency supports the project and the project is reasonably consistent with the agency's plans regarding the property.

7. *Consideration of Local Interest.* It has given fair consideration to the interest of communities in or near which the project may be located.

8. *Consultation with Users.* In making a decision to undertake any airport development project under the Airport and Airway Improvement Act of 1982, it has undertaken reasonable consultations with affected parties using the airport at which the project is proposed.

9. *Public Hearings.* In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with the goals and objectives of such planning as has been carried out by the community. It shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary.

10. *Air and Water Quality Standards.* In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and

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two circulars shall also be applicable to private sponsors receiving Federal assistance under the Airport and Airway Improvement Act of 1982.

operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. *Local Approval.* In projects involving the construction or extension of any runway at any general aviation airport located astride a line separating two counties within a single state, it has received approval for the project from the governing body of all villages incorporated under the laws of that state which are located entirely within five miles of the nearest boundary of the airport.

12. *Terminal Development Prerequisites.* For projects which include terminal development at a public airport, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 612 of the Federal Aviation Act of 1958 and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning or deplaning from aircraft other than air carrier aircraft.

13. *Accounting System, Audit, and Recordkeeping Requirements*—a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the U.S. General Accounting Office publication entitled *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.*

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

14. *Minimum Wage Rates.* It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. *Veterans Preference.* It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in section 515(c) (1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. *Conformity to Plans and Specifications.* It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the approved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporated into the grant agreement.

17. *Construction Inspection and Approval.* It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. *Planning Projects.* In carrying out planning projects:

a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.

b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. *Operation and Maintenance.* a. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local

agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interefere with its use for airport purposes.

In furtherance of this assurance, the sponsor will have in effect at all times arrangements for—

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interefere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise program implementation items that it owns or controls upon which Federal funds have been expended.

20. *Hazard Removal and Mitigation.* It will adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. *Compatible Land Use.* It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. *Economic Nondiscrimination.* a. It will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses.

b. In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor—

(1) To furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenants or nontenants, and combined passenger and cargo flights or all cargo flights. Classification or status as tenant shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on tenant air carriers.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the sponsor under these provisions.

h. The sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. *Exclusive Rights.* It will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply: (1) It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and (2) if allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982.

24. *Fee and Rental Structure.* It will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport

development, airport planning or noise compatibility project for which a grant is made under the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate base in establishing fees, rates, and charges for users of that airport.

25. *Airport Revenue.* If the airport is under the control of a public agency, all revenues generated by the airport will be expended by it for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. Provided, however, that if covenants or assurances in debt obligations previously issued by the owner or operator of the airport, or provisions in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport shall not apply.

26. *Reports and Inspections.* It will submit to the Secretary such annual or special financial and operations reports as the secretary may reasonably request. For airport development and airport planning projects, it will also make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request. For noise program implementation projects, it will also make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

27. *Use of Government Aircraft.* It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that—

a. Five (5) or more government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of government aircraft is 300 or more, or the gross accumulative weight of government aircraft using the airport (the total movements of government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. *Land for Federal Facilities.* It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. *Airport Layout Plan.* It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plan and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or in any of its facilities other than in conformity with the airport layout plan as so approved by the Secretary if such changes or alterations might adversely affect the safety, utility, or efficiency of the airport.

30. *Civil Rights.* It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of the property.

Part V—Assurances

Noise Program Implementation Projects Undertaken By Non Airport Sponsors

A. General

1. These assurances shall be complied with in the performance of grant agreements for noise program implementation projects undertaken by sponsors that are not proprietors of the airport which is the subject of the noise compatibility program.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982 and the Aviation Safety and Noise Abatement Act of 1979. Sponsors are units of local government in the area around the airport which is the subject of the noise compatibility program.

3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration

The terms, conditions, and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired or throughout the useful life of the items installed within a facility under this project, but in any

event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no time limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Futhermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

C. Sponsor Certification

The sponsor hereby assures and certifies, with respect to this grant that:

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Hatch Act—15 U.S.C 1501, *et seq.*

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—Titles II and III, 42 U.S.C. 4621–4655.

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).

g. Archeological and Historic Preservation Act of 1961—16 U.S.C. 461, *et seq.*

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4001, note.

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d, *et seq.*

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*

n. Airport and Airway Improvement Act of 1982—49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*

q. Copeland Kickback Act—18 U.S.C. 874.

r. National Environmental Policy Act of 1969—42 U.S.C. 4321, *et seq.*

s. Endangered Species Act—16 U.S.C. 668(a), *et seq.*

Executive Orders

Executive Order 12372, Intergovernmental Review of Federal Programs.

Federal Regulations

a. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

c. 49 CFR Part 25—Relocation Assistance and Land Acquisition for Federal and Federally Assisted Programs.

d. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.

e. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.

f. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

g. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

h. 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).

i. 14 CFR Part 150—Airport Noise Compatibility Planning.

j. Reserved.

Office of Management and Budget Circulars

a. A–87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.

b. A–102—Uniform Requirements for Assistance to State and Local Governments.

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in the grant agreement.

2. *Responsibility and Authority of the Sponsor.* It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. *Sponsor Fund Availability.* a. It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

b. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. *Good Title.* For projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. *Preserving Rights and Powers.* a. It will not enter into any transaction, or change thereto, or take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of all or any part of its title or other interests in that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise program implementation projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the

noise program implementation project. That agreement and changes thereto must be approved in advance by the Secretary.

d. For noise program implementation projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary.

6. *Consistency with Local Plans.* The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise program implementation projects to be carried out on property which is not owned by the sponsor and which is under the land use control or authority of a public agency other than the sponsor, the sponsor shall obtain from each such agency a written declaration that such agency supports the project and the project is reasonably consistent with the agency's plans regarding the property.

7. *Consideration of Local Interest.* It has given fair consideration to the interest of communities in or near which the project may be located.

8. *Accounting System, Audit, and Recordkeeping Requirements.* a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the U.S. General Accounting Office publication entitled *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.*

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grants. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant of relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

9. *Minimum Wage Rates.* It shall include, in all contracts in excees of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

10. *Veterans Preference.* It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

11. *Conformity to Plans and Specifications.* It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the appoved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporation into the grant agreement.

12. *Construction Inspection and Approval.* It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

13. *Operation and Maintenance.* It will suitably operate and maintain noise program implementation items that it owns or controls upon which Federal funds have been expended.

14. *Hazard Prevention.* It will protect the aerial approaches to the airport by preventing the establishment or creation of future airport hazards on property owned or controlled by it or over which it has land use jurisdication.

15. *Compatible Land Use.* It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, it will not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of the noise program implementation measures upon which Federal funds have been expended.

16. *Reports and Inspections.* It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request. It will also make records and documents relating to the project, and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

17. *Land for Federal Facilities.* It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land purchased under this grant agreement as the Secretary considers necessary or desirable for construction, operation and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

18. *Civil Rights.* It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of personal

property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possesson of the property.

Department of Transportation

Federal Aviation Administration

Grant Agreement

Part 1—Offer

Date of Offer

Airport/Planning Area

Project No.

Contract No.

To:
(herein called the "Sponsor")
From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated , for a grant of Federal funds for a project at or associated with the Airport/Planning Area which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for the Airport of Planning Area (herein called the "Project") consisting of the following:

all as more particularly described in the Project Application.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of the Airport and Airway Improvement Act of 1982, herein called the "Act," and/or the Aviation Safety and Noise Abatement Act of 1979, and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project,

This Offer is made on and subject to the following terms and conditions:

Conditions

1. The maximum Obligation of the United States payable under this offer shall be $. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of section 512(b) of the Act, the following amounts are being specified for this purpose:

$, for planning
$, for land acquisition
$, for airport development or noise program implementation (other than land acquisition).

2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.

3. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Unless otherwise stated in this grant agreement, any program income earned by the sponsor during the grant period shall be deducted from the total allowable project costs prior to making the final determination of the United States share. Final determination of the United States share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

4. The sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurance which were made part of the project applications.

5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the sponsor.

6. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the sponsor on or before _____ or such subsequent date as may be prescribed in writing by the FAA.

7. The sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, or der or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amont of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement, and the sponsor shall hold the United States harmless from all claims arising from, or related to, completion of the project or the sponsor's continuing compliance with the terms, conditions, and assurances in this grant agreement.

The Sponsor's acceptance of this Offer and ratification and adopting of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA

FEDERAL AVIATION ADMINISTRATION

(Name) _____ _____
(Title) _____ _____

Part II—Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this day of , 19 .

(Name of Sponsor)

(SEAL)

By
(Sponsor's Designated Official Representative)
Title
Attest:
Title:

Certificate of Sponsor's Attorney

I, , acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant agreement under the laws of the State of ——————. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor relating thereto, and find that the acceptance thereof by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at ——————— this —— day ——— of ———, 19 .

Signature of Sponsor's Attorney

[FR Doc. 84-23486 filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Logan County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, in cooperation with the Kentucky Transportation Cabinet, intends to prepare an EIS for a proposed highway project bypassing the city of Russellville, Kentucky. The proposed alternatives under consideration at this time consists of four (4) major corridors which include various design schemes, as well as the "do-nothing" alternative. The alternate corridors are essentially construction on new alignments, except for two locations, where a small portion of an existing county road and a city street would be utilized.

The alternate corridors presently being considered encircle the northern half of Russellville from US 68 on the west to US 68 on the east. The alternatives vary from four (4) to six (6) miles in length. The roadway will be two-lane with twenty-four foot pavement and twelve foot shoulders. The facility is designed for a 50 mph speed with partial control of access. The proposed action will relieve congestion on downtown streets and supply industry on the north side of the city with better connections to the existing highway network.

Proposed Scoping Process

An early public information meeting was held on March 8, 1984, in the area of the proposed project. The input received at that meeting is under consideration, at this point. An opportunity for a formal location/design public hearing will be advertised and held, as appropriate.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, P.O. Box 536, Frankfort, Kentucky 40602, Phone (502) 227-7321, FTS 352-5468. To ensure that a full range of issues related to this proposed action are addressed and all significant impacts are identified, suggestions are invited from all interested parties. Comments or questions should be directed to the above person.

Issued on: August 27, 1984.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 84-23559 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-22-M

Federal Aviation Administration

Advisory Circular on Substantiating Flow Rates and Pressures in Fuel Systems of Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This proposed draft AC provides an acceptable method of conducting fuel flow tests with small airplanes, as required by FAR 23.955.

DATE: Commenters must identify File AC 23.955-X; Subject: Substantiating Flow Rates and Pressures in Fuel Systems of Small Airplanes, and comments must be received on or before November 6, 1984.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Yotter, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Commercial Telephone (816) 374-6941, or FTS 758-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

Background

Section 23.955 requires that fuel flow rates and pressures be established to assure satisfactory engine operation during the original type certification program. At some later time, owners may petition to modify their airplanes in such a way as to have a major effect on the originally approved fuel system. This normally requires reconducting the fuel flow tests in order to substantiate continued compliance of the fuel system with applicable requirements. Fuels of the physical properties and octane rating to be used in service should flow at not less than the rate specified by regulations and at the pressure established in accordance with Section 33.7. Test conditions, such as critical airplane attitude and when pertinent the pressure differential between the fuel tank vent airspace and carburetor float bowl airspace, are equally important to the demonstration.

Issued in Kansas City, Missouri, on August 24, 1984.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 84-23485, Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 174
Thursday, September 6, 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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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 AM (Eastern Time), Tuesday, September 11, 1984.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal No. 84–06–FOIA–101–MK, concerning a request for an investigator's report from a closed ADEA charge file.
4. Freedom of Information Act Appeal No. 84–6–FOIA–77–DA, concerning a request for documents from an ADEA file.
5. Freedom of Information Act Appeal No. 84–6–FOIA–154–CL, concerning a request for information from a closed ADEA file.
6. Freedom of Information Act Appeal No. 84–06–FOIA–56–DT, concerning a request for access to a closed ADEA file.
7. Issuance of Opinion Letter Concerning Disclosure of Settlement Agreements to Charging Parties.
8. Proposed Semiannual Regulatory Agenda.
9. Proposed EEO Management Directive 707–Revising and Updating the Statistical Bases to be Used by Federal Agencies in Making Determinations of Underrepresentation for Affirmative Action Planning Purposes.

Closed

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: September 4, 1984.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued September 4, 1984.

[FR Doc. 84-23704 Filed 9-4-84; 1:10 pm]

BILLING CODE 6750-06-M

2

FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Meeting

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be held on the first Monday of October 1984, as specified in 12 CFR 604.325(a).

DATE AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held on October 1, 1984, 8:30 a.m. to 4:30 p.m.; October 2, 1984, 8:30 a.m. to 4:30 p.m.; and October 3, 1984, 8:30 a.m. to 12:00 noon.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Portions Open to the Public:
- Board Member Reports
- Governor's Report
- Economic Report
- Legislative Report
- Proposed Regulations—Revisions to Conflict of Interest Regulations
- Draft Policy Statement on Farm Credit System Directors
- Other Subjects to be Determined

Portions Closed to the Public:
- Executive Session(s)
- FCA Supervisory Reports

Any request for information about the meeting should be directed to Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, at 1501 Farm Credit Drive, McLean, VA 22102–5090, telephone (703) 883–4010.

Dated: September 7, 1984.

Donald E. Wilkinson,

Governor.

[FR Doc. 84-23696 Filed 9-4-84; 2:38 pm]

BILLING CODE 6705-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Friday, August 31, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider recommendations with respect to administrative enforcement proceedings against insured banks (names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii))).

At that same meeting, the Board also considered the application of The Dollar Savings Bank, Pittsburgh, Pennsylvania, for consent to convert into a non-FDIC-insured institution.

In calling the meeting, the Board determined, on motion of Chairman William M. Issac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: August 31, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-23697 Filed 9-4-84; 2:38 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:33 p.m. on Friday, August 31, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of the Northwest, Eugene, Oregon, which was closed by the Superintendent of Banks for the State of Oregon on Friday, August 31, 1984; (2) accept the bid for the transaction submitted by First Interstate Bank of Oregon, National Association, Portland, Oregon; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 4, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-23729 Filed 9-4-84; 2:49 pm]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 11, 1984.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, September 13, 1984.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion #1983-48 (Partial Reconsideration)
Robert S. Lemle, Associate GC, Cablevision Systems Corp.
Draft Advisory Opinion #1984-39
Mike Synar, Member of Congress
Draft Advisory Opinion #1984-43
Edgar Vanneman, Jr., on behalf of Congressman Jim Jones of Oklahoma
Finance Committee Report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-23731 Filed 9-4-84; 3:41 pm]

BILLING CODE 6715-01-M

6

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 2:30 p.m., Thursday, September 13, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6677).

MATTERS TO BE CONSIDERED:

Settlement of Insurance, Appeal Procedure Priorities in Receiverships

J. J. Finn,

Secretary.

No. 95, September 4, 1984.

[FR Doc. 84-23695 Filed 9-4-84; 2:39 pm]

BILLING CODE 6720-01-M

7

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 10, 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. Proposed conceptual design and target budget preparation for the Charlotte Branch of the Federal Reserve Bank of Richmond.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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) 452-3207, 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 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23611 Filed 8-31-84; 5:05 pm]

BILLING CODE 6210-01-M

8

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-42]

TIME AND DATE: 3:30 p.m., Wednesday, September 12, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-201 [Preliminary] (Egg Filler Flats from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[FR Doc. 84-23591 Filed 8-31-84; 4:26 pm]

BILLING CODE 7020-02-M

federal register

Thursday
September 6, 1984

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 1820 and 1860

Public Administrative Procedures; Recordable Disclaimers of Interest in Lands; Correction of Conveyancing Documents; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1820 and 1860

[Circular No. 2552]

Public Administrative Procedures; Recordable Disclaimers of Interest in Lands; Correction of Conveyancing Documents

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The Secretary of the Interior is authorized by section 315 of the Federal Land Policy and Management Act of 1976 to issue a document of disclaimer of interest or interests in any lands in a form suitable for recordation where the disclaimer will help remove a cloud on the title of such lands. The Secretary also is authorized by section 316 of that Act to correct patents or documents of conveyance where necessary to eliminate errors. This final rulemaking sets forth the procedures for carrying out these authority.

EFFECTIVE DATE: October 9, 1984.

ADDRESS: Any suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mark D. Etchart, (202) 343-8693; or Robert C. Bruce, (202) 343-8735

SUPPLEMENTARY INFORMATION: A proposed rulemaking providing the procedures for implementing the Secretary of the Interior's authority to issue documents of disclaimers and to correct patents and other conveyance documents was published in the **Federal Register** on May 3, 1982 (47 FR 10960). Comments were invited for a 60-day period ending on July 2, 1982. During the comment period, ten comments were received; five from corporations, including Alaska Native Corporations; two from attorneys; and three from Federal agencies. The comments commended the Department of the Interior for setting up the procedures contained in the proposed rulemaking, but recommended a number of changes that they hoped would be included in the final rulemaking. One provision that was objected to in the comments was the requirement for recovery of costs connected with the issuance of corrections of patents or other documents of conveyance. The comments argued that since the Federal Government made the error, the holder of the flawed patent or document of conveyance should not bear the cost of making the correction. This comment was considered and after careful consideration, was accepted. However, the study of this question involved a close examination of the Bureau of Land Management's costs for initial handling of applications for either a disclaimer or a correction. Those studies showed that the initial costs run approximately $100. Therefore, the fee that must accompany such applications has been raised to $100 by changes in §§ 1864.1-2 and 1865.1-2 of the final rulemaking. This increased fee is in keeping with the provisions of section 304 of the Federal Land Policy and Management Act that authorizes the collection of reasonable costs with respect to applications relating to the public lands.

A couple of the comments raised questions about the language in the final paragraph of § 1864.0-2, the objectives section, and expressed the view that the language was not clear. The language has been reviewed and rewritten in the final rulemaking to clarify what an instrument of disclaimer is intended to be and what it is intended to accomplish.

Section 1864.0-5(e) has been amended by the addition of the phrase "seaward boundary of the State to bring it into compliance with section 4 of the Submerged Lands Act (43 U.S.C. 1312).

A comment suggested that the term "prospective owner" in § 1864.0-5(g) of the proposed rulemaking should be changed to expand and clarify those instruments which can be used to acquire title and the extent of the title that may be acquired. After careful consideration of the comment, the final rulemaking deletes all reference to prospective purchaser in order to simplify the application process.

As a result of a comment recommending a clarification of the phrase "(A)ny present or prospective owner" in § 1864.1-1 of the proposed rulemaking, the phrase has been amended in the final rulemaking to limit it to "any present owner of record". This section has also been clarified in the final rulemaking to require a showing that the lands are no longer subject to a claim or potential claim of the United States.

Section 1864.1-2(a) of the proposed rulemaking has been amended and moved to § 1864.1-1(c) by the final rulemaking because it is more appropriate in its new location. As a result of the movement of paragraph (a), the subsequent paragraphs have been renumbered by the final rulemaking. In addition, § 1864.1-3(d) has been added by the final rulemaking to clarify the differences between a disclaimer of interest in regular lands and an application for omitted or possibly omitted lands under Part 9180 of this title. A new paragraph (c)(8) has been added to § 1864.1-2 by the final rulemaking allowing the authorized officer to waive certain requirements if they have been satisfied through prior consultation.

Section 1864.1-2(d)(1) of the proposed rulemaking has been rewritten and renumbered § 1864.1-2(c)(1) by the final rulemaking to clarify the requirements for a legal description of the lands for which a disclaimer is sought.

Section 1864.1-3 has been amended by the final rulemaking to include a provision for denial of an application when: (1) 12 or more years have elapsed since the applicant or his/her predecessor in interest knew or should have known of such an error; (2) the application pertains to water or security rights; or (3) the application pertains to trust or Indian lands.

A comment recommended that § 1864.1-4 of the proposed rulemaking be amended to clarify when the Bureau of Land Management would be required to consult with other Federal agencies on the issuance of a disclaimer document. The comment pointed out that the section should make it clear that the Bureau should only consult when it had knowledge that the issuance of the disclaimer document would directly affect another Federal agency. This clarification has been adopted by the final rulemaking.

Another area of general concern in the comments on the proposed rulemaking was the lack of a requirement that adverse claimants be notified when a decision to issue a disclaimer document or a document of correction has been made. The comments expressed the view that those affected by the decision should be given notice and an opportunity to take whatever action they deem appropriate. In response to these comments, the final rulemaking contains changes to § 1864.2 which makes it clear that persons other than the applicant will be notified of the decision of the authorized officer to issue the appropriate document. In connection with this change, the provisions of the appeals section, § 1864.4, has been amended by the final rulemaking to make it clear that claimants adversely affected by a decision of the authorized officer can appeal that decision. Section 1864.2 of the proposed rulemaking has been amended by the final rulemaking to include publication of the notice of disclaimer application in a local newspaper.

As the result of a comment suggesting a need to clarify § 1864.3 of the proposed rulemaking as it relates to the form of the instrument of disclaimer that is issued, and in keeping with the clarifying amendment made by the final rulemaking to § 1864.0-2, the final rulemaking amends the language of § 1864.3.

Section 1864.4 of the proposed rulemaking has been deleted by the final rulemaking because its contents have been covered by § 1864.0-2(b) of the final rulemaking. As a result of this deletion, § 1864.5 has been renumbered § 1864.4 by the final rulemaking.

Section 1865.1-3 of the proposed rulemaking has been totally revised by the final rulemaking. This revision was necessitated by the deletion of the requirement for cost reimbursement for the issuance of correction documents, a change that was discussed earlier in this preamble.

Finally, the Alaska Native Corporations that commented on the proposed rulemaking were concerned that language was needed in the final rulemaking to make it clear that corrections could be made to the interim conveyances that are being issued under the provisions of the Alaska Native Claims Settlement Act until such time as work is completed and patents can be issued. After careful study, this suggestion has been adopted in the final rulemaking by adding a new term "conveyances documents" to the § 1865.0-5, definitions. The new definition makes it clear that interim conveyances issued under the provisions of the Alaska Native Claims Settlement Act and approvals and tentative approvals issued to the State of Alaska under the Alaska Statehood Act are, for the purposes of this subpart, considered conveyance documents that can be corrected by the Bureau of Land Management. This final rulemaking will also permit a correction if an error is discovered in a final patent issued under the provisions of the Alaska Native Claims Settlement Act or Alaska Statehood Act.

Editorial and grammatical corrections as needed have been made.

The principal author of this final rulemaking is Henry B. Beauchamp, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

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

The information collection requirements contained in 43 CFR Subparts 1864 and 1865 do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

List of Subjects

43 CFR Part 1820

Administrative practice and procedure, Alaska, Archives and records, Public lands.

43 CFR Part 1860

Administrative practice and procedure, Public lands.

Under the authority of sections 315 and 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745, 1746), Part 1860, Group 1800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: August 16, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

PART 1860—[AMENDED]

1. Part 1860 is amended by:

A. Revising the title to read:

"PART 1860—CONVEYANCES, DISCLAIMERS AND CORRECTION DOCUMENTS"

B. Adding a new Subpart 1864 to read:

Subpart 1864—Recordable Disclaimers of Interest in Land

Sec.

1864.0-1 Purpose.
1864.0-2 Objectives.
1864.0-3 Authority.
1864.0-5 Definitions.
1864.1 Application for issuance of a document of disclaimer.
1864.1-1 Filing of application.
1864.1-2 Form of application.
1864.1-3 Action on application.
1864.1-4 Consultation with other Federal agencies.
1864.2 Decision on application.
1864.3 Issuance of document of disclaimer.
1864.4 Appeals.

Subpart 1864—Recordable Disclaimers of Interest in Land

§ 1864.0-1 Purpose.

The Secretary of the Interior has been granted discretionary authority by section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745) to issue recordable disclaimers of interests in lands. In general, a disclaimer may be issued if the disclaimer will help remove a cloud on the title to lands and there is a determination that such lands are not lands of the United States or that the United States does not hold a valid interest in the lands. These regulations implement this statutory authority of the Secretary.

§ 1864.0-2 Objectives.

(a) The objective of the disclaimer is to eliminate the necessity for court action or private legislation in those instances where the United States asserts no ownership or record interest, based upon a determination by the Secretary of the Interior that there is a cloud on the title to the lands, attributable to the United States, and that:

(1) A record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or

(2) The lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or

(3) Accreted, relicted, or avulsed lands are not lands of the United States.

(b) A disclaimer has the same effect as a quitclaim deed in that it operates to estop the United States from asserting a claim to an interest in or the ownership of lands that are being disclaimed. However, a disclaimer does not grant, convey, transfer, remise, quitclaim, release or renounce any title or interest in lands, nor does it operate to release or discharge any tax, judgement or other lien, or any other mortgage, deed or trust or other security interest in lands that are held by or for the benefit of the United States or any instrumentality of the United States.

(c) The regulations in this subpart do not apply to any disclaimer, release, quitclaim or other similar instrument or declaration, that may be issued pursuant to any provision of law other than section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745).

§ 1864.0-3 Authority.

Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), authorizes the Secretary of the Interior to issue a recordable disclaimer, where the disclaimer will help remove a cloud on the title of such lands, if certain determinations are made and conditions are met.

§ 1864.0-5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Accreted lands" have the meaning imparted to them by applicable law. In general, they are lands that have been gradually and imperceptibly formed along the banks of a body of water by deposition of water-borne soil.

(e) "Avulsed lands" have the meaning imparted to them by applicable law. In general, they are lands that have been uncovered by a relatively sudden change in alignment of the channel of a river, or by a comparable change in some other body of water, or that remain as uplands following such a change, or that are located in the bed of the new channel.

(d) "Actual shoreline" means the line which is washed by the water wherever it covers the bed of a body of water at its mean high water level.

(e) "Lands" means lands and interests in lands now or formerly forming a part of the reserved or unreserved public lands of the contiguous 48 States and Alaska and as to any coastal State, includes submerged lands inside of the seaward boundary of the State.

(f) "Meander line" means a survey line established for the purpose of representing the location of the actual shoreline of a permanent natural body of water, without showing all the details of its windings and irregularities. A meander line rarely runs straight for any substantial distance. It is established not as a boundary line but in order to permit calculation of the quantity of lands in the fractional sections remaining after segregation of the water area.

(g) "Relicted lands" have the meaning imparted that term by applicable law. In general, they are lands gradually uncovered when water recedes permanently.

§ 1864.1 Application for issuance of a document of disclaimer.

§ 1864.1-1 Filing of application.

(a) Any present owner of record may file an application to have a disclaimer of interest issued if there is reason to believe that a cloud exists on the title to the lands as a result of a claim or potential claim by the United States and that such lands are not subject to any valid claim of the United States.

(b) Prior to the acceptance for filing of an application under this subpart, the authorized officer should discuss the proposal with the proposed applicant to determine if the regulations in this subpart apply.

(c) An application shall be filed in writing with the proper Bureau of Land Management office as listed in § 1821.2-1(d) of this title.

§ 1864.1-2 Form of application.

(a) No specific form of application is required.

(b) A nonrefundable fee of $100 shall accompany the application.

(c) Each application shall include:

(1) A legal description of the lands for which a disclaimer is sought. The legal description shall be based on either an official United States public land survey or, in the absence of or inappropriateness (irregularly shaped tracts) of an offical public land survey, a metes and bounds survey (whenever practicable, tied to the nearest corner of an official public land survey), duly certified in accordance with State law, by the licensed civil engineer or surveyor who executed or supervised the execution of the metes and bounds survey. A true copy of the field notes and plat of survey shall be attached to and made a part of the application. If reliance is placed in whole or in part on an official United States public land survey, such survey shall be adequately identified for record retrieval purposes;

(2) The applicant's name, mailing address, and telephone number and the names addresses and telephone numbers of others known or believed to have or claim an interest in the lands;

(3) All documents which show to the satisfaction of the authorized officer the applicant's title to the lands;

(4) As complete a statement as possible concerning:

(i) The nature and extent of the cloud on the title, and

(ii) The reasons the applicant believes:

(A) The record title interest of the United States in the lands included in the application has terminated by operation of law or is otherwise invalid, including a copy or legal citation of relevant provisions of law; or

(B) The lands between the meander line shown on the plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States, including as documentation an official plat of survey or a reference to a date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue; or

(C) The lands are accreted, relicted or avulsed and are no longer lands of the United States, including submission for the uplands portion of the body of water affected a copy of an official plat of survey or a reference to it by date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue;

(5) Any available documents or title evidence, such as historical and current maps, photographs, and water movement data, that support the application;

(6) The name, mailing address, and telephone number of any known adverse claimant or occupant of the lands included in the application;

(7) Any request the applicant may have that the disclaimer be issued in a particular form suitable for use in the jurisdiction in which it will be recorded; and

(d) Based on prior discussions with the applicant, the authorized officer may waive any or all of the aforementioned items if in his/her opinion they are not needed to properly adjudicate that application.

§ 1864.1-3 Action on application.

(a) An application shall be denied by the authorized officer if:

(1) More than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States;

(2) The application pertains to a security interest or water rights; or

(3) The application pertains to trust or restricted Indian lands:

(b) The authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit needed to cover the administrative costs of processing the application and issuing a disclaimer.

(c) The applicant shall submit a deposit in an amount determined by authorized officer.

(d) If the application is concerned with what may be omitted lands, it shall be processed in accordance with the applicable provisions of Part 9180 of this title. If the application is determined by the authorized officer to involve omitted lands, the applicant shall be so notified in writing.

§ 1864.1-4 Consultation with other Federal agencies.

If the lands included in the application are under the administrative jurisdiction of a Federal agency other than the Department of the Interior or if the issuance of a disclaimer for the lands would, to the Bureau of Land Management's knowledge, directly affect another Federal agency, the authorized officer shall refer the application to that Federal agency for comment.

§ 1864.2 Decision on application.

(a) The authorized officer shall notify the applicant and any party adverse to the application, in writing, on the determination of the authorized officer on whether or not to issue a disclaimer. Prior to such notification, the authorized officer shall issue to the applicant a billing that includes a full and complete statement of the cost incurred in reaching such determination, including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs exceed the amount of the deposit required of the applicant under this subpart, the applicant shall be informed that a payment is required for the difference between the actual costs and the deposit. The notification shall also require that payment be made within 120 days from the date of mailing of the notice. If the deposit exceeds the administrative costs of issuing the disclaimer, the applicant shall be informed that a credit for or a refund of the excess will be made. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application. Before the authorized officer makes a determination to issue a disclaimer, he/she shall publish notice of the application, including the grounds supporting it, in the **Federal Register.** Publication in the **Federal Register** shall be made at least 90 days preceding the issuance of a decision on the disclaimer. Notice shall be published in a newspaper located in the vicinity of the lands covered by the application once a week for 3 consecutive weeks during the 90-day period set out herein. Neither publication shall be made until the applicant has paid the administrative costs.

§ 1864.3 Issuance of document of disclaimer.

Upon receipt of the payment required by §§ 1864.1-2(b), 1864.1-3(c) and 1864.2 of this title and following, by not less than 90 days, the publication required by § 1864.2 of this title, the authorized officer shall make a decision upon the application, and if the application is allowed, shall issued to the applicant an instrument of disclaimer.

§ 1864.4 Appeals.

An applicant or claimant adversely affected by a written decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR Part 4.

2. Part 1860 is amended by adding a new subpart 1865 as follows:

Subpart 1865—Correction of Conveyancing Documents

Sec.
1865.0-1 Purpose.
1865.0-2 Objective.
1865.0-3 Authority.
1865.0-5 Definitions.
1865.1-1 Application for correction of conveyancing documents.
1865.1-1 Filing of application.
1865.1-2 Form of application.
1865.1-3 Action on application.
1865.2 Issuance of corrected patent or document of conveyance.
1865.3 Issuance of patent or document of conveyance on motion of authorized officer.
1865.4 Appeals.

Subpart 1865—Correction of Conveyancing Documents

§ 1865.0-1 Purpose.

The purpose of these regulations is to implement section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746), which affords to the Secretary of the Interior discretionary authority to correct errors in patents and other documents of conveyance pertaining to the disposal of the public lands of the United States under laws administered through the Bureau of Land Management or its predecessors.

§ 1865.0-2 Objective.

The objective of a correction document is to eliminate from the chain of title errors in patents or other documents of conveyance that have been issued by the United States under laws administered by the Bureau of Land Management or its predecessors and that pertain to the disposal of the public lands or of an interest therein.

§ 1865.0-3 Authority.

Section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746) authorizes the Secretary of the Interior to correct patents and other documents of conveyance issued at any time pursuant to the laws relating to the disposal of the public lands where the Secretary of the Interior deems it necessary or appropriate to do so in order to eliminate errors.

§ 1865.0-5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(b) "Error" means the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions and names either in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law.

(c) "Patents or other documents of conveyance" means a land patent, a deed or some other similar instrument in the chain of title to realty that has been issued by the United States under laws administered by the Bureau of Land Management or its predecessors pertaining to the disposal of the public lands of the United States or of an interest therein. It also includes interim conveyances issued under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), and approvals and tentative approvals issued under the Act of July 7, 1958, as amended (72 Stat. 339).

(d) "Lands" mean lands or interest in lands.

§ 1865.1 Application for correction of conveyancing documents.

§ 1865.1-1 Filing of application.

(a) Any claimant asserting ownership of lands described in and based upon a patent or other document of conveyance containing an alleged error may file an application to correct the alleged error.

(b) An application shall be filed in writing with the proper Bureau of Land Management office as listed in § 1821.2-1(d) of this title.

§ 1865.1-2 Form of application.

(a) No specific form of application is required.

(b) A non-refundable fee of $100 shall accompany the application.

(c) Each application shall include:

(1) The name, mailing address, and telephone number of the applicant and any others known to the applicant that hold or purport to hold any title or other interest in, lien on or claim to the lands described in the patent or other document of conveyance containing the alleged error as to which the corrective action is requested, and if the error involves a misdescription, the land that would be affected by the corrective action requested;

(2) All documents which show the applicant's title to the lands included in the application;

(3) A certified copy of any patent or other document conveying any lands included in the application to the applicant or predecessor(s) in interest; and

(4) As complete a statement as possible concerning:

(i) The nature and extent of the error;

(ii) The manner in which the error can be corrected or eliminated; and

(iii) The form in which it is recommended the corrected patent or document of conveyance be issued.

§ 1865.1-3 Action on application.

The authorized officer, upon review of the factual data and information submitted with the application, and upon a finding that an error was made in the patent or document of conveyance and that the requested relief is warranted and appropriate, shall give written notification to the applicant and make a reasonable effort to give written notification to any others known to have or believed to have or claim an interest in the lands that a corrected patent or document of conveyance shall be issued. The notification shall include a description of how the error is to be corrected or eliminated in the patent or document of conveyance. The notice shall require the applicant to surrender the original patent or other document of conveyance to be corrected. Where such original document is unavailable, a statement setting forth the reasons for its unavailability shall be submitted in lieu of the original document. The notice may include a requirement for quitclaiming to the United States the lands erroneously included, and shall specify any terms and conditions required for the quitclaim.

§ 1865.2 Issuance of corrected patent or document of conveyance.

Upon the authorized officer's determination that all of the requirements of the Act for issuance of a corrected patent or document of conveyance have been met, the authorized officer shall issue a corrected patent or document of conveyance.

§ 1865.3 Issuance of patent or document of conveyance on motion of authorized officer.

The authorized officer may initiate and make corrections in patents or other documents of conveyance on his/her own motion, if all existing owners agree.

§ 1865.4 Appeals.

An applicant or claimant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR Part 4.

PART 1820—APPLICATION PROCEDURES

§§ 1821.6—1821.6-6 [Removed]

§§ 1821.7—1821.7-2 [Redesignated as §§ 1821.6 through 1821.6-2]

3. Part 1820 is revised by removing §§ 1821.6 through 1821.6-6 in their entirety and by redesignating §§ 1821.7 through 1821.7-2 as §§ 1821.6 through 1821.6-2.

[FR Doc. 84-23490 Filed 9-5-84; 8:45 am]

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federal register

Thursday
September 6, 1984

Part III

Department of Energy

Economic Regulatory Administration

10 CFR Parts 205 and 590

Import and Export of Natural Gas; New Administrative Procedures; Publication of Final Rule

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 205 and 590

[Docket No. ERA-R-81-05]

Import and Export of Natural Gas; New Administrative Procedures

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Publication of Final Rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has adopted new administrative procedures applicable to its natural gas import and export proceedings. These procedures replace those of the Federal Power Commission (FPC) that were in effect on September 30, 1977, and that have been used by the ERA since October 1, 1977. They also supersede the ERA's existing procedural rules governing off-the-record communications in import and export proceedings.

These final adminstrative procedures reflect the policy and regulatory responsibilities of this agency. ERA proceedings generally will be conducted in an informal manner, with records developed and parties heard through written comments and oral presentations. Trial-type hearings will be reserved for resolution of genuine disputes of material issues of fact when they are necessary for a full and true disclosure of those facts.

Moreover, these procedures are designed to expedite the government's review of import or export applications, while protecting the full rights of all parties.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-017B, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9482

Michael T. Skinker (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667

Jane Register (Public Affairs, Office of the Administrator), Economic Regulatory Administration, Forrestal Building, Room 5B-148, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2972

SUPPLEMENTARY INFORMATION:

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I. Background

A. Authorities and Responsibilities

The authority to regulate imports and exports of natural gas derives from section 3 of the Natural Gas Act (NGA).[1] Until the passage of the Department of Energy Organization Act of 1977 (DOE Act),[2] this authority was exercised by the Federal Power Commission. Sections 301(b) and 402(f) of the DOE Act transferred the responsibility in this area to the Secretary of Energy who in turn delegated it to the Administrator of the ERA.[3] The ERA has been administering this function since October 1, 1977, under the FPC rules in place on September 30, 1977 (except for the *ex parte* rules which the ERA adopted on August 24, 1978 (10 CFR Part 205, Subpart U).

Under Section 3 of the NGA, a proposed import or export of natural gas is to be authorized "upon application" unless it is determined that authorization "will not be consistent with the public interest." The NGA does not specify how such determinations are to be made except to indicate that an application may not be found inconsistent with the public interest without the agency first having provided "opportunity for hearing." There is broad discretion for the agency to adopt the particular procedures to be followed in the authorization process.

In addition to NGA Section 3 responsibilities, the Secretary of Energy is authorized under section 102(10) of the DOE Act to undertake activities involving the integration of domestic and foreign energy policy, which includes engaging in discussions with foreign governments and their representatives concerning international cooperation on energy matters and the establishment of a framework for individual energy arrangements of direct benefit to the United States. The procedures by which the Secretary's delegate, the ERA Administrator, makes regulatory decisions on applications to import or export natural gas have been crafted to take into account DOE consultations with other agencies (such as the State Department) and foreign governments in carrying out these broader domestic and international energy policy responsibilities.

These rules also have been developed with the goal of minimizing the regulatory burden on all parties and assuring efficiency of the proceedings. They provide the Administrator with the ability to expedite the regulatory process, as necessary, to respond to international and energy policy concerns of the U.S. Government.

B. Proposed Rule

On November 30, 1977,[4] the ERA gave notice that it would utilize the

[1] Act of June 21, 1938, C. 556, 52 Stat. 821-833, 15 U.S.C. 717-717W.

[2] Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*

[3] "New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas," Delegation Order No. 0204-111, 49 FR 6684, February 22, 1984.

[4] 42 FR 61856, December 7, 1977.

regulations of the Federal Power Commission contained in 18 CFR Chapter 1, until issuing its own regulations. On August 24, 1978,[5] the ERA issued its own rule of practice on off-the-record communications between DOE decision-making employees and "interested persons."

On August 26, 1981, the agency proposed new administrative procedures[6] under which natural gas import and export applications would be processed. The proposal set out the various procedures that would be available to the Administrator in a particular case. They include written comments and responses, oral presentations, conferences, and trial-type adjudicatory procedures. The Administrator could use any or all of these procedures in a case. However, as explained in the preamble to the proposal, the agency contemplates development of the issues and gathering of the facts generally through written and reply comments, supplemented as necessary by oral presentations.[7] The formal adjudicatory process would be reserved for resolving genuine disputes of material issues of fact when a trial-type hearing is necessary to obtain a full and true disclosure of those facts.

II. Final Rule

A. Introduction

After consideration of the comments received on the proposed rule, the ERA has adopted the administrative procedures essentially as proposed. The procedures are designed to accommodate both the agency's broader natural gas policy responsibilities and its institutional structure. They also will ensure that the due process rights of the parties are protected while achieving a full and fair disclosure of the facts and issues in an efficient and timely manner. There is flexibility to tailor procedures to the needs of a particular case and the nature and complexity of the issues. A discussion below of how the procedures will operate is followed by a discussion of changes from the proposed rule, primarily in response to the comments received.

B. Overall Operating Concept

Most applications or other requests for action will be processed by developing a decisional record through written responses and comments and oral presentations. Other additional procedures for presenting evidence and obtaining information will be granted as necessary to achieve a complete understanding of the facts and issues. In a particular case, the agency may direct that supplemental written filings be made before determining whether any other additional procedures are necessary.

A proceeding will normally be initiated with the filing of an application for authorization to import or export natural gas (§ 590.201). After a **Federal Register** notice is published summarizing the application, 30 days normally will be allowed for the filing of motions to intervene, protests, or comments on the application (§ 590.205).

The applicant or any intervenor may file an answer to any motion to intervene or to protest within 15 days of the filing of the motion (§ 590.303 and § 590.304). The Administrator, however, may issue a final opinion and order pursuant to provision that is made for shortened proceedings (§ 590.316) prior to the expiration of the 15-day answer period. This can be done if no party requests additional procedures or if the Administrator determines that additional procedures are not required pursuant to § 590.310, § 590.311, § 590.312, and § 590.313. Further, this time period might be shortened under emergency conditions with the issuance of an emergency interim order under § 590.403.

After the close of the comment period, or after the close of the 15-day period for responding to motions to intervene and protest, the Administrator will determine whether additional procedures are required. Any party may request additional procedures based on issues raised in the response of any intervenor to the notice of application or in the answers filed to intervenor responses (§ 590.310). If no time limit is established, additional procedures may be requested at any time prior to the issuance of a final opinion and order (§ 590.310). If the Administrator determines that additional procedures are not required, either a conditional order or a final order will be issued based upon the record in the shortened proceeding (§ 590.316). If the order under the shortened proceeding denies the authorization sought, or attaches material conditions to it, the parties will be advised of the reasons for denial or material conditions and will be provided an opportunity to request additional procedures before the issuance of the final decision (§ 590.316).

While a party is not automatically entitled to additional procedures, it is the Administrator's intention to issue a notice of procedures pursuant to § 590.206 when additional procedures are requested unless the Administrator determines that the request is frivolous or is not relevant to matters before the ERA for decision. The notice of procedures may identify and request comments on specific issues of fact, law or policy relevant to the proceeding and may establish a time limit for requesting additional procedures.

The agency has a number of approaches available to it for advancing a proceeding, building a record, and resolving disputed issues of fact, law and policy. They include the filing of written comments and replies, conferences (§ 590.311), oral presentations (§ 590.312), and trial-type hearings (§ 590.313). The Administrator shall decide which of these, singly or in combination, are necessary to advance a proceeding in response to a motion by a party or on the Administrator's own initiative. A party requesting an additional procedure must meet the requirements for obtaining the particular procedures.

A party requesting a conference should identify the reason for holding the conference and the issues to be discussed (§ 590.311). The request will normally be granted if a conference will materially advance the proceeding.

A party requesting an oral presentation (§ 590.312) should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. A request for an oral presentation will ordinarily be granted if the Administrator determines that a substantial question of fact, law, or policy is at issue.

A party requesting a trial-type hearing should identify the issues and demonstrate that they are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts (§ 590.313). The Administrator will grant a trial-type hearing if it is determined that there is a relevant and material factual issue genuinely in dispute and that a trial-type hearing is necessary for a full and true disclosure of the facts.

The Administrator may preside personally at a trial-type hearing or during any other procedure, or may designate another employee as the presiding official to conduct a proceeding while retaining decision-making authority (§ 590.301). The employee designated to act as presiding official on behalf of the Administrator need not be an Administrative Law Judge (§ 590.102(n)).

The Administrator or presiding official will make any decisions necessary to regulate the conduct of a

[5] 43 FR 39080, September 1, 1978.
[6] 46 FR 44696, September 4, 1981.
[7] *Ibid.* at 44696 and 44697.

trial-type hearing in an efficient manner and to keep the record free of irrelevant, immaterial, and unduly repetitious evidence (§ 590.313). These decisions may include limiting the scope of a hearing to consideration of the disputed factual issue or denying or limiting cross-examination of witnesses and the admission of depositions into the record. In the event that additional procedures are needed, a procedural notice will be issued announcing the procedures to be followed (§ 590.206).

C. Discussion of Comments and Other Matters

1. General

A public hearing was held on the proposed administrative procedures rule on November 12, 1981. Comments were received from 23 parties in response to the proposal and at the hearing. Most of the commenters favored adoption of the proposed procedures on the grounds that they would facilitate expeditious handling of noncontroversial cases and would result in considerable savings of time and costs inherent in adjudicatory procedures. Approximately 100 suggested amendments were considered. The technical changes proposed by many commenters were particularly helpful and were adopted in many instances.

Those commenters who opposed adoption of the proposed rule asserted that proceedings under section 3 of the NGA were required to conform to the adjudicatory "hearing" requirements of the Administrative Procedure Act (APA). The final rule would not significantly alter parties' existing procedural rights and would be similar to those conferred by the APA in general "on-the-record" adjudications. The rule fully meets the requirement of section 3 of the NGA that "opportunity for hearing" be provided. The formal adjudicatory procedures of sections 556 and 557 of the APA are not applicable to natural gas import and export proceedings, since the NGA does not require that decisions be "determined on the record after opportunity for an agency hearing," as provided by section 554(a) of the APA.[8] For Section 3 import and export proceedings, which are known as "hybrid" proceedings combining aspects of rulemaking and adjudication, or as "informal" adjudications, an agency has considerable flexibility in conducting the proceeding in reference to the facts, law, and policy at issue in a particular case.[9]

2. Significant Issues

(a) *Off-the-Record Communications—Separation of Functions and Other Matters* (§ 590.108; § 590.102(c)). The final rule adopts, with some minor revisions, the proposed rule prohibiting *ex parte*, off-the-record communications between an "interested person" and any DOE decisional employee regarding the merits of a contested natural gas import or export proceeding pending before the ERA. Under this rule, all DOE employees who are or may reasonably be expected to be involved in the decision making process in a natural gas import or export proceeding are treated as decisional employees. This includes DOE staff assisting the Administrator in the conduct of trial-type hearings. The off-the-record communications rule is designed to avoid all possibilities of prejudice, real or apparent, to the public interest and to persons involved in a natural gas import/export authorization proceeding.

Most of the commenters who opposed the off-the-record communications rule did so because they were concerned that separation of investigative and trial-type functions from decision-making was essential to impartial decisions. They believed that combining trial and investigative functions with activities directly supporting the decision process would compromise the objectivity of agency decisions. The final rule adopts the provision essentially as proposed, in recognition of the fact that there is no separate independent staff performing prosecutorial or investigative functions at the DOE. All DOE employees involved in a natural gas import/export proceeding operate solely on behalf of the Administrator or presiding official; none operates in an independent, adversarial role.

In response to comments, the ERA has made some modifications to help assure that all parties to a proceeding know when the prohibition against off-the-record communications has been triggered. The *ex parte* rules go into effect when a proceeding is contested. The definition of "contested proceeding" in § 590.102(b) has been clarified by requiring that all notices of opposition to an action be in writing. § 590.108(b), which describes when the *ex parte* rules go into effect, was also amended to provide that opposition and the reasons for opposition be expressly stated in a motion to intervene, notice of intervention, protest, or in some other written form.

Further, some commenters stated it was not clear in the proposed rule that a party must be given both reasonable prior notice and the opportunity to respond to an off-the-record communication. Accordingly, the definition of "off-the-record communication" in § 590.102(k) has been amended to provide that both notice and opportunity to respond are required by the rule. Thus, for example, if a party was given reasonable prior notice, but not the opportunity to be present at an off-the-record communication made at a conference on the merits of a contested proceeding, then that communication constitutes a prohibited off-the-record communication.

Section 590.102(k) has been amended to clarify that certain discussions are exempted from the prohibition against off-the-record communications even though relevant to the merits of a proceeding. Section 590.102(k) now provides that general background discussions about an entire industry or market are exempted from the prohibition even though they may relate to the merits of specific contested cases.

(b) *Off-the-Record Communications; Foreign Governments* (§ 590.102(h)).The final rule adopts, with one minor modification, the proposed rule excluding discussions and negotiations with foreign governments from the prohibition against off-the-record communications.

Several of the commenters opposed this exclusion. Generally, the concern was that off-the-record discussions with foreign governments on energy policy and the framework for commercial trade would involve negotiation of terms of individual agreements without the participation of affected parties.

The agency has concluded that, to be effective, DOE officials must be able to conduct sensitive, international discussions on energy matters in private. These discussions characteristically provide avenues for information transmission and foster a free and open exchange of ideas on energy problems that are only possible when confidentiality is maintained.

Discussions with foreign governments and their representatives will generally deal with overall policy. However, should any discussions lead to a formal statement or agreement affecting an

[8] See *American Public Gas Assn* v. *F.P.C.*, 567 F. 2d 1016 (D.C. Cir. 1977), cert. denied, 435 U.S. 907 (1978); *Phillips Petroleum Corp.* v. *F.P.C.*, 475 F. 2d 842 (10th Cir. 1973), cert. denied, 414 U.S. 1146 (1974).

[9] *Ibid.*; *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198 (1980); *Vermont Yankee Nuclear Power Corp.* v. *N.R.D.C.*, 435 U.S. 519 (1978); *Mathews* v. *Eldridge*, 424 U.S. 319 (1976); *West Chicago, Ill.* v. *U.S. N.R.C.*, 701 F. 2d 632 (7th Cir. 1983); *Izaac Walton League* v. *Marsh*, 655 F. 2d 346 (D.C. Cir. 1981), cert. denied, 454 U.S. 1092 (1981); *The Bell Telephone Co.* v. *F.C.C.*, 503 F. 2d 1250 (3rd Cir. 1974), cert. denied, 422 U.S. 1026 (1975).

application for the import or export of natural gas, the formal agreement or statement shall be identified in a **Federal Register** notice of the application. Further, § 590.205(c) is being amended to provide that if a formal agreement is concluded after publication of the notice of application in the **Federal Register**, a description of the agreement or statement shall be placed in the official record of the proceeding. The parties will then be given opportunity to comment. This amendment to § 590.205(c) will ensure that opportunity for public comment, consistent with due process requirements, is provided at the earliest practical stage of the proceeding consistent with the need for confidentiality in international discussions.

3. Other Issues

A number of technical revisions have been made in response to comments received on the proposed rule to enhance the clarity and effectiveness of the rule.

(a) *Computation of Time* (§ 590.105(c)). Section 590.105(c) has been clarified to provide that an order is effective at the time stamped on it by the agency after the order has been signed, unless another effective date is specified in the order.

(b) *Service* (§ 590.107). As proposed, § 590.107(a) could be read to require that documents served upon the parties had to be a copy of the documents filed with the ERA and stamped with the time and date of receipt. Some commenters said this could require personal delivery of documents filed near the end of a filing period in order for parties to meet service and filing requirements. Section 590.107(a) now permits parties to serve a true copy of the document filed which does not have to be a "stamped" copy. A provision has also been added to § 590.103(b) expressly requiring that service of documents be made not later than the filing date of the documents. These changes should give the parties more flexibility in meeting service and filing requirements.

(c) *Good Cause* (§ 590.108(a)(5); § 590.201(b); § 590.204; § 590.303; § 590.304; § 590.310). The final rule adopts "good cause" as the standard the Administrator or presiding official will apply in exercising his or her discretion whether or not to grant certain actions requested. For example, the Administrator or presiding official will determine whether good cause exists for allowing late interventions (§ 590.303(a)), after considering whether the party filing late (1) had reason for failure to file on time, (2) would provide information material to the proceeding, and (3) had an interest which may be directly affected by the outcome of the proceeding. The Administrator or presiding official will also take into account any disruption of the proceedings or prejudice to any existing party or intervenor which might result from the late filing.

(d) *Filing of Applications or Other Requests (§ 590.201).* Section 590.201 as proposed provided only for the filing of applications to import or export natural gas and related amendments. Section 590.201 has been revised to include the phrase "or any other requested action." This change was made to identify a method by which parties could request other actions by the agency, such as the issuance of an order or information letter to remove an ambiguity as to the meaning or effect of a previously issued decision.

(e) *Contents of Applications* (§ 590.202). Section 590.202 as proposed did not make any provision for safeguarding confidential information filed with the ERA. A few commenters urged that some specific provision should be included for this propose. Section 590.202(e) now permits parties confidential treatment of proprietary information.

Further, § 590.202 has been revised to include the requirement that the applicants demonstrate that the proposed import is competitive, and is consistent with the criteria established in the Secretary of Energy's policy guidelines issued February 15, 1984, for evaluating applications for authorization to import or export natural gas.[10]

(f) *Amendment or Withdrawal of Application* (§ 590.204). Proposed § 590.103(c) (general filing requirements) was deleted to eliminate duplication of the responsibilities placed on an applicant by § 590.204(a) (amendment or withdrawal of application). Section 590.103(c) would have required an applicant continually to update the record in a proceeding with any new or newly discovered information relevant thereto, a responsibility already covered by § 590.204(a), which requires an applicant to amend the application whenever a material change in facts or conditions occurs.

(g) *Notice of Applications* (§ 590.205). Section 590.205(a) as proposed allowed 15 days for responding to a notice of application. Several commenters stated that this did not allow enough time for evaluation and response. Accordingly, § 590.205(a) now provides 30 days for responding to notices of application. This change should help assure that all interested parties receive the notice and have ample opportunity to comment. The exception to this is found under § 590.403 where, under emergency conditions, emergency interim orders may be issued in less than 30 days.

(h) *Small Volume Exports* (§ 590.208). The ERA has adopted as proposed a provision which permits exports of up to 100,000 cubic feet of natural gas for scientific, experimental, or other non-utility use without prior authorization. In a change from the proposed rule, the final rule eliminates the requirement for reports to the ERA on these *de minimus* exports. This will accomplish significant savings in administrative burden to those making such small volume exports and to the agency in processing the reports.

(i) *Exchanges By Displacement* (§ 590.209). A provision has been added to clarify that, as long as there is no net effect on authorized imports or exports, and no actual gas flow across the border under the terms of the deferred exchange, no prior authorization is required for exchanges by displacement of imported gas with other gas for the purpose of storage. For example, in one type of exchange allowed under this provision, an importer would place imported gas into seasonal storage for the account of a third party rather than deliver it into his system supply. Withdrawal would subsequently be accomplished by displacement, with stored volumes being delivered into system supply concurrently with delivery of equivalent volumes by the exporter to the third party and a corresponding reduction in volumes delivered by the exporter to the importer. This provision provides additional flexibility to importers and exporters to meet market conditions.

(j) *Interventions and Answers* (§ 590.303). As proposed, § 590.303(e) required answers to motions to intervene to be under oath. There were no corresponding requirements with respect to other filings with the ERA. Some commenters suggested that the under oath requirement should either be deleted or made applicable to all allegations of fact in documents filed with the ERA. Section 590.103(b) (general filing requirements) now requires all documents filed with the ERA to be verified under oath or affirmation. The general application of the under oath requirement may also reduce the need for trial-type hearings to resolve issues of fact. Section 590.303(c) as proposed required intervenors to state their position and the legal and factual basis underlying it in responding to a notice of application. A few

[10] 49 FR 6684, February 22, 1984.

commenters indicated that intervenors may not have an established position in the early stages of a proceeding. Section 590.303(c) now permits intervenors to state their positions "to the extent known." This allows the parties to modify positions as facts and issues are developed in the proceeding.

(k) *Informal Discovery* (§ 590.305). A new § 590.305 has been added to clarify the implicit right of the parties to engage in discovery through procedures such as written interrogatories or production of documents. Under new § 590.305, if the parties cannot agree on discovery procedures, then the Administrator or presiding official will determine what discovery procedures are to be conducted.

(l) *Settlements* (§ 590.309). A new § 590.309 has been added to clarify the implicit right of parties to engage in settlement negotiations. Under new § 590.309, the Administrator or presiding official may order that off-the-record negotiations be conducted. No offer of settlement, comment, or discussion by the parties with respect to an offer of settlement shall be subject to discovery or admissible into evidence against any parties who object to its admission.

(m) *Additional Procedures* (§ 590.310, § 590.311, § 590.312, § 590.313). The comments on the proposed section for additional procedures reflected some confusion over the test to be applied for obtaining procedures in § 590.311 (conferences), in § 590.312 (oral presentations), and in § 590.313 (trial-type hearings). Accordingly, the rule has been clarified (§ 590.310) to indicate that the Administrator on his or her own initiative may determine at his or her discretion to hold additional procedures. Also, § 590.312(a) was revised to provide that an oral presentation ordinarily will be granted in response to a request by a party if the Administrator or presiding official determines that a substantial question of fact, law or policy is at issue and if illumination of that issue will be aided materially by an oral presentation. The criteria for granting a conference or a trial-type hearing have not been changed. As under the proposed rule, the requesting party has a burden of showing the need for the additional procedure requested and the Administrator has the responsibility for determining which of the procedures, singly or in combination, are most appropriate for a particular proceeding.

(n) *Trial-type Hearings* (§ 590.313). The term "evidentiary" hearing used throughout the proposed rule has been replaced with the term "trial-type" hearing in order to make it clear that a formal adjudicatory hearing with cross-examination is the type of hearing referred to. The purpose of this change was to eliminate any confusion that evidence could only be gathered in an adjudicatory hearing.

(o) *Complaints* (§ 590.317). In order to clarify certain existing practices, the agency has added § 590.317 to describe the procedures by which interested parties may file complaints. A complaint may be filed by any person about an existing import or export authorization over which the agency has jurisdiction. The complaint may be based on changed circumstances, improper conduct of the holder of the import or export authorization, or on any other facts that have a significant bearing on continuation or manner of continuation of the import or export authorization. The Administrator shall determine whether a complaint merits any action and what the appropriate action should be. If the Administrator determines that action on a complaint is appropriate, the Administrator may issue a show cause order under § 590.401 to frame the issues for consideration.

(p) *Reports of Contract Amendments* (§ 590.407). Proposed § 590.407 (reports of changed circumstances) is now designated "reports of contract amendments" and has been revised to require parties filing such amendments to specifically identify the ERA dockets to which they relate. This will facilitate expeditious processing of the documents.

(q) *Conditional Orders* (§ 590.402). Conditional orders will generally be issued to announce a final decision subject to completion of actions required by the National Environmental Policy Act [11] or to grant an authorization subject to subsequent showing by the applicant that an import project meets certain conditions. For example, a conditional order may authorize an import of natural gas provided that the pricing provisions in place when the gas begins to flow will assure that the imported gas will remain competitive over the term of the project.

(r) *Reopening of the Record.* The agency has deleted proposed § 590.315 (reopening of the record). The agency will keep the records open in its proceedings until final opinions and orders are issued to ensure consideration of any new or newly discovered evidence of a material nature during the latter stages of a proceeding. Information received after a final order has been issued and after the opportunity for rehearing has expired which has a material bearing on continuation of the import or export will be considered in any new proceeding the Administrator elects to open for the purpose of reviewing that project. Accordingly, the provision for reopening the record in a proceeding where a final order has been issued is not needed and has been deleted.

4. Filing and Processing Fees (§ 590.207)

In the preamble of the proposed rule, there was a request for comments on whether application fees should be sufficient to cover the direct costs associated with the filing and processing of import and export applications. Very few comments were received in response to this request. However, the agency did not propose specific filing and processing fees. Further, on February 7, 1984, the FERC issued the first two of a series of rules concerning changes in its filing and processing fees [12] which involve many of the issues that would be raised by any change in filing and processing fees that the ERA might propose. Accordingly, the agency has decided to make filing and processing fees the subject of a separate rulemaking to be initiated at a later time. This will permit a review of the FERC experience under its new rules.

III. Additional Matters

A. Environmental Review

After reviewing this rule pursuant to DOE's responsibilities under the National Environmental Policy Act (NEPA), the DOE has determined that it is procedural in nature and does not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, preparation of an environmental impact statement is not required.

B. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires the agencies subject to it to prepare a regulatory impact analysis for all major rules, as defined in the Order. This agency has determined that this procedural rule is not a major rule and therefore that a regulatory impact analysis is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 93-354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.* (September 19, 1980)), requires federal agencies to consider the impact of proposed regulations on small businesses, small governments, and other small entities. The DOE certifies that this final rule will not have a

[11] NEPA, Pub. L. 91-190, 83 Stat. 852, 42 U.S.C. 4321.

[12] 49 FR 5074-5091, February 10, 1984.

significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

D. Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et. seq.*). They have been assigned OMB control number 1903–0081.

E. Index of Subjects in Part 590 and Part 205

List of Subjects in 10 CFR Parts 205 and 590

Administrative practice and procedure, Exports, Imports, Filing fees, Natural gas, Environmental protection, Electric power.

F. Amendment of Part 205

At present the only ERA rules applicable to natural gas import and export proceedings are those contained in 10 CFR Part 205, Subpart U—Procedures for Natual Gas and Electricity Import and Export Cases. Because this rulemaking is not applicable to Subpart U as it relates to electricity export proceedings, this rule only amends Subpart U to the extent necessary to eliminate all applicability to natural gas import and export proceedings. The substance of the rule will remain the same with respect to electricity export cases.

Authority: Department of Energy Orgainzation Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101, *et. seq.*); Natural Gas Act, Act of June 21, 1938, c. 556, 52 Stat. 821 (42 U.S.C. 717, *et. seq.*); E.O. 12009, 42 FR 46267, September 15, 1977; DOE Delegation Order No. 02 04–111 (49 FR 6684, February 22, 1984).

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by adding a Part 590 to Subchapter G, and by revising Part 205, as set forth below.

Issued in Washington, D.C., on August 29, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

1. Subchapter G of Chapter II of Title 10, Code of Federal Regulations, is hereby amended by adding a new Part 590, to read as follows:

PART 590—ADMINISTRATIVE PROCEDURES WITH RESPECT TO THE IMPORT AND EXPORT OF NATURAL GAS

Subpart A—General Provisions

Sec.
590.100 OMB Control Numbers.
590.101 Purpose and scope.
590.102 Definitions.
590.103 General requirements for filing documents with ERA.
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590.105 Computation of time.
590.106 Dockets.
590.107 Service.
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590.109 ERA investigations.

Subpart B—Applications for Authorization to Import or Export Natural Gas

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590.316 Shortened proceedings.
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Subpart D—Opinions and Orders

590.401 Orders to show cause.
590.402 Conditional orders.
590.403 Emergency interim orders.
590.404 Final opinions and orders.
590.405 Transferability.
590.406 Compliance with orders.
590.407 Reports of contract amendments.

Subpart E—Applications for Rehearing

590.501 Filing.
590.502 Application is not a stay.
590.503 Opinion and order on rehearing.
590.504 Denial by operation of law.
590.505 Answers to applications for rehearing.

Authority: Sec. 301(b), Sec. 402(f), and Sec. 644, Pub. L. 95–91, 91 Stat. 578, 585, and 599 (42 U.S.C. 7151(b), 7172(f), and 7254), Sec. 3, Act of June 21, 1938, c. 556 52 Stat. 822 (15 U.S.C. 717b); E.O. 12009 (42 FR 46267, September 15, 1977; DOE Delegation Order No. 0204–111 (49 FR 6684, February 22, 1984).

Subpart A—General Provisions

§ 590.100 OMB Control Numbers.

The information collection requirements contained in this Part have been approved by the Office of Management and Budget under Control No. 1903–0081.

§ 590.101 Purpose and scope.

The purpose of this Part is to establish the rules and procedures required to be followed by persons to obtain authorizations from the Administrator of the Economic Regulatory Administration (ERA) to import or export natural gas under the Natural Gas Act and by all other persons interested in participating in a natural gas import or export proceeding before the agency.

This Part establishes the procedural rules necessary to implement the authorities vested in the Secretary of Energy by sections 301(b) and 402(f) of the DOE Act, which have been delegated to the Administrator.

§ 590.102 Definitions.

As used in this Part:

(a) "Administrator" means the Administrator of the ERA or any employee of the DOE who has been delegated final decisional authority.

(b) "Contested proceeding" means a proceeding (1) where a protest or a motion to intervene, or a notice of intervention, in opposition to an application or other requested action has been filed, or (2) where a party otherwise notifies the Administrator and the other parties to a proceeding in writing that it opposes an application or other requested action.

(c) "Decisional employee" means the Administrator, presiding officials at conferences, oral presentations or trial-type hearings, and any other employee of the DOE, including consultants and contractors, who are, or may reasonably be expected to be, involved in the decision-making process, including advising the Administrator on the resolution of issues involved in a proceeding. The term includes those employees of the DOE assisting in the conduct of trial-type hearings by performing functions on behalf of the Administrator or presiding official.

(d) "DOE" means the Department of Energy, of which the ERA is a part.

(e) "DOE Act" means the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*).

(f) "ERA" means the Economic Regulatory Administration.

(g) "FERC" means the Federal Energy Regulatory Commission.

(h) "Interested person" means a person, other than a decisional employee, whose interest in a proceeding goes beyond the general interest of the public as a whole and includes applicants, intervenors, competitors of applicants, and other individuals and organizations, including non-profit and public interest organizations, and state, local, and other public officials, with a proprietary, financial or other special interest in the outcome of a proceeding. The term does not include other federal agencies or foreign governments and their representatives, unless the agency, foreign government, or representative of a foreign government is a party to the proceeding.

(i) "Natural gas" means natural gas and mixtures of natural gas and synthetic natural gas, regardless of physical form or phase, including liquefied natural gas and gels primarily composed of natural gas.

(j) "NGA" means the Natural Gas Act of June 21, 1938, c. 556, 52 Stat. 821 (15 U.S.C. 717 *et seq.*).

(k) "Off-the-record communication" means a written or oral communication not on the record which is relevent to the merits of a proceeding, and about which the parties have not been given reasonable prior notice of the nature and purpose of the communication and an opportunity to be present during such communication or, in the case of a written communication, an opportunity to respond to the communication. It does not include communications concerned solely with procedures which are not relevant to the merits of a proceeding. It also does not include general background discussions about an entire industry or natural gas markets or communications of a general nature made in the course of developing agency policy for future general application, even though these discussions may relate to the merits of a particular proceeding.

(l) "Party" means an applicant, any person who has filed a motion for and been granted intervenor status or whose motion to intervene is pending, and any state commission which has intervened by notice pursuant to § 590.303(a).

(m) "Person" means any individual, firm, estate, trust, partnership, association, company, joint-venture, corporation, United States local, state and federal governmental unit or instrumentality thereof, charitable, educational or other institution, and others, including any officer, director, owner, employee, or duly authorized representative of any of the foregoing.

(n) "Presiding official" means any employee of the DOE who has been designated by the Administrator to conduct any stage of a proceeding, which may include presiding at a conference, oral presentation, or trial-type hearing, and who has been delegated the authority of the Administrator to make rulings and issue orders in the conduct of such proceeding, other than final opinions and orders, orders to show cause, emergency interim orders, or conditional decisions under Subpart D and orders on rehearing under Subpart E.

(o) "Proceeding" means the process and activity, and any part thereof, instituted by the ERA either in response to an application, petition, motion or other filing under this Part, or on its own initiative, by which the ERA develops and considers the relevant facts, policy and applicable law concerning the importation or exportation of natural gas and which may lead to the issuance of an order by the Administrator under Subparts D and E.

(p) "State commission" means the regulatory body of a state or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the state or municipality.

§ 590.103 General requirements for filing documents with the ERA.

(a) Any document, including but not limited to an application, amendment of an application, request, petition, motion, answer, comment, protest, complaint, and any exhibit submitted in connection with such documents, shall be filed with the ERA under this Part. Such document shall be considered officially filed with the ERA when it has been received and stamped with the time and date of receipt by the Natural Gas Division, ERA. Documents transmitted to the ERA must be addressed as provided in § 590.104. All documents and exhibits become part of the record in the official ERA docket file and will not be returned. An original and fifteen (15) copies of all applications, filings and submittals shall be provided to the ERA. No specific format is required.

(b) Upon receipt by the ERA, each application or other initial request for action shall be assigned a docket number. Any petition, motion, answer, request, comment, protest, complaint or other document filed subsequently in a docketed proceeding with the ERA shall refer to the assigned docket number. All documents shall be signed either by the person upon whose behalf the document is filed or by an authorized representative. Documents signed by an authorized representative shall contain a certified statement that the representative is a duly authorized representative unless the representative has a certified statement already on file in the ERA docket of the proceeding. All documents shall also be verified under oath or affirmation by the person filing, or by an officer or authorized representative of the firm having knowledge of the facts alleged. Each document filed with the ERA shall contain a certification that a copy has been served as required by § 590.107 and indicate the date of service. Service of each document must be made not later than the date of the filing of the document.

(c) A person who files an application shall state whether, to the best knowledge of that person, the same or a related matter is being considered by any other part of the DOE, including the FERC, or any other Federal agency or department and, if so, shall identify the matter and the agency or department.

§ 590.104 Address for filing documents.

All documents filed under this part shall be addressed to: Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–033, RG–43, 1000 Independence Avenue, SW., Washington, D.C. 20585.

All hand delivered documents shall be filed at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

§ 590.105 Computation of time.

(a) In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run is not included. The period of time begins to run the next day after the day of the act or event. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal Federal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal Federal holiday, unless otherwise provided by this Part or by the terms of an ERA order. Documents received after the regular business hours are deemed filed on the next regular business day.

(b) When a document is required to be filed with the ERA within a prescribed time, an extension of time to file may be granted for good cause shown.

(c) An order is issued and effective when date stamped by the Natural Gas Division after the order has been signed unless another effective date is specified in the order.

§ 590.106 Dockets.

The ERA shall maintain a docket file of each proceeding under this Part, which shall contain the official record upon which all orders provided for in Subparts A and E shall be based. The official record in a particular proceeding shall include the official service list, all documents filed under § 590.103; the official transcripts of any procedures held under Subpart C, any opinions and orders issued by the ERA under Subparts D and E, and reports of contract amendments under § 590.407. All dockets shall be available for inspection and copying by the public during regular business hours between 8:00 a.m. and 4:30 p.m. Dockets are located in the: Natural Gas Division, Forrestal Building, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585.

§ 590.107 Service.

(a) An applicant, any other party to a proceeding, or a person filing a protest shall serve a copy of all documents filed with the ERA upon all parties unless otherwise provided in this Part. The copy of a document served upon parties shall be a true copy of the document filed with the ERA, but does not have to be a copy stamped with the time and date of receipt by the ERA. The ERA shall maintain an official service list for each proceeding which shall be provided upon request.

(b) When the parties are not known, such as during the initial comment period following publication of the notice of application, service requirements under paragraph (a) of this section may be met by serving a copy of all documents on the applicant and on the ERA for inclusion in the ERA docket in the proceeding.

(c) All documents required to be served under this Part may be served by hand, certified mail, registered mail, or regular mail. It shall be the responsibility of the serving party to ensure that service is effected in a timely manner. Service is deemed complete upon delivery or upon mailing, whichever occurs first.

(d) Service upon a person's duly authorized representatives on the official service list shall constitute service upon that person.

(e) All ERA orders, notices, or other ERA documents shall be served on the parties by ERA either by hand, registered mail, certified mail, or regular mail, except as otherwise provided in this Part.

§ 590.108 Off-the-record communications.

(a) In any contested proceeding under this Part:

(1) No interested person shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any decisional employee.

(2) No decisional employee shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any interested person.

(3) A decisional employee who receives, makes, or knowingly causes to be made an oral off-the-record communication prohibited by this section shall prepare a memorandum stating the substance of the communication and any responses made to it.

(4) Within forty-eight (48) hours of the off-the-record communication, a copy of all written of-the-record communications or memoranda prepared in compliance with paragraph (a)(3) of this section shall be delivered by the decisional employee to the Administrator and to the Director of the Natural Gas Division. The materials will then be made available for public inspection by placing them in the docket associated with the proceeding.

(5) Requests by a party for an opportunity to rebut, on the record, any facts or contentions in an off-the-record communication may be filed in writing with the Administrator. The Administrator shall grant such requests only for good cause.

(6) Upon being notified of an off-the-record communication made by a party in violation of this section, the Administrator may, to the extent consistent with the interests of justice and the policies of the NGA and the DOE Act, require the party to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(b) The prohibitions of paragraph (a) of this section shall apply only to contested proceedings and begin at the time either a protest or a motion to intervene or notice of intervention in opposition to the application or other requested action is filed with the ERA, or a party otherwise specifically notifies the Administrator and the other parties in writing of its opposition to the application or other requested action, whichever occur first.

§ 590.109 ERA investigations.

The Administrator or the Administrator's delegate may investigate any facts, conditions, practices, or other matters within the scope of this Part in order to determine whether any person has violated or is about to violate any provisions of the NGA or other statutes or any rules, regulations, or orders within the Administrator's jurisdiction. In conducting such investigations, the Administrator or the Administrator's delegate may, among other things, subpoena witnesses to testify, subpoena or otherwise require the submission of documents, and order testimony to be taken by deposition.

Subpart B—Applications for Authorization to Import or Export Natural Gas

§ 590.201 General.

(a) Any person seeking authorization to import or export natural gas into or from the United States, to amend an existing import or export authorization, or seeking any other requested action, shall file an application with the ERA under the provisions of this Part.

(b) Applications shall be filed at least sixty (60) days in advance of the proposed import or export or other requested action, unless a later date is permitted for good cause shown.

§ 590.202 Contents of applications.

(a) Each application filed under § 590.201 shall contain the exact legal name of the applicant, the names, titles, and mailing addresses of a maximum of two persons for the official service list, a statement describing the action sought from the ERA, the justification for such action, including why the proposed action is not inconsistent with the public interest, and the ERA docket number, if applicable.

(b) Each application shall include the matters listed below to the extent applicable. All factual matters shall be supported to the extent practicable by the necessary data or documents. Copies of relevant documents filed or intended to be filed with FERC may be submitted to satisfy the requirements of this section. Topics to be addressed or described shall include:

(1) The scope of the project, including the volumes of natural gas involved, the dates of commencement and completion of the proposed import or export, and the facilities to be utilized or constructed;

(2) The source and security of the natural gas supply to be imported or exported, including contract volumes and a description of the gas reserves supporting the project during the term of the requested authorization;

(3) Identification of all the participants in the transaction, including the parent company, if any, and identification of

any corporate or other affiliations among the participants;

(4) The terms of the transaction, such as take-or-pay obligations, make-up provisions, and other terms that affect the marketability of the gas;

(5) The provisions of the import arrangement which establish the base price, volume requirements, transportation and other costs, and allow adjustments during the life of the project, and a demonstration as to why the import arrangement is and will remain competitive over the life of the project and is otherwise not inconsistent with the public interest;

(6) For proposed imports, the need for the natural gas by the applicant or applicant's prospective customers, including a description of the persons who are expected to purchase the natural gas; and for proposed exports, the lack of a national or regional need for the gas; and

(7) The potential environmental impact of the project.

(c) The application shall also have attached a statement, including a signed opinion or legal counsel, showing that a proposed import or export of natural gas is within the corporate powers of the applicant and a copy of all relevant contracts and purchase agreements.

(d) The Administrator or the Administrator's delegate may at any time require the applicant and other parties to make supplemental filings of additional information necessary to resolve issues raised by the application..

(e) All information and data filed in support of or against an application will be placed in the official ERA docket file of the proceeding and will not be afforded confidential treatment, unless the party shows why the information or data should be exempted from public disclosure and the Administrator or Administrator's delegate determines that such information or data shall be afforded confidential treatment.

§ 590.203 Deficient application.

If an application is incomplete or otherwise deemed deficient, the Administrator or the Administrator's delegate may require the applicant to submit additional information or exhibits to remedy the deficiency. If the applicant does not remedy the deficiency within the time specified by the Administrator or the Administrator's delegate, the application may be dismissed without prejudice to refiling at another time.

§ 590.204 Amendment or withdrawal of applications.

(a) The applicant may amend or supplement the application at any time prior to issuance of the Administrator's final opinion and order resolving the application, and shall amend or supplement the application whenever there are changes in material facts or conditions upon which the proposal is based.

(b) The Administrator may for good cause shown by motion of a party or upon the Administrator's own initiative decline to act on, in whole or in part, an amendment or supplement requested by an applicant under paragraph (a) of this section.

(c) After written notice to the ERA and service upon the parties of that notice an applicant may withdraw an application. Such withdrawal shall be effective thirty (30) days after notice to ERA if the Administrator does not issue an order to the contrary within that time period.

§ 590.205 Notice of applications.

(a) Upon receipt of an application, the ERA shall publish a notice of application in the **Federal Register.** The notice shall summarize the proposal. Except in emergency circumstances, generally the notice shall provide a time limit of not less than thirty (30) days from the notice's date of publication in the **Federal Register** for persons to file protests, comments, or a motion to intervene or notice of intervention, as applicable. The notice may also request comments on specific issues or matters of fact, law, or policy raised by the application.

(b) The notice of application shall advise the parties of their right to request additional procedures, including the opportunity to file written comments and to request that a conference, oral presentation, or trial-type hearing be convened. Failure to request additional procedures at this time shall be deemed a waiver of any right to additional procedures should the Administrator decide to grant the application and authorize the import or export by issuing a final opinion and order in accordance with § 590.316.

(c) Where negotiations between the DOE, including the ERA, and a foreign government have resulted in a formal policy agreement or statement affecting a particular import or export proceeding, the ERA shall include in the notice of application a description of the terms or policy positions of that agreement or statement to the extent they apply to the proceeding, and invite comment. A formal policy agreement or statement affecting a particular import or export proceeding that is arrived at after publication of the notice of application shall be placed on the record in that proceeding and the parties given an opportunity to comment thereon.

§ 590.206 Notice of procedures.

In all proceedings where, following a notice of application and the time specified in the notice for the filing or response thereto, the Administrator determined to have additional procedures, which may consist of the filing of supplemental written comments, written interrogatories or other discovery procedures, a conference, oral presentation, or trial-type hearing, the Administrator shall provide the parties with notice of the procedures the Administrator has determined to follow in the proceeding and advise the parties of their right to request any additional procedures in accordance with the provisions of § 590.310. The notice of procedures may identify and request comments on specific issues of fact, law, of policy relevant to the proceeding and may establish a time limit for requesting additional procedures.

§ 590.207 Filing fees.

A non-refundable filing fee of fifty dollars ($50) shall accompany each application filed under § 590.201.

§ 590.208 Small volume exports.

(a) Any person may export up to 100,000 cubic feet of natural gas (14.73 pounds per square inch at 60 °F) or the liquefied or compressed equivalent thereof, in a single shipment for scientific, experimental, or other non-utility gas use without prior authorization of the Administrator.

§ 590.209 Exchanges by displacement.

Any importer of natural gas may enter into an exchange by displacement agreement without the prior authorization of the Administrator when the net effect of the exchange is no different than under the importer's existing authorization. An exchange by displacement is an arrangement whereby authorized imported volumes are displaced by other gas for purposes of storage or flexibility. The term of the exchange agreement may not exceed five (5) years, the volumes imported may not exceed the importer's existing import authorization, and no actual natural gas may flow across the United States border under the terms of the exchange agreement. Any importer who enters into an exchange agreement pursuant to this section shall file with ERA within fifteen (15) days after the start up of the exchange, a written description of the transaction, the exact volume of natural gas to be displaced, the name of the purchaser, and the

import authorization under which the exchange is being carried out.

Subpart C—Procedures

§ 590.301 General.

The procedures of this Subpart are applicable to proceedings conducted on all applications or other requested actions filed under this Part. The Administrator may conduct all aspects of the procedures of this Subpart or may designate a presiding official pursuant to § 590.314.

§ 590.302 Motions and answers.

(a) Motions for any procedural or interlocutory ruling shall set forth the ruling or relief requested and state the grounds and the statutory or other authority relied upon. All written motions shall comply with the filing requirements of § 590.103. Motions made during conferences, oral presentations or trial-type hearings may be stated orally upon the record, unless the Administrator or the presiding official determines otherwise.

(b) Any party may file an answer to any written motion within fifteen (15) days after the motion is filed, unless another period of time is established by the Administrator or the presiding official. Answers shall be in writing and shall detail each material allegation of the motion being answered. Answers shall state clearly and concisely the facts and legal authorities relied upon.

(c) Any motion, except for motions seeking intervention or requesting that a conference, oral presentation or trial-type hearing be held, shall be deemed to have been denied, unless the Administrator or presiding official acts within thirty (30) days after the motion is filed.

§ 590.303 Interventions and answers.

(a) A state commission may intervene in a proceeding under this Part as a matter of right and become a party to the proceeding by filing a notice of intervention no later than the date fixed for filing motions to intervene in the applicable ERA notice or order. If the period for filing the notice has expired, a state commission may be permitted to intervene by complying with the filing and other requirements applicable to any other person seeking to become a party to the proceeding as provided in this section.

(b) Any other person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner's claim of interest is based.

(c) A motion to intervene shall state, to the extent known, the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Administrator as to the specific issues of policy, fact, or law to be raised or controverted.

(d) Motions to intervene may be filed at any time following the filing of an application, but no later than the date fixed for filing such motions or notices in the applicable ERA notice or order, unless a later date is permitted by the Administrator for good cause shown and after considering the impact of granting the late motion on the proceeding. Each motion or notice shall list the names, titles, and mailing addresses of a maximum of two persons for the official service list.

(e) Any party may file an answer to a motion to intervene, but such answer shall be made within fifteen (15) days after the motion to intervene was filed, unless a later date is permitted by the Administrator for good cause shown. Answers shall be in writing. Answers shall detail each material allegation of the motion to intervene being answered and state clearly and concisely the facts and legal authorities relied upon. Failure to answer is deemed a waiver of any objection to the intervention. This paragraph does not prevent the Administrator from ruling on a motion to intervene and issuing a final opinion and order in accordance with § 590.316 prior to the expiration of the fifteen (15) days in which a party has to answer a motion to intervene.

(f) If an answer in opposition to a motion to intervene is timely filed or if the motion to intervene is not timely filed, then the movant becomes a party only after the motion to intervene is expressly granted.

(g) If no answer in opposition to a motion to intervene is filed within the period of time prescribed in paragraph (e) of this section, the motion to intervene shall be deemed to be granted, unless the Administrator denies the motion in whole or in part or otherwise limits the intervention prior to the expiration of the time allowed in paragraph (e) for filing an answer to the motion to intervene. Where the motion to intervene is deemed granted, the participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene, and the admission of such intervenor to party status shall not be construed as recognition by the ERA that the intervenor might be aggrieved because of any order issued.

(h) In the event that a motion for late intervention is granted, an intervenor shall accept the record of the proceeding as it was developed prior to the intervention.

§ 590.304 Protests and answers.

(a) Any person objecting to an application filed under § 590.201 of this Part or to any action taken by the ERA under this Part may file a protest. No particular form is required. The protest shall identify the person filing the protest, the application or action being objected to, and provide a concise statement of the reasons for the protest.

(b) The filing of a protest, without also filing a motion to intervene or a notice of intervention, shall not make the person filing the protest a party to the proceeding.

(c) A protest shall be made part of the the official ERA docket file in the proceeding and shall be considered as a statement of position of the person filing the protest, but not as establishing the validity of any assertion upon which the decision would be based.

(d) Protests shall be served on the applicant and all parties by the person filing the protest. If the person filing the protest is unable to provide service on any person identified as a party to the proceeding after a good faith effort, then the ERA shall effect service. However, when the parties are not known, service requirements may be met by serving a copy on the applicant and on the ERA as provided in § 590.107(b).

(e) Protests may be filed at any time following the filing of an application, but no later than the date fixed for filing protests in the applicable ERA notice or order, unless a later date is permitted by the Administrator for good cause shown.

(f) Any party may file an answer to a protest but such answer must be filed within fifteen (15) days after the protest was filed, unless a later date is permitted by the Administrator for good cause shown.

§ 590.305 Informal discovery.

The parties to a proceeding may conduct discovery through use of procedures such as written interrogatories or protection of documents. In response to a motion by a party, the Administrator or presiding official may determine the procedures to be utilized for discovery if the parties cannot agree on such procedures.

§ 590.306 Subpoenas.

(a) Subpoenas for the attendance of witnesses at a trial-type hearing or for the production of documentary evidence may be issued upon the initiative of the Administrator or presiding official, or upon written motion of a party or oral

motion of a party during a conference, oral presentation, or trial-type hearing, if the Administrator or presiding official determines that the evidence sought is relevant and material.

(b) Motions for the issuance of a subpoena shall specify the relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification to the extent possible of the documents sought and the facts to be proven by them, the issues to which they relate, and why the information or evidence was not obtainable through discovery procedures agreed upon by the parties.

(c) If service of a subpoena is made by a United States Marshall or a Deputy United States Marshall, service shall be evidenced by their return. If made by another person, that person shall affirm that service has occurred and file an affidavit to that effect with the original subpoena. A witness who is subpoenaed shall be entitled to witness fees as provided in § 590.315(c).

§ 590.307 Depositions.

(a) Upon motion filed by a party, the Administrator or presiding official may authorize the taking of testimony of any witness by deposition. Unless otherwise directed in the authorization issued, a witness being deposed may be examined regarding any matter which is relevant to the issues involved in the pending proceeding.

(b) Parties authorized to take a deposition shall provide written notice to the witness and all other parties at least ten (10) days in advance of the deposition unless such advance notice is waived by mutual agreement of the parties.

(c) The requesting motion and notice shall state the name and mailing address of the witness, delineate the subject matters on which the witness is expected to testify, state the reason why the deposition should be taken, indicate the time and place of the deposition, and provide the name and mailing address of the person taking the deposition.

(d) A witness whose testimony is taken by deposition shall be sworn in or shall affirm concerning the matter about which the witness has been called to testify before any questions are asked or testimony given. A witness deposed shall be entitled to witness fees as provided in § 590.315(c).

(e) The moving party shall file the entire deposition with ERA after it has been subscribed and certified. No portion of the deposition shall constitute a part of the record in the proceedings unless received in evidence, in whole or in part, by the Administrator or presiding official.

§ 590.308 Admissions of facts.

(a) At any time prior to the end of a trial-type hearing, or, if there is no trial-type hearing, prior to the issuance of a final opinion and order under § 590.404, any party, the Administrator, or the presiding official may serve on any party a written request for admission of the truth of any matters at issue in the proceeding that relate to statements or opinions of fact or of the application of law to fact.

(b) A matter shall be considered admitted and conclusively established for the purposes of any proceeding in which a request for admission is served unless, within fifteen (15) days or such time limit established by the Administrator or presiding official, the party to whom the request is directed answers or objects to the request. Any answer shall specifically admit or deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the answering party states that, after reasonable inquiry, the answering party has been unable to obtain sufficient information to admit or deny. If an objection is made, the answering party shall state the reasons for the objection.

(c) If the Administrator or presiding official determines that an answer to a request for admission does not comply with the requirements of this section, the Administrator or presiding official may order either that the matter is admitted or that an amended answer be served.

(d) A copy of all requests for admission and answers thereto shall be filed with the ERA in accordance with § 590.103. Copies of any documents referenced in the request shall be served with the request unless they are known to be in the possession of the other parties.

(e) The Administrator or presiding official may limit the number of requests for admission of facts in order to expedite a proceeding through elimination of duplicative requests.

§ 590.309 Settlements.

The parties may conduct settlement negotiations. If settlement negotiations are conducted during a conference, at the request of one of the parties, the Administrator or presiding official may order that the discussions be off-the-record with no transcript of such settlement negotiations being prepared for inclusion in the official record of the proceeding. No offer of settlement, comment or discussion by the parties with respect to an offer of settlement shall be subject to discovery or admissible into evidence against any parties who object to its admission.

§ 590.310 Opportunity for additional procedures.

Any party may file a motion requesting additional procedures, including the opportunity to file written comments, request written interrogatories or other discovery procedures, or request that a conference, oral presentation or trial-type hearing be held. The motion shall describe what type of procedure is requested and include the information required by § 590.311, § 590.312 and § 590.313, as appropriate. Failure to request additional procedures within the time specified in the notice of application or in the notice of procedure, if applicable, shall constitute a waiver of that right unless the Administrator for good cause shown grants additional time for requesting additional procedures. If no time limit is specified in the notice or order, additional procedures may be requested at any time prior to the issuance of a final decision and order. At any time during a proceeding, the Administrator or presiding official may on his or her own initiative determine to provide additional procedures.

§ 590.311 Conferences.

(a) Upon motion by a party, a conference of the parties may be convened to adjust or settle the proceedings, set schedules, delineate issues, stipulate certain issues of fact or law, set procedures, and consider other relevant matters where it appears that a conference will materially advance the proceeding. The Administrator or presiding official may delineate the issues which are to be considered and may place appropriate limitations on the number of intervenors who may participate, if two or more intervenors have substantially like interests.

(b) A motion by a party for a conference shall include a specific showing why a conference will materially advance the proceeding.

(c) Conferences shall be recorded, unless otherwise ordered by the Administrator or presiding official, and the transcript shall be made a part of the official record of the proceeding and available to the public.

§ 590.312 Oral presentations.

(a) Any party may file a motion requesting an opportunity to make an oral presentation of views, arguments, including arguments of counsel, and

data on any aspect of the proceeding. The motion shall identify the substantial question of fact, law or policy at issue and demonstrate that it is material and relevant to the merits of the proceeding. The party may submit material supporting the existence of substantial issues. The Administrator or presiding official ordinarily will grant a party's motion for an oral presentation, if the Administrator or presiding official determines that a substantial question of fact, law, or policy is at issue in the proceeding and illumination of that question will be aided materially by such an oral presentation.

(b) The Administrator or presiding official may require parties making oral presentations to file briefs or other documents prior to the oral presentation. The Administrator or presiding official also may delineate the issues that are to be considered at the oral presentation and place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(c) Oral presentations shall be conducted in an informal manner with the Administrator or the presiding official and other decisional employees presiding as a panel. The panel may question those parties making an oral presentation. Cross-examination by the parties and other more formal procedures used in trial-type hearings will not be available in oral presentations. The oral presentation may be, but need not be, made by legal counsel.

(d) Oral presentations shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.313 Trial-type hearings.

(a) Any party may file a motion for a trial-type hearing for the purpose of taking evidence on relevant and material issues of fact genuinely in dispute in the proceeding. The motion shall identify the factual issues in dispute and the evidence that will be presented. The party must demonstrate that the issues are genuinely in dispute, relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. The Administrator or presiding official shall grant a party's motion for a trial-type hearing, if the Administrator or presiding official determines that there is a relevant and material factual issue genuinely in dispute and that a trial-type hearing is necessary for a full and true disclosure of the facts.

(b) In trial-type hearings, the parties shall have the right to be represented by counsel, to request discovery, to present the direct and rebuttal testimony of witnesses, to cross-examine witnesses under oath, and to present documentary evidence.

(c) The Administrator or presiding official upon his or her own initiative or upon the motion of any party may consolidate any proceedings involving common questions of fact in whole or in part for a trial-type hearing. The Administrator or presiding official may also place appropriate limitations on the number of intervenors who may participate if two or more interveriors have substantially like interests.

(d) The Administrator or presiding official may make such rulings for trial-type hearings, including delineation of the issues and limitation of cross-examination of a witness, as are necessary to obtain a full and true disclosure of the facts and to limit irrelevant, immaterial, or unduly repetitious evidence.

(e) At trial-type hearings, the Administrator or presiding official, or any other decisional employee directed by the Administrator or presiding official, may call witnesses for testimony or presenting exhibits that directly relate to a particular issue of fact to be considered at the hearing. The Administrator or presiding official, or any other decisional employee directed by the Administrator or presiding official, may also question witnesses offered by the parties concerning their testimony.

(f) Trial-type hearings shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.314 Presiding official.

(a) The Administrator may designate a presiding official to conduct any stage of the proceeding, including officiating at a conference, oral presentation, or trial-type hearing. The presiding official shall have the full authority of the Administrator during such proceedings.

(b) A presiding official at a conference, oral presentation, or trial-type hearing shall have the authority to regulate the conduct of the proceeding including, but not limited to, determination of the issues to be raised during the course of the conference, oral presentation, or trial-type hearing, administering oaths or affirmations, directing discovery, ruling on objections to the presentation of testimony or exhibits, receiving relevant and material evidence, requiring the advance submission of written testimony and exhibits, ruling on motions, determining the format, directing that briefs be filed with respect to issues raised or to be raised during the course of the conference, oral presentation or trail-type hearing, questioning witnesses, taking reasonable measures to exclude duplicative material, and placing limitations on the number of witnesses to be called by a party.

§ 590.315 Witnesses.

(a) The Administrator or presiding official may require that the direct testimony of witnesses in trial-type hearings be submitted in advance of the hearing and be under oath, and in written form.

(b) Witnesses who testify in trial-type hearing shall be under oath or affirmation before being allowed to testify.

(c) Witnesses subpoenaed pursuant to § 590.306 shall be paid the same fees and mileage as paid for like services in the District Courts of the United States.

(d) Witnesses deposed pursuant to § 590.307 shall be entitled to the same fees as paid for like services in the District Courts of the United States.

§ 590.316 Shortened proceedings.

In any proceeding where, in response to a notice of application or notice of procedures, if applicable, no party files a motion requesting additional procedures, including the right to file written comments, or the holding of a conference, oral presentation, or trial-type hearing, or where the Administrator determines that such requested additional procedures are not required pursuant to § 590.310, § 590.311, § 590.312 and § 590.313, the Administrator may issue a final opinion and order on the basis of the official record, including the application and all other filings. In any proceeding in which the Administrator intends to deny the application or grant the application with the attachment of material conditions unknown to, or likely to be opposed by, the applicant, solely on the basis of the application and responses to the notice of application or notice of procedures, if applicable, without additional procedures, the Administrator shall advise the parties in writing generally of the issues of concern to the Administrator upon which the denial or material conditions would be based and provide them with an opportunity to request additional procedures pursuant to § 590.310, § 590.311, § 590.312 and § 590.313.

§ 590.317 Complaints.

(a) Any person may file a complaint objecting to the actions by any other person under any statute, rule, order or authorization applicable to an existing

import or export authorization over which the ERA has jurisdiction. No particular form is required. The complaint must be filed with the ERA in writing and must contain the name and address of the complainant and the respondent and state the facts forming the basis of the complaint.

(b) A complaint concerning an existing import or export authorization shall be served on all parties to the original import or export authorization proceeding either by the complainant or by the ERA if the complainant has made a good faith effort but has been unable to effect service.

(c) The Administrator may issue an order to show cause under section § 590.401, or may provide opportunity for additional procedures pursuant to § 590.310, § 590.311, § 590.312, or § 590.313, in order to determine what action should be taken in response to the complaint.

Subpart D—Opinions and Orders

§ 590.401 Orders to show cause.

A proceeding under this Part may commence upon the initiative of the Administrator or in response to an application by any person requesting ERA action against any other person alleged to be in contravention or violation of any authorization, statute, rule, order, or law administered by the ERA applicable to the import or export of natural gas, or for any other alleged wrong involving importation or exportation of natural gas over which the ERA has jurisdiction. Any show cause order issued shall identify the matters of interest or the matters complained of that the Administrator is inquiring about, and shall be deemed to be tentative and for the purpose of framing issues for consideration and decision. The respondent named in the order shall respond orally or in writing, or both, as required by the order. A show cause order is not a final opinion and order.

§ 590.402 Conditional orders.

The Administrator may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. The conditional order shall include the basis for not issuing a final decision and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.

§ 590.403 Emergency interim orders.

Where consistent with the public interest, the Administrator may waive further procedures and issue an emergency interim order authorizing the import or export of natural gas. After issuance of the emergency interim order, the proceeding shall be continued until the record is complete, at which time a final opinion and order shall be issued. The Administrator may attach necessary or appropriate terms and conditions to the emergency interim order to ensure that the authorized action will be consistent with the public interest.

§ 590.404 Final opinions and orders.

The Administrator shall issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the record. The final opinion and order shall be based solely on the official record of the proceeding and include a statement of findings and conclusions, as well as the reasons or basis for them, and the appropriate order, condition, sanction, relief or denial.

§ 590.405 Transferability.

Authorizations by the Administrator to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Administrator.

§ 590.406 Compliance with orders.

Any person required or authorized to take any action by a final opinion and order of the Administrator shall file with ERA, within thirty (30) days after the requirement or authorization becomes effective, a notice, under oath, that such requirement has been complied with or such authorization accepted or otherwise acted upon, unless otherwise specified in the order.

§ 590.407 Reports of contract amendments.

Any person authorized to import or export natural gas has a continuing obligation to give the Administrator written notification, as soon as practicable, of any prospective or actual changes of a substantive nature in the circumstances upon which the authorization was based, including, but not limited to, amendments or other changes in the terms and conditions of any natural gas purchase contract, in volumes accepted or offered, or the import or export price paid. Any notification filed under this section shall contain the ERA docket number(s) to which it relates. Compliance with this section does not relieve an importer or exporter from responsibility to file the appropriate application to amend a previous import or export authorization under this Part whenever such changes are contrary to or otherwise not permitted by the existing authorization.

Subpart E—Applications for Rehearing

§ 590.501 Filing.

(a) An application for rehearing of a final opinion and order, conditional order, or emergency interim order may be filed by any party aggrieved by the issuance of such opinion and order within thirty (30) days after issuance. The application shall be served on all parties.

(b) The application shall state concisely the alleged errrors in the final opinion and order, conditional order, or emergency interim order and must set forth specifically the ground or grounds upon which the application is based. If an order is sought to be vacated, reversed, or modified by reason of matters that have arisen since the issuance of the final opinion and order, conditional order, or emergency interim order, the matters relied upon shall be set forth with specificity in the application. The application shall also comply with the filing requirements of § 590.103.

§ 590.502 Application is not a stay.

The filing of an application for rehearing does not operate as a stay of the Administrator's order, unless specifically ordered by the Administrator.

§ 590.503 Opinion and order on rehearing.

Upon application for rehearing, the Administrator may grant or deny rehearing or may abrogate or modify the final opinion and order, conditional order, or emergency interim order with or without further proceedings.

§ 590.504 Denial by operation of law.

Unless the Administrator acts upon the application for rehearing within thirty (30) days after it is filed, it is deemed to the denied. Such denial shall constitute final agency action for the purpose of judicial review.

§ 590.505 Answers to applications for rehearing.

No answers to applications for rehearing shall be entertained. Prior to the issuance of any final opinion and order on rehearing, however, the Administrator may afford the parties an opportunity to file briefs or answers and may order that a conference, oral presentation, or trial-type hearing be held on some or all of the issues presented by an application for rehearing.

2. Subpart U of Part 205, Chapter II of Title 10, Code of Federal Regulations is

amended to eliminate its applicability to natural gas import and export cases. Subpart U is revised to read as follows:

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart U—Procedures for Electricity Export Cases

Sec.
205.260 Purpose and scope.
205.261 through 205.269 [Reserved]
205.270 Off-the-record communications.

Authority: Federal Power Act, 41 Stat. 1063, as amended; Executive Order No. 10485 as amended by Executive Order No. 12038; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended; Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, Pub. L. 95–70; Department of Energy Organization Act, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.

Subpart U—Procedures for Electricity Export Cases

§ 205.260 Purpose and scope.

(a) The purpose of this section is to state the procedures that will be followed by the Economic Regulatory Administration of the Department of Energy in electricity export adjudications.

(b) *Definitions.*

As used in this subpart—

"Administrator" means the Administrator of the Economic Regulatory Administration.

"Decisional employees" means the Administrator, presiding officers at adjudicatory hearings, and other employees of the Department, including consultants and contractors, who are, or may reasonably be expected to be, involved in the decision-making process, which includes advising the Administrator in resolving the issues in an adjudication. The term does not include those employees of the Department performing investigative or trial functions in an adjudication, unless they are specifically requested by the Administrator or his delegate to participate in the decision-making process.

"Department" means the Department of Energy.

"Off-the-record communication" means an *ex parte* communication, which is an oral or written communication relevant to the merits of an adjudication and not on the record and with respect to which reasonable prior notice to all participants and opportunity to be present at, or respond to, the communication is not given, but does not include a communication relating solely to procedures which are not relevant to the merits of the adjudication.

"Interested person" means a person outside the Department whose interest in the adjudication goes beyond the general interest of the public as a whole and includes applicants, intervenors, competitors of applicants, non-profit and public interest organizations, and other individuals and organizations, including state, local and other public officials, with a proprietary, financial or other special interest in the outcome of the adjudication. The term does not include other federal agencies, unless an agency is a participant in the adjudication.

"Participant" means any applicant or intervenor participating in the adjudication.

"Adjudication" means a formal proceeding employing procedures identical or similar to those required by the Administrative Procedure Act, as codified in 5 U.S.C. 551, 556, and 557, to consider an application to export electricity.

"Reasonable prior notice" means 7 days' written notice stating the nature and purpose of the communication.

"Relevant to the merits" means a communication directly related to the merits of a specific adjudication but does not include general background discussions about an entire industry or communications of a general nature made in the course of developing agency policy for future general application.

(Federal Power Act, 41 Stat. 1063, as amended; Executive Order No. 10485, as amended by Executive Order 12038; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended; Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, Pub. L. 95–70; Department of Energy Organization Act, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

§§ 205.261–205.269 [Reserved]

§ 205.270 Off-the-record communications.

(a) In any proceeding which is subject to this subpart—

(1) No interested person shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any decisional employee.

(2) No decisional employee shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any interested person.

(3) A decisional employee who receives, makes, or knowingly causes to be made an oral communication prohibited by this section shall prepare a memorandum stating the substance of the communication and any responses made to it.

(4) With 48 hours of receiving, making or knowingly causing to be made a communication prohibited by this section, a decisional employee shall deliver all written off-the-record communications and all memoranda prepared in compliance with paragraph (a)(3) of this section to the Director of the Coal and Electricity Division, ERA, who will immediately place the materials described above in the public record associated with the adjudication, available for public inspection.

(5) Upon receipt of a communication knowingly made or knowingly caused to be made by a participant in violation of this section, the Administrator or presiding officer may, to the extent consistent with the interests of justice and the applicable statutory policy, require the participant to show cause why his or her claim or interest in the adjudication should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(6) The prohibitions of this section shall apply beginning at the time an adjudication is noticed for hearing (or the person responsible for the communication acquires knowledge that it will be noticed), a protest is filed, or a petition or notice to intervene in opposition to the requested Department action is filed, whichever occurs first.

(b) The prohibition, cited at 18 CFR 1.30(f), against participation in the decision-making process by Department employees who perform investigative or trial functions in an adjudication, shall no longer be applicable to ERA.

(Federal Power Act, 41 Stat. 1063, as amended; Executive Order No. 10485, as amended by Executive Order 12038; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended; Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, Pub. L. 95–70; Department of Energy Organization Act, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

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federal register

Thursday
September 6, 1984

Part IV

Department of Education

34 CFR Parts 75, 76, and 98

Student Rights in Research, Experimental Activities, and Testing; Final Rules With Invitation To Comment

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, and 98

Student Rights in Research, Experimental Activities, and Testing

AGENCY: Department of Education.
ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary issues final regulations to implement a procedure for the handling of complaints under section 439 (a) and (b) of the General Education Provisions Act (GEPA). Section 439(a) of GEPA requires that, under most programs administered by the Department of Education, an award recipient or contractor make all instructional material used in connection with any research or experimental program or project available to parents of children involved in the program or project. Section 439(b) of GEPA requires a recipient of funds under these programs to obtain permission before requiring a child to submit to certain kinds of psychiatric or psychological examination, testing, or treatment.

DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments.

If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments should be submitted on or before November 5, 1984.

ADDRESS: Submit comments to Monika Edwards Harrison, Room 3021, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Monika Edwards Harrison, Special Advisor to the Deputy Under Secretary for Management, United States Department of Education, Rm. 3021 FOB-6, 400 Maryland Avenue SW., Washington, D.C. 20202, Telephone (202) 472-5123.

SUPPLEMENTARY INFORMATION:

Background

The Secretary issues final regulations to further implement section 439 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232h). Under subsection (a) of section 439, all instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

Under subsection (b) of section 439 no student shall be required as part of any applicable program to submit to psychiatric examination, testing, or treatment, or psychological examination, testing or treatment, in which the primary purpose is to reveal information concerning one or more of the following:

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom respondents have close family relationships;

(6) Legally recognized privileged and analogous relationships such as those of lawyers, physicians, and ministers; or

(7) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

The Department currently has regulations that essentially restate section 439 of GEPA. These regulations are codified at 34 CFR 75.741 and 34 CFR 76.741. However, these rules do not establish procedures for the handling of complaints that arise under section 439. To establish such procedures, the Secretary issues these final regulations.

Significant Differences Between the NPRM and These Final Regulations

On February 22, 1984, the Secretary published in the **Federal Register** at 49 FR 6646 a Notice of Proposed Rulemaking (NPRM) for Student Rights in Research, Experimental Activities and Testing (34 CFR Parts 75, 76, and 98). Following the publication of the NPRM, the Department of Education conducted hearings in seven cities to accept testimony on the procedures proposed in the NPRM. A total of 183 persons testified at those hearings; all but 2 persons urged speedy publication of final regulations. Persons testifying were from 29 States. In addition, the Department has received more than 1900 comments in response to the NPRM. Of the total number of comments received, approximately 1625 persons wrote in favor of these regulations, approximately 270 persons wrote against them, and approximately 25 persons provided general comments. Comments were received from residents of each State and the District of Columbia.

The major provisions of these regulations are substantially the same as those contained in the NPRM. However, after consideration of the public comments on the proposed regulations, the Secretary has made some changes.

Several commenters expressed concern that the NPRM did not require a complainant to attempt initial resolution at the local and State levels before filing a complaint with the Department. In response to this public comment, paragraph (b)(2) has been added to § 98.7. Paragraph (b)(2) requires evidence of an initial attempt at resolution with local and State officials (where there is a State process) and requires the complainant to provide the name of local and/or State officals contacted, as well as significant dates in the attempted resolution process.

Some commenters questioned whether persons other than parents or guardians of students could file a complaint under the procedure established in the NPRM. To clarify that the complaint procedure applies only to parents or guardians of students directly affected and directly affected students who are adults or emancipated minors, § 98.7(a) has been rewritten.

Commenters requested that definitions of statutory terms be included in the final regulations to ensure that complaints are limited to applicable programs and activities requiring prior consent. To respond to these comments, the final regulations provide clarifying interpretations of the terms "psychiatric or psychological testing and examination" and "psychiatric or psychological treatment." The Secretary has decided to seek additional comments on these definitions. Please read the Invitation to Comment at the end of this preamble for additional information on the opportunity to comment.

Finally, commenters requested that programs funded by the National Institute of Education (NIE) and the National Center for Education Statistics (NCES) be included as applicable programs under these regulations. After careful consideration of these comments and review of section 439 and its history and intent, the Secretary has determined that these programs should be covered.

Comments and Responses

The following is a summary of the public comments received on the proposed regulations published in the **Federal Register** on February 22, 1984 (49 FR 6646) and the Secretary's responses to those comments. The comments, responses, and changes are organized in the same order as the referenced sections in these final regulations.

Section 98.1 Applicability of Part

Comment. Many commenters requested that the provisions of the final regulations be extended to cover the National Institute of Education and the National Center for Education Statistics.

Response. A change has been made. Since the National Institute of Education and the National Center for Education Statistics fund research and data-gathering activities, it is extremely unlikely that Congress intended to exclude them from coverage under section 439, which is specifically directed at "research or experimentation" programs and projects and psychiatric or psychological "examination, testing, or treatment." By its terms, section 439 applies to all "applicable programs," which is defined in GEPA to include all programs administered by the former Education Division of the Department of Health, Education, and Welfare, including programs of NIE and NCES. Further, protections provided under section 439 are just as applicable to NIE and NCES as to other education programs, and the Secretary has broad rulemaking authority transferred to him under section 408 of GEPA and under section 414 of the Department of Education Organization Act (DEOA). These final regulations therefore apply section 439 to all programs that were administered within the former Education Division of the Department of Health, Education, and Welfare and to new programs enacted after the effective date of the DEOA and administered by the Secretary of Education.

Comment. A number of commenters requested that the provisions of these regulations apply to all experimental programs regardless of their funding source. They asked that locally, State or Federally funded programs be treated in the same way under the proposed complaint procedure.

Response. No change has been made. Section 439 applies only to activities that are part of an "applicable program." As broadly interpreted in these regulations, "applicable program" includes most programs administered by the Department of Education. The Secretary has no authority to extend these regulations to activities funded by other Federal agencies or from State or local sources.

Comment. Two commenters requested that the regulations clarify the relationship of section 439 to Part B of the Education of the Handicapped Act.

Response. No change has been made. If further clarification becomes necessary, the Secretary would consider the possibility of addressing this matter in a separate notice of proposed rulemaking.

Section 98.3(b) Access to Instructional Material Used in a Research or Experimental Program

Comment. A number of commenters indicated that the definition of "research or experimentation program or project" was "vague." They expressed concern that the definition in the NPRM would lead to "frivolous complaints" and that the resources of local school officials would be unnecessarily used to resolve unwarranted complaints.

Response. No change has been made. It is not the Secretary's intent that these regulations encourage the filing of "frivolous complaints." However, section 439(a), to which this definition applies, requires only that instructional materials be made available for inspection by the parents or guardians of students enrolled in research or experimental programs. In the interest of providing parents the opportunity to review the materials used in educating their children, no change has been made. With regard to the burden this places on local school officials, the Secretary believes that each school district will devise methods of inspection of materials which are appropriate for the local community the schools serve.

Section 98.4 Protection of Students' Privacy in Examination, Testing, or Treatment

Comment. Many commenters requested that this section include definitions of "psychological or psychiatric examination, testing, and treatment." Commenters suggested that, without these definitions, parents would not be able to determine under which circumstances the requirements of section 439(b) of GEPA would apply. Other commenters indicated that the absence of definitions would place an undue burden on school officials because parents or students would file complaints against classroom activities for which no prior consent is required.

Response. A change has been made. The Secretary intends to provide the maximum opportunity for parents to be informed of the activities conducted in their children's classroom, while at the same time not intruding on school district's authority to select curricula which enhance academic achievement. The definitions included in the final regulations at § 98.4(c) are intended to clarify the types of activities which require prior consent. These definitions will clarify the intent of the final regulations to establish a procedure for the handling of complaints which relate to the probing of individual students' personal lives in areas which require prior consent, while at the same time clarifying that it is not the purpose of these regulations to resolve complaints which are focused on academic subject areas selected by the school district.

The Secretary has decided to seek further comments on these definitions. For more information on the opportunity to comment, please read the Invitation to Comment at the end of this preamble.

Comment. Commenters requested that the term "primary purpose" be removed from § 98.4(a). They requested that the requirement for prior consent be triggered any time a student is asked to reveal information in any of the designated areas, for any reason.

Response. No change has been made. Section 98.4(a) is consistent with section 439(b) of the General Education Provisions Act and the Secretary does not have the authority to delete this term.

Section 98.5 Information and Investigation Office

The words "violations and" have been removed from paragraph (a) to clarify the Department's intent by these regulations to investigate complaints and not independently initiate investigations.

Section 98.6 Reports and Records

Paragraphs (a) and (b) of this section have been removed as unnecessary. GEPA requires a recipient or contractor under an applicable program to maintain records and to permit access to the Secretary and the Comptroller General. These requirements are already implemented in the Education Department General Administrative Regulations (EDGAR) §§ 75.730–75.734 and 76.730–76.734. In addition, Part 74, of EDGAR provides general rules about maintenance of records.

Paragraph (c) has been revised to remove its paragraph designation and to indicate that, under these regulations, the Secretary only requires reports necessary to resolve complaints. The Secretary wants to ensure that any

burden in preparing reports is kept to a minimum.

Comment. Some commenters requested that the final regulations require school districts to notify parents annually of the provisions of section 439.

Response. No change has been made. The Secretary defers to local practice in informing parents of these Federal requirements. However, section 439(b) of GEPA requires that students or parents provide consent prior to psychiatric or psychological examinations, tests or treatment whose primary purpose is to ask the student to reveal information listed in § 98.4.

Section 98.7 Filing a Complaint

Comment. Many of the commenters opposing the provisions of the NPRM indicated that the NPRM allowed any individual to file a complaint. School officials expressed concern that this would lead to frivolous complaints that could take local resources to resolve as well as providing a way for interest groups to reject curricula selected by local school officials.

Response. A change has been made. This section has been rewritten to make clear that these regulations limit the right to file a complaint under section 439 to students—or parents or guardians of students—who allege violations under section 439. Standing to bring a complaint is limited to students—or parents or guardians of students—who have been directly affected by such violations.

Comment. A number of State and local officials commented that the NPRM bypassed State and local officials by allowing the initial filing of complaints at the Federal level.

Response. A change has been made. It is not the Secretary's intent to encourage potential complainants to bypass local and State officials in resolving their complaints. A new paragraph (b)(2) has been added to § 98.7 that requires complainants to provide evidence of attempted resolution with the local and State officials, including providing the names of State and/or local officials contacted as well as significant dates in the attempted resolution process.

Section 98.9 Investigation and Findings

Comment. A number of commenters requested that the final regulations impose a limit on the time available to a recipient or contractor to correct a violation of Section 439.

Response. No change has been made. The complexity of a complaint, the recipient's resources, and the remedy proposed will affect the length of time it may take to resolve a complaint. The regulations specify that a "* * * reasonable period of time, given all of the circumstances of the * * *" is available to the recipient or contractor for voluntary compliance. Consideration of "all of the circumstances" will include the interests of the complainant as well as the resources of the recipient or contractor.

Section 98.10 Enforcement of the Findings

Comment. Some commenters asked that the final regulations include a provision to make individuals working for a recipient or contractor, against which there is a finding, personally liable for any psychological damages to the affected student.

Response. No change has been made. Section 439 does not include such a provision, and the Secretary has no authority to impose such a requirement.

Other Changes

Paragraph (a)(2) has been revised as a technical matter to make the remedies against contractors consistent with the remedies against grantees, as permitted by the Federal Acquisition Regulations, 48 CFR 12.5 and 49.1.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will affect small entities that are recipients of funds under applicable programs of the Department of Education. However, the regulations will not have a significant economic impact on these entities because the regulations do not establish prescriptive reporting or recordkeeping requirements or impose other regulatory burdens in excess of statutory requirements.

Assessment of Educational Impact

Based on the comments received in response to the Notice of Proposed Rulemaking and his own review, the Secretary has determined that these regulations do not require the transmission of any information that is already gathered by or is available from any other agency or authority of the United States.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the definitions contained in § 98.4(c) of these final regulations. Written comments and recommedations may be sent to Monika Edwards Harrison, Room 3021, 400 Maryland Avenue SW., Washington, DC 20202. All comments should be submitted on or before November 5, 1984 to be assured consideration by the Secretary. If an amendment to the definitions is necessary, the Secretary will publish the amendment in the **Federal Register.**

All comments submitted in response to this request for comments will be available for public inspection, during and after the comment period, in the room specified in the preceding paragraph between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects

34 CFR Parts 75 and 76

Grant programs-Education, Education.

34 CFR Part 98

Educational research, Privacy, Students, Notice of complaint, Complaints, Consent, examination, Experimental programs, Family, Notice of findings, Inspection, Instructional material, Political affiliations, Psychiatric, Psychological, Reporting and recordkeeping requirements, Research, Sex, Teaching methods, Teaching techniques, Testing, Treatment.

Citation of Legal Authority

A citation of statutory or legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: August 31, 1984.

T.H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Parts 75 and 76 and adds a new Part 98 to Subtitle A of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

§ 75.741 [Removed]

1. Section 75.741 is removed.

PART 76—STATE-ADMINISTERED PROGRAMS

§ 76.741 [Removed]

2. Section 76.741 is removed.

3. A new Part 98 is added, to read as follows:

PART 98—STUDENT RIGHTS IN RESEARCH, EXPERIMENTAL PROGRAMS, AND TESTING

Sec.
98.1 Applicability of part.
98.2 Definitions.
98.3 Access to instructional material used in a research or experimentation program.
98.4 Protection of students' privacy in examination, testing or treatment.
98.5 Information and investigation office.
98.6 Reports.
98.7 Filing a complaint.
98.8 Notice of the complaint.
98.9 Investigation and findings.
98.10 Enforcement of findings.

Authority: Sec. 514(a) of Pub. L. 93-380, 88 Stat. 574 (20 U.S.C. 1232h(a)); Sec. 1250 of Pub. L. 95-561, 92 Stat. 2355-2356 (20 U.S.C. 1232h(b)); and Sec. 408(a)(1) of Pub. L. 90-247, 88 Stat. 559-560, as amended (20 U.S.C. 1221e-3(a)(1)); sec. 414(a) of Pub. L. 96-88, 93 Stat. 685 (20 U.S.C. 3474(a)).

§ 98.1 Applicability of part.

This part applies to any program administered by the Secretary of Education that—

(a)(1) Was transferred to the Department by the Department of Education Organization Act (DEOA); and

(2) Was administered by the Education Division of the Department of Health, Education, and Welfare on the day before the effective date of the DEOA; or

(b) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 439 of the General Education Provisions Act inapplicable.

(c) The following chart lists the funded programs to which Part 98 does not apply as of February 16, 1984.

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Program.	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) 20 U.S.C. 1070d-2).	Part 206.
2. Programs administered by the Commissioner of the Rehabilitative Services Administration.	The Rehabilitation Act of 1973 as amended by Pub. L. 95-602 (29 U.S.C. 700, et seq.).	Parts 351-356, 361, 362, 365, 366, 369-375, 378, 379, 385-390, and 395.
3. College housing..	Title IV of the Housing Act of 1950 as amended (12 U.S.C. 1749, et seq.).	Part 614.

(20 U.S.C. 1221e-3(a)(1), 1230, 1232h, 3487, 3507)

§ 98.2 Definitions.

(a) The following terms used in this part are defined in 34 CFR Part 77; "Department," "Recipient," "Secretary."

(b) The following definitions apply to this part: "Act" means the General Education Provisions Act.

"Office" means the information and investigation office specified in § 98.5.

(20 U.S.C. 1221e-3(a)(1))

§ 98.3 Access to instructional material used in a research or experimentation program.

(a) All instructional material—including teachers' manuals, films, tapes, or other supplementary instructional material—which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project.

(b) For the purpose of this part "research or experimentation program or project" means any program or project in any program under § 98.1 (a) or (b) that is designed to explore or develop new or unproven teaching methods or techniques.

(c) For the purpose of the section "children" means persons not above age 21 who are enrolled in a program under § 98.1 (a) or (b) not above the elementary or secondary education level, as determined under State law.

(20 U.S.C. 1221e-3(a)(1), 1232h(a))

§ 98.4 Protection of students' privacy in examination, testing, or treatment.

(a) No student shall be required, as part of any program specified in § 98.1 (a) or (b), to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following—

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his or her family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom the student has close family relationships;

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b) As used in paragraph (a) of this section, "prior consent" means—

(1) Prior consent of the student, if the student is an adult or emancipated minor; or

(2) Prior written consent of the parent or guardian, if the student is an unemancipated minor.

(c) As used in paragraph (a) of this section—

(1) "Psychiatric or psychological examination or test" means a method of obtaining information, including a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings; and

(2) "Psychiatric or psychological treatment" means an activity involving the planned, systematic use of methods or techniques that are not directly related to academic instruction and that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group.

(20 U.S.C. 1232h(b))

§ 98.5 Information and investigation office.

(a) The Secretary has designated an office to provide information about the requirements of section 439 of the Act, and to investigate, process, and review complaints that may be filed concerning alleged violations of the provisions of the section.

(b) The following is the name and address of the office designated under paragraph (a) of this section: Family Educational Rights and Privacy Act Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

(20 U.S.C. 1231e-3(a)(1), 1232h)

§ 98.6 Reports.

The Secretary may require the recipient to submit reports containing information necessary to resolve

complaints under section 439 of the Act and the regulations in this part.

(20 U.S.C. 1221e-3(a)(1), 1232h)

§ 98.7 Filing a complaint.

(a) Only a student or a parent or guardian of a student directly affected by a violation under Section 439 of the Act may file a complaint under this part. The complaint must be submitted in writing to the Office.

(b) The complaint filed under paragraph (a) of this section must—(1) Contain specific allegations of fact giving reasonable cause to believe that a violation of either § 98.3 or § 98.4 exists; and

(2) Include evidence of attempted resolution of the complaint at the local level (and at the State level if a State complaint resolution process exists), including the names of local and State officials contacted and significant dates in the attempted resolution process.

(c) The Office investigates each complaint which the Office receives that meets the requirements of this section to determine whether the recipient or contractor failed to comply with the provisions of section 439 of the Act.

(20 U.S.C. 1221e-3(a)(1), 1232h)

(Approved under OMB control number 1880-0507)

§ 98.8 Notice of the complaint.

(a) If the Office receives a complaint that meets the requirements of § 98.7, it provides written notification to the complainant and the recipient or contractor against which the violation has been alleged that the complaint has been received.

(b) The notice to the recipient or contractor under paragraph (a) of this section must—

(1) Include the substance of the alleged violation; and

(2) Inform the recipient or contractor that the Office will investigate the complaint and that the recipient or contractor may submit a written response to the complaint.

(20 U.S.C. 1221e-3(A)(1), 1232h)

§ 98.9 Investigation and findings.

(a) The Office may permit the parties to submit further written or oral arguments or information.

(b) Following its investigations, the Office provides to the complainant and recipient or contractor written notice of its findings and the basis for its findings.

(c) If the Office finds that the recipient or contractor has not complied with section 439 of the Act, the Office includes in its notice under paragraph (b) of this section—

(1) A statement of the specific steps that the Secretary recommends the recipient or contractor take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the recipient or contractor may comply voluntarily.

(20 U.S.C. 1221e-3(a)(1), 1232h)

§ 98.10 Enforcement of the findings.

(a) If the recipient or contractor does not comply during the period of time set under § 98.9(c), the Secretary may either—

(1) For a recipient, take an action authorized under 34 CFR Part 78, including—

(i) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(ii) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b), or 298.45(b), depending upon the applicable program under which the notice is issued; or

(iii) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued; or

(2) For a contractor, direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulations, including either—

(i) Issuing a notice to suspend operations under 48 CFR 12.5; or

(ii) Issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

(b) If, after an investigation under § 98.9, the Secretary finds that a recipient or contractor has complied voluntarily with section 439 of the Act, the Secretary provides the complainant and the recipient or contractor written notice of the decision and the basis for the decision.

(20 U.S.C. 1221e-3(a)(1), 1232h)

[FR Doc. 84-23579 Filed 9-5-84; 8:45 am]

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federal register

Thursday
September 6, 1984

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 57
Health Professions Student Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service (PHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would revise existing regulations governing the Health Professions Student Loan (HPSL) program. These revisions would impose more detailed requirements concerning the exercise of due diligence by schools in loan collections and would specify a penalty for failure to comply with reporting requirements.

DATES: Comments on this proposal are invited. To be considered, comments must be submitted by October 22, 1984.

ADDRESSES: Respondents should address written comments to the Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, 301 443–4540.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 1983, (48 FR 25064) the Department issued amendments to the regulations governing the HPSL program. These amendments strengthened the requirements regarding recordkeeping and collections procedures and established performance standards for health professions schools' delinquency rates. Since the publication of these amendments, health professions schools and associations have expressed concern about the absence of detail in the provision of the HPSL regulations which requires that schools exercise due diligence in the loan collections process. Many schools have been uncertain of the procedures they should follow in order to comply with the due diligence requirement. In response to this concern, the Secretary is proposing to specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement. The Secretary is also proposing to clarify the requirements relating to proper execution and safeguarding of promissory notes, and the penalty for failure to comply with reporting requirements.

The proposed changes are summarized below according to the section numbers and titles of the regulations.

Section 57.208 Health Professions Student Loan Promissory Note

Section 57.208(a) of the existing regulations requires that each health professions student loan must be evidenced by a promissory note signed by the borrower. The Secretary proposes to amend this section to specify that the notes must be properly executed and safeguarded. In addition, the Secretary is proposing to amend § 57.208(b) of the existing regulations to require that, where state law permits individuals to void contracts entered during minority, schools must obtain security or endorsements on promissory notes with minors. The Secretary is proposing these revisions to more adequately protect the financial interests of the HPSL program.

Section 57.210 Repayment and Collection of Health Professions Student Loans

Section 57.210(b) of the existing regulations states that a school "must use the collection practices which are generally accepted among institutions of higher education and which are at least as extensive and effective as those used in the collection of other student loan accounts due the school." This section of the regulations also requires that a school carry out three specific activities—use of collection agents, litigation, and credit bureaus—as part of its due diligence procedures, but does not mention other collection activities which a school must perform to satisfy the requirement.

In response to requests from schools and professional associations, the Department is proposing to expand § 57.210(b) to specifyprocedures that a school must follow in order to satisfy the due diligence requirement. These procedures are as follows:

(1) Conduct and document an entrance interview with the borrower;

(2) Conduct and document an exit interview with the borrower, or, if the borrower terminates studies without advance notice, document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail;

(3) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(4) Notify a borrower who is in deferment status in writing of the impending repayment obligation approximately one month prior to the expiration of the approved period of deferment;

(5) Perform regular billing;

(6) Follow up past due payments with a series of at least five attempts to contact the borrower in writing prior to the loan becoming 120 days past due;

(7) Perform address searches when necessary;

(8) Use collection agents, which may include the use of an internal collection agent;

(9) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate; and

(10) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days, when appropriate.

Although compliance with these 10 steps would constitute an adequate minimum for due diligence, the Department is also proposing to retain the existing general language in § 57.210(b) as part of the due diligence requirement, in order to assure that the loan collection procedures that a school follows in the collection of health professions student loans would not exclude any additional procedures that might be followed routinely in the collection of the school's other loan accounts. The general language would also assure that the 10 steps which the Department is proposing to add to this section would be followed in accordance with generally accepted collected practices. For example, step (6) of the proposed due diligence procedures requires that a borrower who is past due be contacted in writing five times prior to the loan becoming 120 days past due, but does not specify time intervals for these five contacts. The requirement to follow generally accepted collection practices will assure that the time intervals are reasonable and will preclude the possibility of a school sending five letters in the same week and then asserting that it is in compliance with this requirement. At the same time, schools will have greater flexibility than if specific time intervals were required as part of step (6). The general due diligence language would not give the Department the right to impose additional required steps that are not specifically defined in the regulations.

Although we expect that the great majority of schools would follow the series of procedures outlined above, it is not our intention, in making these particular practices into regulatory requirements, to prevent adoption of innovations which are more effective or preclude schools from tailoring practices to unique circumstances. Therefore, we have created a provision which would allow schools to substitute more effective collection techniques in place of those outlined above, but only after they have demonstrated the effectiveness of the technique and obtained written approval from the Secretary. This would protect both parties from misunderstandings and assure that due diligence is followed.

The series of procedures outlined above in (1) through (7) would become required steps of the due diligence process as of the date of publication of these proposed regulations in final form. These are in addition to the procedures outlined in (8) through (10), which are already in effect under the existing regulations. For any loan made on or after the publication date of the final regulations, the Department would require that a school follow each of these steps (1) through (10) in order to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of the amended regulations, the Department would require that a school apply the new due diligence requirement prospectively to the extent that it would be possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the publication of the amended regulations must be in conformance with "generally accepted collection practices," as required by the current regulations, and the procedures followed after publication of the amended regulations must include all steps of the new requirement that can be followed prospectively.

The Department also requests comments on the degree of detail in steps (3) through (6) of the proposed due diligence requirements. The Department specifically invites alternate suggestions, if it is felt that the proposed due diligence requirements are overly restrictive. In addressing this issue, the Department requests that respondents consider proposed § 57.210(b)(1), which would permit a school to substitute alternative collection techniques in place of those directed in the regulations, provided that advance approval has been received. In evaluating alternative procedures, the Department would consider whether those procedures are at least as effective in collecting loans as those currently proposed in the regulations.

The Secretary also proposes to add a new subparagraph (b)(4) regarding the Department's policy for the write-off of uncollectible loans to § 57.210. This provision would clarify the process by explaining that when the Secretary determines that a school has exercised due diligence in its attempts to collect an uncollectible loan, the Federal Government will approve the write-off of the unpaid balance on the loan, with the Federal Government and the school each sustaining its proportionate loss of the unpaid balance. This provision would also explain that when the school has failed to exercise due diligence it will not be permitted to "write off" the loan, and must therefore reimburse the fund for the unpaid balance of the loan.

The Secretary reviews each request for write-off approval on a case-by-case basis and makes a determination based on the due diligence procedures that the school was required to follow in attempting to collect that particular loan.

Section 57.215 Records, Reports, Inspection, and Audit

The Secretary proposes to amend paragraph (a) of § 57.215 to clarify the penalty for failure to submit required reports within 45 days of the close of the reporting period. This provision explains that the Secretary would place a school in suspended status for failure to comply with reporting requirements, requiring the school to make no new loan disbursements and to place the loan fund and all subsequent collections in an insured interest-bearing account. This provision would also prohibit a school in suspended status from receiving any new Federal capital contributions. The school would remain in suspended status until notified that the Bureau has received the overdue report. If the Bureau did not receive a required report within six months of the close of the reporting period, the school would be terminated from the program and would be required to return all Federal funds in the loan account to the Department. A terminated school would be required to continue to pursue collections, and could reapply for participation in the program upon the submission of the overdue report.

Regulatory Impact

There are two areas of potential impact resulting from this regulation. First, the new requirements may impose some administrative costs on schools. This cost will be minor because for the most part the regulations merely codify existing due diligence practices. A few schools may be required, as a result of these rules, to expand their due diligence practices. However, these schools are likely, as a result of the new provisions, to also improve the administration of their loan programs, so that any added net administrative costs would be small. Further, although there are new recordkeeping and reporting requirements, they are minor, imposing an average burden of only 48.6 hours on each school.

Second, the rules will have some effect on each school's loan fund. We presume that most schools will comply with the new due diligence requirements, and as a result their loan collections may be somewhat increased. A few schools may not comply with the new requirements, in which case they would be required to reimburse the fund for the unpaid balance of the loan. However, since most schools are already performing the required procedures, effects on individual schools' loan funds are not expected to be significant.

For the reasons described above, the Secretary certifies that this proposed regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. Further the rule does not meet the criteria for a major rule under Executive Order 12291 and therefore does not require a regulatory impact analysis and review.

Paperwork Reduction Act

Sections 57.208, 57.210, and 57.215 of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements contained in §§ 57.208 and 57.210. Other organizations and individuals desiring to comment on the information collection requirements should send them to Peggy Washburn at the address listed earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS. The information collection requirements contained in § 57.215 have been cleared by OMB and given approval numbers 0915–0044 and 0915–0046.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, the Department of Health and Human Services proposes to amend Subpart C of 42 CFR Part 57 as follows.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

Dated: June 2, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: June 26, 1984.

Margaret M. Heckler,

Secretary.

PART 57—[AMENDED]

Subpart C—Health Professions Student Loans

1. Section 57.208 is amended by revising paragraph (a) introductory text and paragraph (b) as follows:

§ 57.208 Health professions student loan promissory note.

(a) *Promissory note form.* Each health professions student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

* * * * *

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

2. Section 57.210 is amended by revising paragraph (b)(1) and adding (b)(4) to read as follows:

§57.210 Repayment and collection of health professions student loans.

* * * * *

(b) * * *

(1) Each school at which a fund is established must exercise due diligence in the collection of health professions student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview with the borrower;

(ii) Conduct and document an exit interview with the borrower, or if the borrower terminates studies without advance notice, document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail;

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation approximately one month prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least five attempts to contact the borrower in writing prior to the loan becoming 120 days past due;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate;

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days, when appropriate.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the technique and obtained written approval from the Secretary.

* * * * *

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determined that a school has failed to exercise due diligence in the collection of a loan, the school will be required to place in the fund the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, the Federal Government will permit the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

3. Section 57.215 is amended by revising paragraph (a) and adding the OMB control number at the end of the section to read as follows:

§ 57.215 Records, reports, inspection, and audit.

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period. A school which fails to submit a required report within 45 days of the close of the reporting period:

(1) Shall be prohibited from receiving new Federal capital contributions;

(2) Must place the revolving fund and all subsequent collections into an insured interest-bearing account; and

(3) May make no new loans.

The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement. A school that fails to submit a complete and timely report within six months of the close of the reporting period shall be terminated from participation in the program and shall be required to return the Federal share of the revolving fund to the Department. A School terminated for this reason may reapply for participation in the program once it has submitted the overdue report. The school must also comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915-0044 and 0915-0046)

(Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 740-744 of the Public Health Service Act, 77 Stat. 170-173, 90 Stat. 2266-2268, 91 Stat. 390-391, 95 Stat. 920 (42 U.S.C. 294m-q))

[FR Doc. 84-23532 Filed 9-5-84; 8:45 am]

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Thursday
September 6, 1984

Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 57

Nursing Student Loan Program

AGENCY: Public Health Service (PHS), HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would revise existing regulations governing the Nursing Student Loan (NSL) program. These revisions would impose more detailed requirements concerning the exercise of due diligence by schools in loan collections.

DATES: Comments on this proposal are invited. To be considered, comments must be submitted by October 22, 1984.

ADDRESSES: Respondents should address written comments to the Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, 301 443–4540.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 1983, (48 FR 25072) the Department issued a Notice of Proposed Rulemaking (NPRM) to amend the regulations governing the NSL program. The June 3, 1983 NPRM proposed amendments to strengthen the requirements regarding recordkeeping and collections procedures and to establish performance standards for nursing school's delinquency rates. Since the publication of the June 3, 1983 NPRM, nursing schools and associations have expressed concern about the absence of detail in the provision of the existing NSL regulations which requires that schools exercise due diligence in the loan collections process. Many schools have been uncertain of the procedures they should follow in order to comply with the due diligence requirement. In response to this concern, the Secretary is proposing in this NPRM to specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement. The Secretary is also proposing to clarify the requirements relating to proper execution and safeguarding of promissory notes.

The proposed changes are summarized below according to the section numbers and titles of the existing NSL regulations. However, it should be noted that the June 3, 1983 NPRM proposes to revise the index (section numbers and titles) of the existing regulations. If the revisions to the index proposed in the June 3, 1983 NPRM are adopted as final regulations prior to the date that this proposed rule is finalized, the Department will change the section numbers and titles indicated in this NPRM accordingly.

Section 57.312 Evidence of Student Indebtedness—Promissory Note; Security

Section 57.312(a) of the existing regulations requires that each nursing student loan must be evidenced by a promissory note signed by the borrower. The Secretary proposes to amend this section to specify that the notes must be properly executed and safeguarded. In addition, the Secretary is proposing to amend § 57.312(b) of the existing regulations to require that, where state law permits individuals to void contracts entered during minority, schools must obtain security or endorsement on promissory notes with minors. The Secretary is proposing these revisions to more adequately protect the financial interests of the NSL program.

Section 57.314 Repayment and Collection of Nursing Student Loans

Section 57.314(b) of the existing regulations states that a school "shall use such collection practices as are generally accepted among institutions of higher education and which are at least as extensive and effective as those used in the collection of other student loan accounts due the school." The June 3, 1983 NPRM has proposed to amend this section of the regulations to require that a school carry out three specific activities—use of collection agents, litigation, and credit bureaus—as part of its due diligence procedures, but does not mention other collection activities which a school would be required to perform to satisfy the requirement.

In response to requests from schools and professional associations, the Department is proposing to expand § 57.314(b) to specify procedures that a school must follow in order to satisfy the due diligence requirement. These procedures are as follows:

(1) Conduct and document an entrance interview with the borrow;

(2) Conduct and document an exit interview with the borrower, or, if the borrower terminates studies without advance notice, document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail;

(3) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(4) Notify a borrower who is in deferment status in writing of the impending repayment obligation approximately one month prior to the expiration of the approved period of deferment;

(5) Perform regular billing;

(6) Follow up past due payments with a series of at least five attempts to contact the borrower in writing prior to the loan becoming 120 days past due;

(7) Perform address searches when necessary;

(8) Use collection agents, which may include the use of an internal collection agent;

(9) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate; and

(10) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days, when appropriate.

Although compliance with these 10 steps would constitute an adequate minimum for due diligence, the Department is also proposing to retain the existing general language in § 57.314(b) as part of the due diligence requirement, in order to assure that the loan collection procedures that a school follows in the collection of nursing student loans would not exclude any additional procedures that might be followed routinely in the collection of the school's other loan accounts. The general language would also assure that the 10 steps which the Department is proposing to add to this section would be followed in accordance with generally accepted collection practices. For example, step (6) of the proposed due diligence procedures requires that a borrower who is past due be contacted in writing five times prior to the loan becoming 120 days past due, but does not specify time intervals for these five contacts. The requirement to follow generally accepted collection practices will assure that the time intervals are reasonable and will preclude the possibility of a school sending five letters in the same week and then asserting that it is in compliance with this requirement. At the same time, schools will have greater flexibility than if specific time intervals were required as part of step (6). The general due diligence language would not give the

Department the right to impose additional required steps that are not specifically defined in the regulations.

Although we expect that the great majority of schools would follow the series of procedures outlined above, it is not our intention, in making these particular practices into regulatory requirements, to prevent adoption of innovations which are more effective or preclude schools from tailoring practices to unique circumstances. Therefore, we have created a provision which would allow schools to substitute more effective collection techniques in place of those outlined above, but only after they have demonstrated the effectiveness of the technique and obtained written approval from the Secretary. This would protect both parties from misunderstandings and assure that due diligence is followed.

The series of procedures outlined above in (1) through (7) would become required steps of the due diligence process as of the date of publication of these proposed regulations in final form. These would be in addition to the procedures outlined in (8) through (10), which are proposed to become effective as of the date that the June 3, 1983 NPRM is finalized. For any loan made on or after the publication date of final regulations which include all ten steps indicated above, the Department would require that a school follow each of these steps (1) through (10) in order to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of the amended regulations, the Department would require that a school apply the new due diligence requirement prospectively to the extent that it would be possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the publication of the amended regulations must be in conformance with "generally accepted collection practices," as required by the current regulations, and the procedures followed after publication of the amended regulations must include all steps of the new requirement that can be followed prospectively.

The Department also requests comments on the degree of detail in steps (3) through (6) of the proposed due diligence requirements. The Department specifically invites alternate suggestions, if it is felt that the proposed due diligence requirements are overly restrictive. In addressing this issue, the Department requests that respondents consider proposed § 57.314(b)(1), which would permit a school to substitute alternative collection techniques in place of those directed in the regulations, provided that advance approval has been received. In evaluating alternative procedures, the Department would consider whether those procedures are at least as effective in collecting loans as those currently proposed in the regulations.

The Secretary also proposed to add a new subparagraph (b)(4) regarding the Department's policy for the write-off of uncollectible loans to § 57.314. This provision would clarify the process by explaining that when the Secretary determines that a school has exercised due diligence in its attempts to collect an uncollectible loan, the Federal Government will approve the write-off of the unpaid balance on the loan, with the Federal Government and the school each sustaining its proportionate loss of the unpaid balance. This provision would also explain that when the school has failed to exercise due diligence it will not be permitted to "write off" the loan, and must therefore reimburse the fund for the unpaid balance of the loan.

The Secretary reviews each request for write-off approval on a case-by-case basis and makes a determination based on the due diligence procedures that the school was required to follow in attempting to collect that particular loan.

Regulatory Impact

There are two areas of potential impact resulting from this regulation. First, the new requirements may impose some administrative cost on schools. This cost will be minor because for the most part the regulations merely codify existing due diligence practices. A few schools may be required, as a result of these rules, to expand their due diligence practices. However, these schools are likely, as a result of the new provisions, to also improve the administration of their loan programs, so that any added net administrative cost would be small. Further, although there are new recordkeeping and reporting requirements, they are minor, imposing an average burden of only 18.4 hours on each school.

Second, the rules will have some effect on each school's loan fund. We presume that most schools will comply with the new due diligence requirements, and as a result their loan collections may be somewhat increased. A few schools may not comply with the new requirements, in which case they would be required to reimburse the fund for the unpaid balance of the loan. However, since most schools are already performing the required procedures, effects on individual schools' loan funds are not expected to be significant.

For the reasons described above, the Secretary certifies that this proposed regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. Further the rule does not meet the criteria for a major rule under Executive Order 12291 and therefore does not require a regulatory impact analysis and review.

Paperwork Reduction Act

Sections 57.312 and 57.314 of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to comment on the information collection requirements should send them to Peggy Washburn at the address listed earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, the Department of Health and Human Services proposes to amend Subpart D of 42 CFR Part 57 as follows.

(*Catalog of Federal Domestic Assistance*, No. 13.364, Nursing Student Loan Program)

Dated: June 2, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: June 26, 1984.

Margaret M. Heckler,

Secretary.

PART 57—[AMENDED]

Subpart D—Nursing Student Loan

1. Section 57.312 is amended by revising paragraph (a) introductory text and paragraph (b) as follows:

§ 57.312 Evidence of student indebtedness—promissory note; security.

(a) *Promissory note form.* Each nursing student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

* * * * *

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

2. Section 57.314 is amended by revising paragraph (b)(1) and adding (b)(4) to read as follows:

§ 57.314 Repayment and collection of nursing student loans.

* * * * *

(b) * * *

(1) Each school at which a fund is established must exercise due diligence in the collection of nursing student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview with the borrower;

(ii) Conduct and document an exit interview with the borrower, or if the borrower terminates studies without advance notice, document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail;

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation approximately one month prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least five attempts to contact the borrower in writing prior to the loan becoming 120 days past due;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate;

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days, when appropriate.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the technique and obtained written approval from the Secretary.

* * * * *

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, the school will be required to place in the fund the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, the Federal Government will permit the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

* * * * *

(Sec. 215 of the Public Health Service Act, 58 Stat. 170, as amended (42 U.S.C. 216); sections 835–841 of the Public Health Service Act, 78 Stat. 913–916, as amended (42 U.S.C. 297 a–h))

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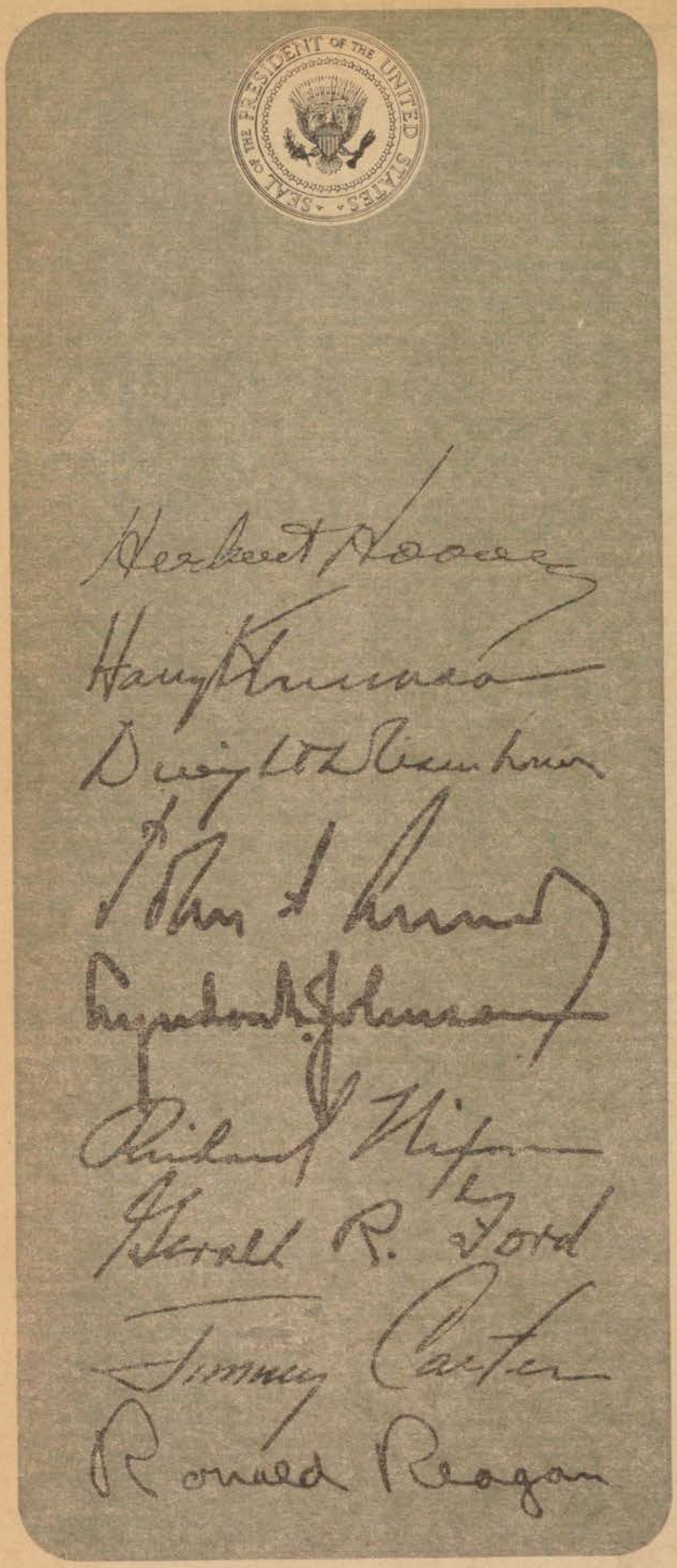

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