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WEDNESDAY, SEPTEMBER 7, 1977



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OUT OF TOWN WORKSHOPS PREVIOUSLY ANNOUNCED

Boston, Mass., 9–7, 9–8, 9–9
(Details: 42 FR 37261, 7–20–77)
For reservations call: Mrs. Louise Conboy
at (617) 223–7121

Saint Paul, Minn. 9–13, 9–14, 9–15
(Details: 42 FR 40999, 8–12–77)
For reservations call: Chuck McDew
at (612) 291–6421

St. Louis, Mo. 9–28 and 9–29–77
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For reservations call: Delores O'Guin
at (314) 425–4106

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Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
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	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Miscellaneous Amendments

Correction

In FR Doc. 31419, appearing at page 47021 in the issue for Wednesday, October 27, 1976, on page 47022, in § 907.113 (a), in the second column, the twenty-seventh line, "allocation of general maturity allotments", should be deleted.

PART 932—OLIVES GROWN IN CALIFORNIA

Grade and Size Requirements for Certain Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule approves grade and size requirements for processed olives which are used in the production of limited use style olives (i.e. halved, quartered, segmented, sliced, chopped, or minced canned ripe olives). This action permits use of those olives of sizes too small to be desirable for use as whole or pitted ripe olives to be utilized in producing other styles of olives, thereby benefiting olive users and producers.

EFFECTIVE DATE: September 1, 1977, through August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-3545).

SUPPLEMENTARY INFORMATION: This regulation is issued under the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act". The regulation was recommended by the Olive Administrative Committee, which is established under the order as the agency to administer its terms.

Section 932.52 (a)(2) and (a)(3) of the order specify the minimum sizes of processed olives (by variety) that may be used in the production of whole and pitted styles of canned ripe olives. The minimum sizes are expressed in terms of minimum weights for individual olives. Section 932.52(a)(3) also provides that use of processed olives smaller than the sizes prescribed for whole and pitted style may be established annually for limited use and the subparagraph further provides that each such minimum size may also include a size tolerance as recommended by the committee and approved by the Secretary. Any such tolerances may also be recommended and approved annually. Therefore, this action approves establishment, for olives from the 1977-78 crop, of minimum sizes contained in § 932.52(a)(3) and includes a size tolerance of 25 percent for undersize Variety Group 1 olives and 20 percent for undersize Variety 2 olives. These requirements are the same as have been established each fiscal year since 1971.

This regulation reflects the committee's appraisal of the 1977-78 olive crop and marketing conditions and is its recommendation for the minimum grade and sizes of olives that will provide good quality fruit, of the styles specified, in the interest of consumers and producers.

It is found that amendment of Subpart—Rules and Regulations (7 CFR 932.108-932-161) by amending § 932.153 which contains grade and size requirements and tolerances for processed olives for limited use, is in accordance with the order and will tend to effectuate the declared policy of the act. Therefore, such amendment, as hereinafter set forth, is approved.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), and good cause exists for making the provisions hereof effective at the time hereinafter set forth, in that (1) the time intervening between the date when the information upon which this amendment is based became available and the time such amendment must become effective in order to effectuate the declared policy of the act is insufficient; (2) the handling of the 1977 crop of olives is expected to begin on or about the effective time hereof; (3) compliance with the amended rules and regulations will require handlers no special preparation which cannot be completed by the effective time hereof; and (4) this amendment relaxes restrictions on the handling of olives.

Therefore, § 932.153 of Subpart—Rules and Regulations (7 CFR 932.108-932.161) is amended to read as follows:

§ 932.153 Establishment of grade and size requirements for processed 1977-78 olives for limited use.

(a) *Grade.* On and after September 1, 1977, any handler may use processed olives of the respective variety groups in the production of limited use styles of canned ripe olives if such olives were processed after August 31, 1977, and meet the grade requirements specified in § 932.52(a)(1) as modified by § 932.149.

(b) *Sizes.* On and after September 1, 1977, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were processed during the period September 1, 1977, through August 31, 1978, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives processed before September 1, 1977, or after August 31, 1978;

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/90 pound: *Provided*, That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/90 pound;

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostina varieties shall be of a size which individually weight 1/140 pound: *Provided*, That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/140 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weight 1/180 pound: *Provided*, That not to exceed 20 percent of the olives in any lot or sublot may be smaller than 1/180 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided*, That not to exceed 20 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

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

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Dated: August 31, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-25931 Filed 9-6-77;8:45 am]

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Expenses of Prune Administrative Committee, and Rate of Assessment for the 1977–78 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses of $218,880 and a rate of assessment of $1.50 per ton of salable prunes handled for the maintenance and functioning of the Prune Administrative Committee during the 1977–78 crop year. This regulation enables the Committee to collect assessments from handlers on all prunes handled and use the resulting funds for its expenses.

EFFECTIVE DATE: For the 1977–78 crop year beginning August 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: 202–447–3545.

SUPPLEMENTARY INFORMATION: The marketing agreement, and Order No. 993, both as amended, regulate the handling of dried prunes produced in California. They are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Committee, established under the order, is responsible for its local administration.

Notice was published in the August 5, 1977, FEDERAL REGISTER (42 FR 39672) inviting written comments by August 19, 1977. A comment was filed by the Prune Administrative Committee on its proposed budget, but the comment had no effect on the total expenses or the assessment rate.

Findings. After consideration of all relevant matters, including the proposals in the notice, it is found that the following expenses and rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of the amended marketing agreement and order require that the rate of assessment fixed for a particular crop year shall be applicable to all salable prunes handled by handlers as the first handlers thereof; and (2) the current crop year began on August 1, 1977, and the rate of assessment hereinafter fixed will automatically apply to all such prunes beginning with that date.

The regulation is as follows:

§ 993.328 Expenses of the Prune Administrative Committee and rate of assessment for the 1977–78 crop year.

(a) *Expenses.* Expenses in the amount of $218,880 are reasonable and likely to be incurred by the Prune Administrative Committee during the crop year beginning August 1, 1977, for its maintenance and functioning and for such other purposes as the Secretary may, pursuant to the applicable provisions of the marketing agreement, as amended, and this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for such crop year which each handler is required, pursuant to § 993.81, to pay to the Prune Administrative Committee as his pro rata share of said expenses is fixed at $1.50 per ton of salable prunes handled by him as the first handler thereof.

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

Dated: August 31, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-25930 Filed 9-6-77;8:45 am]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER E—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

PART 1702—PETITIONS FOR EXEMPTIONS FROM POISON PREVENTION PACKAGING ACT REQUIREMENTS; PETITION PROCEDURES AND REQUIREMENTS

Interim Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Interim rule on which comment is solicited.

SUMMARY: In this document, the Commission issues as interim rules, and solicits comments on, procedures for petitioning the Commission to grant exemptions from child-protection packaging standards under the Poison Prevention Packaging Act of 1970. This document also establishes, and solicits comments on, requirements for the types of information to be supplied with the petitions to enable the Commission to properly evaluate and decide on exemption requests. At the present time, the Commission has no general rules for submitting petitions for exemption and therefore it must request specific information from petitioners, as needed, on a case-by-case basis. This interim regulation will provide guidance to petitioners as to procedures for petitioning and requirements for what information petitions must contain.

DATES: The interim rule is effective on an interim basis for petitions for exemption received after August 7, 1977. Comments concerning this interim rule should be received by October 7, 1977.

ADDRESS: Comments should be sent to: Office of the Secretary, Consumer Product Safety Commission, 1111 18th St. NW., Third floor, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Irvin Weiss, Office of Program Management (301–492–6453), or for technical questions contact Dr. Fred Marozzi, Division of Safety Packaging and Scientific Coordination (301–492–6477), Consumer Product Safety Commission, Washington, D.C. 20207.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to issue an interim regulation for comment under the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471–6). The interim regulation, a new Part 1702, will establish procedures and requirements for persons requesting the Consumer Product Safety Commission to grant exemptions from child-protection packaging (special packaging) standards.

BACKGROUND

Section 3(a) of the PPPA authorizes the Consumer Product Safety Commission to establish standards for the special packaging of household substances. Special packaging standards that have been issued appear at 16 CFR 1700.15. The Commission regulations at 16 CFR 1700.14 name particular substances or categories of substances that must comply with these standards by being packaged in special packaging. The procedures and requirements for petitioning contained in this document apply to requests for exemptions from the application of special packaging standards to the named substances or categories of substances.

Under the PPPA, the Commission has authority to grant exemptions from special packaging standards. Congress anticipated that in appropriate circumstances the regulations establishing special packaging requirements could be amended to exclude a single substance or category of substances. The granting of exemptions from special packaging was contemplated in the Conference Report of the legislative history of the Poison Prevention Packaging Act of 1970 (H.R. Rep. No. 1755, 91st Cong., 2d Sess. 8 (1970)).

At the present time, the Commission accepts petitions to exempt products subject to PPPA standards. After evaluating the information submitted by the petitioner and other available information, the Commission either grants or denies the petition. If the petition is granted, the Commission publishes a notice of proposed rulemaking inviting public comment on whether the exemption should be issued in final form.

Although the Commission has no rules for petitioning for exemption from PPPA standards, it has been using, as general guidelines, the basic factors for evaluating petitions stated in the preamble of the regulation establishing special packaging standards for oral prescription drugs (38 FR 9431 at 9432 (April 16, 1973)). In that preamble it was stated that petition requests "must furnish reasonable grounds therefor, including information such as available human experience data, relevant experimental data, toxicity information,

product and packaging specifications, labeling, marketing history, and the justification for the exemption." The interim regulation issued below expands on this basic statement and specifies, with as much detail as possible, the types of information the Commission considers necessary to evaluate petitions for exemption.

These grounds, and the requirements set forth below, generally are based upon the statutory findings the Commission must make in the first instance in establishing a standard for a particular substance or category of substances. Section 3 of the PPPA provides for the establishment of standards requiring special packaging for a household substance if the Commission finds that:

(1) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and

(2) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance. Before establishing a standard, the Commission must consider:

(1) The reasonableness of such standard;

(2) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(3) The manufacturing practices of industries affected by the Act, and

(4) The nature and use of the household substance.

The type of information specified in this regulation is similar to the relevant information the Commission is required to consider in establishing special packaging standards for a particular household substance or category of substances. The information specified in this regulation is also generally necessary in order for the Commission to determine that the degree or nature of the hazard to children is such that special packaging is not required to protect children from serious personal injury or serious illness, or that special packaging required for a household substance is not technically feasible, praticable, or appropriate.

Summary of Interim Regulations

The interim regulations issued in this document, at § 1702.2, set forth procedural requirements that must be met before the Commission will accept a petition for filing. These procedural requirements and recommendations are similar to those contained in the Commission's Interim Procedures for Petitioning for Rulemaking under section 10 of the Consumer Product Safety Act, 16 CFR 1110.7 (41 FR 43128, September 29, 1976).

At § 1702.3, the regulations set out substantive requirements that must be met before the Commission will consider the merits of a petition. If a petition does not contain the required information, the petition will be closed unless the petitioner, upon notification by the Commission, is able to furnish the information or provide a satisfactory explanation for the absence of the information, as provided by § 1702.4.

Section 1702.5 provides that the failure to supply information that is adverse to the petition will result in the denial of the petition.

The interim regulation, at § 1702.6, provides for treatment of petitions containing trade secrets and other confidential information in accordance with the Commission's regulations under the Freedom of Information Act.

In order to be considered complete, the petition must contain a statement of justification for the exemption in accordance with § 1702.7; and must include all available information concerning human experience data; relevant experimental data (both human and animal); product and packaging specifications; labeling; and marketing history; in accordance with §§ 1702.8 through 1702.14.

Section 1702.8 requires petitions to include all available human experience data involving all adverse reports of personal injury, illness, and significant allergenicity. Human experience data may be obtained from reports from Poison Control Centers; reports of adverse reactions concerning the product submitted to the company by physicians, hospitals, consumers, and other sources; extensive searches of the medical, pharmacological, and toxicological literature; and, for drugs, a summary of relevant human experience data required to be compiled for an Investigational Exemption for a New Drug (IND) or a New Drug Application (NDA).

Section 1702.9 specifies the relevant experimental data that must be submitted with an application. Subsection 1702.9(a) lists minimum acute animal toxicity data that must be submitted for all petitions; § 1702.9(b) lists additional data that must be submitted for drug products and all other household substances which are normally intended to be used in or on the human body. In addition, § 1702.9(c) lists the additional data that should be submitted, if available, by petitioners requesting an exemption for substances not intended for use in or on the human or animal body. Section 1702.10 provides that any human experimental data submitted with a petition must indicate that adequate measures have been taken to safeguard the subjects of the studies from psychological or physical injury.

Section 1702.11 of the interim regulation outlines product specifications that must be included in each petition for an exemption. Section 1702.12 provides packaging specifications that must be included in each petition for an exemption. Section 1702.13 requires petitions to include sample labeling and any package inserts, as well as complete promotional information or advertising, in the case of drugs. Section 1702.14 provides that petitions must include a statement of the marketing history of the substance.

The interim regulation, at § 1702.15, requires petitions alleging the incompatibility of child resistant packaging with the substance petitioned for exemption to contain adequate evidence supporting the allegation. Section 1702.16 of the proposed regulation specifies requirements for petitions requesting an exemption for drug or a new drug.

Section 1702.17 provides that where the Commission determines that reasonable grounds for an exemption are presented by a petition, the Commission shall publish a proposed exemption in the Federal Register. "Reasonable grounds" for publishing a proposed exemption may be based on information and data sufficient to support the conclusion that the degree or nature of the hazard to children in the availability of the substance, by reason of its packaging, is such that child-resistant packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the substance. Reasonable grounds may also be present where information and data support the conclusion that special packaging is not technically feasible, practicable, or appropriate for the substance; or that special packaging is incompatible with the particular substance. Section 1702.18 provides that where the Commission determines that reasonable grounds for an exemption are not presented by the petition, the petition will be denied.

As provided by § 1702.19, the filing of a petition does not have the effect of staying the regulation from which the exemption is sought. Even though a petition for an exemption has been filed, substances subject to child-resistant packaging standards are considered in violation of the law unless packaged in child-resistant packaging.

Public Procedure

Because this document contains rules of agency procedure or practice, the relevant provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are not applicable. In addition, even if it were to be found that these provisions of the APA apply, the agency for good cause finds that notice and public procedure and delayed effective date are unnecessary because the procedures merely add specificity to the factors for evaluating petitions stated in the preamble of the regulation establishing special packaging for oral prescription drugs, 38 FR 9431 at 9432 (April 16, 1973), that are currently being followed on an individual basis.

In accordance with Commission policy to solicit public participation and comment whenever practicable, interested persons are invited to submit written comments on these procedures (preferably in five copies) to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207 until October 7, 1977. Late-received comments will be considered to the extent practicable. The

Commission may make changes in the procedures as a result of comments received or experience with the interim procedures. After reviewing all timely comments, the Commission will publish in the FEDERAL REGISTER a notice describing what final action it will take regarding the procedures.

CONCLUSION

Accordingly, under provisions of the Poison Prevention Packaging Act of 1970 (secs. 2(4), 3, 5; Pub. L. 91-601; 84 Stat. 1670-1672; 15 U.S.C. 1471(4), 1472, 1474), the Federal Hazardous Substances Act (sec. 10(a); 74 Stat. 378; 15 U.S.C. 1269(a)), the Federal Food, Drug, and Cosmetic Act (sec. 701(a); 21 U.S.C. 371(a)), and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573; sec. 30(a); 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission adds the following new Part 1702 to Subchapter E, Chapter II:

Sec.

1702.1 Purpose and policy.
1702.2 Procedural requirements.
1702.3 Substantive requirements.
1702.4 Petitions with insufficient or incomplete information.
1702.5 Failure to supply adverse information.
1702.6 Trade secrets and other confidential information.
1702.7 Justification for the exemption.
1702.8 Human experience data.
1702.9 Relevant experimental data.
1702.10 Human experimental data involving the testing of human subjects.
1702.11 Product specifications.
1702.12 Packaging specifications.
1702.13 Labeling.
1702.14 Marketing history.
of child resistant packaging with the particular substance petitioned for exemption.
1702.15 Petitions alleging incompatibility.
1702.16 Petitions requesting an exemption for a drug or a new drug.
1702.17 Granting petitions.
1702.18 Denying petitions.
1702.19 Effect of filing petition.

AUTHORITY: Secs. 2(4), 3, 5; Pub. L. 91-601; 84 Stat. 1670-72; (15 U.S.C. 1471(4), 1472, 1474); sec. 10(a), 74 Stat. 378; (15 U.S.C. 1269(a); 21 U.S.C. 371(a)); sec. 30(a); Pub. L. 92-573, 86 Stat. 1231; (15 U.S.C. 2079(a)).

§ 1702.1 Purpose and policy.

(a) Section 1700.14(a) of Part 1700 lists household substances the Consumer Product Safety Commission requires under section 3(a)(1) of the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1472, to be contained in special packaging to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances. There may be occasions, however, when the Commision determines that a particular substance should be exempt from special packaging requirements.

(b) The Commission may, either on its own initiative or upon the petition of any interested person, amend the regulation at § 1700.14(a) by exempting a substance or category of substances from special packaging requirements. The purpose of these rules is to provide procedures and requirements for submitting petitions for exemption from special packaging requirements.

§ 1702.2 Procedural requirements and recommendations.

(a) *Requirements.* To be considered a petition for exemption from special packaging requirements under this part a document filed under this part must:

(1) Be mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street NW., Third floor, Washington, D.C. 20207.

(2) Be written in the English language,

(3) Contain the name and address of the petitioner,

(4) Contain an explicit request for exemption from special packaging requirements,

(5) Identify the category of substances under § 1700.14(a) from which the exemption is sought,

(6) Identify the particular substance for which the exemption is sought, and

(7) Describe the package size of the substance for which the exemption is sought.

(b) *Failure to meet requirements.* Where a submission fails to meet all of the requirements of paragraph (a) of this section, the Office of the Secretary shall notify the person submitting it, describe the deficiency, and explain that the petition may be resubmitted when the deficiency is corrected.

(c) *Procedural recommendations.* The following are procedural recommendations to help the Commission in its consideration of petitions. The Commission requests, but does not require, that petitions filed under this part:

(1) Be typewritten,

(2) Include the word "petition" in a heading preceding the text,

(3) Include the telephone number of the petitioner, and

(4) Be accompanied by at least five (5) copies of the petition.

§ 1702.3 Substantive requirements.

(a) A petition filed under this Part shall include the information required by this Part. As provided by § 1702.4, a petition which is not complete may be closed. To be considered complete, a petition shall include the following:

(1) A statement of the justification for the exemption in accordance with § 1702.7,

(2) All available information concerning human experience data, relevant experimental data (both human and animal), product and packaging specifications, labeling, and marketing history, in accordance with §§ 1702.8 through 1702.14,

§ 1702.4 Petitions with insufficient or incomplete information.

If a petition is submitted that is not complete and does not explain the reason for the absence of the information, the Commission shall afford the petitioner a reasonable opportunity to provide additional information. If the required information is not submitted to the Commission, or if the petitioner does not satisfactorily explain the absence of the information within a reasonable time, the petition shall be closed if insufficient or incomplete information has been submitted to enable the Commission to evaluate the merits of the exemption request.

§ 1702.5 Failure to supply adverse information.

Failure to obtain and provide the Commission with all information that the petitioner knows is unfavorable or could reasonably expect to be unfavorable to the petition shall result in the denial of the petition.

§ 1702.6 Trade secrets and other confidential information.

Where a petition contains material that the petitioner believes should be exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552, the petitioner shall comply with the requirements of 16 CFR 1015.17, 42 FR 10490, February 22, 1977, the Commission's regulation under the Freedom of Information Act concerning requests for treatment as exempt material. The Commission shall act upon any request for treatment as exempt material in accordance with the provisions of 16 CFR 1015.17.

§ 1702.7 Justification for the exemption.

The justification for the exemption, required under § 1702.3, shall explain the reason for the exemption based on one or more of the following grounds:

(a) If the justification is based on a lack of need for special packaging to protect young children from serious injury or illness from the substance, the justification shall state how the lack of toxicity and lack of adverse human experience for the substance clearly supports granting the exemption.

(b) If the exemption is requested because special packaging is not technologically feasible, practicable, or appropriate for the substance, the justification shall explain why.

(c) If the exemption is requested because special packaging is incompatible with the particular substance, the justification shall explain why.

§ 1702.8 Human experience data.

Human experience data constitutes the primary criterion used by the Commission in evaluating petitions for exemptions. Petitions shall therefore include a compilation of all available reports pertaining to human use of the particular substance and involving adverse reports of personal injury, illness, and significant allergenicity. Human experience data may be obtained from such sources as:

(a) Reports from Poison Control Centers,

(b) Reports of adverse reactions relative to the product that have been submitted to the company by physicians, hospitals, consumers, and other sources,

(c) Extensive searches of the medical, pharmacological, and toxicological literature, and

(d) For drugs, where the human experience data submitted is based on data required by FDA to be compiled for an Investigational Exemption for a New Drug (IND), 21 CFR Part 312, or a New Drug Application (NDA), 21 CFR Part 314, a summary of the relevant data should be provided. The entire NDA and IND material need not be submitted.

§ 1702.9 Relevant experimental data.

Experimental data are generated in both animals and humans in controlled situations in order to evaluate the biological effects of a substance. Certain toxicological effects cannot generally be evaluated in human beings. This is especially true of those substances which are not normally intended to be used in or on the human body or animal body. Therefore, the Commission considers experimental data obtained in animal studies to be an important supplement to such data as may exist from any experimental studies conducted in humans. The minimum toxicological evaluation necessary for a particular household substance is proportional to the expected exposure of man to that substance. Household substances which are not expected, in normal use, to contact man are subject to less extensive studies than those substances, such as drugs, which are designed to be used in or on man. The Commission has, therefore separated the requirements of this section into three subsections. Section 1702.9(a) lists minimum acute animal toxicity data which must be submitted for all petitions; § 1702.9(b) lists those additional data which must be submitted for drug products and all other household substances which are normally intended to be used in or on the human body; and, § 1702.9 (c) lists those additional data which should be submitted, if available, by petitioners requesting exemption for substances not intended for use in or on the human or animal body. The Commission emphasizes that, while not mandatory, the types of data outlined in § 1702.9(c) may greatly expedite the Commission's evaluation of a particular exemption request.

(a) *General requirements for all petitions.* (1) Each petition for an exemption under this part shall include all relevant experimental data relating to the petition regardless of whether such data are unfavorable to the petitioner's request. As used in this part, the term "relevant experimental data" includes, but is not limited to, all data, including animal and human studies revealing the nature and degree of the hazard associated with the particular substance. Generally, the hazard associated with the particular substance involves the risk of injury arising from the acute accidental ingestion of a product. Where a hazard different from the risk of injury arising from accidental ingestion is known to exist (e.g. potential for significant allergenicity, dermal or opthalmic injury from handling or using the product), the petitioner shall also submit all relevant experimental data evaluating the nature and degree of any additional hazard(s).

(2) All animal studies submitted in support of exemption requests shall be performed in conformity with good pharmacological and toxicological practice which includes, as a minimum, complete descriptions of protocols used in experimental animal studies, and signed laboratory reports which include the following basic information:

(i) An exact description of materials tested;

(ii) A description of test animals employed in studies, including number, age, weight, sex, and nutritional state of animals;

(iii) Dosage level(s) and number of animals tested per dosage level;

(iv) Basis upon which dosage was administered (e.g. as salt or base);

(v) Route of administration and dosage volume; and

(vi) Appendices containing all raw data and any additional data generated subsequent to the completion of the original study (e.g. results of histopathological examinations, if performed).

(3) Reports of Median Lethal Dosage (LD50) studies shall be submitted with each petition and shall include all raw data obtained in such studies. These studies shall be conducted in both adult and weanling animals of the same species. The oral route of administration must be followed for studies involving substances subject to regulations promulgated under the Poison Prevention Packaging Act of 1970. Where a percutaneous toxicity hazard exists, such studies shall also be performed using this route of administration. Sufficient dosage levels as well as adequate numbers of test animals per dosage level must be used to give statistical reliability to determined LD50 values.

(4) In view of the fact that LD50 values in themselves do not necessarily reflect a true estimate of the overall toxic potential of a substance, LD50 determinations must include:

(i) An LD50 value with 95 percent confidence limits;

(ii) A slope determination for the dose response curve, including 95 percent confidence limits; and

(iii) A description of the statistical method employed in the analysis of such data (with proper citation) as well as the statistical analysis itself.

(5) The Commission shall disregard any data which do not fulfill the strict requirements of the statistical method used in their analyses. Modifications of accepted statistical methods which have been published in the literature are acceptable to the Commission provided that a copy of the published work is submitted.

(6) The Commission requires at least a seven day observation period of test animals in acute toxicity studies. Good pharmacological practice requires that test animals be observed closely for several hours following test substance administration and less frequently on subsequent test days. Succumbing animals are necropsied as soon as practicable following death, while surviving animals are necropsied at the end of the observation period and gross pathological alterations noted. Documentation of nonlethal effects occurring during these observation periods shall be submitted in conjunction with acute toxicity laboratory reports. Documentation of any lethal effects occurring at high dosage levels, including mode of death (e.g. cardiac arrest/respiratory arrest), and time of death shall be submitted in conjunction with acute toxicity laboratory reports. Reports of gross necropsies performed upon surviving animals shall be submitted as well as results of necropsies performed upon animals succumbing to the test substance: *Provided*, That such animals are examined prior to the onset of autolysis. Results of microscopic examinations, when indicated by the nature or results of an acute toxicity study, shall also be submitted.

(b) *Additional data requirements for petitions involving substances normally used in or on the human or animal body.* (1) Petitioners submitting exemption requests for substances normally designed to be used on or taken into the human body or animal body shall, in addition to the requirements of paragraph (a) of this section, submit the following types of data:

(i) Summary laboratory reports of data obtained in subacute and chronic animal studies where the data pertain to the absorption, distribution, metabolism, and excretion of substances in question;

(ii) A median lethal dosage (LD50) determination conducted in one additional species. Of the two LD50 determinations required by persons submitting exemption requests under this part, one must be conducted in a nonrodent species;

(iii) Summary reports of data obtained in human studies designed to measure the absorption, distribution, metabolism, and excretion of substances in question; and

(iv) Data indicating, insofar as is known, the mechanism of action of the substance in question and the mechanism by which expected toxicological effects occur. If unknown, petitioner must so state.

(2) The Commission recognizes that the pharmacology and toxicology of many substances for which exemptions may be sought under this section may be well documented in the medical and scientific literature. Petitioners requesting an exemption subject to the requirements of this section may, therefore, under certain circumstances, submit comprehensive reviews of the referenced literature. Such material will be acceptable to the Commission: *Provided*, That the petitioner certifies that these data have not previously been generated by the petitioner, and provided that the petitioner demonstrates that generation of such data by the petitioner is unnecessary. For the purposes of this demonstration, the petitioner must submit a comprehensive evaluation of the pharmacology and toxicology of the substance in question with proper literature citations. The mere submission of literature material without competent pharmacological and toxicological evaluation will not be considered as having met the

requirements of this paragraph. The Commission notes that the requirements of this section do not alter the requirements listed in § 1702.9(a).

(c) *Optional data requirements for petitions involving substances not intended for use in or on the human or animal body.* The following types of data, although often not generated for household substances not normally intended for use in or on the human or animal body, may be available to a petitioner and should, where available, be submitted.

(1) Summary laboratory reports of data obtained in subacute and chronic animal studies where such data pertain to the absorption, distribution, metabolism, and excretion of the substance in question;

(2) Results of median lethal dosage (LD50) studies conducted in additional species of animals; and

(3) Any additional experimental studies relevant to the exemption request which would provide the Commission with additional means of assessing the hazards to children of the product for which exemption is sought.

§ 1702.10 Human experimental data involving the testing of human subjects.

Any human experimental data submitted with a petition requesting an exemption under this part shall include a statement establishing that adequate measures have been taken to ensure against psychological or physical injury to the subjects of the human studies. The Commission considers its regulations concerning the protection of human subjects (16 CFR Part 1028, 42 FR 36818, July 18, 1977) to be an example of measures that are adequate to ensure against psychological or physical injury to human subjects.

§ 1702.11 Product specifications.

Each petition for an exemption shall include:

(a) A complete quantitative formula for the product, including inert ingredients, diluents, and solvents. (Petitioners should refer to § 1702.6 for information regarding trade secrets.)

(b) A listing of all physical forms or dosage forms (whichever is appropriate) in which the product is available.

§ 1702.12 Packaging specifications.

Each petition for an exemption shall include the following:

(a) A description of the packaging currently in use for each form of the product, including the name of the manufacturer of the package and all specifications for the package,

(b) A complete packaging description including any carton or wrapping in which the product is offered to the consumer,

(c) A description of each size in which each form of the product is offered, including physical form, color and flavoring, and

(d) An empty sample of each type and size of package used, and, in the case of drugs, a designation of those packages intended to be used in dispensing the product to the consumer for household use.

§ 1702.13 Labeling.

Each petition for an exemption under this part shall include a sample of the label and complete packaging for each size in which each form of the product is packaged. This shall include the immediate container labeling, any package inserts, and other carton or wrapping labeling in which the product is offered to the consumer. In the case of drugs, each petition shall be accompanied by labeling on the outer carton or wrapping in which the product is offered to the retailer, as well as complete promotional information or advertising for the product.

§ 1702.14 Marketing history.

Each petition for an exemption under this part shall include a statement of the marketing history of the substance for which an exemption is requested. The marketing history dates from the year in which each form of the product was introduced onto the market. The marketing history shall include the total number of units of each form or strength and package size of the product distributed since the product was introduced onto the market. In the case of prescription drugs, the average prescription size for the product shall also be indicated.

§ 1702.15 Petitions alleging the incompatibility of child resistant packaging with the particular substance petitioned for exemption.

(a) Where the petition for an exemption is based upon an allegation that the applicable special packaging standard is incompatible with the particular substance or would seriously and adversely compromise the utility or stability of a substance, the petitioner shall submit adequate evidence to support the allegation.

(b) If the allegation of incompatibility is based upon the fact that package choice is limited by a new drug application filed with the FDA, the petition shall state the limitation of package choice and a description of a time schedule to revise the NDA in order to allow additional package choice.

(c) If the allegation of incompatibility is based upon the fact that the shelf life of the product limits package choice, the petition shall outline the particular limitation and shall include a description of a time schedule to re-establish shelf-life data.

§ 1702.16 Petitions requesting an exemption for a drug or a new drug.

(a) Where the petition requests an exemption for a drug, as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)), the petitioner shall include those reports required to be filed under the Food and Drug Administration's Adverse Reaction Reporting Program.

(b) Where the petition requests an exemption for a new drug, as defined in section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)) the Commission shall deny the petition if the Food and Drug Administration has not approved a new drug application.

§ 1702.17 Granting petitions.

Where the Commission determines that reasonable grounds for an exemption are presented by the petition, the Commission shall publish, in the FEDERAL REGISTER, a proposed amendment to the listing of substances requiring special packaging under § 1700.14(a). "Reasonable grounds" for publishing a proposed exemption are information and data sufficient to support the conclusion that:

(a) The degree or nature of the hazard to children in the availability of the substance, by reason of its packaging, is such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the substance, or

(b) Special packaging is not technically feasible, practicable, or appropriate for the subject substance, or

(c) Special packaging is incompatible with the particular substance.

§ 1702.18 Denying petitions.

Where the Commission determines that reasonable grounds for an exemption are not presented by the petition, the petition shall be denied, and the petitioner notified in writing of the denial, including a brief statement of the reasons therefor.

§ 1702.19 Effect of filing petition.

The filing of a petition for exemption under this Part 1702 shall not have the effect of staying the regulation from which the exemption is sought. Therefore, substances subject to special packaging standards shall be considered in violation of the law unless packaged in special packaging during the Commission's consideration of a petition.

Interested persons are invited to submit written comments on this proposed rule until October 7, 1977. Comments received after that date will be considered if practicable. Comments and any accompanying memoranda or data should be submitted, preferably in 5 copies to the Secretary, Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, 3rd floor, 1111 18th Street NW., Washington, D.C., during working hours Monday thru Friday.

Until final action is taken on comments received, these procedures will serve on an interim basis, effective for petitions for exemption received after publication of this document in the FEDERAL REGISTER.

Dated: September 1, 1977.

RICHARD E. RAPPS,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-25982 Filed 9-6-77;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5847; 34-23819; 35-20122; 39-477; IC-9877; IA-603; PA-5]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Chicago Regional Office; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction.

SUMMARY: This document corrects an error in the address of the Chicago Regional Office.

EFFECTIVE DATE: August 26, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles A. Moore, Records and Privacy Act Officer, Securities and Exchange Commission, Washington, D.C. 20549 (202-523-5550).

SUPPLEMENTARY INFORMATION: In FR Doc. 77-22871 appearing at page 40189 in the FEDERAL REGISTER of August 9, 1977, in the third column the address for the Chicago Regional Office should be corrected to 219 South Dearborn St.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 26, 1977.

[FR Doc.77-26016 Filed 9-6-77;8:45 am]

[Release Nos. 33-5860, 34-13902, 35-20155, AS-225]

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS

Lease Accounting and Disclosure Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission has taken action to (1) conform its lease accounting and disclosure requirements to those standards recently adopted by the Financial Accounting Standards Board (FASB) in its Statement No. 13, "Accounting for Leases"; (2) require early application for public companies of the FASB lease accounting and disclosure standards; and (3) require certain lease disclosures of rate-regulated enterprises. The Commission's action will improve the financial statements filed with the Commission.

EFFECTIVE DATE: Earliest application is for financial statements for fiscal years ending after December 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Gary A. Zell, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549, 202-376-8019.

SUPPLEMENTARY INFORMATION: These rules and amendments were proposed for comment in Securities Act Release No. 5812 on March 2, 1977 (42 FR 13838). Many letters of comment have been received and considered. In proposing these rules the Commission noted that it believes that Statement of Financial Accounting Standards (SFAS) No. 13, "Accounting for Leases," issued in November 1976 by the FASB, provides improved standards of accounting and disclosure for leases, and that conforming the Commission's rules to those of the FASB would improve financial reporting to investors.

SFAS No. 13 supersedes four APB Opinions and provides for the capitalization by lessees of leases when substantially all the benefits and risks of ownership of the leased property have been transferred to the lessee. It provides additional criteria for the recognition by lessors of a sale and/or financing arrangement.

The Commission has concluded that it will require financial statements filed with the Commission for fiscal years ending after December 24, 1978, to reflect early application of the accounting requirements of SFAS No. 13 unless a violation or probable future violation of a restrictive clause in an existing loan indenture or other agreement would result. In that event a description of the potential violation should be made in the footnotes to the financial statements.

Although the Commission has adopted this rule, it is concerned that some commentators have asserted that its application would be unfair to companies which might be in violation of loan covenants if they adopted SFAS No. 13 early or if they were required to disclose they were not adopting it because of that problem. Because of this concern the Commission will reconsider this action before December 31, 1977.

The Commission would like to receive additional input by October 31 concerning those assertions. We are particularly interested in a more detailed description of the hardships expected to be caused by the disclosure of the existence of a "problem" as the reason for not restating.

The Commission also believes that for rate-regulated enterprises, the assets and liabilities that would have been included in the balance sheet and the effect on expenses in the income statement should be disclosed in financial statements for fiscal years ending after December 24, 1977 as if such leases had been accounted for as capital leases along with any other information management believes is necessary as to the ratemaking process.

The disclosures of Rule 3-16(q)(2) (previously Rule 3-16(q) of Regulation S-X (17 CFR 210.3-16(q)(2)) will not be required for financial statements that have been restated to reflect early application of SFAS No. 13 or for which the disclosures required by paragraph 50 of SFAS No. 13 are provided.

INTERPRETATIONS AND COMMENTS

Commentators supported the Commission's proposal to conform the Commission's lease accounting and disclosures rules to those of the FASB. However, a number of questions were raised regarding the proposed disclosure requirements for rate-regulated enterprises and the proposed early application of the lease accounting and disclosure requirements of the FASB. These comments are discussed below.

1. *Proposed disclosures for rate-regulated enterprises.* The Commission proposed to require disclosure of the following information from rate-regulated enterprises for leases which meet SFAS No. 13's definition of a capital lease but which are accounted for as operating leases:

(a) The amounts of the assets and liabilities which would have been included in the balance sheet had such leases been accounted for as capital leases; and

(b) The effect on net income (loss) and net income (loss) per share which would have resulted had such leases been accounted for as capital leases.

The comments received confirm the Commission's view that there is no general agreement on the applicability of the Addendum[1] with respect to SFAS No. 13. The Commission has previously requested the FASB to review the Addendum. Differing views were presented on whether the proposed disclosures for rate-regulated enterprises were desirable. Several commentators support the Commission's proposal to require disclosure of the amounts of the assets and liabilities which would have been included in the balance sheet had such leases been accounted for as capital leases. They felt these disclosures were necessary until the application of the Addendum is clarified. Some commentators view the Addendum as applying primarily to the determination of income and expense and believe that capital leases should be recorded in the balance sheet.

A number of commentators felt that the proposed disclosure for rate-regulated companies was not meaningful and was misleading since only assets used as a basis for rate making are relevant to rate-regulated enterprises. They pointed out that such disclosures do not relate to past or future cash flows and were not considered by rate regulators in determining the rate base and cost of capital.

After considering the comments the Commission has decided to require such disclosures in financial statements for fiscal years ending after December 24, 1977 to provide the effects of the Addendum to investors.

The Commission's proposal to require rate-regulated enterprises to disclose

[1] The Addendum to APB Opinion No. 2, "Accounting for the 'Investment Credit,'" states "* * * differences may arise in the application of generally accepted accounting principles as between regulated and nonregulated businesses because of the effect in regulated businesses of the rate-making process * * *" The effect of the Addendum with respect to the standards adopted by SFAS No. 13 is not clear.

the effect on net income (loss) and net income (loss) per share which would have resulted had assets acquired under such leases been accounted for as capital leases was not generally supported. Commentators indicated that such disclosures would be misleading because, in their view, any change in expenses would generally be considered by the rate regulators in determining rates and would result in a similar change in revenues, thus resulting in an immaterial effect on net income. It was further stated that such disclosures are not generally accepted accounting principles for such enterprises and do not reflect the economics of the rate-making process which generally allows for the recovery of costs.

The Commission has decided to revise the proposed rule and to require only the disclosure of the additional expense that would be recognized had such leases been accounted for as capital leases.

2. *Early application of the lease accounting and disclosure requirements of the FASB.* Unless a registrant has been unable to resolve problems in connection with restrictive clauses in loan indentures or other agreements, the Commission proposed that financial statements filed with the Commission for fiscal years ending after December 24, 1977, be restated in accordance with the provisions of SFAS No. 13.

The effective dates of SFAS No. 13 are summarized as follows:

Leases entered into on or after January 1, 1977, must follow the new accounting rules.

Balance sheets as of December 31, 1976, and subsequent balance sheets and income statements are required to be restated to apply the new accounting rules to all leases for purposes of financial statements for fiscal years beginning after December 31, 1980. Prior financial statements are required to be restated for as many prior periods as is practicable.

Certain disclosures are required of the effect on the balance sheets as of December 31, 1976 and thereafter and income statements for periods beginning after December 31, 1976 on the effects of the new accounting rules.

The Commission believes that data accumulation will not represent a burdensome task to most of the companies filing financial statements with the Commission and that early application was encouraged by the FASB and is desirable for investors. The Commission has concluded to require early application but has decided to extend the effective date to fiscal years ending after December 24, 1978 to provide additional time for lessors to accumulate the required data, and for lessees to determine the appropriateness of their data and to resolve problems.

Several commentators indicated that the data accumulation necessary for registrants to apply these lease accounting requirements would be a significant task. They indicated that the definition of a "capital lease" in SFAS No. 13 differs from the definition of a "financing lease" contained in Rule 3-16(q) (now 3-16(q)(2)) (announced in Accounting Series Release No. 147 (38 FR 29215) in 1973) and many new computations are required to conform to the lease accounting requirements of SFAS No. 13. The Commission notes that the computations are required by SFAS No. 13 for calendar year 1977 and subsequent years and are required to be disclosed. The Commission believes that such computations and the lease accounting rules of SFAS No. 13 should be reflected in the financial statements filed with the Commission as soon as practicable.

Commentators also indicated that data for periods prior to 1977 may be difficult to accumulate, especially for registrants which were under the materiality limits of Rule 3-16(q) (now 3-16(q)(2)) or have had leases that have expired. Those companies which find such restatements are not practicable are not required by SFAS No. 13 to restate those periods and are required to include the cumulative effect in determining net income in the earliest year restated. They are also required to disclose the amount of the cumulative effect and the reason for not restating the prior years. The Commission agrees with several of the commentators that such accounting is desirable for comparability purposes and, with the revised effective date, will not result in an undue hardship on companies filing financial statements with the Commission.

3. *Registrants unable to resolve problems.* Several commentators indicated that time was needed in order for them to resolve problems in connection with restrictive clauses in loan indentures or other agreements. The Commission had proposed that registrants who were not able to resolve such problems would not be required to apply early the lease accounting requirements of SFAS No. 13 and further that such problems should be disclosed. Commentators noted that "problems" was not well defined in the Commission's release. Accordingly, the Commission has defined a "problem" as a situation where early application of the lease accounting requirements of SFAS No. 13 would result in the violation or probable future violation by 1980 of a restrictive clause in an existing loan indenture or other agreement. The Commission further requires that the "problem" and its impact be disclosed in the footnotes to the financial statements.

4. *Application to lessors.* Commentators indicated that the Commission's proposal was unclear as to its application to lessors. Lessors have not been subject to the disclosures of Rule 3-16(q) now 3-16(q)(2)); therefore data accumulation will represent a more burdensome task on companies involved in a substantial amount of leases as lessors. The Commission's rule applies to lessors. To provide lessors additional time to accumulate data and for the reasons given in Item No. 1, the Commission has revised the proposed requirement to give registrants an additional year before being required to apply the lease accounting requirements of the FASB. However, the Commission continues to encourage early application of the lease accounting standards of SFAS No. 13 for fiscal years ending before December 25, 1978.

5. *Reporting during transition.* Several commentators discussed the desire to have consistent reporting for the periods during transition. While the Commission agrees that comparability between companies is desirable, it has provided the exception to its rule for companies with problems, in order to prevent undue hardship to companies where early application would result in the violation or probable future violation of a restrictive clause in an existing loan indenture or other agreement. However, in order to provide information for meaningful comparisons the Commission has decided to retain the previously required lease disclosures of Rule 3-16(q) (now 3-16(q)(2)) of Regulation S-X for fiscal years that have not been restated or for which the disclosures required by paragraph 50 of SFAS No. 13 are not provided since such disclosures are not required by the FASB for years ending before December 31, 1977.

6. *Replacement cost information.* It has been pointed out that the early application of SFAS No. 13 may result in registrants meeting the tests of Rule 3-17 of Regulation S-X which requires the disclosure of replacement cost information. Replacement cost disclosures are required for companies meeting the requirements of Rule 3-17 because of adding capitalized leases to their recorded assets. However, if voluntary early application of SFAS No. 13 results in an undue hardship in providing replacement costs data, registrants should discuss their circumstances with the staff.

7. *Support for the Financial Accounting Standards Board.* Several commentators indicated that the adoption of the Commission's proposed rule would lessen the credence of, undermine, or preempt the FASB. The Commission does not agree. The Commission believes that its action is appropriate in its role expressed in ASR No. 150 of looking to the private sector for leadership in establishing and improving accounting principles and standards. The Commission requirements do not affect the determination of accounting principles but only the timing of their application for public companies that file their financial statements with the Commission. In determining the effective dates of their accounting rules, the FASB also has to consider the problems of companies who do not file their financial statements with the Commission. The Commission's responsibility is for public companies that file their financial statements with the Commission. The lease information accumulated by companies who file their financial statements with the Commission is significantly greater than that of other companies and includes that information accumulated under the requirements of Rule 3-16(q) (now 3-16(q)(2)) for the last several years. Accordingly, the Commission has concluded that it is appropriate to consider the timing and effective date of the improved lease accounting requirements for registrants filing their financial statements with the Commission.

COMMISSION ACTION: The Commission hereby specifies under this Accounting Series Release (No. 225) (17 CFR Part 211):

1. That the financial statement restatement requirements in SFAS No. 13 shall be applied in financial statements filed for fiscal years ending after December 24, 1978 with regard to all leases except for companies where a problem, as defined below, exists. The problem and its potential impact should be disclosed in the footnotes to the financial statements. For purposes of this paragraph "problem" is defined as: that situation where capitalization of capital leases as defined in SFAS No. 13 would result in the violation or probable future violation expected to occur prior to fiscal years beginning after December 31, 1980 of a restrictive clause in an existing loan indenture or other agreement.

2. The disclosures specified under § 210.3-16(q)(2) (formerly § 210.3-16 (q)) of Regulation S-X are not required for financial statements that have been restated as specified in (1) above or for which the disclosures required by paragraph 50 of SFAS No. 13 are provided.

The Commission hereby adopts amendments of § 210.3-16 of 17 CFR Part 210 by redesignated paragraph (q) and subparagraphs (1), (2), (3), and (4) thereunder as subparagraphs (2) and (i), (ii), (iii), and (iv) respectively, and by adding new subparagraphs (1) and (i) and (ii) to paragraph (q), which as so amended reads as given below:

§ 210.3-16 General notes to financial statements. (See Release No. AS-4.)

* * * * *

(q) *Leased assets and lease commitments.*—(1) *Leased assets and lease commitments of regulated enterprises subject to the rate-making process.* (i) Subparagraph (1) of this paragraph is applicable to all regulated enterprises subject to the rate-making process that do not record capital leases as assets with associated liabilities. For purposes of subparagraph (1) of this paragraph a lease is defined as an agreement conveying the right to use property, plant, or equipment (land and/or depreciable assets) usually for a stated period of time. It includes agreements that, although not normally identified as leases, meet the above definition, such as a "heat supply contract" for nuclear fuel. This definition does not include agreements that are contracts for services that do not transfer the right to use property, plant, or equipment from one contracting party to the other. On the other hand, agreements that do transfer the right to use property, plant, or equipment meet the definition of a lease for purposes of subparagraph (1) of this paragraph even though substantial services by the contractor (lessor) may be called for in connection with the operation or maintenance of such assets. Subparagraph (1) of this paragraph does not apply to lease agreements concerning the rights to explore for or to exploit natural resources such as oil, gas, minerals, and timber. Nor does it apply to licensing agreements for items such as motion picture films, plays, manuscripts, patents, and copyrights. A lease is a capital lease if at its inception it meets one or more of the following four criteria:

(A) The lease transfers ownership of the property to the lessee by the end of the lease term.

(B) The lease contains a bargain purchase option.

(C) The lease term is equal to 75 percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(D) The present value at the beginning of the lease term of the minimum lease payments excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any profit thereon, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by him. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease. A lessee shall compute the present value of the minimum lease payments using his incremental borrowing rate, unless (*1*) it is practicable for him to learn the implicit rate computed by the lessor and (*2*) the implicit rate computed by the lessor is less than the lessee's incremental borrowing rate. If both of those conditions are met, the lessee shall use the implicit rate.

(ii) The following information shall be provided for capital leases covered by this rule:

(A) As of the date for each required balance sheet, the aggregate amounts of the assets and liabilities that would have been recorded in the accounts had all leases meeting the definition of a capital lease been recorded.

(B) For each period for which an income statement is required, the aggregate effect on expenses had all assets obtained through leases meeting the definition of a capital lease been recorded as assets with associated liabilities and any additional information management believes is necessary as to the rate making process.

(2) *Leased assets and lease commitments of enterprises which are not covered by paragraph (1)* (See Release No. AS-225 for applicability of this subparagraph (2).) Any contractual arrangement which has the economic characteristics of a lease, such as a "heat supply contract" for nuclear fuel, shall be considered a lease for purposes of this rule. Leases covering oil and gas production rights and mineral and timber rights are not to be considered leases for purposes of this rule. For purposes of this rule, a financing lease is defined as a lease which, during the noncancelable lease period, either covers 75 percent or more of the economic life of the property or has terms which assure the lessor a full recovery of the fair market value (which would normally be represented by his investment) of the property at the inception of the lease plus a reasonable return on the use of the assets invested subject only to limited risk in the realization of the residual interest in the property and the credit risks generally associated with secured loans. The disclosures set forth under subdivisions (i) and (ii) of this subparagraph are only required if gross rental expense in the most recent fiscal year exceeds one percent of consolidated revenues.

(i) Total rental expense (reduced by rentals from subleases, with disclosure of such amounts) entering into the determination of results of operations for each period for which an income statement is required shall be disclosed. Rental payments under short-term leases for a month or less which are not expected to be renewed need not be included. Contingent rentals, such as those based upon usage or sales, shall be reported separately from the basic or minimum rentals. Rentals on noncapitalized financing leases shall be shown separately for both categories of rentals reported.

(ii) The minimum rental commitments under all noncancelable leases shall be disclosed, as of the date of the latest balance sheet required, in the aggregate (with disclosure of the amounts applicable to noncapitalized financing leases) for (A) Each of the five succeeding fiscal years; (B) each of the next three five-year periods; and (C) the remainder as a single amount. The amounts so determined should be reduced by rentals to be received from existing noncancelable subleases (with disclosure of the amount of such rentals). For purposes of this rule, a noncancelable lease is defined as one that has an initial or remaining term of more than one year and is noncancelable, or is cancelable only upon the occurrence of some remote contigency or upon the payment of a substantial penalty.

(iii) Additional disclosures shall be made to report in general terms: (A) The basis for calculating rental payments if dependent upon factors other than the lapse of time; (B) existence and terms of renewal or purchase options, escalation clauses, etc.; (C) the nature and amount of related guarantees made or obligations assumed; (D) restrictions on paying dividends, incurring additional debt, further leasing, etc.; and (E) any other information necessary to assess the effect of lease commitments upon the financial position, results of operations, and changes in financial position of the lessee.

(iv) For all noncapitalized financing leases there shall be disclosed:

(A) The present values of the minimum lease commitments in the aggregate and my major categories of properties, such as real estate, aircraft, truck fleets and other equipment. Present

values shall be computed by discounting net lease payments (after subtracting, if practicable, estimated, or actual amounts, if any, applicable to taxes, insurance, maintenance and other operating expenses) at the interest rate implicit in the terms of each lease at the time of entering into the lease. Such disclosure shall be made as of the date of any balance sheet required. If the present value of the minimum lease commitments is less than five percent of the sum of long-term debt, stockholders' equity and the present value of the minimum lease commitments, and if the impact on net income required to be disclosed under (D) of this subdivision is less than three percent of the average net income for the most recent three years, this disclosure is not required;

(B) Either the weighted average interest rate (based on present value) and range of rates or specific interest rates for all lease commitments included in the amount disclosed under paragraph (q)(2)(iv)(A) of this section;

(C) The present value of rentals to be received from existing noncancelable subleases of property included under paragraph (q)(2)(iv)(A) of this section based on the interest rates implicit in the terms of the subleases at the times of entering into the subleases;

(D) The impact upon net income for each period for which an income statement is required if all noncapitalized financing leases were capitalized, related assets were amortized on a straight-line basis and interest cost was accrued on the basis of the outstanding lease liability. The amount of amortization and interest cost included in the computation shall be separately identified. If the impact on net income is less than three percent of the average net income for the most recent three years, that fact may be stated in lieu of this disclosure. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this test.

* * * * *

Paragraph (q)(1) of § 210.3-16 is effective for fiscal years ending after December 24, 1977.

These amendments are adopted pursuant to authority in sections 6, 7, 8, 10, and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; sections 12, 13, 15(d), and 23(a) (15 U.S.C. 78l, 78m, 78o(d), 78w) of the Securities Exchange Act of 1934; and sections 5(b), 14, and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935. Pursuant to section 23(a)(2) of the Exchange Act the Commission has considered the impact of these proposals on competition and is not aware, at this time, of any burden that such rule amendments would impose on competition.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 31, 1977.

[FR Doc.77-26012 Filed 9-6-77;8:45 am]

[Release No. IC-9915]

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Bearing of Distribution Expenses by Mutual Funds

AGENCY: Securities and Exchange Commission.

ACTION: Statutory interpretation.

SUMMARY: The Securities and Exchange Commission announces that it has not changed its previous position that it is generally improper for registered open-end management investment companies ("mutual funds" or "funds") to use their assets to finance the distribution of their shares. This action is being taken to eliminate any doubt concerning the present position of the Commission with regard to the propriety of mutual fund assets being used to finance the distribution of shares.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

Dianne E. O'Donnell, Esq., Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549 (202-755-0225).

SUPPLEMENTARY INFORMATION: In the past the Commission has generally taken the position that use of mutual fund assets for the purpose of financing the distribution of fund shares would be improper. For example, in its Statement on the Future Structure of the Securities Markets the Commission stated that:

[T]he cost of selling and purchasing mutual fund shares should be borne by the investors who purchase them and thus presumably receive the benefits of the investment, and not, even in part, by the existing shareholders of the fund who often derive little or no benefit from the sale of new shares. To impose a portion of the selling cost upon the existing shareholders of the fund may violate principles of fairness which are at least implicit in the Investment Company Act.[1]

In the past year the Commission has been engaged in a review of this area. In this connection, the Commission held public hearings on November 17, 18, 22 and 23, 1976, and received written statements concerning the public policy and legal implications of arrangements whereby mutual funds would, directly or indirectly, bear expenses related to the distribution of their shares.[2]

At those hearings, it was argued on the one hand that increased sales of fund shares could benefit shareholders, and therefore that the use of fund assets to pay distribution expenses should be permitted at least under some circumstances. On the other hand, it was argued by others that any increased sales of shares resulting from the use of mutual fund assets to finance distribution activities would benefit mainly the management of a mutual fund rather than its shareholders, and therefore that such use of fund assets should not be permitted.

The Commission has not yet completed its consideration of the relevant issues and is not yet prepared to suggest whether, and if so under what circumstances, mutual funds should be permitted to bear distribution expenses. Accordingly, the Commission has no reason at this time to change its previous position that it is generally improper under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq. ("Act") for mutual funds to use their assets, directly or indirectly, to finance the distribution of their shares. Therefore, directors, officers and investment advisers which authorize mutual funds to bear the expenses of distribution will be doing so at their risk.

In most cases, arrangements whereby mutual funds would use their assets to finance the distribution of shares cannot be implemented without a Commission order permitting the arrangement under one or more sections of the Act. At least until the Commission completes its review in this area, however, it does not believe that it can sanction any new arrangements without giving them the most careful scrutiny, which, in almost all circumstances, would mean that applications under the Act seeking permission to implement such arrangements would be set down for hearing so that a full record can be developed. The Commission has also instructed the staff to refrain from taking no-action positions with regard to any such arrangements.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 31, 1977.

[FR Doc.77-26011 Filed 9-6-77;8:45 am]

[1] SEC, "Statement on the Future Structure of the Securities Markets" (February 1972), in BNA Sec. Reg. and L. Rep. No. 137 pt. II at 7.

[2] The hearings were announced in Investment Company Act Release No. 9470, October 4, 1976 (41 FR 44770, October 12, 1976).

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 77-221]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Republic of Zaire; Coastwise Transportation

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include the Republic of Zaire in the lists of nations which permit vessels of the United States to transport certain articles between their ports. This amendment will provide reciprocal privileges for vessels of Republic of Zaire registry.

EFFECTIVE DATE: May 5, 1977.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Casey, Attorney, Carriers, Drawback and Bonds Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. 883), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by United States citizens. However, the Act also provides that if the Secretary of State advises the Secretary of the Treasury that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

In accordance with the Act, the Customs Service has listed in § 4.93(b)(1) of the Customs Regulations (19 CFR 4.93(b)(1)) those nations which have been found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Those nations which have been found to grant reciprocal privileges to vessels of the United States in respect to the transportation of equipment for use with cargo vans, lift vans, and shipping tanks; empty barges specifically designed for carriage aboard a vessel, empty instruments of international traffic, and certain stevedoring equipment and material are listed in § 4.93(b)(2) of the Customs Regulations (19 CFR 4.93(b)(2)).

On May 5, 1977, the Secretary of State advised the Secretary of the Treasury that the Republic of Zaire places no restriction on the transportation of the articles listed in the Act by vessels of the United States between ports in the Republic of Zaire. Therefore, reciprocal privileges are accorded to vessels of Republic of Zaire registry as of that date.

DRAFTING INFORMATION

The principal author of this document was Marvin M. Amernick, Attorney, Regulations and Legal Publications Division of the Office of Regulations and Rulings, United States Customs Service. However, personnel from other offices of the United States Customs Service participated in developing this document, both on matters of substance and style.

Inasmuch as there is a statutory basis for the described extension of reciprocal privileges, and the amendments recognize an exemption from the transportation coastwise prohibition of section 27, 41 Stat. 999, as amended (46 U.S.C. 883), notice and public procedure thereon are unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

AMENDMENTS TO THE CUSTOMS REGULATIONS

§ 4.93 [Amended]

To reflect the reciprocal privileges granted to the Republic of Zaire, paragraphs (b)(1) and (b)(2) of § 4.93 of the Customs Regulations (19 CFR 4.93(b)(1), (b)(2), are amended by the insertion of "Republic of Zaire" in appropriate alphabetical order in the lists of countries under those paragraphs.

(Sec. 27, 41 Stat. 999, as amended, sec. 14, 67 Stat. 516 (5 U.S.C. 301, 19 U.S.C. 1322(a), 46 U.S.C. 883))

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: August 24, 1977.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc.77-26020 Filed 9-6-77;8:45 am]

[T.D. 77-222]

PART 153—ANTIDUMPING

Parts for Self-Propelled Bituminous Paving Equipment From Canada

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to advise the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the International Trade Commission, respectively, have resulted in determinations that parts for self-propelled bituminous paving equipment from Canada are being, or are likely to be, sold at less than fair value and that these sales are injuring, or are likely to injure, an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of these parts will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: September 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the Secretary of the Treasury responsibility for determination of sales at less than fair value. Pursuant to this authority the Secretary of the Treasury has determined that parts for self-propelled bituminous paving equipment from Canada are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). (Published in the FEDERAL REGISTER of April 12, 1977 (42 FR 19242)).

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the United States International Trade Commission responsibility for determination of injury or likelihood of injury. The United States International Trade Commission has determined, and on July 7, 1977, it notified the Secretary of the Treasury that an industry in the United States is being, or is likely to be, injured by reason of the importation of parts for self-propelled bituminous paving equipment from Canada that are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. (Published in the FEDERAL REGISTER of July 14, 1977 (42 FR 36321)).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to parts for self-propelled bituminous paving equipment from Canada.

Section 153.46 of the Customs Regulations (19 CFR 153.46) is amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	T.D.
Parts for self-propelled bituminous paving equipment.	Canada.	77-222

(Secs. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

AUGUST 31, 1977.

[FR Doc.77-25953 Filed 9-6-77;8:45 am]

[T.D. 77-223]

PART 153—ANTIDUMPING

Metal-Walled Above-Ground Swimming Pools From Japan

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended by the U.S. Treasury Department and the International Trade Commission, respectively, have resulted in determinations that metal-walled above-ground swimming pools from Japan are being, or are likely to be, sold at less than fair value and that those sales are likely to injure an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: September 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Edward F. Haley, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the Secretary of the Treasury responsibility for determination of sales at less than fair value. Pursuant to this authority the Secretary of the Treasury has determined that metal-walled aboveground swimming pools from Japan are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). (Published in the FEDERAL REGISTER of April 1, 1977 (42 FR 17558)).

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the United States International Trade Commission responsibility for determination of injury or likelihood of injury. The United States International Trade Commission has determined, and on June 29, 1977, it notified the Secretary of the Treasury that less than fair value imports of metal-walled above-ground swimming pools from Japan are likely to injure an industry in the United States. (Published in the FEDERAL REGISTER of July 8, 1977 (42 FR 35231)).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to metal-walled above-ground swimming pools from Japan.

Section 153.46 of the Customs Regulations (19 CFR 153.46) is amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	T.D.
Metal-walled aboveground swimming pools.	Japan	77-223

(Secs. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173))

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

AUGUST 31, 1977.

[FR Doc.77-25954 Filed 9-6-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Applicability Dates; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction.

SUMMARY: This document corrects the final rule that appeared at page 37935 in the FEDERAL REGISTER of Monday, July 25, 1977 (FR Doc. 77-21230).

EFFECTIVE DATE: September 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone No. 919-541-5271.

Dated: August 31, 1977.

EDWARD F. TUERK,
Acting Assistant Administrator, for Air and Waste Management.

In FR Doc. 77-21230 appearing at page 37935 in the FEDERAL REGISTER of Monday, July 25, 1977, the following corrections are made to §§ 60.250(b) and 60.270 (b) on page 37938:

1. The applicability date in § 60.250(b) is corrected to October 24, 1974.

2. The applicability date in § 60.270(b) is corrected to October 21, 1974.

(Sec. 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 1857c-6, 1857g(a)).)

[FR Doc.77-26023 Filed 9-6-77;8:45 am]

[FRL 787-1]

SUBCHAPTER E—PESTICIDE PROGRAMS

[PP 4F1518/R118]

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

Thiabendazole

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide thiabendazole. The amendment was requested by Merck, Sharp & Dohme. This amendment to the regulations will establish maximum permissible levels for residues of thiabendazole on wheat grain and straw.

EFFECTIVE DATE: September 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. Eugene Wilson, Product Manager (PM) 21, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 202-426-2456.

SUPPLEMENTARY INFORMATION: On September 28, 1976, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (41 FR 42678) in response to a pesticide petition (PP 4F1518) submitted to the Agency by Merck, Sharp & Dohme, Div. of Merck & Co., Rahway, N.J. 07065. This petition proposed that 40 CFR 180.242 be amended by the establishment of tolerances for residues of the fungicide thiabendazole (2-(4-thiazolyl) benzimidazole) in or on the raw agricultural commodities wheat grain (grown from treated seed) at 0.1 part per million (ppm) and wheat straw at 0.2 ppm. No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking. The proposed notice on September 28, 1976, reduced the comment period from 30 days to 10 days to permit the use of thiabendazole in time for the fall wheat crop in the Pacific Northwest. Subsequent to the issuance of the proposal, however, most of the crop had already been planted, thereby eliminating the urgency of this regulation.

The toxicological data considered in support of the proposed tolerances were two-year rat and dog-feeding studies, multigeneration rat and mouse reproduction studies, livestock feeding studies, and six months' daily administration to humans. The acceptable daily intake (ADI) is 6 milligrams (mg)/day for a 60-kilogram (kg) man or 0.1 mg/kg of body weight/day (4 ppm in the diet) for a 60 kg man consuming 1,500 grams of food/day. The proposed tolerance would add a maximum of 0.008 ppm of thiabendazole to the average diet; this is very much less than 1/20 of the ADI. The long-term mouse study is not required because there is no reasonable expectation of human oral exposure from the proposed tolerances. Permanent tolerances have previously been established for residues of thiabendazole on a variety of raw agricultural commodities from 10 ppm to 0.02 ppm. An adequate analytical method (liquid chromatography) is available to enforce the proposed tolerances.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.242 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before October 7, 1977, file written objections with the Hearing Clerk, EPA, Room 1019, East Tower, 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and should specify both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective September 7, 1977, Part 180, Subpart C, section 180.242 is amended by adding tolerances for wheat grain at 0.1 ppm and wheat straw at 0.2 ppm as set forth below.

Part 180, Subpart C, § 180.242 is amended in paragraph (a) by adding tolerances on wheat grain at 0.1 ppm and wheat straw at 0.2 ppm to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

Commodity:	*Parts per million*
* * *	* * *
Wheat, grain	0.1
Wheat, straw	0.2

(Section 408(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(2)).)

Date: August 30, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-25877 Filed 9-6-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

PART 105–53—STATEMENT OF ORGANIZATION AND FUNCTIONS

General Description of the General Services Administration

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is publishing a description of its organization and functions. Ths action is in response to a 1976 Administrative Conference recommendation that descriptions of agencies be published for preservation in the Code of Federal Regulations and is intended to make that information more accessible to the general public. The GSA statement of organization includes information on the general organization of the agency's staff officers, operating services, and regional offices and includes addresses and telephone numbers for key offices. The statement also contains information on the availability of agency regulations and other agency material that may be inspected by the public.

EFFECTIVE DATE: September 7, 1977.

FOR FURTHER INFORMATION CONTACT:

E. E. Hord, Director, Management Systems Division, Office of Management Services, OAD, General Services Administration, Washington, D.C. 20405, 202–566–1777.

A new Part 105–53 is added to Chapter 105 of Title 41 to read as follows:

Sec.

105–53.100 Purpose.

Subpart A—General

105–53.110 Creation and authority.
105–53.112 General statement of functions.
105–53.114 General statement of organization.
105–53.116 General regulations.
105–53.118 Location of material available for public inspection.
105–53.120 Addresses and telephone numbers.

Subpart B—Staff Offices

105–53.130 Office of the Administrator.
105–53.132 Office of Administration.
105–53.134 Office of General Counsel.

Subpart C—Operating Services

105–53.144 Automated Data and Telecommunications Service.
105–53.146 Federal Preparedness Agency.
105–53.148 Federal Supply Service.
105–53.150 National Archives and Records Service.
105–53.152 Public Buildings Service.

Subpart D—Regional Offices

105–53.162 Organization and functions.
105–53.164 Geographic composition; addresses and telephone numbers.

AUTHORITY: 5 U.S.C. 552(a)(1), Pub. L. 90–23, 81 Stat. 54 sec. (a)(1); 40 U.S.C. 486 (c), Pub. L. 81–152, 63 Stat. 390, sec. 205(c).

§ 105–53.100 Purpose.

This part is published in accordance with 5 U.S.C. 552 and is a general description of the General Services Administration.

Subpart A—General

§ 105–53.110 Creation and authority.

The General Services Administration was established by section 101 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), effective July 1, 1949. The act consolidated and transferred to the agency a variety of real and personal property and related functions formerly assigned to various agencies. Subsequent laws and Executive orders assigned other related functions and programs.

§ 105–53.112 General Statement of functions.

The General Services Administration is responsible for providing for the Government an economical and efficient system for the management of its property and records, including construction and operation of buildings; procurement and distribution of supplies; disposal of surplus property; management of transportation, traffic, and telecommunications; stockpiling of strategic materials; direction and coordination of the Government-wide civil emergency preparedness program; management of the Government-wide ADP resources program; and creation, preservation, and disposal of records.

§ 105–53.114 General statement of organization.

The General Services Administration is an independent agency in the executive branch of the Government. The work of the agency as a whole is directed by the Administrator of General Services, who is assisted by the Deputy Administrator. The staff offices and the operating services are described in §§ 105–53.130 to 105–53.150 of this part.

§ 105–53.116 General regulations.

Regulations of the General Services Administration and its components are codified in the Code of Federal Regulations in Title 1, Chapters I and II; Title 32A, Chapter I; Title 34, Chapter II; and Title 41, Chapters 1, 5A, 5B, 101, and 105. Titles 1, 32A, 34, and 41 of the Code of Federal Regulations are available at most legal and depository libraries and at the General Services Administration Central Office and regional offices. Copies may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 105–53.118 Locations of material available for public inspection.

GSA maintains reading rooms containing materials available for public inspection and copying at the following locations:

(a) General Services Administration, 18th and F Streets NW., Library (Room 1033), Washington, D.C. 20405. Telephone: 202–566–0212.

(b) Business Service Center, General Services Administration, John W. McCormack Building, Post Office and Courthouse, Boston, Mass. 02109. Telephone: 617–223–2868.

(c) Business Service Center, General Services Administration, 26 Federal Plaza, New York, N.Y. 10007. Telephone: 212–264–1234.

(d) Business Service Center, General Services Administration, Seventh and D Streets, SW., Washington, D.C. 20407. Telephone: 202–472–1804.

(e) Business Service Center, General Services Administration, 1776 Peachtree Street NW., Atlanta, Ga. 30309. Telephone: 404–881–3934.

(f) Business Service Center, General Services Administration, 230 South Dearborn Street, Chicago, Ill. 60604. Telephone: 312–353–5383.

(g) Business Service Center, General Services Administration, 1500 East Bannister Road, Kansas City, Mo. 64131. Telephone: 816–926–7203.

(h) Business Service Center, General Services Administration, 819 Taylor Street, Fort Worth, Tex. 76102. Telephone: 817–334–3284.

(i) Business Service Center, General Services Administration, Building 41, Denver Federal Center, Denver, Colo. 80225. Telephone: 303–234–2216.

(j) Business Service Center, General Services Administration, 525 Market Street, San Francisco, Calif. 94105. Telephone: 415–556–2122.

(k) Business Service Center, General Services Administration, 440 Federal Building, 915 Second Avenue, Seattle, Wash. 98174. Telephone: 206–442–5556.

§ 105–53.120 Addresses and telephone numbers.

The Office of the Administrator, Office of Administration, Office of General Counsel, Automated Data and Telecommunications Service, Federal Preparedness Agency, and Public Buildings Service are located in the General Services Building, 18th and F Streets NW., Washington, D.C. 20405. The Federal Supply Service is located in Crystal Mall Building 4, 1941 Jefferson Davis Highway, Arlington, Va. 20406. The National Archives and Records Service is located in the National Archives Building, Eighth Street and Pennsylvania Avenue NW., Washington, D.C. 20408. The telephone number for the above addresses is 202–655–4000. The addresses of the ten regional offices are provided in §105–53.164.

Subpart B—Staff Offices

§ 105–53.130 Office of the Administrator.

(a) *Functions.* The Administrator of General Services, appointed by the President with the advice and consent of the Senate, directs the programs of the General Services Administration. The Deputy Administrator, who is appointed by the Administrator, assists in directing agency programs and coordinates activities related to audits; agencywide investigations and physical security programs; congressional liaison; legislation; public information; consumer product information; GSA's Federal Information Center and Business Service Center programs; major systems acquisition; the formulation of agency policy and the determination of the aims, objectives, and goals of GSA; and the de-

velopment and maintenance of a short- and long-range agency planning system.

(b) *Regulations.* Regulations pertaining to Office of the Administrator programs are published in the Code of Federal Regulations in Title 41, Chapter 105, Part 105–62. Information on availability of the regulations is provided in § 105–53.116.

§ 105–53.132 Office of Administration.

(a) *Functions.* The Office of Administration (OAD), headed by the Director of Administration, plans for and administers GSA-wide programs for financial management, personnel management, equal employment opportunity, internal automatic data processing, and administrative management.

(b) *Regulations.* Regulations pertaining to OAD programs are published in the Code of Federal Regulations in Title 41, Chapter 101, Subchapter A, and Chapter 105, Parts 105–1, 50, 54, and 735. Information on availability of the regulations is provided in § 105–53.116.

§ 105–53.134 Office of General Counsel.

(a) *Functions.* The Office of General Counsel (OGC), headed by the General Counsel, provides legal counsel to the Administrator and other agency officials; performs all legal services in connection with the agency's activities; drafts all legislation proposed by GSA; provides legal services pertaining to Presidential and other special commissions and committees; and plans, develops and administers GSA's contract compliance activities.

(b) *Regulations.* Regulations pertaining to OGC programs are published in the Code of Federal Regulations in Title 41, Chapter 101, Subchapter A, and Chapter 105, Parts 105–60 and 64. Information on availability of the regulations is provided in § 105–53.116.

Subpart C—Operating Services

§ 105–53.144 Automated Data and Telecommunications Service.

(a) *Creation and authority.* The Automated Data and Telecommunications Service (ADTS), headed by the Commissioner, Automated Data and Telecommunications Service, was established on July 15, 1972, by the Administrator of General Services. The Service was assigned responsibility for administering the Government-wide automatic data processing (ADP) resources management program and the Government-wide telecommunications management program. These responsibilities were previously assigned to the Federal Supply Service and the former Transportation and Communications Service, respectively.

(b) *Functions.* The Automated Data and Telecommunications Service is responsible for the administration of two interrelated Government-wide programs—ADP and communications. ADTS provides for the economical and efficient purchase, lease, maintenance, operation, and utilization of ADP equipment by Federal departments and agencies; and it guides, coordinates, and assists the civilian agencies in the procurement and utilization of telecommunications services.

(c) *Regulations.* Regulations pertaining to ADTS programs are published in the Code of Federal Regulations in Title 34, Chapter II, and in Title 41, Chapters 1 and 101, Subchapters E and F. Information on availability of the regulations is provided in § 105–53.116.

§ 105–53.146 Federal Preparedness Agency.

(a) *Creation and authority.* The Federal Preparedness Agency (FPA), headed by the Director, Federal Preparedness Agency, was established on June 26, 1975, by the Administrator of General Services to supersede the Office of Preparedness, the functions of which were transferred to GSA from the Office of Emergency Preparedness, Executive Office of the President, by Executive Order 11725, effective July 1, 1973. Responsibility for GSA's stockpile disposal program was assigned to FPA on January 3, 1976.

(b) *Functions.* FPA is responsible for developing national policy and program guidance in the field of civilian preparedness; for conducting studies and analyses in support of preparedness activities; for assuming leadership roles in coordinating the Federal response in special crises; and for providing guidance to the States relative to emergency preparedness. FPA is responsible for maintaining suitable emergency operating facilities and arrangements for continuing operations to ensure continuity of the Government in emergencies and for providing guidance in establishing lines of succession, maintaining alternate sites for relocation of essential personnel, and the safekeeping of essential records. FPA is also responsible for preparing plans which enable the country to respond to national emergencies; for continually informing the President and affected agency heads of developments in these emergencies; for establishing levels for strategic and critical stockpile materials; and for establishing policy for the acquisitions and disposals needed to maintain these levels.

(c) *Regulations.* Regulations pertaining to FPA programs are published in the Code of Federal Regulations in Title 32A, Chapter I. Information on availability of the regulations is provided in § 105–53.116.

§ 105–53.148 Federal Supply Service.

(a) *Creation and authority.* The Federal Supply Service (FSS), headed by the Commissioner, Federal Supply Service, was established on December 11, 1949, by the Administrator of General Services to supersede the Bureau of Federal Supply of the Department of the Treasury, which was abolished by the Federal Property and Administrative Services Act of 1949.

(b) *Functions.* The Federal Supply Service procures personal property and nonpersonal services for Federal agencies, stores and distributes supplies, and regulates the supply functions performed by other agencies. It promulgates Federal Specifications and Standards; maintains the Federal Catalog System; plans, develops, and administers the Federal Procurement Regulations; issues General Services Administration Procurement Regulations pertaining to personal property and related services; acquires, stores, and otherwise manages inventories of materials essential for military and industrial use in times of national emergency; promotes the utilization of personal property and the transfer of excess property among Federal agencies; provides for the maintenance, repair, rehabilitation, and reclamation of personal property; disposes of personal property surplus to the needs of the Federal Government by donation, sale, or other means; procures and promotes the economical use of transportation, motor equipment, and public utility services by executive agencies; and audits all transportation bills paid by the U.S. Government.

(c) *Regulations.* Regulations pertaining to FSS programs are published in the Code of Federal Regulations in Title 34, Chapter II, and in Title 41, Chapters 1, 5A, and 101, Subchapters A, C, E, F, G, and H. Information on availability of the regulations is provided in § 105–53.116.

§ 105–53.150 National Archives and Records Service.

(a) *Crea ion and authority.* The National Archives and Records Service (NARS), under the direction of the Archivist of the United States, was established on December 11, 1949, by the Administrator of General Services to succeed the National Archives Establishment originally established by the Act of June 19, 1934 (48 Stat. 1122).

(b) *Functions.* The National Archives and Records Service (NARS) performs a variety of functions relating to the preservation, use, and disposition of the records of the Federal Government. NARS selects, preserves, and makes available for further Government use and for private research the Nation's records of enduring value, both textual and audiovisual. Among its other activities are the administration of a regional network of storage-type facilities for nonarchival records; operation of the Presidential library system and a Government records management program; custody and control of the Nixon Presidential historical materials; and publication of legislative, regulatory, and other widely used documents. NARS acts as a central clearinghouse for the general public for information about all federally produced audiovisual materials and as a central sales and distribution point for these materials.

(c) *Regulations.* Regulations pertaining to NARS programs are published in the Code of Federal Regulations in Title 1, Chapters I and II; Title 41, Chapter 101, Subchapter B; and Title 41, Chapter 105, Parts 105–61 and 63. Information on availability of the regulations is provided in § 105–53.116.

§ 105–53.152 Public Buildings Service.

(a) *Creation and authority.* The Public Buildings Service (PBS), headed by

the Commissioner, Public Buildings Service, was established on December 11, 1949, by the Administrator of General Services, to supersede the Public Buildings Administration, which was abolished by the Federal Property and Administrative Services Act of 1949.

(b) *Functions.* The Public Buildings Service is responsible for the design, construction, management, maintenance, operation, alteration, extension, remodeling, preservation, repair, improvement, protection, and control of buildings, both federally owned and leased, in which are provided housing accommodations for Government activities, where authorized. It also has the responsibility for the acquisition, utilization, custody, and accountability for GSA real property and related personal property, and for the GSA safety program. It is responsible for the development of Government-wide policies and regulations to promote the maximum and optimum utilization of excess real and related personal property by executive agencies; for surveying Federal real property to identify properties not properly utilized; for transferring excess property among Federal agencies and authorized organizations; for disposing of surplus real property; and for granting or approving leases or permits for use of real property.

(c) *Regulations.* Regulations pertaining to PBS programs are published in the Code of Federal Regulations in Title 34, Chapter II, and in Title 41, Chapters 1, 5B, and 101, Subchapters D and H. Information on availability of the regulations is provided in § 105–53.116.

Subpart D—Regional Offices

§ 105–53.162 Organization and functions.

Regional offices have been established in 10 cities throughout the United States. Each regional office is headed by a Regional Administrator who is responsible to the Administrator for the overall direction and administration of the regional office and for the total performance of GSA programs and activities within the region. The organization of each regional office generally parallels that of the Central Office. In some instances, however, regional offices are assigned nationwide or interregional jurisdiction for a specific program. The geographic composition of each region is shown in § 105–53.162.

§ 105–53.164 Geographic composition; addresses and telephone numbers.

REGIONAL OFFICES—GENERAL SERVICES ADMINISTRATION

Region and Address

No. 1. (Comprising the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont); John W. McCormack Building, Post Office and Courthouse, Boston, Mass. 02109. Telephone: 617–223–2100.

No. 2. (Comprising the States of New Jersey and New York, the Commonwealth of Puerto Rico, and the Virgin Islands); 26 Federal Plaza, New York, N.Y. 10007. Telephone: 212–264–3311.

No. 3. (Comprising the District of Columbia and the States of Maryland, Virginia, West Virginia, Pennsylvania, and Delaware); GSA Regional Office Building, Seventh and D Streets SW., Washington, D.C. 20407. Telephone: 202–655–4000.

No. 4. (Comprising the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee); 1776 Peachtree Street NW., Atlanta, Ga. 30309. Telephone: 404–285–0111.

No. 5. (Comprising the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin); 230 South Dearborn Street, Chicago, Ill. 60604. Telephone: 312–353–4401.

No. 6. (Comprising the States of Iowa, Kansas, Missouri, and Nebraska); 1500 East Bannister Road, Kansas City, Mo. 64131. Telephone: 816–758–7212.

No. 7. (Comprising the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas); 819 Taylor Street, Fort Worth, Tex. 76102. Telephone: 817–334–3011.

No. 8. (Comprising the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming); Building 41, Denver Federal Center, Denver, Colo. 80225. Telephone: 303–234–3131.

No. 9 (Comprising Guam and the States of Arizona, California, Hawaii, and Nevada); 525 Market Street, San Francisco, Calif. 94105. Telephone: 415–556–9000.

No. 10. (Comprising the States of Alaska, Idaho, Oregon, and Washington); GSA Center, Auburn, Wash. 98002. Telephone: 206–396–5000.

Dated: August 30, 1977.

JOEL W. SOLOMON,
Administrator of General Services.

[FR Doc.77-25965 Filed 9-6-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1272]

PART 1033—CAR SERVICE

Goodwin Railroad, Inc. Authorized To Operate Over Certain Tracks Owned by State of New Hampshire

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Service Order No. 1272).

SUMMARY: Service Order No. 1272 authorizes the Goodwin Railroad to operate a line of railroads formerly operated by the Boston and Maine Railroad and now owned by the State of New Hampshire extending between Concord, N.H., and Lincoln, N.H. An application for permanent authority is pending.

DATES: Effective 12:01 a.m., September 1, 1977. Expires 11:59 p.m., February 15, 1977.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423. Telephone 202–275–7840, Telex 89–2742.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 1st day of September, 1977.

It appearing, That the Boston and Maine Corp., Robert W. Meserve and Benjamin H. Lacy, Trustees (B&M), in Finance Docket No. 26604 has requested authority to abandon its line between Concord, N.H., and Lincoln, N.H.; that the State of New Hampshire in a Declaration of Taking, filed in the Superior Court of Merrimack County on October 30, 1975, has taken title to this line; that the State of New Hampshire has designated the Goodwin Railroad, Inc. (Goodwin) as the operator of these lines; that the Goodwin has consented to operate these lines pending action of the Commission on the application of the Goodwin for approval of the extended contract; that many shippers are solely dependent upon continued operation of the aforementioned lines for essential railroad service; that the operation by the Goodwin over the aforementioned tracks owned by the State of New Hampshire is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1272 Service Order No. 1272.

(a) *Goodwin Railroad, Inc. authorized to operate over certain tracks owned by the State of New Hamsphire.* The Goodwin Railroad, Inc. (Goodwin) be, and it is hereby authorized to operate over tracks owned by the State of New Hampshire and acquired from the Boston and Maine Corp., Robert W. Meserve and Benjamin H. Lacy, Trustees (B&M) extending from Concord, N.H., to Lincoln, N.H., a distance of approximately 71.8 miles, and to operate over certain B&M tracks in Concord necessary to the assembling or break-up of trains operated by the Goodwin, pending disposition of application of the Goodwin for permanent authority.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the Goodwin over tracks previously operated by the B&M and over tracks of the B&M is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via the B&M, until tariffs naming rates and routes specifically applicable via the Goodwin become effective.

(d) In transporting traffic over these lines the Goodwin and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with

reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(e) *Effective date.* This order shall become effective at 12:01 a.m., September 1, 1977.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 15, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1, 12, 15 and 17(2).)

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-25987 Filed 9-6-77;8:45 am]

[Ex Parte No. MC-37 (Sub-No. 26)]

PART 1048—COMMERCIAL ZONES

Commercial Zones and Terminal Areas

AGENCY: Interstate Commerce Commission.

ACTION: Correction.

SUMMARY: The notice of amendment of final rule concerning the definition of the Syracuse, N.Y., commercial zone, which was published in the Federal Register on June 23, 1977 (42 FR 31795), inadvertently omitted the amended rule. This correction restores the omitted language.

EFFECTIVE DATE: September 6, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael Erenberg, Assistant Deputy Director, Section of Operating Rights, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423. (202-275-7292).

SUPPLEMENTARY INFORMATION: The following should be added to the notice of amendment of final rule concerning the Syracuse, N.Y., commercial zone, which was published in the Federal Register on June 23, 1977 (42 FR 31795):

Accordingly, Section 1048.16 of Part 1048 of Chapter X of Title 49 of the Code of Federal Regulations, as published in the Federal Register on May 16, 1977, is deleted and the following is substituted in lieu thereof:

§ 1048.16 Syracuse, N.Y.

The zone adjacent to, and commercially a part of Syracuse, N.Y., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone, is partially exempt from regulation under Section 203 (b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Syracuse, N.Y., itself;

(b) All points within a line drawn 10 miles beyond the municipal limits of Syracuse;

(c) Those points in the towns of Van Buren and Lysander, Onondaga County, N.Y., which are not within the area described in paragraph (b) of this section, but which are within an area bounded by a line beginning at the intersection of new New York Highway 48 with the line described in (b) above, thence northerly along new New York Highway 48 to junction New York Highway 370, thence westerly along New York Highway 370 to junction Emerick Road, thence northerly along Emerick Road to junction Dunham Road, thence northerly along Dunham Road to junction New York Highway 192, thence easterly along New York Highway 192 to junction new New York Highway 48, thence northerly along new New York Highway 48 to junction New York Highway 213, thence easterly along New York Highway 213 to junction New York Highway 213A, thence easterly along New York Highway 213A to junction New York Highway 37, thence southerly along New York Highway 37 to its intersection with the line in (b) above;

(d) All of any municipality any part of which is within the limits of the combined areas defined in (b) and (c) above, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Syracuse or any other municipality included under the terms of (d) above.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-25988 Filed 9-6-77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of National Elk Refuge, Wyo. to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to elk hunting at the National Elk Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 29, 1977, through December 29, 1977.

FOR FURTHER INFORMATION CONTACT:

John E. Wilbrecht, National Elk Refuge, P.O. Box C, Jackson, Wyo. 83001.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Public hunting of elk on the National Elk Refuge, Wyoming is permitted from October 29 through December 29, 1977, only on the area designated by signs as open to hunting. This open area, comprising 16,327 acres, is delineated on maps available at refuge headquarters, Jackson, Wyo., and from the Area Manager, U.S. Fish and Wildlife Service, Federal Building, Room 3035, 316 N. 26th, Billings, Mont. 59101. Hunting shall be in accordance with all applicable State regulations covering the hunting of elk subject to the following special conditions:

(1) A special permit is required in addition to a valid 1977 State Elk Hunting license. Ninety special permits (for three hunt periods) shall be issued to applicants by drawing at refuge headquarters at 3:00 p.m. on Fridays, October 28, November 4, and November 11. Thirty permits will be valid for the Saturday through Sunday period; thirty permits valid Wednesday through Thursday; no hunting will be permitted on Fridays. Additional Friday drawings from the period November 18 through December 23, 1977 may be authorized if it is determined that additional harvest is necessary to achieve management objectives.

(2) Applicants for a special permit must have a hunter safety certification or a current hunter safety instructor card.

(3) Persons successful in drawing a permit may not draw again in succeeding drawings.

(4) Persons without permits may accompany special permit holders, but only permit holders are allowed to possess a firearm. Anyone entering hunt area must have fluorescent orange exterior garments.

(5) Permits will be revoked in the event of a violation of refuge regulations and violations can result in denial of future privileges on the refuge.

(6) Access to the refuge shall be only through the main gate east of refuge headquarters in Jackson.

(7) Vehicles are to be parked only in designated parking areas.

(8) Motorized vehicle travel in the hunt area is prohibited. Entry into the hunt area will be restricted to foot or horseback travel. Hunters may use horses for riding and packing. Retrieval of kills will be either by dragging, backpacking, wheeled carts (nonmotorized), or by horse packing.

(9) Citizens Band (C.B.) radios are not allowed in hunt area.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 28, 1977.

JOHN E. WILBRECHT,
Refuge Manager.

[FR Doc.77-25963 Filed 9-6-77;8:45 am]

PART 32—HUNTING

Opening of Bombay Hook National Wildlife Refuge, Del. to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Bombay Hook National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: November 1, 1977 through January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Don Perkuchin, Bombay Hook National Wildlife Refuge, R.D. No. 1, Box 147, Smyrna, Del. 19977, Telephone No. 302-653-9345.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of ducks, geese, and coots is permitted on areas designated by signs as open to hunting including the South Waterfowl Hunting Area, the West Waterfowl Hunting area, the Young Waterfowlers Area, and the South Upland Hunting Area. These open areas are delineated on maps available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Mass 02158.

Hunting shall be in accordance with all State and Federal regulations covering the hunting of ducks, geese, and coots subject to the following special conditions:

1. Hunting is permitted on the West Waterfowl Hunting Area from one-half hour before sunrise to 12 noon local standard time, Tuesdays, Thursdays, and Saturdays (except November 12) during the goose season.

2. Hunting in the South and West Waterfowl Areas and Young Waterfowlers Area shall be from existing numbered blinds. The possession of a loaded gun or shooting while outside of a blind is prohibited on these areas.

3. Hunting is permitted in the South Waterfowl Hunting Area only on Monday, Wednesday, Friday, and Saturday, during the State duck season.

4. The necessary permit to enter the South Waterfowl Hunting Area will be issued each hunting day by a ticket-lottery system at one and one-half hours before legal shooting time at the checking station at Port Mahon. Hunters arriving after the lottery will be issued permits on a first-come, first-served basis. Permits will be surrendered at the checking station within one-half hour after sunset. The necessary permit to enter the West Waterfowl Hunting Area may be obtained by applying to the refuge manager for advance reservation. The permits for advance reservations will be cancelled if the holder is not present one hour prior to the start of legal shooting time on the date of his reservation. These forfeited permits and permits not reserved by advance reservation will be awarded to other hunters by lottery on the morning of the hunt. All hunters will check out through the headquarters checking station prior to leaving the refuge.

5. Each hunting permittee using the West Waterfowl Hunting Area will pay a recreation fee of $10.00 on the day of the hunt. A Recreation fee of $2.00 per hunter will be charged on the South Waterfowl Hunting Area.

6. Not more than four persons may occupy a blind at any one time on the West Waterfowl Hunting Area nor more than three on the South Waterfowl Hunting Area.

7. The Young Waterfowlers Area will be open from one-half hour before sunrise to 12 noon local standard time on Saturdays and holidays to young hunters who present evidence of having completed the prescribed training program. Two youths, accompanied by an instructor who may not possess ammunition or possess or discharge a firearm, may use one blind.

8. Hunters on all four areas are required to use steel shot shells in 12 gauge shotguns. Hunters using 12 gauge shotguns may not have in their possession lead shotshells. Lead shotshells may be used in shotguns other than 12 gauge. No hunter may have in their possession or use in one day more than 10 shells on the West Waterfowl Hunting Area or 15 shells on the Young Waterfowlers Hunting Area.

9. Hunters, when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

HOWARD N. LARSEN,
Regional Director, United States Fish and Wildlife Service.

AUGUST 26, 1977.

[FR Doc.77-25967 Filed 9-6-77;8:45 am]

PART 32—HUNTING

Opening of Monte Vista National Wildlife Refuge, Colo. to Public Hunting of Upland Game

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of cottontail rabbits and white and black-tailed jackrabbits on the Monte Vista National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 1, 1977 through January 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Melvin T. Nail, Refuge Manager, Monte Vista National Wildlife Refuge, P.O. Box 511, Monte Vista, Colo. 81144, telephone number 303-852-2435; or Mitchell G. Sheldon, Assistant Area Manager, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1426 Federal Building, 125 South State Street, Salt Lake City, Utah 84138, telephone number 801-524-5630.

SUPPLEMENTARY INFORMATION:

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Hunting of cottontail rabbits and white and black-tailed jack rabbits is permitted on the Monte Vista National Wildlife Refuge, Colorado, but only on the areas designated by signs as being open to hunting. These areas comprising 5,314 acres are delineated on maps available at refuge headquarters, Monte Vista, Colo., and from the Area Manager, U.S. Fish and Wildlife Service, 1426 Federal Building, 125 South State St., Salt Lake City, Utah 84138. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of cottontail rabbits and white and black-tailed jack rabbits, subject to the following special conditions:

(1) Cottontail rabbits and white and black-tailed jack rabbits—October 1, 1977 through October 14, 1977, inclusive, and November 12, 1977 through January 19, 1978, inclusive.

(2) Shooting hours for cottontail rabbits will be from sunrise to sunset.

(3) Shooting hours for white and black-tailed jack rabbits shall coincide with those set by Federal and State proclamation for the hunting of migratory waterfowl.

(4) Admittance—Entrance to the area open to hunting and parking of vehicles will be restricted to designated parking areas.

(5) Dogs—Not to exceed two dogs per hunter may be used in the hunting of the above species.

(6) Hunting with rifles and hand guns is prohibited.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107

NELS WINTERS,
Acting Refuge Manager.

AUGUST 29, 1977.

[FR Doc 77-25971 Filed 9-6-77;8:45 am]

PART 32—HUNTING

Opening of Bombay Hook National Wildlife Refuge, Del. to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Bombay Hook National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: November 11, 1977 through November 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Don Perkuchin, Bombay Hook National Wildlife Refuge, R.D. No. 1, Box 147, Smyrna, Del. 19977, Telephone No. 302-653-9345.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Public hunting of deer with shotguns is permitted only on the Deer Hunting Area and South Upland Hunting Area designated by signs as open to hunting. These open deer hunting areas are shown on maps available at refuge headquarters and from the Regional Director U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Mass. 02158.

Hunting shall be in accordance with all State and Federal regulations covering the hunting of deer with firearms subject to the following special conditions:

1. Hunting with shotguns on the Deer Hunting Area is permitted only on November 11, 12, 14 and 16, 1977.

2. A Federal permit is required to hunt on the Deer Hunting Area and may be obtained by applying to the refuge manager in writing for an advance reservation. An individual with an advance reservation will forfeit his permit if he is not present one hour prior to the start of legal shooting time on the date of the reservation. These forfeited permits and permits not reserved by advance reservations will be awarded to standby hunters by lottery one hour before the start of legal shooting time. Permits must be surrendered prior to departure from the refuge.

3. The number of hunters admitted to the open area at one time will be restricted to 50.

4. Hunters using the Deer Hunting Area and the South Upland Hunting Area must possess a valid firearm qualification card. The qualification test for shotgun slugs consists of placing three consecutive slugs in a 12-inch bullseye at 30 yards from the standing position. The qualification test for shotgun buckshot hunters will consist of placing five or more pellets in a 20-inch target from a distance of 30 yards from the standing position.

5. Target practice or test firing is not permitted.

6. Only blinds, platforms or scaffolds that are erected and removed each day of the hunt may be used. Written permission from the refuge manager is required for the construction or use of any such artificial structure.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

HOWARD N. LARSEN,
Regional Director, United States Fish and Wildlife Service.

AUGUST 26, 1977.

[FR Doc. 77-25968 Filed 9-6-77;8:45 am]

PART 32—HUNTING

Opening of Bombay Hook National Wildlife Refuge, Del. to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Bombay Hook National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 14, 1977 through October 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Don Perkuchin, Bombay Hook National Wildlife Refuge, R.D. No. 1, Box 147, Smyrna, Del. 19977, Telephone No. 302-653-9345.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Public hunting of deer with primitive firearms is permitted only on the Deer Hunting Area and South Upland Hunting Area. These open deer hunting areas are shown on maps available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Mass. 02158.

Hunting shall be in accordance with all State and Federal regulations covering the hunting of deer with firearms subject to the following special conditions:

1. Hunting with primitive firearms on the Deer Hunting Area is permitted only on October 14 through October 15.

2. The number of hunters admitted to the Deer Hunting Area at any one time will be restricted to 50.

3. Permits are required for the Deer Hunting Area and will be issued on a first-come, first-served basis one-half hour before shooting time.

4. Hunters using the Deer Hunting Area and the South Upland Hunting Area must possess a valid firearms qualification card. The qualification test will consist of placing three consecutive rounds in a 12-inch circle at 50 yards, firing from the offhand position. The muzzleloader used for the qualification test must be the same one that is used for the hunt.

5. Target practice or test firing is not permitted.

6. Only blinds, platforms or scaffolds that are erected and removed each day of the hunt may be used. Written permission from the refuge manager is required for the construction or use of any such artificial structure.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

HOWARD N. LARSEN,
Regional Director, United States Fish and Wildlife Service.

AUGUST 26, 1977.

[FR Doc.77-25969 Filed 9-6-77;8:45 am]

PART 32—HUNTING

Opening of Prime Hook National Wildlife Refuge, Del., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Prime Hook National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: November 1, 1977, through January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

William McCoy, Prime Hook National Wildlife Refuge, R.D. No. 1, Box 195, Milton, Del. 19968, telephone No. 302–684–8419.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of ducks, geese, and coots is permitted on the Waterfowl Hunting Area. This 1,180-acre open area is shown on maps available at refuge headquarters or from the Regional Director, Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Mass. 02158.

Hunting shall be in accordance with all Federal and State regulations covering the hunting of ducks, geese, and coots, subject to the following special conditions:

(1) Permits will be issued by a ticket-lottery system at two hours before legal shooting time. Hunters arriving after the lottery will be issued permits on a first-come, first-served basis until 3 p.m. Permits will be surrendered at the checking station within one hour after sunset. When leaving a blind unoccupied for any reason the permit must be turned in and a new permit must be completed at the check station before hunting again.

(2) Hunting shall be only from blinds at locations designated by refuge personnel. The possession of a loaded gun or shooting outside of a blind while hunting waterfowl and coots is prohibited. Three hunters per blind permitted.

(3) The area is open each Monday, Wednesday, Friday, and Saturday, throughout the duck hunting season.

(4) Access to the waterfowl hunting area will be at designated boat access points.

(5) Steel shotshells are required for all shotguns 12 gauge or larger. Persons using 12 gauge shotguns may not have in their possession lead shotshells. Lead shotshells may be used in shotguns other than 12 gauge.

(6) Hunters, when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A–107.

HOWSARD N. LARSEN,
Regional Director, United States Fish and Wildlife Service.

AUGUST 26, 1977.

[FR Doc.77-25973 Filed 9-6-77;8:45 am]

PART 32—HUNTING

Opening of Monte Vista National Wildlife Refuge, Colo., to Public Hunting of Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of geese, ducks, coots, mergansers, mourning doves, and Wilson's snipe on the Monte Vista National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 1, 1977, through January 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Melvin T. Nail, Refuge Manager, Monte Vista National Wildlife Refuge, P.O. Box 511, Monte Vista, Colo. 81144, telephone number 303–852–2435; or Mitchell G. Sheldon, Assistant Area Manager, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1426 Federal Building, 125 South State Street, Salt Lake City, Utah 84138, telephone number 801–524–5630.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game bird hunting; for individual wildlife refuge areas.

Hunting of geese, ducks, coots, mergansers, mourning doves, and Wilson's snipe is permitted on the Monte Vista National Wildlife Refuge, Colo., but only on the areas designated by signs as being open to hunting. These areas comprising 5,314 acres are delineated on maps available at refuge headquarters, Monte Vista, Colo., and from the Area Manager, U.S. Fish and Wildlife Service, 1426 Federal Building, 125 South State Street, Salt Lake City, Utah 84138. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of geese, ducks, coots, mergansers, mourning doves, and Wilson's snipe, subject to the following special conditions:

(1) The refuge will be open to hunting of mourning doves and Wilson's snipe only during the established waterfowl seasons—October 1, 1977, through October 14, 1977, inclusive, and November 12, 1977, through January 19, 1978, inclusive.

(2) Shooting hours will be from sunrise to sunset on mourning doves and Wilson's snipe.

(3) Admittance—Entrance to the area open to hunting, and parking of vehicles will be restricted to designated parking areas.

(4) Dogs—Not to exceed two dogs per hunter may be used in the hunting of the above species.

(5) Boats—The use of boats is prohibited. One or two-man life rafts that can be carried by an individual from the parking areas to the hunting area may be used to retrieve dead or wounded birds.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE: The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A–107.

NELS WINTERS,
Acting Refuge Manager, Monte Vista National Wildlife Refuge, Monte Vista, Col.

AUGUST 29, 1977.

[FR Doc.77-25970 Filed 9-6-77;8:45 am]

PART 32—HUNTING

Opening of Prime Hook National Wildlife Refuge, Del., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Prime Hook National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 14, 1977 through January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

William McCoy, Prime Hook National Wildlife Refuge, R.D. No. 1, Box 195, Milton, Del. 19968, Telephone No. 302–684–8419.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Public hunting of deer by means of primitive firearms and shotgun is permitted only on the North Hunting Area. This open deer hunting area, comprising approximately 2,320 acres, is shown on a map available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Mass. 02158.

Hunting shall be in accordance with all State regulations covering the hunting of deer subject to the following conditions:

1. Primitive firearm and shotgun hunters must possess a valid firearms qualification card. The test for muzzleloaders will consist of placing three consecutive rounds in a 12-inch bullseye at 50 yards, firing from the standing position. The test for shotgun slug hunters will consist of placing three consecutive slugs in a 12-inch target at a distance of 30 yards, firing from the standing position. The test for shotgun buckshot hunters will consist of placing five or more pellets in a 20-inch target from a distance of 30 yards from the standing position.

2. Permits are required for all deer hunting. These permits are available free of charge and will be issued by mail to successful applicants selected by a preseason drawing.

3. The number of shotgun hunters admitted to the open area will be restricted to 25 preselected hunters per day.

4. Permits must be returned to the refuge office by the end of the deer hunting seasons.

5. Only blinds, platforms or scaffolds that are erected and removed each day of the hunt may be used. Written permission from the refuge manager is required for the construction or use of any such artificial structure.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

HOWARD N. LARSEN,
Regional Director, United States Fish and Wildlife Service.

AUGUST 26, 1977.

[FR Doc.77-25972 Filed 9-6-77;8:45 am]

proposed rules

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.

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1702]

EXEMPTIONS FROM POISON PREVENTION PACKAGING ACT REQUIREMENTS; PETITION PROCEDURES AND REQUIREMENTS

Proposed and Interim Rule

CROSS REFERENCE: For an interim rule, on which comments are solicited, regarding procedures and requirements for submitting petitions for exemptions from Poison Prevention Packaging Act requirements of child resistant packaging, see FR Doc. 77-25982 appearing in the Rules and Regulations section of this issue.

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 231]

[Release No. 33-5858; File No. 4-201]

OFFER AND SALE OF CERTAIN CONTRACTURAL ARRANGEMENTS ISSUED BY LIFE INSURANCE COMPANIES

Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period for comments set in the notice published June 22, 1977, requesting public comment regarding the offer and sale of certain contractual arrangements issued by insurance companies and generally known as guaranteed investment, interest, or income contracts. The staff of the Commission is studying these contracts in order to determine the extent to which they are eligible for the exemption from registration contained in section 3(a)(8) of the Securities Act of 1933.

DATES: Comments must be received on or before October 6, 1977.

ADDRESSES: Comments should be sent in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should refer to File No. 4-201.

FOR FURTHER INFORMATION CONTACT:

Laura A. Boughan, Esq., Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549 (202-755-0218).

SUPPLEMENTARY INFORMATION: Notice was published on June 22, 1977, Release No. 33-5838 (42 FR 32861, June 28, 1977)[1] requesting the submission of views with respect to the offer and sale of certain contractual arrangements issued by life insurance companies. The American Council of Life Insurance ("ACLI"), which represents 470 life insurance companies, has requested an extension of time for submission of its comments. In view of this request, the Commission has authorized an extension to October 6, 1977, of the due date for submitting comments. The Commission believes that this extension is appropriate and will not result in undue delay.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 26, 1977.

[FR Doc.77-26017 Filed 9-6-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-193-74]

INCOME TAX

Definition of the Term "Church Plan"; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to church plans.

DATES: The public hearing will be held on October 6, 1977 beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by September 26, 1977.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (202-566-3935), not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 414(e) of the Internal Revenue Code of 1954. These proposed regulations appeared in the FEDERAL REGISTER for April 8, 1977 (42 FR 18621).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by September 26, 1977. The outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T (LR-193-74), Washington, D.C. 20224. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

ROBERT A. BLEY,
Director,
Legislation and Regulations Division.

[FR Doc.77-25989 Filed 9-6-77;8:45 am]

POSTAL SERVICE

[39 CFR Parts 241, 245, 246, 247, 248, 265]

DISCONTINUANCE OF POST OFFICE

Procedural Regulations

Correction

In FR Doc. 77-24469 appearing at page 42695 in the issue for Wednesday, August 24, 1977, the following correction should be made.

In the middle column of page 42698, on line eight of § 247.13, the comment date now reading, "06 days", should read, "60 days".

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 786-6]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the Great Basin Unified Air Pollution Control District's Rules and Regulations in California

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Great Basin Unified Air Pollution Control District (APCD)

[1] This document was inadvertently published in the Notices section of the FEDERAL REGISTER.

has adopted changes to their rule concerning upset breakdown (malfunction). This revision has been submitted to the Environmental Protection Agency (EPA) by the California Air Resources Board as a revision to the California State Implementation Plan (SIP). The intended effect of the revision is to update the rules and regulations and to correct deficiencies in the SIP. The EPA invites public comments on this rule, especially as to its consistency with the Clear Air Act.

DATE: Comments by October 7, 1977.

ADDRESS: Send comments to: Regional Administrator, Attention: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section, EPA, Region IX, 100 California Street, San Francisco, Calif. 94111.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 100 California Street, San Francisco, Calif. 94111, Attention: David R. Souten, 415–556–7288.

SUPPLEMENTARY INFORMATION: The June 6, 1977 submittal contained the following revised rule:

Rule 403—Upset/Breakdown.

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulation as an SIP revision.

The Regional Administrator hereby issues this notice setting forth this revision as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Relevant comments received on or before October 7, 1977, will be considered. Comments received will be available for public inspection at the Region IX Office and the EPA Public Information Reference Unit.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

Great Basin Unified Air Pollution Control District, 873 North Main Street, Suite 213, Bishop, Calif. 93514.
California Air Resources Board, 1709 11th Street, Sacramento, Calif. 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, Calif. 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460.

(Secs. 110, 301, Clean Air Act, as amended (42 U.S.C. 1857c-5, 1857g).)

Dated: July 26, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-25874 Filed 9-6-77;8:45 am]

[40 CFR Part 52]

[FRL 786-7]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Bay Area Air Pollution Control District's Rules and Regulations in California

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bay Area Air Pollution Control District (APCD) has adopted changes to their rules and regulations. The revisions have been submitted to the Environmental Protection Agency (EPA) by the California Air Resources Board as revisions to the California State Implementation Plan (SIP). The intended effect of these revisions is to update the rules and regulations and to correct deficiencies in the SIP. The EPA invites public comments on these rules, especially as to their consistency with the Clean Air Act.

DATES: Comments by October 7, 1977.

ADDRESS: Send comments to: Regional Administrator, Attention: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section, EPA, Region IX, 100 California Street, San Francisco, Calif 94111.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 100 California Street, San Francisco, Calif. 94111, Attention: David R. Souten, 415–556–7288.

SUPPLEMENTARY INFORMATION: The following rules and regulations were submitted on the indicated dates:

JULY 25, 1973

REGULATION 2, SECTION 1214, EXPERIMENTAL OPERATIONS

REGULATION 3, SECTION 1205, EXPERIMENTAL OPERATIONS

APRIL 21, 1976

REGULATION 2, SECTION 3212, UPSET CONDITIONS, BREAKDOWN OR SCHEDULED MAINTENANCE

REGULATION 3, SECTION 3203, UPSET CONDITIONS, BREAKDOWN OR SCHEDULED MAINTENANCE

JUNE 6, 1977

REGULATION 7—NEW SOURCE PERFORMANCE STANDARDS

Definitions

Rule:

1. General Provisions.
2. Fossil Fuel Steam Generators.
3. Incinerators.
4. Portland Cement Plants.
5. Nitric Acid Plants.
6. Sulfuric Acid Plants.
7. Asphalt Concrete Plants.
8. Refineries.
9. Storage of Petroleum Liquids.
10. Secondary Lead Smelters.
11. Secondary Brass and Bronze Ingot Plants.
12. Iron and Steel Plants.
13. Sewage Plants.
14. Phosphate Fertilizer Plants.
15. Steel Plants—Electric Arc Furnaces.
16. Primary Aluminum Reduction Plants.
17. Primary Copper Smelters.
18. Primary Zinc Smelters.
19. Primary Lead Smelters.
20. Coal Preparation Plants.
21. Ferroalloy Production Facilities.

REGULATION 8—EMISSION STANDARDS FOR HAZARDOUS POLLUTANTS

Definitions

Rule:

1. General Provisions.
2. Asbestos.
3. Beryllium.
4. Beryllium Rocket Firing.
5. Mercury.

A Revision to Regulation 2, Division 13 concerning new source review was also submitted on June 6, 1977; however, it is not being considered in this notice but will be acted upon in a separate FEDERAL REGISTER notice.

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve and disapprove the regulations as an SIP revision.

The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Relevant comments received on or before October 7, 1977, will be considered. Comments received will be available for public inspection at the Region IX Office and the EPA Public Information Reference Unit.

Copies of the proposed revisions are available for public inspection during normal business hours at the following locations:

Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, Calif. 94109.
California Air Resources Board, 1709 11th Street, Sacramento, Calif. 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, Calif. 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460.

(Secs. 110, 301, Clean Air Act, as amended (42 U.S.C. 1857c-5, 1857g).)

Dated: July 25, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-25875 Filed 9-6-77;8:45 am]

[40 CFR Part 61]

[FRL 786-8]

VINYL CHLORIDE

National Emission Standards for Hazardous Air Pollutants; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, extension of comment period.

SUMMARY: The deadline for submittal of comments on the amendments to the vinyl chloride standard which were proposed on June 2, 1977 (42 FR 28154), is being delayed from August 19, 1977, to September 23, 1977. Due to the complexity of the issues which have been raised with regard to the proposed amendments, EPA believes that additional time is needed for submission of factual information to the Agency which can be used in evaluating the proposal.

DATE: Comments must be postmarked on or before September 23, 1977.

ADDRESS: Comments should be submitted (preferably in triplicate) to the Emission Standards and Engineering Division (MD–13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, attention: Mr. Don R. Goodwin.

All public comments received may be inspected and copied at the Public Information Reference Unit (EPA Library), Room 2922, 401 M Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919–541–5271.

SUPPLEMENTARY INFORMATION: On June 2, 1977 (42 FR 28154), the Environmental Protection Agency proposed amendments to the vinyl chloride standard which was promulgated under the authority of section 112 of the Clean Air Act on October 21, 1976 (42 FR 46561). The notice of proposal requested public comments on the amendments by August 1, 1977. On August 10, 1977 (42 FR 40452), in response to a request by the Society of Plastics Industry, Inc., EPA delayed the deadline for submittal of comments on the proposed amendments until August 19, 1977. The purpose of the delay was to allow ample opportunity for interested parties to review and comment on the transcript of the proceedings from the public hearing held on July 19, 1977.

A number of technological and legal issues have been raised on the proposed amendments both in statements made at the public hearing and in written comments received by the Agency. Because of the complexity of these issues, EPA has decided to extend the comment period to allow additional time for submitting factual data to the Agency which can be used in evaluating the proposal. EPA believes that an extension of the comment period through September 23, 1977, is needed for this purpose.

Dated: August 26, 1977.

EDWARD F. TUERK,
Assistant Administrator for Air and Waste Management.

[FR Doc.77-25876 Filed 9-6-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

[41 CFR Part 101–25]

ELECTRIC TYPEWRITERS

Use Standards

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the General Services Administration (GSA) proposes to amend the Federal Property Management Regulations to require agencies to establish criteria for the use of electric typewriters and to specify that acquisition of electric typewriters is restricted to the least expensive units that will meet agency needs. The Congress and other interested parties have indicated that a high percentage of the electric typewriters procured by Federal agencies are not the lowest priced units available. These procurement practices may be resulting in unnecessary costs to the Government. This regulation has been developed to ensure that agencies acquire and use only the lowest priced electric typewriters necessary to accomplish the anticipated workload.

DATES: Comments are due on or before September 30, 1977.

ADDRESSES: Written comments should be sent to: General Services Administration (FFY), Washington, D.C. 20406.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Procedures Management Division, Office of Customer Service and Support, Federal Supply Service, General Services Administration, Washington, D.C. 20406 (703–557–1914).

It is proposed to amend Part 101–25 as follows:

PART 101–25—GENERAL

Subpart 101–25.3—Use Standards

1. Section 101–25.301(a) is revised as follows:

§ 101–25.301 General.

(a) This subpart prescribes basic use standards for certain Government-owned personal property which shall be applied by all executive agencies. Additional criteria above these basic standards shall be established by each executive agency, limiting its property to the minimum requirements necessary for the efficient functioning of the particular office concerned.

* * * * *

2. Section 101–25.302–3 is amended as follows:

§ 101–25.302–3 Electric typewriters.

* * * * *

(c) Agency heads shall ensure that acquisition of electric typewriters is in accordance with the provisions of §§ 101–26.408–2 through 101–26.408–4 concerning procurement of the lowest delivered priced item available through multiple-award Federal supply schedule contracts.

(d) Agency heads shall establish criteria for the use of electric typewriters. These criteria shall be based on requirements to meet the normal needs of the typing station including the volume and nature of the work to be performed. The criteria shall also provide for use of electric typewriters that are compatible with word processors when essential to meet the requirements of the typing station. Further, agencies shall select the type of equipment available through Federal supply schedules which incorporates the minimum features and characteristics considered essential to accomplish the anticipated workload.

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

NOTE.—The General Services Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: August 22, 1977.

ROBERT P. GRAHAM,
Commissioner, Federal Supply Service.

[FR Doc.77-25966 Filed 9-6-77;8:45 am]

notices

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.

NOTICE TO FEDERAL AGENCIES

Beginning October 1, 1977, Federal agencies must reimburse the Government Printing Office (GPO) for the cost of printing documents in the FEDERAL REGISTER and Code of Federal Regulations.

The Legislative Branch Appropriation Act, 1978 (Pub. L. 95–94, August 5, 1977) amended the Federal Register Act to require Federal agencies to reimburse the Government Printing Office for the cost of printing, binding, and distributing the FEDERAL REGISTER and Code of Federal Regulations. The pertinent provisions of Pub. L. 95–94 amending 44 U.S.C. 1509 are contained in Appendix A to this document.

FEDERAL REGISTER

In order to make certain that statutory requirements for publication in the FEDERAL REGISTER can be met on and after October 1, 1977 agencies must submit a Printing and Binding Requisition (Standard Form 1) before September 15 to the following address:

Superintendent of Planning Service, Room C830, Government Printing Office, Washington, D.C. 20401.

CODE OF FEDERAL REGULATIONS

Every agency that has rules in the Code of Federal Regulations must submit a second Printing and Binding Requisition (Standard Form 1) to the Superintendent of Planning Service at the above address.

COMPUTATION OF COSTS-BILLING: FISCAL YEARS 1978, 1979

For fiscal year 1978 agencies will be charged $285 for each page of printed matter they publish in the FEDERAL REGISTER and $50 for each page in the Code of Federal Regulations. Fractions of pages published in the FEDERAL REGISTER will be counted on a column basis with a minimum charge of one column ($95). GPO will bill each agency monthly for the material the agency has printed in the previous month. Billing for the Code of Federal Regulations will be on an as printed basis.

For budget planning purposes, agencies are advised that current estimates for printing services in Fiscal Year 1979 are as follows: FEDERAL REGISTER $300 per page; Code of Federal Regulations $55 per page.

These prices cover the costs of composition, printing, binding and distribution.

INFORMATION AND ASSISTANCE

For information and assistance in filling out the Printing and Binding Requisition (Standard Form 1) and in computing your projected printing costs, call: Mr. William Rose, 202–275–2867.

APPENDIX A

[Pub. L. 95–94 Approved Aug. 5, 1977]

* * * * *

"§ 1509. Costs of publication, etc.

"(a) The cost of printing, reprinting, wrapping, binding, and distributing the FEDERAL REGISTER and the Code of Federal Regulations, and, except as provided in subsection (b), other expenses incurred by the Government Printing Office in carrying out the duties placed upon it by this chapter shall be charged to the revolving fund provided in section 309. Reimbursements for such costs and expenses shall be made by the Federal agencies and credited, together with all receipts, as provided in section 309(b)."

* * * * *

(b) The amendments made by subsection (a) shall take effect on October 1, 1977.

* * * * *

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

1977 WHITE OR IRISH POTATO PRODUCTION

Estimate

Headnote 2 of Subpart A of Part 8 of Schedule 1 of the Tariff Schedules of the United States (TSUS) provides that, if for any calendar year the production in the United States of white or Irish potatoes, including seed potatoes, according to the estimate of the Department of Agriculture made as of September 1, is less than 21 billion pounds, an additional quantity of potatoes equal to the amount by which such estimated production is less than 21 billion pounds shall be added to the 45 million pounds for which duty at 37.5 cents per 100 pounds is provided by TSUS item 137.25 for the 12-month period beginning September 15.

The estimate of the Department of Agriculture, made as of September 1, 1977, is that for the calendar year 1977 the production in the United States of white or Irish potatoes, including seed potatoes, will exceed 21 billion pounds.

Issued at Washington, D.C., this 1st day of September 1977.

THOMAS R. HUGHES,
Administrator.

[FR Doc.77-25923 Filed 9-6-77;8:45 am]

Packers and Stockyards Administration

SALEM HORSE AUCTION; SALEM, ARK., ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard:	*Date of posting*
AR–152, Salem Horse Auction, Salem, Ark.	Mar. 9, 1974.
CO–120, Valley Livestock Auction Co., Grand Junction, Colo.	Mar. 9, 1957.
IA–246, Perkins Auction, Carson, Iowa.	Sept. 16, 1973.
IA–178, Manchester Sales Barn, Manchester, Iowa.	May 20, 1959.
IA–191, Sweetland Livestock Auction, Inc., Muscatine, Iowa.	June 26, 1958.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule relieving a restriction and may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective September 7, 1977.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 31st day of August 1977.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.77-25996 Filed 9-6-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77-8-141; Docket No. 27573; Agreement C.A.B.26845, R-1 through R-4, and Agreement C.A.B. 26846]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Specific Commodity Rates; Order

Issued under delegated authority August 26, 1977.

Agreements have been filed with the Board pursuant to section 412(a) of the

Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conference of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreements would add four specific commodity rates uder existing commodity descriptions and adds one new rate with a new specific commodity description as set forth below, reflecting reductions from general cargo rates; and were adopted pursuant to unprotested notice to the carriers and promulgated in IATA letters dated August 10, 1977.

Agreement CAB	Specific commodity item No.	Description and rate [1]
26845:		
R-1	1082	Hatching eggs, 265 cents per kilogram,[2] minimum weight 500 kgs. From New York to Monrovia.
R-2	0006	Foodstuffs, spices and beverages, 91 cents per kilogram, minimum weight 500 kgs. From Honolulu to Tokyo. 96 cents per kilogram, minimum weight 500 kgs. From Honolulu to Osaka.
R-3	3161	Pewter products,[3] 276 cents per kilogram,[4] minimum weight 500 kgs. From Kuala Lumpur to Los Angeles.
R-4	4206	Surface vehicle parts, excluding steamship and/or motorship machine parts, 125 cents per kilogram[4], minimum weight 2,500 kgs. From Sydney to Los Angeles.
26846	9658	Suitcases, overnight bags, briefcases, attache cases, handbags, purses, and wallets, 325 cents[5] per kilogram[4], minimum weight 100 kgs. 303 cents[5] per kilogram[4], minimum weight 250 kgs. From Sydney to Guam.

[1] Subject to applicable currency conversion factors as shown in tariffs.
[2] Expires June 30, 1978.
[3] New description.
[4] Expires Dec. 31, 1978.
[5] Based on 02 lb rate 1 U.K. pence equals U.S. $0.02605.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the agreements are adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions ordered.

Accordingly, *it is ordered* That:

Agreements C.A.B. 26845, R-1 through R-4, and C.A.B. 26846 are approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to beocme effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notices that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By James L. Deegan, Chief, Passenger and Cargo Rates Division, Bureau of Fares and Rates.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-25995 Filed 9-6-77;8:45 am]

[Order 77-8-142; Docket No. 29123, Agreement C.A.B. 26857, R-1 through R-3]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Passenger Fares; Order

Issued under delegated authority August 26, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 2 of the International Air Transport Association (IATA). The agreement, adopted by mail vote, has been assigned the above C.A.B. agreement number.

The agreement would increase first-class and economy-class fare levels and cancel the weekend excursion fare between Maputo, Mozambique, and Manzini, Swaziland. We will approve those portions of the agreement involving fares which are combinable with fares to/from United States points and thus have indirect application in air transportation as defined by the Act. Jurisdiction will be disclaimed with respect to that portion of the agreement which governs a noncombinable fare between foreign points and therefore has no application in air transportation under the Act.

Pursuant to authority duly delegated by the Board's Regulations, 14 CFR 385.14:

(1) It is not found that the following resolutions, incorporated in the agreement as indicated and which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26857: R-1	032	TC2 1st-Class Fares (Amending)	2 (within Africa).
R-2	062	TC2 Economy-Class Fares (Amending)	Do.

(2) It is not found that the following resolution, incorporated in the agreement as indicated, affects air transportation within the meaning of the Act:

Agreement CAB	IATA No.	Title	Application
26857: R-3	072b	TC2 Creative Fares Except Europe (Amending)	2 (within Africa).

Accordingly, *It is ordered* That:

(1) Those portions of Agreement C.A.B. 26857 described in finding paragraph 1 above are approved; and

(2) Jurisdiction is disclaimed with respect to that portion of Agreement C.A.B. 26857 described in finding paragraph 2 above.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulation, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By James L. Deegan, Chief, Passenger and Cargo Rates Division, Bureau of Fare and Rates.

PHYLLIS T. KAYLER,
Secretary.

[FR Doc.77-25994 Filed 9-6-77;8:45 am]

[Dockets 31232, 31234, 31235, 31246, 31247, 31285, 31305, and 29123]

NATIONAL AIR CARRIER ASSOC. ET AL. v. PAN AMERICAN WORLD AIRWAYS ET AL.

Oral Argument

In the matter of Complaints of National Air Carrier Association, Brendan Tours, Inc., Charter Travel Corporation, The Educational Cooperative And Laker Airways Limited Against Tariffs of Pan American World Airways, Inc., Trans World Airlines, Inc., British Airways, And Air India Proposing Stand-by Budget, and Super-Apex Fares Over The North Atlantic; and the Agreement Adopted by the Traffic Conferences of the International Air Transport Association Relating to North Atlantic Passenger Fares Agreement C.A.B. 26858, R-1 through R-5.

The Board has decided that it will hear oral argument on the questions whether to suspend and or investigate the fare proposals against which the above-described complaints have been filed and whether to approve the above-described IATA Agreement.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral arguments in this proceeding is assigned to be held before the Board on September 7, 1977, at 10 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise the Acting Chief Administrative Law Judge, by telex, to be received in his office on or before September 1, 1977, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., August 30, 1977.

HENRY M. SWITKAY,
Acting Chief Administrative Law Judge.

[FR Doc.77-25878 Filed 9-6-77;8:45 am]

[Docket 29439]

EASTERN AIR LINES, INC.

Application for Authority for Intercarrier Discussions Concerning Agreements About Research, Design, and Procurement of Future Aircraft Types; Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on October 5, 1977, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Persons served with Order 77-7-162 are reminded that those electing to participate in the oral argument shall file with the Board briefs and or statements of position on or before September 21, 1977, and serve copies of this submission upon all other persons on the service list. Each of the persons on the service list desiring to participate in the oral argument shall also so advise the Acting Chief Administrative Law Judge, in writing, on or before the above date, together with the name of the individual who will represent it at the argument.

Dated at Washington, D.C., August 29, 1977.

HENRY M. SWITKAY,
Acting Chief Administrative Law Judge.

[FR Doc.77-25879 Filed 9-6-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

GEOLOGICAL SURVEY, ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Decision: Applications denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles, for such purposes as the foreign articles are intended to be used, are not being manufactured in the United States.

Reasons: Section 301.8 of the Regulations provides in pertinent part:

> The applicant shall on or before the 20th day following the date of such notice, inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article for the same intended purposes to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an extension of time is granted by the Deputy Assistant Secretary in writing prior to the expiration of the 90-day period.
>
> * * * If the applicant fails, within the applicable time periods specified above, to either (a) inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article to which the denial without prejudice to resubmission relates, or (b) resubmit the new application, the prior denial with out prejudice to resubmission shall have the effect of a final decision by the Deputy Assistant Secretary on the application within the context of § 301.11.

The meaning of the subsection is that should an applicant neither fail to notify the Deputy Assistant Secretary of its intent to resubmit another application for the same article to which the denial without prejudice relates within the 20-day period, or fails to resubmit a new application within the 90-day period, the prior denial without prejudice to resubmission will have the effect of a final denial of the application.

None of the applicants to which this consolidated decision relates has satisfied the requirements set forth above, therefore, the prior denials without prejudice have the effect of a final decision denying their respective applications.

Section 301.8 further provides:

> * * * the Deputy Assistant Secretary shall transmit a summary of the prior denial

without prejudice to resubmission, to the FEDERAL REGISTER for publication, to the Commissioner of Customs, and to the applicant.

Each of the prior denials without prejudice to resubmission to which this consolidated decision relates was based on the failure of the respective applicants to submit the required documentation, including a completely executed application form, in sufficient detail to allow the issue of "scientific equivalency" to be determined by the Deputy Assistant Secretary.

Docket Number: 76-00501. Applicant: U.S. Geological Survey, 345 Middlefield Road, Menlo Park, Calif. 94025. Article: Isotope Micromass Model 602C, VG Digital Printer, Inlet Option C6. Date of denial without prejudice to resubmission: April 26, 1977.

Docket Number: 77-00020. Applicant: Research Foundation for Mental Hygiene, 722 W. 168th Street, New York, N.Y. 10032. Article: Forceps, Ultrafine. Date of denial without prejudice to resubmission: April 11, 1977.

Docket Number: 77-0030. Applicant: Battelle Memorial Institute, 505 King Avenue, Columbus, Ohio 43201. Article: Mass Spectrometer, Model MS702R (Used). Date of denial without prejudice to resubmission: April 14, 1977.

Docket Number: 77-00105. Applicant: Sandia Laboratories, Kirtland Air Force Base East Albuquerque, N. Mex. 87115. Article: Two (2) Heerum Property Protection Doors with Oxide Ceramic Safety Elements and Two (2) P2040 Kroker Safety Locks with Two (2) keys. Date of denial without prejudice to resubmission: April 14, 1977.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.77-25910 Filed 9-6-77;8:45 am]

MARITIME ADMINISTRATION

[Docket No. S-574]

COVE TANKERS CORP.

Application

Notice is hereby given that by letter of August 30, 1977, Coles & Goertner filed an application dated August 15, 1977, on behalf of its client, Cove Tankers Corp., which requests written permission under section 805(a) of the Merchant Marine Act, 1936, as amended, for Cove Tankers Corps. to permit its affiliate, Cove Shipping, Inc., to operate the *SS Stuyvesant* in the carriage of Alaskan oil in the domestic trade, as well as the right to move the *SS Stuyvesant* from one domestic trade to another, and/or from a foreign trade to a domestic trade. The *SS Stuyvesant* is a 226,200 DWT tanker built in 1977. Cove Tankers Corp. holds Operating-Differential Subsidy Agreement, Contract No. MA/MSB-357, covering the participation of the *SS Mount Explorer, SS Mount Navigator,* and *SS Cove Communicator* in cargo carrying service in U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, which will expire on December 31, 1977, or upon completion of a voyage(s) in progress on that date.

The United States Trust Co. of New York, as owner trustee, has agreed to acquire the *SS Stuyvesant* from Polk Tanker Corp., prior to its delivery from the shipbuilders, and to bareboat charter the vessel to Queensway Tankers, Inc., who will time charter the vessel to Sohio Petroleum Co., a Delaware corporation and wholly owned subsidiary of the Standard Oil Co. (Ohio) for the purpose of engaging in the carriage of Alaskan oil in the domestic trade. Queensway Tankers, Inc. proposes to enter into an agreement with Cove Shipping, Inc. pursuant to which Cove Shipping will act as operating agent for the *SS Stuyvesant.* Cove Shipping, Inc. is wholly owned by Lawrence Shipping Corp., which also owns 100 percent of the outstanding stock of Cove Tankers Corp.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on September 14, 1977, file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistant Program No. 11.504 Operating-Differential Subsidies (ODS).)

By order of the Assistant Secretary for Maritime Affairs.

Dated: September 1, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-26035 Filed 9-6-77;8:45 am]

[Docket No. S-575]

COVE TANKERS CORP.

Application

Notice is hereby given that by letter of August 18, 1977, Coles & Goertner filed an application dated August 15, 1977, on behalf of its client, Cove Tankers Corp., which requests written permission under section 805(a) of the Merchant Marine Act, 1936, as amended, for Cove Tankers Corp. to permit its affiliate, Cove Trading Inc., to own the *Cove Trader* (ex-*Transeastern*) for worldwide operations (including domestic operation), and its affiliate, Cove Shipping Inc., to operate the *Cove Trader* in the carriage of Alaskan oil in the domestic trade, as well as the right to move the vessel from one domestic trade to another, and/or from a foreign trade to a domestic trade. The *Cove Trader* is a 49,339 DWT tanker built in 1959. Cove Tankers Corp. holds Operating-Differential Subsidy Agreement, Contract No. MA/MSB-357, covering the participation of the SS *Mount Explorer,* SS *Mount Navigator,* and SS *Cove Communciator* in cargo carrying service in U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, which will expire on December 31, 1977, or upon completion of a voyage(s) in progress on that date.

Cove Trading Inc. has acquired the *Cove Trader* and agreed to enter into an agreement with Cove Shipping Inc. (whose former name was Mount Shipping Inc.) to act as operating agent for the *Cove Trader.* Cove Trading Inc. is a subsidiary of Cove Steamship Inc., which is owned 100 percent by Cove Maritime Companies, Inc. Lawrence Shipping Corp. is also owned 100 percent by Cove Maritime Companies, Inc. Cove Shipping Inc. is wholly owned by Lawrence Shipping Corp., which also owns 100 percent of the outstanding stock of Cove Tankers Corp.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on September 14, 1977 file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties withstanding to be heard, a hearing will be held, the purpose of which will be to receive evidence

under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistant Program No. 11.504 Operating-Differential Subsidies (ODS).)

By order of the Assistant Secretary for Maritime Affairs.

Dated: September 1, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-26036 Filed 9-6-77;8:45 am]

National Oceanic and Atmospheric Administration

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL AND SCIENTIFIC AND STATISTICAL COMMITTEE AND ADVISORY PANEL

Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C., Appendix I, notice is hereby given of a joint meeting of the North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC), and its Advisory Panel (AP) and a separate meeting of the SSC and AP.

The North Pacific Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) has authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the State of Alaska. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

The Council has established a Scientific and Statistical Committee, as well as an Advisory Panel, under Section 302(g) of the Act, to assist the Council in the development and amendment of fishery management plans.

The meetings will be Friday and Saturday, October 27-28, 1977, in the Jury Assembly Room No. 401, State Court Bldg., 303 K Street, Anchorage, Alaska. The meetings will convene at 8:30 a.m., and adjourn at approximate 4:30 p.m. each night. The meetings may be extended or shortened depending upon progress on the agenda. The SSC and AP will meet separately on October 26, in the Council offices, Suite 32, 333 West 4th Avenue, Post Office Mall Building, Anchorage, Alaska, beginning at 1:30 p.m.

PROPOSED AGENDA

OCTOBER 27

PROPOSED AGENDA

OCTOBER 27

1. Executive Director's Report and other Council administrative business.
2. Reports from Scientific and Statistical Committee and Advisory Panel.
3. Progress report and update from Council's Drafting Management Planning Teams.
4. Closed Session to discuss classified material on preparations for and actual negotiations in connection with the International North Pacific Fisheries Commission (INPFC), and the International Pacific Halibut Commission (IPHC) and continuing negotiations with the Canadians. (Council only)
5. Period for public comment.
6. Review of foreign fishing activities.

OCTOBER 28

1. Other Council business.

A closed session of the Council is planned for the early afternoon of the first day, October 27, from 1:30 p.m. through 3:30 p.m. to hear Department of State reports and other related Council business on preparations for an actual negotiations in connection with the International North Pacific Fisheries Commission, the International Pacific Halibut Commission and continuing negotiations with the Canadians, properly classified under Executive Order 11652. Only those members having security clearances will be allowed to attend this executive session. The Scientific and Statistical Committee and Advisory Panel will not attend this session.

After the closed meeting adjourns, a public hearing will be held on the afternoon of the first day, October 27, at approximately 3:30 p.m., at the same location. Interested members of the public are invited to testify at this hearing on matters relating to fishery management plans under development by the Council and other related Council functions.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined, on August 31, 1977 pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the executive session should be exempt from the provisions of the Act relating to open meetings and public participation therein, because these items will be concerned with matters listed in 5 U.S.C. 552b(c)(1), i.e., it is specifically required by E.O. 11652 that they be kept secret in the interest of national security. (A copy of the determination is available for public inspection and copying.)

The meeting will be open to the public (except the closed session of the Council) and there will be seating for approximately 65-75 public members available on a first-come, first-served basis.

Members of the public having an interest in specific items for discussion are also advised that agenda changes, are, at times, made prior to the meetings. To receive information on changes, if any, made to the agenda, interested members of the public should contact on or about October 17, 1977:

Mr. Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska, 99510, Telephone 907-274-4563.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing Mr. Jim H. Branson at the above address. The public is permitted to file written statements at any time before or after the meeting. However, to receive due consideration and to facilitate inclusion in the record of the meeting, typewritten statements which related to the agenda items should be received no later than ten (10) days after the close of the joint meeting.

Dated: August 31, 1977.

WINFRED H. MEIBOHM,
Acting Deputy Director, National Marine Fisheries Service.

[FR Doc.77-25958 Filed 9-6-77;8:45 am]

WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the Western Pacific Fishery Management Act of 1976 (Pub. L. 94-265).

The Western Pacific Fishery Management Council has authority over fisheries within the Fishery Conservation Zone seaward of Hawaii, American Samoa and Guam. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on foreign fishing applications, and conduct public hearings.

The Seventh Meeting of the Council will be held from September 29-30, 1977, at the Royal Lahaina Hotel, Kaanapali, Maui, Hawaii. The meeting will convene at 9 a.m. and will adjourn at approximately 5:30 p.m. The meeting may be extended or shortened depending upon progress on the agenda.

PROPOSED AGENDA

1. Administrative and financial reports.
2. Reports on foreign fishing and enforcement activity.
3. Report on the Fourth Meeting of the Scientific and Statistical Committee.
4. Report on progress and status of management planning activities.
5. Consideration of a draft plan for management of the spiny lobster fishery of the Leeward Hawaiian Islands.
6. Other Council business.

This meeting is open to the public, and there will be seating for approximately 50 members of the public on a first-come, first-served basis.

Members of the public who have an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, interested members of the public should contact on or about September 19, 1977:

Mr. Wilvan G. Van Campen, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1506, Honolulu, Hawaii 96813, 808-523-1368.

Interested members of the public may, at the discretion of the Council, be permitted to speak at times which will allow the orderly of Council business. Inter-

ested members of the public who wish to submit written comments should do so by addressing the Executive Director at the above address. To receive due consideration and to facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Date: August 31, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.77-25959 Filed 9-6-77;8:45 am]

Office of the Secretary

[Dept. Organization Order 10-5 Amdt. 3]

ASSISTANT SECRETARY FOR ADMINISTRATION

Organization and Functions

This order effective August 16, 1977 further amends the material appearing at 38 FR 34133 of December 11, 1973, 41 FR 19996 of May 14, 1976, and 41 FR 36058 of August 26, 1976.

Department Organization Order 10-5, dated November 23, 1973 is hereby further amended as shown below. The purpose of this amendment is to update the list of offices and units reporting to the Assistant Secretary as shown in the attached Appendix. This revised Appendix reflects: (1) the transfer, to the Office of Audits, of the Interagency Auditor Training Center; (2) the consolidation of the Office of Budget and Program Analysis and the Office of Program Evaluation into the Office of Budget and Program Evaluation; (3) the establishment of the Office of ADP Management; and (4) the establishment of the Office of the Secretary Budget Staff; and the removal of the position of Deputy to the Assistant Secretary for Administration (Section 4).

Section 4. Office of the Assistant Secretary for Administration. Delete subparagraph .01b., and reletter the successive subparagraphs c. and d. as b. and c., respectively.

The Appendix attached to this amendment supersedes the Appendix dated April 23, 1976.

Effective: August 16, 1977.

ELSA A. PORTER,
Assistant Secretary
for Administration.

APPENDIX

DEPARTMENTAL OFFICES AND UNITS WHICH REPORT TO ASSISTANT SECRETARY FOR ADMINISTRATION

Office of Administrative Services and Procurement.
Office of ADP Management.
Office of Audits.
Office of Budget and Program Evaluation.
Office of Emergency Readiness.
Office of Financial Management Services.
Office of Investigations and Security.
Office of Organization and Management Systems.
Office of Personnel.
Office of Publications.
Appeals Board (for administrative purposes only).
Special Assistant for Civil Rights.
Office of the Secretary Budget Staff.

[FR Doc.77-25947 Filed 9-6-77;8:45 am]

[Dept. Organization Order 10-3 Amdt. 3]

ASSISTANT SECRETARY FOR DOMESTIC AND INTERNATIONAL BUSINESS

Organization and Functions

This order effective August 15, 1977 further amends the materials appearing at 41 FR 24202 of June 15, 1976, 41 FR 28334 of July 9, 1976, and 41 FR 55220 of December 17, 1976.

Department Organization Order 10-3, dated May 19, 1976 is hereby further amended as shown below. This amendment reflects the transfer of the Bureau of International Economic Policy and Research from the Assistant Secretary for Policy to the Assistant Secretary for Domestic and International Business.

1. *Section 3. Scope of Authority.* A new subparagraph 3.03g. is added to read as follows: "g. The *Deputy Assistant Secretary for International Economic Policy and Research.*"

2. *Section 4. Redesignation and Transfer.* Revise subparagraph 4.a. to read as follows: "a. The functions, personnel, funds, property, and records of the Bureau of International Economic Policy and Research (BIEPR) are hereby transferred to the Assistant Secretary for Domestic and International Business, with the exclusion of ten positions and associated funds (as prescribed in DOO 10-2)."

3. *Section 5. Delegation of Authority.* Add new subparagraphs 5.02 z., aa., bb., cc., and dd. to read as follows: "z. Section 4221 of the Internal Revenue Code of 1954 (26 U.S.C. 4221) and Section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), insofar as they relate to findings with respect to exemptions from taxes and import duties on supplies and equipment for aircraft;

"aa. Section 135 and 104 of the Trade Act of 1974 (88 Stat. 1978, 19 U.S.C. 2155 and 2114) and Section 4(d) of Executive Order 11846 of March 27, 1975, relating to direct negotiation support and the policy matters associated with industry policy and sector advisory committees;

"bb. Sections 5(b) and 5(c) of Executive Order 11846 of March 27, 1975, relating to quantitative import restrictions and monitoring of imports under orderly market agreements;

"cc. Executive Order 11961 of January 19, 1977 which delegates to the Secretary of Commerce the authority of the President under Sections 4(a)(1), (2), and (4), and 4(b) of the International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108).

The functions thereunder shall be carried out in coordination with the Bureau of Economic Analysis, Office of the Chief Economist (Department Organization Order 35-1A), including to the extent feasible, the division or assignment of responsibilties. All regulations established to carry out functions under the Act, and reports to be submitted to the Congress, shall be issued by the Secretary; and

"dd. Executive Order 11858, of May 7, 1975, relating to foreign investment in the United States."

4. *Section 6. Functions.* Subparagraph 6.g. is revised to read as follows: "g. Conduct research, analysis and formulation of international economic and commercial programs and policies relating to trade, finance and investment; manage and provide staff support for the consultations with U.S. industry in support of multilateral trade negotiations; represent the Department in International Trade and other negotiations and carry out the Department's interagency role with such international economic policy organizations as the National Security Council, the National Advisory Council on International Monetary and Financial Policy and others."

Effective August 15, 1977.

ELSA A. PORTER,
Assistant Secretary for
Administration.

[FR Doc.77-25946 Filed 9-6-77;8:45 am]

[Dept. organization order 10-2]

ASSISTANT SECRETARY FOR POLICY

Organization and Functions

This order effective August 15, 1977 supersedes the material appearing at 41 FR 24204 of June 15, 1976.

Section 1. Purpose. .01 This order prescribes the authority and functions of the Assistant Secretary for Policy.

.02 This revision reflects the transfer of the Bureau of International Economic Policy and Research to the Assistant Secretary for Domestic and International Business.

Section 2. Administrative Designation. The position of Assistant Secretary of Commerce, established by the Act of February 14, 1903 (15 U.S.C. 1504), is hereby designated as the Assistant Secretary for Policy (the "Assistant Secretary"). The Assistant Secretary is appointed by the President, by and with the advice and consent of the Senate.

Section 3. Transfer. The Bureau of International Economic Policy and Research is hereby transferred from the Assistant Secretary for Policy and is assigned to the Assistant Secretary for Domestic and International Business. The Assistant Secretary for Policy shall retain ten positions and associated dollars in order to provide the Secretary: (1) policy analyses on issues requiring immediate Secretarial attention; (2) assessment of the views and recommendations of Departmental organizations on major policy matters; (3) coordination and integration of Departmental views on policy matters affecting more than one Commerce element; and (4) ad hoc, longer-term policy studies.

Section 4. Delegation of Authority. Pursuant to the authority vested in the Secretary of Commerce, and subject to such policies and directives as the Secretary may prescribe, the Assistant Secre-

tary for Policy is hereby delegated the authority of the Secretary of Commerce under the Act of February 14, 1903, (15 U.S.C. 1512 *et seq.*, 15 U.S.C. 171 *et seq.*) as amended, as necessary to carry out the functions of the offices under the Assistant Secretary.

Section 5. Functions. The Assistant Secretary shall:

a. Serve as a principal adviser to the Secretary on all policy matters including those relating to the assessment of regulatory impacts on business and industry, those associated with energy and strategic resource development, economic and business matters—domestic and international—particularly as they involve more than one policy making function within the Department, and matters of direct concern to the Secretary;

b. Provide for the Secretary long-term policy studies and coordinate services on broad policy matters concerning more than one operating unit of the Department; and

c. Serve as Executive Director of the Department Policy Council.

Section 6. Office of the Assistant Secretary for Policy. The Office of the Assistant Secretary shall consist of:

a. A Special Assistant; and

b. Such Departmental offices as the Assistant Secretary, in conjunction with the Assistant Secretary for Administration, may establish for the purpose of carrying out assigned functions and responsibilities. A list of these offices is appended hereto, and shall be kept current by the Assistant Secretary. These offices currently include the Office of Energy and Strategic Resource Policy, the Office of Policy Development and Coordination, and the Office of Regulatory Economics and Policy.

The Assistant Secretary for Administration, in cooperation with the Assistant Secretary for Domestic and International Business and the Assistant Secretary, shall determine the amount of funds, positions and personnel to be transferred in accordance with Section 3. of this order.

Effective August 15, 1977.

ELSA A. PORTER,
Assistant Secretary for Administration.

APPENDIX

DEPARTMENTAL OFFICES COMPRISING THE OFFICE OF ASSISTANT SECRETARY FOR POLICY

Office of Energy and Strategic Resource Policy.

Office of Policy Development and Coordination.

Office of Regulatory Economics and Policy.

[FR Doc.77-25945 Filed 9-6-77;8:45 am]

BUREAU OF INTERNATIONAL ECONOMIC POLICY AND RESEARCH

Organization and Functions; Revocation

This order effective August 15, 1977 supersedes the material appearing at 41 FR 50313 of November 15, 1977.

Revocation. Department Organization Order 21-4, dated October 13, 1976 is hereby revoked.

Explanation. The functions, personnel, funds, property, and records of the Bureau of International Economic Policy and Research have been transferred from the Assistant Secretary for Policy to the Assistant Secretary for Domestic and International Business.

Effective August 15, 1977.

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc.77-25949 Filed 9-6-77;8:45 am]

[Dept. Organization Order 40-1 Amdt. 1]

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Organization and Functions

This order effective August 15, 1977 amends the material appearing at 41 FR 50314 of November 15, 1976.

Department Organization Order 40-1, dated October 13, 1976, is hereby amended as shown below. The purpose of this amendment is to reflect the changes in DIBA's organization and functions resulting from the transfer of the Bureau of International Economic Policy and Research from the Assistant Secretary for Policy to the Assistant Secretary for Domestic and International Business (Section 9.).

1. A new Section 9. is added to read as follows:

"*Section 9. Bureau of International Economic Policy and Research.* The *Deputy Assistant Secretary for International Economic Policy and Research* shall determine the objectives of the Bureau—a mainline component of DIBA—assist and advise the Assistant Secretary in the research, analysis and formulation of international economic and commercial programs and policies relating to trade, finance and investment, and competitive assessment; shall initiate and review research studies on developments affecting U.S. trade and commercial interests abroad and provide statistical information and analysis on the foreign trade of the U.S. and of foreign countries; shall be responsible for development and coordination of policy formulation; represent the Department in international trade and related negotiations; and carry out the Department's interagency policy role in such organizations as the National Security Council, the Council on International Economic Policy, the Office of the Special Trade Representative, and the National Advisory Council on International Monetary and Financial Policies. The Deputy Assistant Secretary shall be assisted by a Deputy Director who shall perform the functions of the Deputy Assistant Secretary in the latter's absence. The functions of the Bureau shall be carried out through its principal organizational elements as prescribed below:

".01 The *Office of Economic Research* shall develop, implement, and coordinate the Department's program of quantitative research and analysis of international economic policy issues, conduct research studies on developments affecting U.S. international trade and commercial interest, on the economic factors affecting the competitive position of the United States, and on the domestic economic impact of international developments; develop and utilize econometric models for forecasting trade and international economic conditions and for simulating the effects of policy alternatives; maintain a research program for improving the Department's and the Government's capability for empirical and quantitative analysis of international economics; represent the Department in interagency committees concerned with international economic research matters; serve as liaison with U.S. Government research and intelligence agencies as well as with private research groups, and prepare and publish economic analyses and interpretative statistical information on the foreign trade of the United States and of foreign countries.

".02 The *Office of International Trade Policy* shall be responsible for the development and implementation of the Department's position on U.S. international trade policy, including trade legislation and International Trade Commission findings, trade negotiations, consultations with industry, and trade and commercial policy relations with individual countries, regional economic groupings, and international organizations. For such trade policy matters, the Office shall represent the Department on interagency committees, and in international meetings on trade policy matters; analyze and comment on relevant legislative proposals; prepare the Department's position on International Trade Commission findings, bilateral trade policy issues and bilateral trade negotiations; manage the consultations with U.S. industry in support of multilateral trade negotiations; maintain relationships and representation with business and trade groups; and, through appropriate channels, make representations to foreign governments on behalf of U.S. business on the maintenance of their full rights under the terms of treaties and international agreements of the United States.

".03 *Office of International Finance and Investment* shall be responsible for the development and implementation of the Department's policies relating to international investment, finance and monetary affairs, U.S. and foreign taxation of international business operations, economic impact of international technology transfer, international business practices, international trade aspects of antitrust, standardization, patent and copyright protection, and related matters arising from the international commercial and investment operations of U.S. firms; and shall analyze and act on international transportation and insurance problems affecting U.S. business. The Office shall provide staff support for the Department's representative on the National Advisory Council on International Monetary and Financial policies, and represent the Department on interagency work groups and at international meetings concerning multinational corpora-

tions, investment disputes and other related matters.

".04 The *Office of Foreign Investment in the United States* shall develop, obtain, consolidate and analyze information on foreign investment in the United States; improve procedures for the collection and dissemination of information on such foreign investment, based on close observation of foreign investment in the U.S., prepare reports and analyses of trends and significant developments in appropriate categories of such investment, compile data and prepare evaluations of significant inward investment transactions and assess the impact of such investment on U.S. economic security; submit to the interagency Committee on Foreign Investment in the United States, the Congress and the public, appropriate reports, analyses, data and recommendations on foreign investment in the U.S.; and obtain information and assistance from other Federal departments and agencies in order to carry out the Secretary's functions and activities under Executive Order 11858."

2. In pen and ink, renumber the existing sections 9 and 10, as sections *10* and *11*, respectively.

3. Exhibit 1, dated June 5, 1977 supersedes Exhibit 1 of October 13, 1976. A copy of Exhibit 1 is on file with the original of this document with the Office of the Federal Register.

Effective August 15, 1977.

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc.77-25952 Filed 9-6-77;8:45 am]

[Dept. Organization Order 30-7B]

NATIONAL TECHNICAL INFORMATION OFFICE

Organization and Functions

This order effective August 1, 1977, supersedes the materials appearing at 40 FR 3627 of January 23, 1973, and 41 FR 31415 of July 28, 1976.

Section 1. Purpose.

.01 This order prescribes the organization and assignment of functions within the National Technical Information Service (NTIS).

.02 This revision: changes the name of the Office of Market Development to the Office of Marketing and increases the scope of its functions (Section 5.); establishes the Office of Product, Program and Administrative Management (sec. 7.), and the Office of the Controller (sec. 8.); and generally updates the lanaguage of the order.

Section 2. Organization Structure. The principal organization structure and line of authority shall be as depicted in the attached organization chart. A copy of the organization chart is on file with the original of this document with the Office of the Federal Register.

Section 3. Office of the Director.

.01 The *Director*, as the head of NTIS, directs and is responsible for all activities of the organization.

.02 The *Deputy Director* assists the Director in managing NTIS and performs the functions of the Director during the latter's absence.

Section 4. Staff Offices Reporting to the Director. The *Office of Government Inventions and Patents* shall develop and operate programs to promote wider private sector use of government inventions. It shall administer a program for the foreign filing and licensing of government inventions under Executive Order 9865, as amended. It shall also provide Executive Secretariat functions for the Committee on Government Patent Policy of the Federal Council for Science and Technology and assist in the development formulation, to the extent appropriate, of a uniform government-wide patent policy.

Section 5. Office of Marketing. The Office shall be headed by an *Assistant Director, Marketing* who shall be responsible for the conduct of all functions relating to marketing, market development and services promotion, speakers, exhibits, seminars, conferences, and educational programs. It shall advise the Office of Product, Program and Administrative Management with respect to the design, format, and presentation of all NTIS products and services, and in the planning of new products. It shall recommend, develop, and implement methods and procedures for identifying, locating and refining potential markets for NTIS products and services; design and use professional promotional vehicles for stimulating NTIS sales in such markets; and conceive, initiate, and design graphic and illustrative material for all publications and services, sales promotion and seminars, presentations, plant tours, and employee information. It shall also maintain a central photographic and illustrations file and serve as a liaison with the Department's graphic arts group.

Section 6. Office of Production. The Office shall be headed by an *Assistant Director, Production*, who shall provide operating policy direction to and overall administration of the acquisition, cataloging, indexing, filming, copying, order processing, warehousing, distribution, and automatic data processing operations. The functions of the Office shall be carried out through its principal organizational elements as prescribed below.

.01 The *Input Processing Division* shall be responsible for acquisitioning, accessioning, evaluating, scheduling, routing, descriptive cataloging, indexing, and subject analysis of all material entering the NTIS collection. The Division will produce abstract journals, indexes, and other printed material in accordance with objectives set by the Office of Product, Program, and Administrative Management.

.02 The *Distribution and Reproduction Division* shall store and ship documents and other NTIS products being offered for sale directly or indirectly; print or film copies of NTIS products; handle customer requests and inquiries for NTIS products and services, and will satisfy NTIS customers by alleviating complaints.

.03 The *Automated Data Processing Division* shall plan and operate the agency's automatic data processing systems used to process the bibliographic data file, publications and edit programs, inventory management programs, and sales order processing files; develop procedural adaptations of automatic data programs, participate in studies and analyses, and recommend the applicability of automated processing.

Section 7. Office of Product, Program, and Administrative Management. The Office shall be headed by an *Assistant Director* who shall be responsible for developing policy recommendations in all areas relative to the design, development, and business management of NTIS products, programs, and services. The Assistant Director shall also lead in coordinating on-going NTIS operations, ensuring a satisfactory resolution among finance, production, and marketing interests in the delivery of NTIS products, programs, and services.

The functions of the Office shall be carried out through its principal organizational elements as prescribed below:

.01 The *Office of Product and Program Management* shall be directly responsible for coordinating the successful production and marketing of on-going products and services, and for developing and bringing to the market new and improved information products and services. The Office shall be responsible for ensuring the regular acquisition of scientific and technical, economic, and engineering information from foreign or domestic sources, for availability to business, industry, Government, and other interested individuals. The Office shall be responsive, on a continuing basis, to the needs of NTIS source clients, managing dealers, and major customers, and will monitor their acceptance of, and sensitivity to, NTIS policies on products, programs, and pricing.

.02 The *Office of Administration* shall provide, for all components of NTIS, the following administrative services: procurement and contract management; property and supply management; directives and paper work management; records and files management; space and facilities management; travel and traffic management; telecommunications, mail, messenger, and related office services; occupational health and safety; security; and certain aspects of personnel management including labor relations, training, and liaison with the Departmental Office of Personnel.

Section 8. Office of the Controller. The Office shall be headed by a *Controller* who shall be responsible for providing technical direction, coordination, evaluation, and execution of financial management policies: performing cost studies as a basis for product pricing; formulating and executing an integrated budget, which includes revenue forecasts, expense and production budgets, cost standards, and programs for capital investment and financing; measuring performance against approved operating plans

and standards; planning, developing, and implementing accounting procedures and systems; and measuring and reporting on the validity of the objectives of NTIS and on the effectiveness of its policies, organization structure and procedures in attaining these objectives.

Effective: August 1, 1977.

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc.77-25951 Filed 9-6-77 8:45 am]

[Dept. Organization Order 20-9 Amdt. 2]

OFFICE OF PUBLICATIONS

Organization and Functions

This order effective August 8, 1977, further amends the materials appearing at 41 FR 31415 of July 28, 1977, and 42 FR 11863 of March 1, 1977.

Department Organization Order 20-9, dated June 29, 1976 is hereby further amended as shown below. The purpose of this amendment is to assign responsibility for Departmental seals and emblems and stationery specifications.

Section 3. Functions. Subparagraph .01f. is added to read as follows: "f. Carry out principal Departmental responsibility for coordinating and processing all requirements for seals and emblems (as prescribed in DAO 201-1), and for stationery specifications (as prescribed in DAO 214-2)."

Effective: August 8, 1977.

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc.77-25948 Filed 9-6-77;8:45 am]

[Dept. Organization Order 30-3B Amdt. 1]

PATENT AND TRADEMARK OFFICE

Organization and Functions

This order effective August 11, 1977, amends the material appearing at 41 FR 37831 of September 8, 1976.

Department Organization Order 30-3B dated August 19, 1976 is hereby amended as shown below. This amendment establishes: the Office of Planning, Budget and Evaluation by consolidating the former Office of Budget and the Office of Planning and Evaluation (paragraph 8.07); the Scientific Library, formerly part of the Office of Patent and Trademark Services, as one of the Patent Documentation Organizations (subparagraph 5.02f.); and revises the functional statement of the Office of Patent and Trademark Services accordingly (paragraph 8.05).

1. *Section 4. Organizations Reporting to the Commissioner.* In pen and ink delete paragraph 4.05.

2. *Section 5. Organizations reporting to the Assistant Commissioner for patents.* Reletter the current subparagraph 5.02f as g. A new subparagraph f. is added to read as follows: "f. The *Scientific Library* maintains collections of technical and scientific information such as foreign patents, periodicals, books and other publications, in printed or microfilm form, and provides related services and facilities, for use by the public and by examiners and other personnel in the internal operations of the Patent and Trademark Office."

3. *Section 8. Offices Reporting to the Assistant Commissioner for administration.* a. In pen and ink delete the current paragraph 8.02, and renumber .03, .04, and .05 as .02, .03, and .04. The current .06 is renumbered .05 and revised to read as follows:

".05 The *Office of Patent and Trademark Services* shall provide materials and services to the public, many on a fee basis, as well as to examiners and other personnel for internal operations of the Patent and Trademark Office. It shall maintain a Public Search Room with a collection of U.S. patents, record assignments and other instruments for the transfer of property rights to patents and trademarks, furnish copies of patents, trademark registrations and office records, and provide drafting services. It shall also conduct an initial examination of patent applications for compliance with law and regulations as to form and certain matters of factual content; grant or deny a filing date based on such examination, and forward to the Examining Groups those granted a filing date; acknowledge the acceptance or rejection of applications for examination; and maintain records on the status and location of all applications."

b. The current 8.07 is renumbered .06, and a new .07 is added to read as follows:

".07 The *Office of Planning, Budget and Evaluation*, under the policy guidance of the Commissioner, shall develop objectives and subobjectives for the Patent and Trademark Office and prepare program plans based thereon which reflect decisions of the Commissioner on program alternatives and allocation of resources; formulate, interpret and execute budgetary and fiscal policies; in collaboration with cost center officials, develop, establish and maintain comprehensive budget and fiscal plans; develop and present budget requests; allocate and maintain budgetary accountability of available funds; maintain external liaison in budgetary matters; review and evaluate the fulfillment of budget-based program commitments; and establish program evaluation plans, identifying problem areas, monitoring studies of program effectiveness, establishing criteria of study quality, and reviewing studies monitored."

4. The organization chart dated August 19, 1976 is superseded by the chart attached to this amendment. A copy of the organization chart is on file with the original of this document with the Office of the Federal Register.

Effective August 11, 1977.

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc.77-25950 Filed 9-6-77;8:45 am]

Office of the Secretary

PRIVACY ACT OF 1974

Proposed New System of Records

The purpose of this notice is to propose a new Privacy Act System of Records for the White House Conference on Balanced National Growth and Economic Development, entitled Mailing List and Correspondence File, COMMERCE/WHC-1.

The purpose of this new system is to develop a mailing list and correspondence file which will help obtain the broadest possible interest and participation in the Conference.

This Conference, authorized by Pub. L. 94-487, Title II, October 12, 1976, 90 Stat. 2339, is to develop recommendations for further action toward balanced national growth and economic development and to take account of present economic conditions and trends. The Department of Commerce has been designated by the President as the lead agency in planning and conducting the Conference.

The records to be maintained by the White House Conference in this system of records are names, addresses, and other pertinent data, as described in the system description below, for individuals with whom the Conference communicates. These individuals may include, but are not limited to, private citizens who receive conference literature, those who correspond with the Conference on subject areas of interest, and those who are associated with the Conference as consultants, participants, or in other ways. These records are maintained to assure that the Conference communicates appropriately with all interested individuals. The proposed system is printed below.

The Commerce Department submitted a New System Report dated August 30, 1977, to the Congress, the Office of Management and Budget, as required by the Privacy Act.

Although the Act requires the opportunity for public comment only as to the proposed "routine uses," comments regarding any portion of this notice will be given due consideration before final publication. Any interested person may submit written data, views, or arguments, to the Assistant Secretary for Administration (Attn: Information Management Division, Room 5319), U.S. Department of Commerce, 14th and E Streets NW., Washington, D.C. 20230, any time on or before October 7, 1977. The comments received will be available, as received, for public inspection at the above address between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday (except holidays).

This system of records will become effective October 7, 1977, provided the Department's request for a waiver of the 60-day advance notice requirement is granted by the Office of Management and Budget, or unless the Department notices to the contrary.

(5 U.S.C. 552a(e) (4) and (11), sec. 3 of the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896).)

ELSA A. PORTER,
Assistant Secretary for Administration.

AUGUST 30, 1977.

COMMERCE/WHC-1

System name:

Mailing List and Correspondence File—Commerce White House Conference-1.

System location:

White House Conference on Balanced National Growth and Economic Development, U.S. Department of Commerce, 2001 S Street NW., Washington, D.C. 20009.

Categories of individuals covered by the system:

Individuals with whom the Conference communicates, including individuals who receive Conference literature.

Categories of records in the system:

Name; home and or business address; home and or business telephone number; place of employment or interest group; type of organization; nature of relationship to the Conference (participant, consultant, guest, observes, etc.); source of name; and subject area(s) of interest.

Authority for Maintenance of the system:

Public Works and Economic Development Act of 1976, Pub. L. 94-487, Title II, 90 Stat. 2339, 42 U.S.C. 3121 note.

Routine uses:

Information may be provided Federal, State, local or international agencies in response to a written request indicating a likelihood that individuals on the mailing list would benefit by or be interested in material to be sent by the requesting agency. General routine uses of the Prefatory Statement also apply.

Storage:

Paper copy in file folders, index cards in file drawers, computer tape, mailing labels.

Retrievability:

By name alphabetically, by geographical area (State, city), by type of organization with which affiliated, if any, by nature of relationship to the Conference, by source of name and by subject area(s) of interest.

Safeguards:

Records are located in locked cabinets or in secured rooms or premises with access limited to those whose official duties require access.

Retention and Disposal:

Permanent. Retired in accordance with applicable records control schedule.

System manager and address:

Director, White House Conference on Balanced National Growth and Economic Development, U.S. Department of Commerce, 2001 S Street NW., Washington, D.C. 20009.

Notification procedure:

Information may be obtained from: Deputy Director for Policy of the White House Conference on Balanced National Growth and Economic Development, 2001 S Street NW., Washington, D.C. 20009.

Record access procedures:

Requests from individuals should be addressed to Same address as stated in the notification section above.

Contesting record procedures:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

Record source categories:

Subject individual; those authorized by the individual to furnish information; public reference sources (press articles, Who's Who, etc.); government, private, and public interest organizations.

[FR Doc 77-25872 Filed 9-6-77;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

REPUBLIC OF KOREA

Adjusting Charges Against the Import Restraint Levels for Certain Man-Made Fiber Textile Products

SEPTEMBER 2, 1977.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Reducing the import charges against the restraint level for Category 229 (Coats, Not Knit) and charging them to Category 240 (other wearing apparel, not knit) during the agreement year which began on October 1, 1976. (A detailed description of the Categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 31, 1975 (40 FR 60220), December 30, 1976 (41 FR 56881), January 21, 1977 (42 FR 3888), and March 7, 1977 (42 FR 12898).)

SUMMARY: On January 1, 1977, a list of changes in the Tariff Schedules of the United States Annotated Numbers in the arrangement of the cotton, wool and man-made fiber textile product categories used by the United States in administering the textile trade agreements program became effective. Among the changes, T.S.U.S.A. number 376.5610, formerly located in Category 240, was placed in Category 229.

Pursuant to the Cotton, Wool and Man-Made Fiber Textile Bilateral Agreement of June 26, 1975, as amended, between the Governments of the United States and the Republic of Korea, imports in T.S.U.S.A. number 376.5610 continue to be charged to Category 240 for the agreement year beginning October 1, 1976.

EFFECTIVE DATE: September 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert C. Woods, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-5423).

SUPPLEMENTARY INFORMATION: On December 30, 1976 (41 FR 56881) and January 21, 1977 (42 FR 3888), there was published in the FEDERAL REGISTER notices announcing changes in the list of Tariff Schedules of the United States Annotated Numbers contained in textile categories used by the United States in administering the textile trade agreements program. These changes were effective on January 1, 1977, and included replacing T.S.U.S.A. Number 376.5600 (contained in Category 240) with T.S.U.S.A. Numbers 376.5610 (moved to Category 229) and 376.5620 (left in Category 240).

In the letter published below, the Commissioner of Customs is directed, in accordance with the provisions of the Bilateral Agreement, to adjust the charges against the restraint level for Category 229 in the current agreement period.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

SEPTEMBER 2, 1977.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 25, 1975, between the Governments of the United States and the Republic of Korea, it would beappreciated if you would deduct 64,764 dozen from the charges to the level of restraint for Category 229 for the agreement period which began on October 1, 1976. This deduction is for the period January 1, 1977 through July 31, 1977. Deductions for the remainder of the agreement will be sent when data are available. This will become effective on September 8, 1977.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc 77-26202 Filed 9-6-77;9:53 am]

COMMISSION ON FEDERAL PAPERWORK

PUBLIC MEETING

Change of Location for Washington, D.C., Meeting

Notice is hereby given of a change in the location of public meeting by the Commission on Federal Paperwork to be held in Washington, D.C. Notice of this meeting appears at page 43424 of the FEDERAL REGISTER on August 29, 1977. The Commission has moved the meeting to the Caucus Room, Room 345, of the Cannon Office Building.

FRANK HORTON,
Chairman.

[FR Doc 77-25981 Filed 9-6-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

GENERAL ADVISORY COMMITTEE

Meeting

SEPTEMBER 1, 1977.

Pursuant to provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) in accordance with the purpose of section 26 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2036) and section 104(d) of the Energy Reorganization Act of 1974 (42 U.S.C. 2814), notice is hereby given that the General Advisory Committee will hold a meeting on September 21 and 22 in Golden, Colo. The open sessions will be held in the Library, second floor, Solar Energy Research Institute, 1536 Cole Blvd., Golden, Colo. 80401. The agenda is as follows:

SEPTEMBER 21

9 a.m.-11a.m.—Solar Study (discussion with Stanford Research Institute).
11 a.m.-12:30 p.m. Briefing on Decentralized Energy Technologies.
2 p.m.-3 p.m.—Briefing on Solar Energy Research Institute Programs.
3 p.m.—5:30 p.m.—Solar Study (discussion with SRI).

SEPTEMBER 22

8:30 a.m.-12 noon—Solar Study (discussion with SRI).
1:30 p.m.-3 p.m.—Solar Study (discussion with SRI).

In addition to the above agenda items, the Committee will meet in closed session under the authority of Section 10(d) of Pub. L. 92-463 as follows:

SEPTEMBER 21

7:30 p.m.-9:30 p.m. Review of Nominations for the 1977 E. O. Lawrence Awards (Exemption 6 of 5 U.S.C. 552b(c).

This session will involve information exempt from disclosure under 5 U.S.C. 552b(c), exemption (6).

I have determined that it is necessary to close this portion of the meeting to receive and discuss information which falls within exemption (6) of 5 U.S.C. 552b(c). Any non-exempt material that may be discussed at this session will be inextricably intertwined with the discussion of exempt material and no further separation is practical. It is essential to close such portion of the meeting to protect such privileged information.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in agenda items, scheduled above, the following requirements shall apply:

(a) Persons wishing to submit written statements on agenda items may do so by mailing 13 copies thereof, postmarked no later than September 13, 1977, to the Secretary, General Advisory Committee, U.S. Energy Research and Development Administration, Washington, D.C. 20545. Comments shall be based on the above agenda items. Minutes of the meeting will be kept open for 30 days for the recepit of written statements for the record.

(b) Information as to whether the meeting has been rescheduled or relocated can be obtained by a prepaid telephone call to the Office of the Secretary of the Committee on 202 376 4678 between 8 30 a.m. and 5 p.m., eastern time. Members of the public who are interested in attending are urged to call since the location or schedule may change.

(c) Questions at the meeting may be propounded only by members of the General Advisory Committee.

(d) Seating to the public will be made available on a first-come, first-served basis.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting will be permitted both before and after the meeting and during any recess. The use of equipment will not, however, be allowed while the meeting is in session.

(f) Copies of the minutes will be available for copying, following their certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the Energy Research and Development Administration's Public Document Room, 20 Massachusetts Avenue NW., Washington, D.C. 20545, upon payment of all charges required by law.

HARRY PEEBLES,
Deputy Advisory Committee Management Officer.

[FR Doc.77-25997 Filed 9-6-77;8:45 am]

INDUSTRY BRIEFING ON ADVANCED CONVERSION TECHNOLOGY STUDIES FOR COGENERATION

Meeting

AUGUST 29, 1977.

The ERDA Division of Conservation Research and Technology will conduct a briefing for industry on a forthcoming Cogeneration Technology Alternatives Study (CTAS) which is to define ERDA sponsored advanced energy conversion technology needs for industrial congeneration applications.

The briefing will take place on Friday, September 16, 1977 in Washington, D.C. from 9 30 a.m. to 12 30 p.m.

As part of the briefing, NASA Lewis Research Center, in support of the ERDA sponsored study will present considerations in evaluating advanced energy conversion systems for cogeneration.

Comments and or questions from the floor will be permitted from 11:30 a.m. to 12 30 p.m.

Questions requesting clarification of the announcement regarding the Cogeneration Technology Alternatives Study which appeared in the Commerce Business Daily on August 8, 1977, will also be answered during this time. If you wish to attend the briefing please call Dianne Sherwood at Courtesy Associates, 1629 K Street NW., Washington, D.C., 202-296-0935 for meeting arrangements and hotel reservations.

JOHN A. BELDING,
Director, Division of Conservation Research and Technology.

[FR Doc.77-25998 Filed 9-6-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 787-2]

MAINE DRINKING WATER

Approval of State Application for Primary Enforcement Responsibility

In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), (88 Stat. 1661; 42 U.S.C. 300f et seq.) and 40 CFR 142 (41 FR 2918, January 20, 1976), Mr. David E. Smith, Commissioner of the Maine Department of Human Services, has submitted an application to assume primary enforcement responsibility under the SDWA to the Environmental Protection Agency (EPA) for approval.

Notice is hereby given that the Regional Administrator, EPA, Region I, has approved this aplication for primary enforcement authority, to become effective October 1, 1977. This action is based on a thorough evaluation of the State's water supply supervision program in relation to the requirements of 40 CFR 142 10, including the adoption and implementation of:

(1) State primary drinking water regulations; (2) an inventory of public water systems; (3) a systematic program of sanitary surveys; (4) a State program for certification of laboratories; (5) State laboratory facilities certified by EPA; (6) a plan review program; (7) adequate statutory or regulator enforcement authority; (8) record-keeping and reporting procedures; (9) a program for issuing variances and exemptions; (10) a plan for providing safe drinking water under emergency circumstances.

This evaluation has shown that the program which will be carried out by the Department of Human Services' Division of Health Engineering fulfills all requirements for obtaining primary enforcement authority.

Any interested person may request a public hearing to consider the Regional Administrator's determination within 30 days of the publication of this notice. If a public hearing is requested and granted, this determination shall not become effective until such time, following the hearing, as the Regional Administrator issues an order affirming or rescinding the determination. Requests for hearing shall be addressed to:

William R. Adams, Regional Administrator, U.S. Environmental Protection Agency, Room 2203, John F. Kennedy Building, Boston, Mass. 02203.

and shall include the following information:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity,

the signature of a responsible official of the organization or other entity.

A complete copy of the Department of Human Services' application for primary enforcement responsibility is available for public inspection during normal business hours at the Office of the Regional Administrator and at the following location in Maine:

State of Maine, Department of Human Services, Division of Health Engineering, Room 259, Health and Welfare Building, 221 State St., Augusta, Maine 04333.

Dated: August 30, 1977.

WILLIAM R. ADAMS,
Regional Administrator, Region I.

[FR Doc.77-26022 Filed 9-6-77;8:45 am]

MICHIGAN DRINKING WATER

[FRL 787-3]

Determination of Primary Enforcement Responsibility

This public notice is issued under section 1413 of the Safe Drinking Water Act, Pub. L. 93-523, December 16, 1974, and section 142.10 of the National Interim Primary Drinking Water Regulations, published in the FEDERAL REGISTER on January 20, 1976.

A submission, dated July 7, 1977, has been received from the Director, requesting a determination that the Michigan Department of Public Health has met requirements for primary enforcement responsibility for public water systems in the State of Michigan, in accordance with the provisions of this Act.

In response, I have determined that the Michigan Department of Public Health has the statutory authority and, with the adoption of the rules in a form similar to those submitted to the U.S. Environmental Protection Agency, will meet all conditions of the Safe Drinking Water Act and subsequent regulations for the assumption of primary enforcement responsibility for public water systems in the State of Michigan. The State—

(1) Will adopt drinking water regulations which are no less stringent than the National Interim Primary Drinking Water Regulations;

(2) Will adopt and implement adequate procedures for the enforcement of such State regulations, including adequate monitoring and inspections;

(3) Will keep such records and make such reports as required;

(4) Will issue variances and exemptions in accordance with the provisions of the National Interim Primary Drinking Water Regulations;

(5) Will adopt and implement an adequate plan for the provision of safe drinking water under emergency circumstances.

All documents relating to this determination are available for public inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Bureau of Environmental and Occupational Health, Michigan Department of Public Health, 3500 North Logan St., Lansing, Mich. 48914

Michigan Department of Public Health, 305 Ludington St., Escanaba, Mich. 49829.

Water Supply Branch, Environmental Protection Agency, Region V, 230 South Dearborn St., Chicago, Ill. 60604.

Any interested person may comment upon the State submission by writing to the U.S. EPA, Region V office. Written comments must be submitted on or before October 5, 1977.

I have scheduled a public hearing to consider this application and to enable all interested parties to present their views on the State's submission. The hearing will begin at 11 a.m. on October 7, 1977, in the Manty Conference Room, Michigan Department of Public Health in Lansing, Mich.

Oral statements will be heard and considered, but, for accuracy of the record, all testimony should be submitted in writing. Statements should summarize extensive written material, so there will be time for all interested parties to be heard. Persons are encouraged to bring extra copies of their written statements for the use of the hearing officer and other interested persons.

The hearing officer may, at his discretion, exclude oral testimony if it is overly repetitious of previous testimony heard or if it is not relevant to the decision to approve or require revision to the State program as submitted.

Further information about the public hearing may be obtained by writing the Water Supply Branch of the U.S. EPA, Region V, or by calling Joseph Harrison at 312-353-2151 or by writing the Bureau of Environmental and Occupational Health, Michigan Department of Public Health or by calling William Kelley at 517-373-1376.

No final decision will be made until the rules are final. If the final rules are in a form similar to the proposed rules, I will review the record and issue an order affirming or rescinding the determination. If the determination is affirmed, it shall become effective as of the date of this notice. If the final rules are in a form different from those proposed, I will announce a public comment period of thirty days. It should also be noted that the Offi e of General Counsel has not yet approved my initial determination and will review the submittal after the rules are fully promulgated.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated August 31, 1977.

GEORGE R. ALEXANDER, Jr.,
Regional Administrator, Region V, Environmental Protection Agency.

[FR Doc 77-26061 Filed 9-6-77;8:45 am]

[FRL 786-5]

OCEAN DUMPING

Availability of Implementation Manual, "Ecological Evaluation of Proposed Discharge of Dredged Material Into Ocean Waters"

In accordance with §§ 227.6(e) and 227.27(b) of the Environmental Protection Agency's (EPA) Criteria for the Evaluation of Permit Applications for Ocean Dumping of Materials (40 CFR Chapter I, Subchapter H, Part 227, 42 FR 2462, 2466-2468, 2476-2482, January 11, 1977), notice is hereby given of the availability of a manual setting forth the procedures for conducting bioassays on the liquid, suspended particulate, and solid phases of dredged material to determine whether such material is acceptable for ocean disposal under §§ 227.6(c) and 227.13(c) of the Criteria. An additional manual revising standard methods for bioassay procedures for non-dredged materials is under development and will be published in the near future; notice of availability of this manual will be published in the FEDERAL REGISTER.

As research leading to the development of this revised manual progresses, certain procedures in the dredged material manual may be found applicable to nondredged wastes. In such cases, appropriate procedures in the dredged material manual may be used, in the discretion of EPA Regional Administrators, as the basis for providing interim guidance on acceptable bioassay procedures for suspended particulate and solid phases of other materials to determine whether such materials are acceptable for ocean dumping under § 227.6(c) of the Criteria.

The dredged material bioassay manual is the product of a multi-disciplinary effort by both EPA and the Corps of Engineers to develop sound, routinely implementable procedures for determining whether dredged material complies with the technical requirements of the Criteria. Among other things, the manual discusses the requirements of the Criteria and provides detailed guidance on sediment and water sample collection, preparation and preservation; chemical analysis of the liquid phase; bioassays of liquid, suspended particulate and solid phases; estimation of bioaccumulation potential; and estimation of initial mixing. Both EPA and the Corps anticipate that the manual will be periodically revised to reflect technical and scientific advances in the state of the art.

The interim criteria of § 227.6(e) shall become inapplicable and the biological criteria of § 227.6(c) shall become mandatory for the evaluation of all permit applications for the ocean disposal of dredged material received after the date of publication of this notice.

Copies of the implementation manual are available from Chief, Marine Protection Branch (WH-548), Environmental Protection Agency, Washington, D.C. 20460; or from the U.S. Army Engineer Waterways Experiment Station, Post Office Box 631, Vicksburg, MS 39180, Attention: D. P. Booth.

Both EPA and the Corps invite continuing public comment on the manual including, but not limited to, the scope of the manual and proposed revisions. Comments should be sent to the Chief, Marine Protection Branch, and/or the U.S. Army Engineer Waterways Experi-

ment Station at the addresses indicated above.

Dated: August 31, 1977.

THOMAS C. JORLING,
Assistant Administrator for Water and Hazardous Materials.

[FR Doc.77-25873 Filed 9-6-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21373]

PAUL GEORGE KASANOFF

Suspension of Radiotelephone Third Class Operator Permit; Order

Adopted: August 26, 1977

Released: August 30, 1977

In the Matter of Paul George Kasanoff, 93 Harbor Key, Secaucus, N.J. 07094.

1. The Chief, Field Operations Bureau has under consideration the suspension for a period of one year of the Radiotelephone Third Class Operator Permit, P3-2-53596, issued to Paul George Kasanoff of the above captioned address for the violation of Section 13.70 of the Commission's Rules.[1] Paul George Kasanoff presently possesses a Radiotelephone Third Class Operator Permit with a broadcast endorsement which expires May 16, 1980.

2. On May 12, 1976, Kasanoff appeared at the Commission's Boston Field Office located at 165 State Street, Boston, Mass., and filed an application for a Radiotelephone Third Class Operator Permit under the name of "Jay Michael Davis". Based on information available to the Commission, it appears that Kasanoff filed the application for the purpose of assisting another Commission licensee, Fred A. Hunter, in attempting to frauduently obtain a broadcast endorsement[2] to be affixed to Hunter's Radiotelephone Third Class Operator Permit.

3. It appears further on the basis of information available to the Commission, that Kasanoff did enter the examination room under the assumed name of "Davis", took the Element Nine portion of the examination for Hunter through the exchange of examination papers with Hunter at the time, and submitted the examination paper bearing Hunter's name as his own

4. On May 9 1977 the Chief Field Operations Bureau under delegated authority released on Order proposing the suspension of the above captioned permit for one year In a letter dated May 16, 1977 Kasanoff requested a hearing. The timely request places in abeyance until the conclusion of this proceeding the proposed suspension.

5. Accordingly, it is ordered, pursuant to Section 303(m)(2) of the Communications Act of 1934, as amended and §§ 0.311 and 1.85 of the Commission's Rules, that the matter of a suspension of the Radiotelephone Third Class Operator Permit—P3-2-53596—issued to Paul George Kasanoff is hereby designated for a hearing at a time and place to be specified by a further Order of the Commission, upon the following issues:

(a) To determine whether Paul George Kasanoff did on May 12, 1976, wilfully and knowingly file an application for a Radiotelephone Third Class Operator Permit in the name of "Jay Michael Davis" in violation of § 13.70 of the Commission's Rules.

(b) To determine whether Paul George Kasanoff did on May 12, 1976, attempt to assist Fred A. Hunter to fraudulently obtain a broadcast endorsement to be affixed to Hunter's Radiotelephone Third Class Operator Permit in violation of § 13.70 of the Commission's Rules.

(c) To determine, in light of the evidence adduced on the preceeding issues, whether the Radiotelephone Third Class Operator Permit issued to Kasanoff should be suspended for a period of one year.

6. It is further ordered, that, to avail himself of the opportunity to be heard, the applicant, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission in triplicate a written appearance stating an intent to appear on a date fixed for hearing to present evidence on the issues specified in this order.

8. It is further ordered, that the Secretary shall send a copy of this Order by Certified Mail, Return Receipt Requested to Paul George Kasanoff at the address given above.

FEDERAL COMMUNICATIONS COMMISSION,
JAMES C. MCKINNEY,
Acting Chief, Field Operations Bureau.

[FR Doc.77-25880 Filed 9-6-77;8:45 am]

[1] Section 13.70 *Fraudulent licenses.* No licensed radio operator or other person shall alter, duplicate, or fraudulently obtain or attempt to obtain, or assist another to alter, duplicate, or fraudulently obtain or attempt to obtain an operator license. Nor shall any person use a license issued to another or a license that he knows to be altered, duplicated, or fraudulently obtained.

[2] Section 13.72 provides in pertinent part the requirement that elements 1 and 2 of the commercial operator examination be satisfactorily completed before issuance of a Radiotelephone Third Class Operator Permit. The examination element 9 as delineated in Section 13.21 must be satisfactorily completed before the Broadcast Endorsement confers the special operating privilege described in Section 13.62.

FEDERAL ENERGY ADMINISTRATION

ACCOUNTING PRACTICES—OIL AND GAS PRODUCERS FINANCIAL ACCOUNTING STANDARDS

AGENCY: Federal Energy Administration (FEA).

ACTION: Cross Reference.

SUMMARY: Title V, section 503 of the EPCA requires that the SEC, in consultation with the FEA, the General Accounting Office and the Federal Power Commission, assure the development and observance of accounting practices to be followed by persons engaged in the production of crude oil or natural gas in the United States.

The SEC in Securities Act Release 5861, (42 FR 44972, September 7 1977 is proposing a rulemaking which would amend the Commission's regulations to incorporate as rules of the Commission certain financial and accounting standards required by section 503 of the EPCA to be developed by December 22, 1977 The Commission is proposing such rules pursuant to authority granted it by the EPCA The accounting practices required to be developed will be applicable to persons engaged in the production of oil and gas who file reports with the Federal Energy Administration (and who will be required under the EPCA to filie reports with the Department of Energy), including those who are not subject to the filing requirements of the federal securities laws. The admendments are proposed to place the Commission in a position to adopt by December 22, 1977 financial accounting and reporting standards for oil and gas producing activities. The proposed amendments are the same as the standards contained in the proposed statement of financial accounting standards, "Financial Accounting and Reporting by Oil and Gas Producing Companies," issued on July 15, 1977, by the Financial Accounting Standards Board.

The reason for this notice by the FEA is that Title V, section 505 of the EPCA amends section 11(c) of the Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163 (ESECA) in the following respect: in order to carry out the responsibility under section 11(a) of ESECA to require the reporting of energy information (as defined in section 11(d) of ESECA) to the FEA, the FEA Administrator shall require that persons engaged in whole or in part in the production of crude oil or natural gas (1) keep energy information in accordance with the accounting practices developed by the SEC pursuant to section 503 of the EPCA and (2) submit reports with respect to energy information kept in accordance with such practices.

Accordingly, the FEA encourages all interested parties to submit comments to the Securities and Exchange Commission in response to its release, as referenced above.

DATES: Comments are due by October 15, 1977.

ADDRESSES: Comments should be made in triplicate and sent to George A. Fitzsimmons, Secretary, SEC, Washington, D.C. 20549. All such communications should refer to File No. S7-715 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Richard C. Adkerson, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-1671).

Fred Santogrossi, Office of Energy Information and Analysis, Federal Energy Administration, 2000 M Street NW., Washington, D.C. 20461 (202-254-8725).

Issued in Washington, D.C., on August 30, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-26019 Filed 9-6-77;8:45 am]

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with Section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163) notice is hereby provided of a meeting of Subcommittee A of the Industry Advisory Board to the International Energy Agency (IEA) to be held on September 9, 1977, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning, at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of members of Subcommittee A at a meeting of representatives of governments of countries participating in the International Energy Program to discuss the Fall 1977 Emergency Data System Test.

The Agenda for the meeting is under the control of the government group. It is expected that the following Agenda will be followed:

AGENDA

1. Correct implementation of Questionnaire B reporting instructions, notably in respect of cutoff dates.
2. Consistency of data on operations of Reporting Companies in Questionnaire B with those contained in Questionnaire A.
3. Phasing of cutoff dates in European countries.
4. Procedures of the Emergency Data Test; related questions.
5. Feedback results of Reporting Companies meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public. Unanticipated circumstances have required the notice period as contained in § 209.32(b) of FEA regulations to be shortened.

Issued in Washington, D.C., August 31, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-25922 Filed 9-6-77;8:45 am]

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 10]

CARRIERS AND CONFERENCES OF CARRIERS IN THE TREATMENT OF OVERLAND/OVERLAND COMMON POINT (OCP) CARGO

Possible Unlawful Action; Order

The Federal Maritime Commission has reason to believe that the recent actions of certain carriers and conferences of carriers concerning the treatment of Overland OCP cargo in the trade between the Far East and Pacific Coast ports of the United States may be in violation of sections 15, 16 First, and or 17 of the Shipping Act, 1916.

It is the opinion of the Commission that it is essential to conduct an investigation to determine whether there are or have been any such violations of the Shipping Act, 1916, in order that the Commission may properly exercise its regulatory duties to insure the protection of the public interest in the proper and effective administration of the law.

Therefore, it is ordered, That pursuant to section 22 and 27 of the Shipping Act, 1916, and section 214 a) of the Merchant Marine Act of 1936, a nonadjudicatory investigation is hereby instituted into the practices of carriers and conferences of carriers concerning the treatment of Overland OCP cargo, said investigation to be conducted pursuant to the Commission's rules of practice and procedure, 46 CFR §502.281-291;

It is further ordered, That the Investigative Officer shall be Wm. Jarrel Smith, Jr., of the Commission, assisted by the Bureau of Hearing Counsel and by such members of the staff as he may designate, with full authority under Commission rule 18 (supra), to hold public or nonpublic sessions, to resort to all compulsory processes authorized by law, including the issuance of subpoenas, to administer oaths and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission.

It is further ordered, That any person other than carriers or conferences having an interest and desiring to participate in this proceeding, shall file a statement with the Investigative Officer, describing their interest on or before September 16, 1977;

It is further ordered, That said Investigative Officer shall issue to the Managing Director interim progress reports every three months and a final report of findings and recommendations no later than one year after publication of this order in the FEDERAL REGISTER, all such reports to remain confidential unless and until the Commission rules otherwise;

It is further ordered, That notice of this order be published in the FEDERAL REGISTER.

By the Commission August 23, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-25990 Filed 9-6-77;8:45 am]

PORT OF PALM BEACH DISTRICT AND WEST INDIA SHIPPING CO.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763; 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126, or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 27, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Dwight Green, Traffic Consultant, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Fla. 33404.

Agreement No. T-3508, between Port of Palm Beach District (Port) and West India Shipping Co., Inc. (Company), provides for the five-year renewable, exclusive lease of certain facilities at the Port of Palm Beach, Fla., for the purpose of office and warehouse space and open storage of commodities and equipment. As compensation, the Company will pay an initial total sum of $98,312.00 per year payable on a monthly basis. In addition, Company shall pay all applicable charges as specified in the then current tariff published by Port. As a further inducement to the Port, Company guarantees a minimum of 50,000 tons of cargo will be shipped through the Port's facilities for each year of the agreement.

Although this agreement may not be subject to section 15 of the Shipping Act, 1916, interested parties are given an opportunity to comment thereon if they so desire.

Dated: September 1, 1977.

By Order of the Federal Maritime Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-25992 Filed 9-6-77;8:45 am]

[Independent Ocean Freight Forwarder License No. 1552]

J. D. EXPRESS CO., INC.

Reinstatement of License

By Federal Maritime Commission Order served and published in the FEDERAL REGISTER, J. D. Express Co., Inc.'s Independent Ocean Freight Forwarder License No. 1552 was revoked, effective July 7, 1977, for failure to maintain a valid surety bond on file with the Commission. The Order of Revocation was published on July 26, 1977, in 42 FR 38000.

An appropriate surety bond has been received in favor of J. D. Express Co., Inc., and compliance pursuant to section 44, Shipping Act, 1916, and section 510.9 of the General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised) section 7.04 a), dated September 15, 1973, Independent Ocean Freight Forwarder License No. 1552 shall be reissued to J. D. Express Co., Inc. effective August 23, 1977. A copy of this Notice of Reinstatement shall be published in the FEDERAL REGISTER and served upon J. D. Express Co., Inc.

LEROY F. FULLER,
Director, Bureau of Certification and Licensing.

[FR Doc.77-25991 Filed 9-6-77;8:45 am]

STABEN BRAND FORWARDING CO., ET AL.

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44 a) of the Shipping Act, 1916 (Stat. 522 and 46 U.S.C. 841 b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Staben Brand Forwarding Co. (John D. Staben, d b a.), 2117 McCarty Drive, Houston, Tex. 77029.

Cargo Worldwide (Robert R. Solomon, d b a.), P.O. Box 75202, Tampa, Fla. 33675.

Robert Warren, 610 Northeast 12th Avenue, Hallandale, Fla. 33009.

Copeland Services (Barbara L. Copeland, d b a.), P.O. Box 8632, Baltimore, Md. 21240.

Cadenas Intl Freight Forwarding, 3401 Northwest 36th Street, Rm. 1B, Miami, Fla. 33142. Officers: Manuel Cadenas, President; Carlos Cardet, Secretary.

Fast International Forwarding Corp., Bldg. 2141, MIAD, P.O. Box 480035, Miami, Fla. 33148. Officers: Elia A. Lopez, President/Secretary; Julio Rodriguez, Treasurer; Esteban A. Ferrer, Asst. Secretary.

John W. Kenehan, 5306 Brinkman Drive, Amarillo, Tex. 79106.

ACM International (Amanda De Pippo, d b.a.), 12522 Greenspoint Drive, Houston, Tex. 77060.

John Cassidy and Sons, Inc., 7100 Northwest 36th Avenue, Miami, Fla. 33147. Officers: John H. Cassidy, President; Kathleen A. Cassidy, Treasurer.

Alpha International Shipping (Jan-Peter Jueterbock, d b a.), 366 W. 131st Street, Los Angeles, Calif. 90061.

James O. Lindsey, 175-11 148th Road, Jamaica, N.Y. 11434.

Gulf States Forwarding, Inc., 118 North Royal Street, P.O. Box 2365, Mobile, Ala. 36601. Officers: L. Douglas Harwell, Sr., President; Angus R. Cooper, Vice President; David J. Cooper, Secretary-Treasurer.

Shipping Corporation of America, 177 State Street, Rm. 300, Boston, Mass. 02109. Officers: Jordan H. Steinberg, Pres./Treas./Director; Francis E. Gillis, Clerk/Vice President; John C. Wherty, Vice President; Gail Carrey, Director; Mary Rudder, Director.

Dated: September 1, 1977.

By the Federal Maritime Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-25993 Filed 9-6-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. CP74-289, CP73-334, and CP75-360]

EL PASO NATURAL GAS CO.

Filing of Proposal in Settlement and Termination of the Subject Proceedings

AUGUST 30, 1977.

Take notice that on August 19, 1977, El Paso Natural Gas Co. (El Paso), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso, Tex. 79978, filed its Proposal in Settlement and Termination of the above docketed proceedings pursuant to § 1.18 (e) of the Rules of Practice and Procedure so as to accomplish the following:

(i) Correct the past misdistribution of gas supplies, noted by Opinion Nos. 800 and 800-A, through the prospective curtailment of deliveries to Southern California Gas Co. (So'cal) and Pacific Gas and Electric Co. (PG&E) and the allocation, sale and delivery of such volumes of natural gas to certain of El Paso's east-of-California (EOC) distributors and direct sale customers;

(ii) Secure arrangements for the protection of EOC Priority 1 and 2 service from the El Paso system during the 1977-78 winter heating season, and

(iii) Establish a Priority 2 classification for the storage injection and other load-equation requirements of El Paso and of its customers possessing their own storage facilities to the extent that such injection and load-equation gas is to be used by El Paso and by such customers upon withdrawal from storage for the ultimate protection of Priority 1 and 2 service;

all as more fully set forth in the settlement proposal on file with the Commission and open to public inspection. El Paso, concurrently with the settlement proposal, also filed with the Commission, a motion for approval of the instant settlement proposal.

The settlement proposal states that in order to correct the "past misdistribution of gas supplies," El Paso proposes to allocate additional natural gas quantities to certain of its EOC distributor and direct sale customers indicated on Appendix A attached to the settlement. These additional quantities of gas shall be obtained by the curtailment of deliveries to El Paso's California customers. El Paso will deliver to the indicated EOC customers 35,343,963 Mcf of additional gas, less the EOC share of such quantities of gas, if any, as are actually utilized for the protection of EOC Priority 1 and 2 service from El Paso's system during the 1977-78 winter heating season as more fully set forth in the settlement proposal. The EOC customers set forth in Appendix A are those whose Priority 5 service was curtailed by El Paso in 1974 and 1975 to provide the gas supplies necessary to support advance sales made to PG&E and to support injections made by El Paso into the Rhodes Reservoir Storage Project under temporary authorization granted by the Commission. The sale and delivery of the additional quantities of natural gas to each of the indicated EOC customers would be made on the basis indicated at Appendix A.

The additional quantities shall be sold and delivered to the EOC customers at the applicable Rate Schedule B, A-1-X, X-1 or X-7 rate in effect when deliveries are made. The allocation, sale, and delivery to each of the EOC customers of their respective quantities of natural gas indicated on Appendix A and obtained by El Paso's additional curtailment of its California customers shall fully discharge any and all claims, which may now or hereafter be asserted by or on behalf of any person or persons against El Paso, PG&E and So'Cal or any of them, which are alleged to arise from or out of (i) Opinion Nos. 800 and 800-A, their findings and accompanying order or (ii) the implementation of the El Paso load-equation projects addressed in those opinions, or (iii) the instant settlement proposal, including the implementation hereof pursuant to Commission order or (iv) the Commission order approving the implementation of the settlement proposal.

The settlement proposal further states that in order to protect Priority 1 and 2 service to its OEC customers during the forthcoming 1977-78 winter heating season, El Paso proposes to schedule its additional curtailment of deliveries to PG&E so as to retain with PG&E, for drawdown by El Paso in the same manner provided by the special operating arrangements in effect during the past winter seasons, a quantity of advance sale gas sufficient to enable El Paso to avoid the curtailment of its Priority 1 and 2 service to EOC customers during the forthcoming 1977-78 winter heating season. EOC Priority 1 and 2 service deficiencies during the forthcoming winter are now projected for the El Paso system, despite supplies from the Rhodes

Opinion No. 800, "Opinion and Order Issuing Conditional Certificate of Public Convenience and Necessity", issued May 23, 1977, and Opinion No. 800-A, "Opinion and Order on Rehearing," issued July 20, 1977, at El Paso Natural Gas Co., Docket Nos. CP74-289, et al.

Reservoir Storage Project and Clay Basin Interim Storage Arrangements.

To the extent that all or any part of such retained advance sale gas quantity is not required to be drawn-down for use in protecting EOC Priority 1 and 2 requirements during the 1977–78 winter heating season, such remaining portion of the retained quantity shall be obtained by additional curtailment of PG&E after April 30, 1978, for allocation, sale, and delivery to the EOC customers. In order to recover those costs which it has incurred on and after May, 1977, under the advance sale arrangements with PG&E, and which it projects that it will incur under those arrangements until the last of the total advance sale gas quantity of 28,837,199 Mcf has been drawn-down from PG&E, El Paso shall apply a surcharge to its monthly billings to each of its EOC customers having Priority 1 and 2 requirements commencing November 1977, through October 1978. Such surcharge to be applied to each such customer's monthly billings shall be calculated by multiplying that customer's aggregate winter season Priority 1 and 2 base volumes as reflected in the Index of Base volumes on file as part of El Paso's FPC Gas Tariff, by the amount of 0.7905 cents per Mcf. Such surcharge shall not be adjusted during the twelve-month period of its effectiveness, but El Paso shall adjust for over- or under-collections through such surcharge in its billings to such customers for months subsequent to October 1978.

Additionally, the settlement proposal states that a system-wide Priority 2 classification shall apply to all injections or deliveries made by El Paso, or on its behalf for the ultimate benefit of EOC Priority 1 and 2 requirements, with respect to the following storage and load-equation projects: (i) Rhodes Reservoir Storage Project; (ii) Clay Basin Interim Storage Arrangements; (iii) Barker Creek Dome Reservoir; and (iv) such other storage or load-equation arrangements as El Paso may hereafter propose for the future protection of EOC Priority 1 and 2 service.

In order to effectuate the instant settlement proposal, El Paso requests the issuance of an order by the Commission approving the instant settlement proposal in its entirety and without provisions, conditions or limitations other than those set forth therein, including the following: (i) unconditionally accepting the tariff filing, and making effective as of November 1, 1977, the related tendered tariff sheets, included in Appendix B to the settlement proposal relative to the establishment of an EOC Priority 1 and 2 surcharge; (ii) terminating the subject proceedings, specifically Docket Nos. CP73–334, CP74–289 and CP75–360; (iii) recognizing that the additional curtailment of El Paso's California customers and the allocation, sale and delivery to the EOC customers of the additional quantities indicated at Appendix A shall fully discharge any and all claims which may now or hereafter be asserted by or on behalf of any person or persons against El Paso, PG&E and SoCal or any of them, and which are alleged to arise from or out of: Opinion Nos. 809 and 809–A, their findings and accompanying orders; or the implementation of the El Paso load-equation projects addressed in those opinions; or the instant proposal, including the implementation hereof pursuant to Commission order; or the Commission order approving the implementation of the instant proposal; and (iv) granting waiver of all applicable provisions of the Commission's Rules and Regulations necessary to effectuate the instant proposal as submitted.

In addition, the settlement proposal states that the following reservations shall apply to, and constitute a part of, the instant settlement proposal: (i) the instant settlement proposal is submitted pursuant to § 1.18(e) of the Commission's Rules of Practice and Procedure and it is agreed by all parties to the subject proceedings, including the Commission Staff, that unless such proposal is accepted as submitted, it shall be privileged and El Paso shall have the right to withdraw the same; (ii) the provisions of the instant settlement proposal are intended to relate only to the specific matters referred to herein and, by agreeing hereto, no party waives any claim or right which it may otherwise have with respect to any matters not expressly provided for herein; and (iii) El Paso shall have the right to withdraw the instant settlement proposal should any party seek rehearing or judicial review of an order of the Commission approving, without modification or condition, this settlement proposal in its entirety and the assent of any party to the instant settlement proposal shall constitute its representation, upon which other parties may rely, that rehearing of judicial review will not be sought by such party.

In a concurrent motion El Paso requests that the Commission establish the following schedule for the submission of comments by interested parties on the accompanying Proposal:

Comments on the Proposal to be filed on or before August 29, 1977.

Answering Comments to be filed on or before September 7, 1977.

El Paso is also currently filing, pursuant to Part 154 of the Commission's Regulations, its tariff filing designed to implement El Paso's settlement proposal effective November 1, 1977.

Any person desiring to be heard, to make any protest, or file initial comments with reference to said settlement should, on or before September 9, 1977, file with the Federal Power Commission, Washington, D.C. 20426, with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). Reply comments should be filed on or before September 20, 1977. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the authorization is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

EL PASO NATURAL GAS COMPANY

Appendix A

EOC Recipients of Return of Advance Sale Gas and Reallocation of Rhodes Injections Pursuant to Opinion 800 and 800-A[1]
(Mcf at 14.73 psia)

	1974			1975			Total		
	Return of Advance Sales	Rhodes Reallocation	Total	Return of Advance Sales	Rhodes Reallocation	Total	Return of Advance Sales	Rhodes Reallocation	Grand Total
Arizona Public Service Company	2,319,426	1,022,503	3,341,929	3,372,832	-	3,372,832	5,692,258	1,022,503	6,714,761
Arizona Public Service Company - Salt River Project	1,016,273	460,024	1,476,297	1,279,636	-	1,279,636	2,295,909	460,024	2,755,933
Compania Minera de Cananea, S. A.	172,623	77,918	250,541	194,240	-	194,240	366,863	77,918	444,781
El Paso Electric Company	1,665,583	785,724	2,451,307	2,035,046	-	2,035,046	3,700,629	785,724	4,486,353
Kennecott Copper Corporation - Hayden	101,915	42,742	144,655	42,404	-	42,404	144,317	42,742	187,059
- Hurley	325,719	141,292	467,011	344,389	-	344,389	670,108	141,292	811,400
Lordsburg, New Mexico, City of	-	-	-	61,817	-	61,817	61,817		61,817
Phelps Dodge Corporation	188,573	63,694	252,267	1,150,359	-	1,150,359	1,338,932	63,694	1,402,626
Southern Union Gas Company	319,781	168,419	488,200	328,512	-	328,512	648,293	168,419	816,712
Southwest Gas Corporation	2,150,904	971,374	3,122,278	3,291,880	-	3,291,880	5,442,784	971,374	6,414,158
Southwestern Public Service Company	2,139,953	1,185,453	3,325,406	-	-	-	2,139,953	1,185,453	3,325,406
Tucson Gas & Electric Company	2,673,106	1,308,679	3,981,785	2,295,657	-	2,295,657	4,968,763	1,308,679	6,277,442
Willcox, Arizona, City	617,914	278,942	896,856	748,659	-	748,659	1,366,573	278,942	1,645,515
Total	13,691,768	6,506,764	20,198,532	15,145,431	-	15,145,431	28,837,199	6,506,764	35,343,963
Pacific Gas and Electric Company								2,882,740	
Southern California Gas Company								3,624,024	
Total								6,506,764	

1/ Indicated quantities shall be reduced *pro rata* to reflect the EOC customers proportional share of such quantities of advance sale gas, if any, which are utilized for the protection of EOC Priority 1 and 2 requirements for the 1977-78 heating seasons.

[FR Doc.77-25851 Filed 9-6-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

REHABILITATION RESEARCH AND TRAINING CENTER

Announcement of Grant for FY '77; Extension of Time for Applications

The Rehabilitation Services Administration, Office of Human Development Services, announces that it is extending the due date for receipt of applications under its Rehabilitation Research and Training Center Program. Applications will now be accepted until September 19, 1977.

The program was originally announced in the FEDERAL REGISTER (42 FR 40778, No. 155, Thursday, August 11, 1977) as Program Announcement No. 13627-774.

Under this extension, the September 19 deadline can be met only if applications are received by 5 p.m. on that date at: Division of Grants and Contract Management, Office of Human Development Services, Room 1427, Mary E. Switzer Building, 330 "C" Street SW., Washington, D.C. 20201, Attention: (13627-774). This requirement supersedes that published in the original announcement.

(Catalog of Federal Domestic Assistance Program No. 13.627 Rehabilitation Research and Demonstration.)

Dated: August 23, 1977.

JOSEPH A. MOTTOLA,
Acting Commissioner of Rehabilitation Services.

Approved: August 31, 1977.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

[FR Doc.77-25912 Filed 9-6-77;8:45 am]

Office of the Secretary

ADVISORY COUNCIL ON EDUCATION STATISTICS

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that a meeting of the Advisory Council on Education Statistics will be held on October 4, 1977, from 9 a.m. to 4:30 p.m., in Room 3000, FOB No. 6, 400 Maryland Avenue SW., Washington, D.C. 20202. The meeting will be continued on October 5, 1977, from 9 a.m. to 12 noon, at the same location.

The Advisory Council on Education Statistics is mandated by section 406(c) of the General Education Provisions Act as added by section 501(a) of the Education Amendments of 1974, Pub. L. 93-380 (20 USC 1121e-1(c)), to advise the Secretary of the Department of Health, Education, and Welfare, and the Assistant Secretary for Education, and the National Center for Education Statistics (NCES); and "shall review general policies for the operation of the Center and shall be responsible for establishing standards to ensure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence."

The meeting agenda will include the swearing in of three new members; reports on NCES' budget planning for fiscal year 1978; the status of the NCES survey program; the Education Data Acquisition Council; and, NCES policies on external demands for data acquisition activities.

The meeting is open to the public; however, because of limited accomodations, those members of the public wishing to attend should make reservations by writing, no later than September 23, 1977; to:

Acting Executive Director, Advisory Council on Education Statistics, Room 3003, FOB-6, 400 Maryland Avenue SW., Washington, D.C. 20202.

Records shall be kept of all Council proceedings and shall be available for public inspection in the Office of the Administrator, National Center for Education Statistics, located at 400 Maryland Avenue SW., Washington, D.C. 20202.

Signed at Washington, D.C. on September 1, 1977.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

[FR Doc.77-25911 Filed 9-6-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-9682]

ARIZONA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal; Correction

AUGUST 29, 1977.

In Federal Register Document No. 77-22413 appearing on pages 39486-39487 of the FEDERAL REGISTER of August 4, 1977, the following changes are made:

1. In the second paragraph, the fourth and fifth lines, delete the following:

"* * * from all forms of appropriation under the public land laws and * * *"

2. On Page 39486, the land description for Section 27 is corrected to read:

T. 5 N., R. 1 E.,
Section 27, * * * E½W½NW¼ * * *

MARIO L. LOPEZ,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-25960 Filed 9-6-77;8:45 am]

OREGON

Closure to Motorized Vehicles

On June 28, 1977, there was printed in the FEDERAL REGISTER a notice closing certain public lands in Baker County, Oreg., to motorized vehicles from August 27, 1977, to December 1, 1977. On July 28, 1977 there was printed in the FEDERAL REGISTER an amendment to the June 28, 1977 notice.

Parties to the subject cooperative motorized vehicle closure dissolved their agreement by mutual consent on August 24, 1977. The public is no longer held to the conditions of the closure on the public lands involved. The public lands have reverted back to the same use status as existed prior to the notice of closure.

GORDON R. STAKER,
District Manager.

AUGUST 29, 1977.

[FR Doc.77-25961 Filed 9-6-77;8:45 am]

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93–205).

Applicant. C. J. Chamberlain, 4850 Alcorn Road, Fallon, Nev. 89406.

OMB NO. 42-R1675

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
XXX EXPORT — One time only — XXX PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED
Exportation of one (1) male & one (1) female Brown Eared Manchurian pheasant (Crossoptilon-mantchuricus) 1977 hatch. Desired for the introduction of new blood into an existing flock for the enhancement of propagation and survival of the species.
Exportation from Fallon, NV. U.S.A. to South River, Ontario, Canada.
Deliver to: Mr. Harvey Bennison.

3. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
C. J. Chamberlain
4850 Alcorn Road
Fallon, Nevada 89406
Ph. (702) 867-2237

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING
X MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5'-7" WEIGHT: 140
DATE OF BIRTH: 18 Feb. 1911 COLOR HAIR: Gen. COLOR EYES: Blue
PHONE NUMBER WHERE EMPLOYED: (702) 867-2237 (home) SOCIAL SECURITY NUMBER: 530-30-0581
OCCUPATION: Retired - Civil Service - Navy Dept.
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: N.A.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.: N.A.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED: N.A.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Exportation from Fallon, Nevada, U.S.A. to South River, Ontario, Canada
Via United Air Lines - (Air Freight)
Recipient: Mr. Harvey Bennison.
South River, Ontario
POA 1NO Canada.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? XX YES ☐ NO
(If yes, list license or permit number(s)): PRT 2-353 (CSSP) Permit

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? XX YES ☐ NO
(If yes, list jurisdictions and type of documents): Nevada State Commercial License #1.

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $ N.A.

10. DESIRED EFFECTIVE DATE: A.S.A.P.

11. DURATION NEEDED: Four (4) months

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (see 50 CFR 17.22(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17:22 Attached.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13 OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY BE SUBJECT TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE: C. J. Chamberlain — DATE: 20 July 1977

3-200 (6-74)

ATTACHMENT

50 CFR 17.22

Export Permit Application

(1) One (1) pair, male and female, Brown Eared Manchurian pheasant, Crossoptilon-mantchuric both birds are of 1977 hatch. Selling and exporting to Canada.

(2) Both birds and several generations back were hatched and raised in captivity in Fallon, Nev. by the applicant.

(3) No attempt has ever been made by either the applicant or the proposed recipient of the above birds to obtain this species from the wild or in any other manner that would cause injury or death to this specie.

(4) As stated in (2) above the birds covered by this application were raised in captivity by the applicant in Fallon, Nev., U.S.A.

(5) The birds covered by this application will be housed at South River, Ontario, Canada. South River is 125 miles north of Toronto, Canada. The place of confinement is located on a 30-acre parcel of land in a rural area. The birds will be housed in a brand new pen 15 feet by 30 feet with 8 foot x 15 foot house in the rear—see sketch and photo attached.

(6) (i) See (5) above.

(6) (ii) Mr. Bennison has been raising game birds for the past twenty years and is considered one of the finer breeders in northern Canada. He has been very successful in raising the Manchurian pheasants for the past eleven years. In addition to the Brown Eared Manchurian, he also has the Blue Eared and the endangered White Eared. Many of the other exotic species are raised on Mr. Bennison's game bird farm.

(6) (iii) Mr. Bennison has indicated a willingness to participate in any cooperative breeding program as requested by the Wildlife Service and will maintain or contribute data to a stud book as might be requested.

(6) (iv) Both birds will be shipped in unused wire bound wooden crates, suitably padded to prevent any scalping or injury. Food and water containers will be wired securely in corners of the containers. Only one bird will be transported in each container which will be of sufficient size for the birds to stand and turn around in.

(6) (v) Due to the good management and well constructed pens Mr. Bennison has had no fatalities during the past five (5) years.

(7) There are no contracts or agreements other than the purchase price of the birds.

(8) It is believed that the statements in (6) (ii) and (6) (v) above would fully justify the issuance of the requested permit.

(8) (i) It is truly believed that the requested permit will enable Mr. Bennison to establish a stronger blood line in the Brown Eared which will certainly enhance the propagation and survival of these beautiful birds.

(8) (ii) Mr. Bennison plans to mate his very fine stock with the outstanding stock which I have. The crossing of these blood lines is sure to enhance the propagation which we both are quite proud of.

(8) (iii) Mr. Bennison feels as I do—no endangered or threatened species of any animal or bird should be quartered in one central location. The species should be spread out to many and varied locations. In the event of a serious disease in one location birds or animals in another would tend to survive and therefore enhance the survival of that particular species.

(8) (iv) Mr. Bennison states that if, and when, he decides to terminate his activities in propagating game birds he will dispose of them thru sales or gifts to qualified aviculturists as may be directed by the wildlife service of his Country.

NOTE.—Mr. Bennison is aware of, and will provide the Canadian Import Permit to accompany shipment of birds to Canada.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File No. PRT 2-1180-07; please refer to this number when submitting comments. All relevant comments received on or before October 7, 1977, will be considered.

Dated: August 31, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.77-25767 Filed 9-6-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93–205).

Applicant: Vern Denton, 1566 Wetmore Road, Livermore, Calif. 94550.

OMB NO. 42-R1510

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate a / all)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
IMPORT FIVE PALAWAN PEACOCK PH. FROM A BREEDER IN CANADA FOR BREEDING PURPOSES. SELL OR OTHERWISE DISPOSE OF THE YOUNG FROM THIS BREEDING FOR A PERIOD OF TWO YEARS.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
VERN DENTON
1566 WETMORE ROAD
LIVERMORE, CALIFORNIA 94550
415-447-3997

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

☐ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT 5'4"	WEIGHT 215
DATE OF BIRTH 9/16/13	COLOR HAIR BRN/GREY	COLOR EYES BLUE
PHONE NUMBER WHERE EMPLOYED RETIRED	SOCIAL SECURITY NUMBER 549-14-7149	

OCCUPATION
RETIRED - BIRD BREEDER

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
DENTON BIRD FARM. PERSONAL BUSINESS FOR BREEDING AND SALES OF EXOTIC BIRDS.

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
BREED AND SELL OFFSPRING OF EXOTIC BIRDS.

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
VERN DENTON 415-447-3997
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
IMPORT FROM CANADA TO SAN FRANCISCO DIRECT.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit number(s))

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☒ NO
(If yes, list jurisdictions and type of document(s))
CANADIAN PERMITS BEING OBTAINED BY THE CANADIAN BREEDER.

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE
OCTOBER 1, 77

11. DURATION NEEDED
TWO YEARS

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Vern Denton — DATE JULY 13, 1977

3-200
8/76

GPO 895-042

PHONE 447-3997 AREA CODE 415

Denton Bird Farm

Exotic Birds ● Game Birds ● Aviary Equipment

1566 WETMORE ROAD
LIVERMORE, CALIFORNIA 94550

JULY 13, 1977

ATTACHMENT TO APPLICATION TO IMPORT FIVE PALAWAN PEACOCK PHEASANTS BY VERN DENTON, 1566 WETMORE ROAD, LIVERMORE, CALIFORNIA 94550.

MR. JACK SCHUITEMAN OF DEVLIN, ONTARIO, CANADA HAD A SMALL FLOCK OF PALAWAN PEACOCK PHEASANTS (POLYPLECTRON EMPHANUM) WHICH HE WAS TRYING TO BREED. THE WEATHER IN CANADA AND AN ONSLAUGHT OF PREDATORS MADE CONTINUATION OF THE EFFORT UNFRUITFUL AND HE HAS OFFERED ME THE BALANCE OF HIS BIRDS. THESE FIVE BIRDS WERE ALL HATCHED IN CAPTIVITY. ONE AT THE ASSINIBONE ZOO IN WINNEPEG, TWO IN WISCONSIN U.S.A. AND TWO AT MR. DEVLIN'S AVIARY IN DEVLIN CANADA. ONE BIRD IS SIX YEARS OLD, ONE FOUR YEARS, TWO TWO YEARS, AND ONE ONE YEAR. TWO OF THESE BIRDS, BOTH MALES, HAVE SUFFERED EXTENSIVE FROST DAMAGE. ONE RESULTING IN THE COMPLETE LOSS OF ONE FOOT AND THE OTHER ALL TOES OF ONE FOOT. THE REMAINING THREE ARE IN GOOD SHAPE.

DENTON BIRD FARM IS A RETIREMENT BUSINESS OWNED AND OPERATED BY MYSELF. WE BREED, RAISE, AND SELL EXOTIC PHEASANTS AND SOME AUSTRALIAN HOOKBILLS. WE HAVE CUSTOMERS IN MANY STATES AND IN CANADA AND MEXICO. THE COLLECTION IS HOUSED ON TWO ACRES LOCATED SOME TWO MILES SOUTH OF THE CITY OF LIVERMORE AND ABOUT FORTY MILES SOUTH EAST OF SAN FRANCISCO. WE HAVE OVER ONE HUNDRED BREEDING AND MAINTENANCE PENS AN AVERAGE OF 220 TWO HUNDRED AND TWENTY SQUARE FEET IN AREA WITH A MINIMUM OF EIGHTY SQUARE FEET AND A MAXIMUM OF ONE THOUSAND SQUARE FEET. ALL PENS ARE ENCLOSED WITH ONE INCH HEAVY DUTY POULTRY NETTING. SHELTER FROM THE WEATHER IS PROVIDED BY A FULL RAINTIGHT ROOF OVER TWENTY FIVE PERCENT OF THE PEN WITH PERCH SHELTER ON THE WEST AND SOUTH FROM WIND AND STORM. ADDITIONAL SHADE IS PROVIDED EACH PEN LEAVING AT LEAST FIFTY PERCENT OPEN TO SUNSHINE. THE PENS ARE CONSTRUCTED ON A ROCKY WELL-DRAINED SOIL AND THE PENS ARE FLOORED WITH THREE TO FOUR INCHES OF WASHED SAND OVER THE ENTIRE PEN. AT THE SHELTERED END AN ADDITIONAL THREE INCHES OF SHREDDED LITTER IS PROVIDED. WE HAVE AN AUTOMATIC WATER SYSTEM IN EACH PEN WHICH IS INSPECTED EVERY OTHER DAY AND RECEIVES A FULL CLEANING AT LEAST ONCE A WEEK. FEED IS PROVIDED IN SEMI-MOUSE RESISTANT FEEDERS AND GRIT AND OYSTER SHELL IS CONSTANTLY AVAILABLE. WE USE A PETERSIME AUTOMATIC INCUBATOR PLUS FOUR LYON ELECTRIC INCUBATORS MODIFIED BY UNIVERSITY OF CALIFORNIA DAVIS FOR ALL INCUBATION AND HATCHING. FORTY TWO INDIVIDUAL BROODERS ARE PROVIDED FOR RAISING THE YOUNG. THE SERVICES OF A LOCAL VETERINARY, THE STATE OF CALIFORNIA POULTRY LABORATORIES AT PETALUMA AND AT SACRAMENTO, AND THE AVIAN SCIENCES DEPARTMENT OF THE UNIVERSITY OF CALIFORNIA AT DAVIS ARE ALL AVAILABLE TO ASSIST WITH HEALTH MAINTENANCE IN THE FLOCK.

THE WILDLIFE HERE ARE CARED FOR PRINCIPALLY BY MYSELF WITH ASSISTANCE FROM A HIGH SCHOOL SENIOR FROM THE LOCAL SCHOOL WHO TAKES A "WORK EXPERIENCE" COURSE HERE IN GAME MANAGEMENT.

I HAVE BEEN CARING FOR AND REARING PHEASANTS AND SIMILAR BIRDS FOR OVER FIFTEEN YEARS AND HAVE HAD PALAWAN PEACOCK PHEASANTS FOR OVER TEN YEARS. WE HAVE RAISED SOME TWENTY BIRDS IN THAT PERIOD. THE STOCK IS AGING AND NEW BLOOD IS NEEDED TO MAINTAIN THE FLOCK. WE KEEP SIX SPECIES OF PEACOCK PHEASANT AND HAVE BEEN GRANTED FIRST BREEDING CERTIFICATES BY THE AMERICAN GAME BIRD BREEDERS FEDERATION FOR FOUR SPECIES OF PHEASANTS; KOCKLASS, ROTHSCHILD PEACOCK PHEASANT, BORNEAN PEACOCK PHEASANT, AND MALAYAN PEACOCK PHEASANT. IN ADDITION TO THE PEACOCK PHEASANTS WE KEEP AND BREED THE MALAY GREAT ARGUS, THE BORNEAN GREAT ARGUS, TEMMINK AND SATYR TRAGOPANS, THREE SPECIES OF JUNGLE FOWL, OCCELATED TURKEYS, BORNEAN CRESTED FIREBACKS AND BULWERS WATTLED PHEASANT. I AM A MEMBER OF THE AMERICAN PHEASANT AND WATERFOWL SOCIETY, THE AMERICAN GAME BIRD BREEDERS FEDERATION, WAS SECRETARY-TREASURER OF THE WESTERN GAME BREEDERS SOCIETY FOR A GOOD PORTION OF ITS EXISTANCE. I HAVE BEEN ADMITTED TO THE AVICULTURAL HALL OF FAME OF THE AMERICAN GAME BIRD BREEDERS FEDERATION.

WE MAINTAIN RATHER COMPLETE BREEDING RECORDS AND WOULD BE WILLING TO PARTICIPATE IN CO-OPERATIVE BREEDING AND "STUD BOOK" ACTIVITIES.

SINCE 1972 WE HAVE LOST TWO PALAWANS. ONE HEN FROM A LOST ARGUMENT WITH HER MATE AND ONE MALE THAT EVIDENTLY DIED FROM OLD AGE. POST MORTEM OF BOTH REVEALED NO DISEASE OR OTHER EVIDENT CAUSE OF DEATH. THESE LOSSES WERE REPLACED BY BIRDS WE BRED HERE AND WE CURRENTLY MAINTAIN THREE PAIR. ONE PAIR WAS OBTAINED FROM A WILD-CAUGHT SHIPMENT IN 1967, THE SECOND PAIR WAS HATCHED IN CAPTIVITY IN HONG KONG IN 1968 AND THE THIRD PAIR CONSISTS OF A 1967 FEMALE AND A 1971 MALE HATCHED HERE. THE CANADIAN BIRDS MATCHED UP WITH SOME OF OUR YOUNG STOCK WILL GIVE US A GOOD INFUSION OF NEW BLOOD AND YOUNGER STOCK. THE TWO FROST DAMAGED MALES WILL ONLY BE USEFUL FOR ARTIFICIAL INSEMINATION TRIALS WITH THIS SPECIES.

THE BIRDS WILL BE SHIPPED ON A DIRECT FLIGHT FROM INTERNATIONAL FALLS MINNESOTTA TO SAN FRANCISCO IN CRATES MEETING ALL ICC AND AIRLINE REGULATIONS. ADEQUATE WATER WILL BE PROVIDED AND THEY SHOULD NOT BE EN-ROUTE MORE THAN SIX HOURS. NO CONTRACTS EXIST COVERING THIS TRANSACTION. I AM TRADING TRAGOPANS TO MR. SCHUITEMAN FOR THE PALAWANS. I INTEND TO HOLD THESE BIRDS AS BREEDERS TO AUGMENT OUR STOCK, TO WORK WITH THE UNIVERSITY OF CALIFORNIA ON ARTIFICIAL INSEMINATION WITH THE TWO DAMAGED BIRDS, AND TO SELL THE OFFSPRING OF THESE BIRDS AND MY PRESENT HOLDING TO OTHERS WHO HOLD PERMITS UNDER YOUR REGULATIONS.

VERN DENTON

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File No. PRT 2-1202-C07; please refer to this number when submitting comments. All relevant comments received on or before October 7, 1977, will be considered.

Dated: August 31, 1977.

DONALD G. DONALOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.77-25768 Filed 9-6-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant. Ecological Analysts, Inc., c/o Ohio Power Co., P.O. Box 158, Beverly, Ohio 45715, Thomas W. Philbin, VP.

OMB NO. 42-R1470

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)

☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.

Environmental field studies on the Muskingum River, Ohio in which molluscs are collected for identifying population compositions in conjuction with an overall ecological survey for a 316(a) demonstration.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)

Ecological Analysts, Inc.
Attention: Robert Rothwell
c/o Ohio Power Co.
P.O. Box 158
Beverly, Ohio 45715 (614) 984-2892

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING.

☐ MR. ☐ MRS. ☐ MISS ☐ MS.

HEIGHT | WEIGHT

DATE OF BIRTH | COLOR HAIR | COLOR EYES

PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER

OCCUPATION

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING.

EXPLAIN TYPE OF KIND OF BUSINESS, AGENCY, OR INSTITUTION

Environmental consulting firm

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.

Thomas W. Philbin, VP (516) 752-1122

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

Maryland

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED

Muskingum River-approximately from Stockport to Devola (approximate river miles 5.8 to 40.2)

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF

10. DESIRED EFFECTIVE DATE: immediate

11. DURATION NEEDED: through 31 Dec 77

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (see 50 C.F.R. [illegible]) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

17.22 (a) (1) to (a) (8) also Ecological Analysts' Attachments A and B

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Robert J. Rothwell

DATE 7 Jul 77

3-200-16-741

17.22 Permits for Scientific Purposes or for the Enhancement of Propagation or Survival.

(a) Application Requirements.

(1) Name: pink mucket pearly mussel (*Lampsilis orbiculata orbiculata*). The potential incidental taking of a unknown number, age, and sex of individuals during a scientific investigation of the shellfish inhabiting the Muskingum River, Ohio.

(2) At this time, the wildlife to be covered by the permit is still in the wild.

(3) Present investigations utilize a crow foot brail in taking shellfish from the Muskingum River. Inadvertant taking of the pink mucket pearly mussel is possible.

(4) Species identification is possible only by external and internal examination of the specimens therefore causing death.

(5) All shellfish species are field-identified and sent to Dr. David Stanbery of the Ohio State University Museum of Zoology, Columbus, Ohio, for identification, verification, and storage at the Museum.

(6) All shellfish sent to the Ohio State University Museum are preserved in 70 percent ethanol for use as a scientific specimen.

(7) Copies of the complete contract between Ecological Analysts, Inc. and the Ohio Power Company are on file at Melville, N.Y. The technical portions and subsequent correspondence pertaining to the aquatic studies involving the collection of molluscs are attached (Attachment A). Mr. Robert Rothwell (Resume—Attachment B) will be conducting the mollusc collections with the assistance of an aide.

(8) Ecological Analysts, Inc., is justified in receiving a permit because:

(i) The pink mucket pearly mussel is not being collected specifically but may be collected incidentally as part of an overall biological survey.

(ii) The specifics of the benthic survey are given in the attachments.

(iii) The benthic survey is required as part of a 316(a) demonstration as specified by the "Interagency 316(a) Technical Guidance Manual and Guide for Thermal Effects Sections of Nuclear Facilities Environmental Impact Statements." U.S. Environmental Protection Agency, May 1, 1977.

(iv) All pink mucket pearly mussels will be sent to the Ohio State University Museum of Zoology in Columbus, Ohio, as part of a scientific voucher specimen collection.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File No. PRT 2-1233-C07; please refer to this number when submitting comments. All relevant comments received on or before October 7, 1977, will be considered.

Dated: August 31, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.77-25769 Filed 9-6-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant. Oklahoma City Zoo, T. 1, Box 1, Oklahoma City, Okla. 73111, Lawrence Curtis, Director.

OMB NO. 42-R1470

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)

☐ IMPORT OR EXPORT LICENSE ☒ PERMIT To export an endangered species.

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED:

Export one (1) male Snow leopard (Panthera uncia) from the Oklahoma City Zoo to the Assiniboine Park Zoo for enhancement of propogation.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)

Oklahoma City Zoo
Rt. 1, Box 1
Oklahoma City, Oklahoma 73111
(405) 424-3344

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

☐ MR. ☐ MRS. ☐ MISS ☐ MS.

HEIGHT | WEIGHT

DATE OF BIRTH | COLOR HAIR | COLOR EYES

PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER

OCCUPATION

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

N/A

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:

EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION

Zoological, educational, or scientific or propogation

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. 405/424-3344

Lawrence Curtis, Director

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED

Export from the Oklahoma City Zoo, Oklahoma City, Oklahoma, to the Assiniboine Park Zoo, Winnipeg, Manitoba, CANADA

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO

(If yes, list license or permit number)

73EZ2

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO

(If yes, list jurisdictions and type of documents)

Valid permit from Canada will be in hand prior to shipment.

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF

$ not required

10. DESIRED EFFECTIVE DATE: 1 August 1977

11. DURATION NEEDED: 6 months

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

(6)(i, ii, v); (7)

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) [signature] DATE 18 July 1977

9-200
16/741

OKLAHOMA CITY ZOO,
JULY 15, 1977.

DIRECTOR,
U.S. Fish & Wildlife Service,
Washington, D.C. 20249

DEAR SIR: Please consider this our application to export an endangered species of animal within the context of Endangered and Threatened Wildlife and Plants, Part 17, Subpart C, Article 17.22 for the enhancement of propagation.

(a)(1) Exportation of one (1) male Snow leopard (*Panthera uncia*) born Oklahoma City Zoo, September 9, 1976.

(2) (iv) N/A, (ii) N/A, (iii) Born in captivity—see (a)(1).

(3) N/A—See (2)(iii).

(4) Born and raised in captivity at the Oklahoma City Zoo, U.S.A.

(5) Assiniboine Park Zoo, 2355 Corydon Avenue, Winnipeg, Manitoba, Canada.

(6) (i) See Attachment Number 1, Part A.

(ii) See Attachment Number 1, Part B.

(iii) The Oklahoma City Zoo is willing to participate in a cooperative breeding program and to maintain or contribute to a studbook for the wildlife covered by this permit application.

(iv) This animal will be packed in a crate meeting or exceeding current I.A.T.A. regulations and shipped by the most appropriate airline from the Oklahoma City Zoo to the Assiniboine Park Zoo.

(v) See Attachment Number 2.

(7) See Attachments Numbers 3, 4, 5 and 6.

(8) (i) See U.S.D.I. Form 3-200 (item 2)—attached.

(ii) See (6) (iv).

(iii) Acquisition by Assiniboine Park Zoo of this animal will enhance their breeding program by adding a non-related sire.

(iv) The animal concerned in this permit will reside at the Assiniboine Park Zoo as a member of their breeding stock. Further disposition of the animal will be regulated by Canadian laws and regulations protecting the species.

Sincerely,

LAWRENCE CURTIS,
Zoo Director.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File No. PRT 2-1201-C07; please refer to this number when submitting comments. All relevant comments received on or before October 7, 1977, will be considered.

Dated: August 31, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.77-25770 Filed 9-6-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant. Gladys Porter Zoo, 500 Ringgold Street, Brownsville, Tex. 78520.

OMB NO. 43-R1375

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED
Permit to move one pair of Orangutan born at the Gladys Porter Zoo to the Ruhr-Zoo Gelsenkirchen (GERMANY)

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Gladys Porter Zoo
500 Ringgold Street
Brownsville, Texas 78520
(512) 546-7187

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
The Gladys Porter Zoo is a public facility owned by the city of Brownsville, Texas and operated by the Valley Zoological Society. The Gelsenkirchen Zoo is a private zoo subsidized by the city of Gelsenkirchen, West Germany.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Don D. Farst, D.V.M., Zoo Director
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
Texas

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Brownsville, Texas USA, to Gelsenkirchen West Germany

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number(s))
PRT 2-192 AQ

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdictions and type of document)
N/A

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF:
$ N/A

10. DESIRED EFFECTIVE DATE
Immediately

11. DURATION NEEDED
Until completed

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Don D. Farst — Don D. Farst, D.V.M. — DATE 8/2/77

3-200
(5/76)
GPO 895-042

SUPPLEMENTAL ATTACHMENT FOR ENDANGERED SPECIES PERMIT, GLADYS PORTER ZOO, BROWNSVILLE, TEX.

50 CFR 17.22

1. This permit is requested for the purpose of transferring one male and one female Orangutan (Pongo pygmeus) from the Gladys Porter Zoo, Brownsville, Tex., USA, to the Gelsenkirchtn Zoo in West Germany. The male Orangutan was born on November 29, 1975, and the female was born on December 12, 1975.

2. These animals were both born at the Gladys Porter Zoo, Brownsville, Tex., USA.

3. We wish to move these animals to Gelsenkirchen, West Germany, for purposes of breeding and public exhibition.

4. The animals were both born in Brownsville, Tex., USA.

5. The Gelsenkirchen West Germany Zoo is an internationally-known zoological park. Their address is: Ruhr-Zoo, Gelsenkirchen, Bleckstr. 64, West Germany.

6. (i) The animals will be housed in the Ape House at the Gelsenkirchen Zoo which consists of four indoor cages, measuring 14 x 4 x 3 meters, with outdoor exhibit cages of 10 x 10 meters and another large, open-air arena of 400 square meters.

(ii) The staff of the Gelsenkirchen Zoo is very experienced and has raised many great apes in their collection. The director, Hermann Ruhe, Jr., has been in the zoo profession for over 40 years and is ably assisted by Dr. Rudiger Wandrey, Assistant Director, and Dr. Ernst Ruhmekorf, Scientific Director. The zoo veterinarian surgeon, Dr. H. Gass, has over 12 years of experience in dealing with zoo animals and, in particular, great apes.

(iii) The Gelsenkirchen Zoo will participate in an active breeding program and will contribute data to a studbook on Orangutans. Their long-range breeding goals are similar to U.S. Zoos.

(iv) The animals will be transported together in a container measuring 18 inches wide, 30 inches long, and 24 inches in height. There will be adequate ventilation to prevent overheating, and bedding material will be utilized for the animals' comfort. In our opinion, it is best to transport these animals together since they have lived togeiher since infancy and do not like to be separated. The animals would be air-shipped directly from Brownsville, Tex., to New York and then forwarded to Germany.

(v) The Ruhr-Zoo Gelsenkirchen has a very good reputation for maintaining great apes and I do not know of any mortalities that they have had in recent years.

7. A copy of the acceptance letter from the Gelsenkirchen Zoo is attached. The only people involved with this transaction will be Gladys Porter Zoo officials, Fred J. Zeehandelaar, New Rochelle, N. Y., who will act as the intermediate forwarding agent in New York, and officials of the Gelsenkirchen Zoo.

8. (i) The Gladys Porter Zoo is requesting permission to send one young pair of zoo-born Orangutans to the Gelsenkirchen Zoo in West Germany for the purposes of public display and breeding.

(ii) The animals will be shipped by air from Brownsville, Tex., to New York City, to Gelsenkirchen, West Germany.

(iii) The Gladys Porter Zoo presently has four male and eight female Organgutans and we consider this to be in excess of the optimum number for our facilities. We would like to maintain a static collection of three males and seven females so that the one pair of animals we are offering to the Gelsenkirchen Zoo are considered surplus for our

breeding program. Orangutans have been successfully reproduced in captivity in the United States and the removal of these two animals from the United States breeding population would not be to the detriment of the future United States breeding program.

(iv) The Gelsenkirchen Zoo plans to keep this young pair of Orangutans in their collection for breeding purposes. The animals would be moved to another recognized zoological institution if the Gelsenkirchen Zoo would discontinue their Organgutan breeding project.

Respectfully submitted,

DON D. FARST, DV.M.
Director,
Gladys Porter Zoo.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File No. PRT 2-1267-07; please refer to this number when submitting comments. All relevant comments received on or before October 7, 1977, will be considered.

Dated: August 31, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.77-25771 Filed 9-6-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant. Gladys Porter Zoo, 500 Ringgold Street, Brownsville, Tex. 78520.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
[ ] IMPORT OR EXPORT LICENSE [X] PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED
This permit is to move three (3) male and three (3) female Coahuilan Aquatic Box Turtles from the Republic of Mexico to the Gladys Porter Zoo as part of a cooperative breeding effort between the Department of Fauna Silvestre and the Gladys Porter Zoo.

3. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Gladys Porter Zoo
500 Ringgold Street
Brownsville, Texas 78520
(512) 546-7187

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING
[ ] MR. [ ] MRS. [ ] MISS [ ] MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY OR INSTITUTION, COMPLETE THE FOLLOWING
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
The Gladys Porter Zoo is a public facility owned by the City of Brownsville, Texas, and operated by the Valley Zoological Society. The Department of Fauna Silvestre is the governing agency for all fish and wildlife activities of the Republic of Mexico.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Don D. Farst, D.V.M., Zoo Director
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
Texas

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
From Coahuila, Mexico to the Gladys Porter Zoo, Brownsville, Texas , USA.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? [X] YES [ ] NO
(If yes, list license or permit numbers)
PRT 2-192 AQ

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? [X] YES [ ] NO
(If yes, list jurisdictions and type of documents)
Dept.of Fauna Silvestre
Dr. Antonio Landazuri Ortiz
(Documents to follow)

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$ N/A

10. DESIRED EFFECTIVE DATE
Immediately

11. DURATION NEEDED
Until completed.

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR [illegible]) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17.22

CERTIFICATION
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.
SIGNATURE: Don D Farst — Don D. Farst, D.V.M. — DATE: 8/1/77

3-200
10-76
GPO 935-042

SUPPLEMENTAL ATTACHMENT FOR ENDANGERED SPECIES PERMIT, GLADYS PORTER ZOO, BROWNSVILLE, TEX.

50 CFR 17.22

1. This permit is requested for the purpose of moving 3.3 Coahuilan Aquatic Box Turtles (Terrepene coahuila) from the wild, to be placed in a captive breeding situation at the Gladys Porter Zoo in Brownsville, Tex.

2. These animals are all to be removed from the wild population by the Department of Fauna Silvestre of the Republic of Mexico.

3. We wish to bring these animals to the Gladys Porter Zoo for the purpose of breeding and public exhibition because this turtle is endangered due to the destruction of its limited wild habitat, and the Mexican Government and the Gladys Porter Zoo concur that it would be in the best interests of the species to try to establish this turtle as well as others in captive breeding groups.

4. The animals in question are all of wild origin.

5. Don D. Farst, D.V.M., Director of the Gladys Porter Zoo, became interested in zoo animals while attending the College of Veterinary Medicine at Ohio State University, during which time he worked at Columbus Zoo as a parttime keeper. He graduated from Ohio State with a degree in Veterinary Medicine and entered private general practice in northwestern Pennsylvania for four years. In May of 1969, Dr. Farst accepted the position of veterinarian at the Columbus Municipal Zoo where he was also the Curator of Mammals and taught a course in Exotic Animal Medicine to the senior veterinary students at Ohio State University's College of Veterinary Medicine. In August of 1970, Dr. Farst became the Associate Director and Veterinarian at the new Gladys Porter Zoo in Brownsville, Texas, and was named the Director there in April, 1974. He has been a member of the American Association of Zoological Parks and Aquariums since 1969, serving as Chairman of various committees of that organization, was elected to its Board of Directors in 1976, and presently serves as Chairman of the Animal Health Committee. Dr. Farst is also a member of the Board of Directors of the American Association of Zoo Veterinarians and is the Editor of that organization's scientific publication, "Journal of Zoo Animal Medicine."

David P. Thompson, Deputy Director—Zoologist, has been associated with the Gladys Porter Zoo since June 5, 1971. He attended Southern Illinois University where he received a degree in Biological Science. He was a keeper at the St. Louis Zoo from 1964 to 1966, working with waterfowl, small mammals, reptiles, and primates. During a tour of duty with the Armed Forces, he was connected with the Medical Research Laboratory of the Serpentarium. He then became the Associate Curator of Mammals at the St. Louis Zoo and later, the Supervisor of the Children's Zoo and Nursery there. As Deputy Director of the Gladys Porter Zoo, Mr. Thompson functions in the capacity of director in Dr. Farst's absence. Mr. Thompson is a member of the American Association of Zoological Parks and Aquariums, and the American Federation of Aviculturists. He also maintains the Zoo's voluminous animal records in cooperation with the International Species Inventory System.

Stuart L. Porter, V.M.D., is the Resident Veterinarian for the Gladys Porter Zoo. He received a Biology degree from Washington and Lee University in 1970, and a degree in veterinary medicine from the University of Pennsylvania Veterinary School in 1974. Dr. Porter was the resident veterinarian at the Overton Park Zoo and Aquarium in Memphis, Tennessee for one year. He has been affiliated with the Gladys Porter Zoo since July, 1975, and is experienced in all phases of veterinary

medicine. He is a member of the American Association of Zoological Parks and Aquariums, Wildlife Disease Association and the American Association of Zoo Veterinarians.

Patrick M. Burchfield, General Curator and Herpetologist of the Gladys Porter Zoo, has been affiliated with the Brownsville Zoo since 1970. He attended Ohio State University in Columbus, Ohio, and Texas Southmost College in Brownsville, Tex. He is presently attending the Pan American University in Edinburg, Tex., where he will graduate with a degree in Zoology in December of this year. He has worked as a keeper at the Columbus Municipal Zoo from 1960 to 1963, followed by a tour of duty in the Armed Forces where he was the Curator of Venom Laboratory. He returned to the Columbus Zoo as Head Keeper until his move to Brownsville as Associate Curator. He became the General Curator in 1971 at which time he was entrusted with the entire reptile collection, supervision of the construction of a reptile building and then the establishment of breeding groups which have resulted in a number of successes. Mr. Burchfield is a member of the American Association of Zoological Parks and Aquariums and American Society of Ichthyologists and Herpetologists.

6. (i) The animals will be housed in a grotto enclosure comprising 160 square feet, with a small running stream and pool measuring approximately 4' x 4' x 10", closely resembling the normal habitation of the turtles in the wild.

(ii) The Director of the Gladys Porter Zoo is Dr. Don D. Farst, who is a qualified administrator, having served as Associate Director and Veterinarian before becoming the Zoo's Director in 1974. Under his direction, the Gladys Porter Zoo has successfully reproduced many rare and endangered animals as well as animals that have not easily been propagated in captive situations. Breeding and management expertise have been recognized and acknowledged throughout the zoological community in the United tSates and abroad.

(iii) The Gladys Porter Zoo, in cooperation with the Mexican Department of Fauna Silvestre, hope to reproduce these turtles in captivity on a long-range basis to provide potential stock for ultimate reintroduction to native habitats in Mexico when suitable protection measures have been taken to secure those areas.

(iv) The animals will be transported in individual containers measuring 12" x 12" x 8", with mesh tops and ½-inch meshed holes in the side panels to assure proper ventilation. A representative from the Mexican Department of Fauna Silvestre will transport the animals from the wild to the Gladys Porter Zoo by land in a truck. The turtles will not require feeding during the two to three days necessary to transport them from the wild at Cuatro Cienegas, Coahuila, Mexico, to the Gladys Porter Zoo in Brownsville, Tex., U.S.A. The animals will, however, be placed on moistened paper as bedding to insure that they will not desiccate. To insure safe transport, they will be under the responsibility of a biologist from the Department of Fauna Silvestre who will accompany the shipment.

(v) We have not maintained this species of turtle at the Gladys Porter Zoo, however, turtles of the genus *Terrapene* tend to be hearty captives and it is not anticipated that any major problems would occur, and captive adjustment should proceed smoothly.

7. A letter from the Gladys Porter Zoo Director to the Director General of the Department of Conservation contains the request to participate in the joint project and a copy is attached hereto. All subsequent communication has been by telephone between Dr. Antonio Landazuri Ortiz and Dr. Don D. Farst, who was advised that all necessary permits for Mexico were issued and are being forwarded to the Gladys Porter Zoo.

8. (i) Permission is requested to move 3.3 Coahuilan Aquatic Box Turtles from the wild at Cuatro Cienegas, Coahuila, Mexico to the Gladys Porter Zoo, Brownsville, Tex., U.S.A.

(ii) These animals will be moved by surface carrier.

(iii) The 3.3 Coahuilan Aquatic Box Turtles will be received under the auspices of the Mexican Department of Fauna Silvestre. The Gladys Porter Zoo presently does not show this species, however, they have undertaken extensive study of the requirements of this turtle in captivity and are desirous of starting a breeding program at the Gladys Porter Zoo in cooperation with the Department of Fauna Silvestre of Mexico.

(iv) These animals will remain at the Gladys Porter Zoo for the foreseeable future and they would only be moved to another recognized zoological park or returned to the wild under the recommendation and authority of the Department of Fauna Silvestre of Mexico or, if deemed advisable, returned to the wild if the breeding program at the Gladys Porter Zoo were to be terminated. The distribution of progeny would, likewise, be determined by the Department of Fauna Silvestre of Mexico and the Gladys Porter Zoo in the best interests of the species concerned, and in compliance with existing Endangered Species regulations.

The Coahuilan Aquatic Box Turtle's only known habitat is rapidly shrinking as a result of drainage projects for agricultural use in the area. The streams which form small pools called "pozos" which provide the habitat for the turtles are rapidly drying up also as a result of agricultural development of those streams. At present, the future of this species looks bleak unless some affirmative action is undertaken to insure sufficient captive breeding colonies for possible later reintroduction to the wild if and when portions of the native habitat are secured to insure the survival of the species. The Mexican Department of Fauna Silvestre is continuing their studies of this species in the wild as well as the other species of reptiles and other animals that live in the Cuatro Cienegas Basin region.

DON D. FARST, D.V.M.,
Director, Gladys Porter Zoo.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File No. PRT 2-1266-C07; please refer to this number when submitting comments. All relevant comments received on or before October 7, 1977, will be considered.

Dated: August 31, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.-25772 Filed 9-6-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant, Deborah Ann Wien, SR Box 60464, 11½ mi. Richardson Highway, Fairbanks, Alaska 99701.

OMB NO. 42-R0295

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ Import/Export License ☐ PERMIT
Law Enforcement (S&C) Anchorage, Alaska

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
To obtain and hold in captivity 3pr. Laysan Teal(Anas platyrhychos laysanensis) 2pr. Satyr Tragopan(Tragopan Satyra) and 2pr. Palawan Peacock Phesant // (Polyplectron emphanum)

All above mentioned animals are on the endangered species list.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)

Mrs. Deborah Ann Wien
SR Box 60464
11½ mi. Richardson hwy.
Fairbanks, Ak 99701
(ac.907) 488-6830

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING.

☐ MR. ☒ MRS. ☐ MISS ☐ MS.

HEIGHT	WEIGHT
5' 5"	
DATE OF BIRTH: 12-24-55	COLOR HAIR: blonde	COLOR EYES: blue
PHONE NUMBER WHERE EMPLOYED: 488-6830	SOCIAL SECURITY NUMBER: 574-20-2149

OCCUPATION: Housewife/ Mother

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:
I am a member of :
American Federation of Aviculture and American Game Bird Breeders Co.Fa. recieving monthly info on breeding and raising of Gamebirds.

5. IF "APPLICANT" IS A BUSINESS CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
At our Home/ Residence, the same as above.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit number)
N/A

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☒ NO
(If yes, list jurisdictions and type of documents)
N/A Need Federal approvale before I can get State approval.

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE
AS SOON AS Available

11. DURATION NEEDED
INDEFINITE

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 C.F.R. 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 § 17.22 (1, 2, 4, 5, 6,ii,iii,iv,v, 7, 8)

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Deborah Wien
DATE July 17, 1977

3-200
6/76

June 29, 1977

Refer to 50 CFR 17.22 as is applicable.

1. This is a list of the common and scientific names of birds wanted, as well as numbers of individuals to be aquired. The scientific names are as listed in the WATERFOWL OF THE WORLD by Jean Delacour vol. 4 pg. 337-339 and ENCYCLOPAEDIA OF AVICULTURE vol. 1. by A. Rutgers and K.A. Norris pg 207 and 233 respectively.

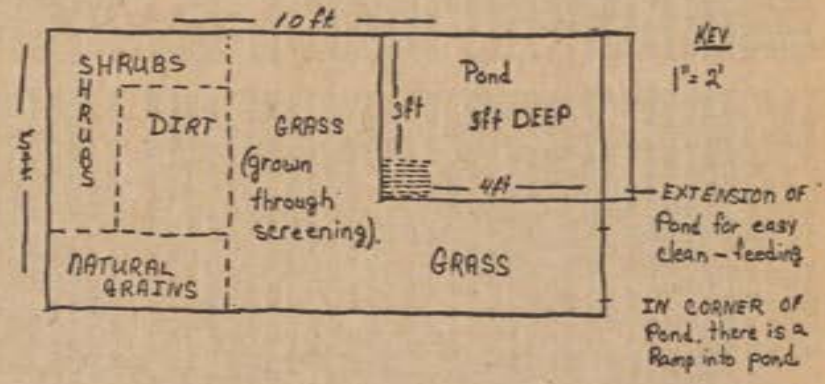
Laysen Teal	Anas Platyrhychos Laysanensis	6	4,1yr., 2, 6mo.
Satyr Tragopan	Tragopan Satyra	4	age undetermined
Palawan Peacock Pheasant	Polyplectron Emphanum	4	" "

At this time I would like to import, hold in possession, and breed these species.

2. The birds would be purchased from licenced vendors who have bred these species in captivity. The ones I would aquire would be a product of such a breeding. No wild caught birds would be aquired unless absolutly necessary. I would not be doing this but going through another vendor who has had the birds properly quarantined.

+. Two pair of the Laysen Teal would come from Cracker's Waterfowl Farm in N.Y. The other birds would come from farms located in either Ohio or N.Y. At present I have only reserved 2pr. of Laysen Teal pending the outcome of the permit but I have in mind two places for the Satyr Tragopan one in N.Y. and the other in Ohio, the Palawan Peacock is less available but I have in mind a Mr. Charlie Sivelle who has farms in N.Y.

5. The wild life would be kept and maintained at our home and residence, which is located 11½ mi. on the Richardson (or the Alaskan Highway.)
We own about 4 acres of land on which we have plans of constructing a building 20 ft. x 48 ft. In this there would be one pen for each pair of Laysen Teal (3) about 5 ft. x 10 ft. with a pond in each pen of 4ft. x 3ft. and 3 ft. deep. The pens would be done in such a way as to have grass growing around the pond and shrubery to the back with a small space of open soil and hopefully some natural grain growing to the side. The Satyr Tragopan and Palawan Peacock would all be pened together according to kind in pens 5ft. x 5ft. within the pens would have grass with part of the area in tall grass or natural grains, there would be a fake tree for the Tragopans but otherwise there would be no shrubery.
Note the diagram below of the Teals' pen. pg.3 has the dia_ram of the overall building and the pens for the Satyr and Palawan.



2.

ii. I have not bred ducks before. However we own 1pr. Greenwing Teal and 1pr. Mandarin Ducks for one year now in good condition and I do hope to propagate them next year. We also own several Quail (of which would not count, but as information) they consist of Couturnix, Blue Scale, California Valley Quail. Of these I have raised several young. I am sure with proper care and food I could breed the three species I am applying for.

iii. I would be willing to participate with a cooperative breeding program. Naturally I would have to feel sure about such a program and its purpose. But I would be willing to loan out some of my birds for a said period of time or even give the young to worthwhile programs. I would also be willing to contribute any data useful or beneficial to others.

iv. I have not done any shipping of birds at present and would have to do some study before I did.

By some of the crates I have come in contact with, they were made out of heavy cardboard with a screen for air and some light in the side but not enough to cause draft. The bottom is covered with scratch and sufficient Game bird feed to last several days in case of lay-over and a water container wired to the side for easy use and also refilling as may be needed. The size would be of concern as to much room could prove fatal.

v. I recieved my two pair of ducks one year ago. There have been no deaths or injuries. The quail were recieved at the same time. Of these we recieved 14 birds and at present have 10 birds, not counting young and those to hatch in a few days. The quail were killed in flying against the sides of the pen when scared. The pen was to large in this case.. The problem has not been corrected as yet, however in the new building soon to be constructed there is space set aside for a new pen for the quail. We also lost two quail for unknown reasons, but since the cause has not occured again in 5 mo. now I have not become to concerned. There was also one case of rumatism and one case of lameness. Both were cured by quiet, rest and literally no room for activity. It took two to three weeks for the birds to be fit again and be placed back in there original pens.

7. I am not real sure what this part is getting at but in August if all goes well I would like to display one of each of these species on this application at our local Tanana Valley Fair. The display would be done by me in conjunction with Nothern Lights Nursery here in Fairbanks.

8. I personally feel that the ravaging of the native land of some of these species can only be off set by breeders who take up a few of these species they are interested in so as to care for them, breed them and keep them from becoming extinct. By extinct I mean not seen either in the wild or in the pen. A species can be extinct in the wild but still existing in confinement.

I am positive there are others more qualified but I would very much like to do my best to propagate these birds for sale or donation to other breeders to ensure a stabilization of these species I am most interested in. I do have lots of information on their feeding requirements, temperment and their needs as well as the known data on their breeding. Thus where I lack I can find help.

Any which should die would be promptly frozen and reported. The birds would remain so until I knew there was no museum or inotatution who wished them. On termination all species would be sold to others who are interested and fully licenced and/or donated to cooperative breeding programs.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File No. PRT 2-1193-07; please refer to this number when submitting comments. All relevant comments received on or before October 7, 1977 will be considered.

Dated: August 31, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.77-25773 Filed 9-6-77;8:45 am]

National Park Service

[Order 5, Admt. 7]

FIELD LAND ACQUISITION OFFICERS

Delegation of Authority

Southwest Region Order No. 5, Amdt. 1, approved April 25, 1972 and published in the FEDERAL REGISTER of June 13, 1972, (37 FR 11736), set forth in section 2, Delegation of Authority.

Section 2 is hereby amended by revising paragraph (e) to read as follows:

SEC. 2. *Delegation* * * *

(e) Field Land Acquisition Officers. The Field Land Acquisition Officers are authorized to execute the land acquisition program in their assigned area, including contracting for acquisition of lands and related property, and options and offers to sell related thereto, not in excess of $250,000.

Dated: August 11, 1977.

JOHN E. COOK,
Director, Southwest Region.

[FR Doc.77-25925 Filed 9-6-77;8:45 am]

NORTH ATLANTIC REGIONAL ADVISORY COMMITTEE

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the North Atlantic Regional Advisory Committee will be held on September 22 and 23 at the Park Headquarters, Cape Cod National Seashore in South Wellfleet, MA.

The purpose of the Committee is to provide for the free exchange of ideas between the National Park Service and the public, and to facilitate the solicitation of advice or other counsel from members of the public on problems and programs pertinent to the North Atlantic Region of the National Park Service.

Matters to be discussed at this meeting include:

1. Current activities of the North Atlantic Region.
2. Report of Subcommittees: St. Gaudens, Ellis Island.
3. Policy Discussions: Advisory Commissions, Personnel Rotation.

The meeting will begin approximately at 9 a.m. on September 22, 1977, at the Marconi Station/Park Headquarters, South Wellfleet, MA. The meeting will be open to the public, and any member of the public may file with the committee a written statement concerning matters to be discussed. The meeting will conclude at approximately 12 noon, September 23.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact John Raftery, Assistant to the Regional Director, North Atlantic Region at Area Code 617-223-3762. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the North Atlantic Region, 15 State Street, Boston, MA.

Dated: August 30, 1977.

ROBERT M. LANDAU,
Assistant for Advisory Boards and Commissions, National Park Service.

[FR Doc.77-25926 Filed 9-6-77;8:45 am]

Office of the Secretary

[INT DES 77-28]

PROPOSED GENERAL MANAGEMENT PLAN/WILDERNESS STUDY/ROAD STUDY GLEN CANYON NATIONAL RECREATION AREA ARIZONA-UTAH

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a draft environmetal statement for the proposed General Management Plan/Wilderness Proposal/Road Study Al-

ternatives, Glen Canyon National Recreation Area, Arizona-Utah.

The statement considers, within the General Management Plan, a proposal dividing the recreation area into four management zones. The Wilderness Proposal calls for adding 519,000 acres (42 percent of the recreation area) to the National Wilderness System; an additional 68,030 acres (5 percent of the recreation area) are proposed for Potential Wilderness Addition. In response to enabling legislation for the recreation area, an engineering report identifying four feasible routes from Glen Canyon City to Bullfrog Basin was issued in October 1974. A survey of the environmental impacts of constructing and using the four routes appears in the draft environmental statement.

Written comments on the environmental statement are invited and will be accepted for a period of forty-five (45) days from the date of this notice. Comments should be addressed to the Superintendent, Glen Canyon National Recreation Area, at the address given below.

Copies of the draft environmental statement are available from, or for inspection at, the following locations:

Superintendent, Glen Canyon National Recreation Area, Post Office Box 1507, Page, Ariz. 86040.
Utah State Office, National Park Service, 135 South State St., Room 2209, Salt Lake City, Utah 84138.
Rocky Mountain Regional Office, National Park Service, 655 Parfet St., Post Office Box 25287, Denver, Colo. 80225.

Dated: August 26, 1977.

LARRY E. MEIEROTTE,
Deputy Assistant,
Secretary of the Interior.

[FR Doc.77-25924 Filed 9-6-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[332-73]

HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

Hearing on Draft Chapters

The United States International Trade Commission hereby gives notice that a public hearing will be held at 10 a.m., e.d.t., beginning on September 23, 1977, in the Hearing Room of the United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436 on a draft of, and draft U.S. comments on, the following chapters of the Harmonized Commodity Description and Coding System:

Chapter 1: Live animals.
Chapter 2: Meat and edible meat offals.
Chapter 4: Dairy products; bird's eggs; natural honey; edible products of animal origin, not elsewhere specified or included.
Chapter 5: Products of animal origin, not elsewhere specified or included.
Chapter 6: Live trees and other plants; bulbs, roots, and the like; cut flowers and ornamental foliage.
Chapter 8: Edible fruit and nuts; peel of citrus fruit or melons.
Chapter 12: Oil seeds and oleaginous fruit; miscellaneous grain seeds and fruit; industrial and medical plants; straw and fodder.
Chapter 13: Gums, resins, and other vegetable saps and extracts.
Chapter 14: Vegetable materials.
Chapter 15: Animal and vegetable fats and oils and their cleavage products, prepared edible fats; animal and vegetable waxes.
Chapter 16: Preparations of meat, of fish, of crustaceans or molluscs.
Chapter 17: Sugar and sugar confectionary.
Chapter 18: Cocoa and cocoa preparations.
Chapter 19: Preparations of [milk] cereals, flour or starch; pastry cooks' products.
Chapter 20: Preparations of vegetables, fruit or other parts of plants.
Chapter 21: Miscellaneous edible preparations.
Chapter 22: Beverages, spirits, and vinegar.
Chapter 23: Residues and waste from the food industries; prepared animal fodder.
Chapter 24: Tobacco.
Chapter 30: Pharmaceutical products.
Chapter 33: Essential oils and resinoids; perfumery, cosmetics and toilet preparations.
Chapter 34: Soap, organic surface active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and "dental waxes".

The purpose of this hearing is to obtain the comments and views of interested parties with respect to these draft chapters of the Harmonized Commodity Description and Coding System, and of the draft U.S. comments thereon.

The Commission also invites the comments and views of interested parties on chapters 3, 7, 9, 10, and 11, which have been provisionally adopted by the Harmonized System Committee.

This notice is being issued pursuant to Commission investigation No. 332-73, instituted on January 31, 1975 (40 FR 6239), under section 332(g) of the Tariff Act of 1930. The investigation was initiated in accordance with section 608(c) of the Trade Act of 1974 which provides, in part, that the Commission shall institute an investigation which would provide the basis for—

(2) Full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices * * *.

The Harmonized Commodity Description and Coding System (Harmonized Code) is being developed by the Customs Cooperation Council (CCC), a 79-member intergovernmental organization with headquarters in Brussels, as an international commodity classification system which will be adaptable for modernized customs tariff nomenclature purposes and for recording, handling, and reporting of transactions in international trade. The Harmonized Code will be based on, and in many respects will be an extension of, the Customs Cooperation Council Nomenclature; formerly known as the Brussels Tariff Nomenclature or BTN.

Currently, a technical team working under the auspices of the CCC prepares drafts of the various chapters of the Harmonized Code for consideration by the Harmonized System Committee which was established in order to develop the code. These drafts are forwarded to the members and observers of the Committee for their review and submission of written comments. The Committee meets three times a year to consider these drafts and the written comments and presentations of the various delegations. The review of a particular chapter or group of chapters may extend to more than one meeting.

In 1971, the Department of the Treasury established an Interagency Advisory Committee on Customs Cooperation Council Matters in order to provide a basis for interested Federal agencies to participate with respect to CCC matters. In order to establish and develop U.S. programs and policies with respect to the Harmonized Code, the interagency committee has instituted procedures which take into account the provisions of section 608(c) of the Trade Act of 1974, which call for the Commission to contribute to the U.S. technical input to the Harmonized System Committee. Under these procedures the Commission is preparing technical comments and proposals on the various chapters of the Harmonized Code for consideration by the interagency committee in the determination of U.S. positions with respect to the Harmonized Code. In making proposals, the Commission is seeking and taking into consideration the views of trade and industry and other interested parties and of interested Government agencies.

The draft U.S. comments on the chapters of the Harmonized Code released for public comment today relate specifically to the technical team drafts of these chapters and should be read in conjunction therewith.

In its public notice issued May 10, 1976, regarding hearings on the chapters of the Harmonized Commodity Description and Coding System (41 FR 19781 of May 13, 1976) interested parties were notified regarding the rules governing the conduct of the hearings, and the submission of written statements. The Commission's notice of May 10, 1976, applies to the hearing on the chapters being released today to the extent that it is applicable.

In its public notices of May 4, 1976 (41 FR 18716 of May 6, 1976), August 9, 1976 (41 FR 34370 of August 13, 1976), and December 20, 1976 (41 FR 55948 of December 23, 1976), the Commission identified those chapters which have been considered thus far by the Harmonized System Committee, and the chapters for which a technical team draft has been released. Since those notices were issued the Commission has received the following draft chapters prepared by the technical team:

Chapter 31: Fertilisers.
Chapter 35: Albuminoidal substances; glues.

Chapter 36: Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations.
Chapter 41: Raw hides and skins and leather.
Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut).
Chapter 43: Furskins and artificial fur; manufactures thereof.
Chapter 92: Musical instruments, sound recorders or reproducers; television image and sound recorders or reproducers; parts and accessories of such articles.
Chapter 93: Arms and ammunition; parts thereof.
Chapter 94: Furniture and parts thereof; bedding mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings not elsewhere specified or included.
Chapter 97: Toys, games and sports requisites; parts thereof.

Requests to appear at the hearing must be filed in writing with the Secretary of the Commission not later than September 16, 1977. Parties who have properly entered an appearance by this date will be individually notified of the date on which they are scheduled to appear. Such notice will be sent as soon as possible after September 16, 1977. Any person who fails to receive such notification by September 21, 1977, should immediately communicate with the Office of the Secretary of the Commission. Parties wishing to submit written comments in lieu of attendance at the hearing should do so by September 30, 1977.

Copies of the foregoing chapters and of the chapters and draft U.S. comments thereon which are the subject of the hearings are available for public inspection at the offices of the Commission at 701 E Street NW., Washington, D.C. 20436 or at 6 World Trade Center, New York, N.Y., 10048. The Commission will also send copies to interested parties who notify the Commission of their interest with respect to any particular chapter or group of chapters.

Issued: September 1, 1977.

By order of the Commission:

KENNETH R. MASON,
Secretary.

[FR Doc.77-26015 Filed 9-6-77;8:45 am]

[AA1921-167]

PRESSURE SENSITIVE PLASTIC TAPE FROM ITALY

Determination of Injury or Likelihood Thereof

On May 31, 1977, the United States International Trade Commission received advice from the Department of the Treasury that pressure sensitive plastic tape of more than 1⅜ inches in width and not exceeding 4 mils in thickness from Italy is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on June 3, 1977, the Commission instituted investigation No. AA1921-167 under section 201 (a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation and of the public hearing held in connection therewith were published in the FEDERAL REGISTER on June 9, 1977, and July 20, 1977 (42 FR 29568 and 42 FR 37258). On July 26, 1977, a hearing was held in Washington, D.C., at which all persons who requested the opportunity were permitted to appear by counsel or in person.

In arriving at its determination, the Commission gave due consideration to all written submissions from interested parties and information adduced at the hearings as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of its investigation, the Commission has determined (Chairman Daniel Minchew and Commissioner Catherine Bedell dissenting) that an industry in the United States is being or is likely to be injured[1] by reason of the importation of pressure sensitive plastic tape of more than 1⅜ inches in width and not exceeding 4 mils in thickness from Italy that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS FOR THE AFFIRMATIVE DETERMINATION OF VICE CHAIRMAN JOSEPH O. PARKER AND COMMISSIONERS GEORGE M. MOORE AND ITALO H. ABLONDI

On May 31, 1977, the United States International Trade Commission received advice from the Department of the Treasury that pressure sensitive plastic tape more than 1⅜ inches in width and not exceeding 4 mils in thickness from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on June 3, 1977, the Commission instituted investigation No. AA1921-167 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

In order to find in the affirmative in this investigation, the Commission must find that two conditions are satisfied. First, it must find that an industry in the United States is being or is likely to be injured or is prevented from being established.[2] Second, any injury or likelihood of injury must be by reason of the importation into the United States of the class or kind of foreign merchandise which Treasury has determined is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

Determination. On the basis of the information obtained in the investigation, we determine that an industry in the United States is being or is likely to be injured[2] by reason of the importation of certain pressure sensitive tape from Italy which is being, or is likely to be sold at LTFV.

The imported article and the domestic industry. Pressure sensitive plastic tape more than 1⅜ inches in width and not exceeding 4 mils in thickness (PSP tape), the imported article which Treasury found to be sold at LTFV, is a plastic film-backed tape with an adhesive on one side that remains permanently tacky at room temperature. The tape firmly adheres to a variety of surfaces upon mere contact, without the need of more than finger or hand pressure. No activation by water, solvent, or heat is required in order to obtain a strong adhesive holding force. PSP tape of the size and specifications which the Department of the Treasury determined is being or is likely to be sold at LTFV is used primarily in the sealing of corrugated boxes.

In making this determination we have considered the U.S. industry to consist of the facilities in the United States devoted to the production of PSP tape. There are nine known producers of such tape.

LTFV sales. The Department of the Treasury examined sales of PSP tape from Italy during the period December 1975 through June 1976. LTFV margins were found on a substantial quantity of the merchandise on which comparisons were made. Three Italian firms were found to have made sales at LTFV margins ranging from 1 to 26 percent. The weighted average margin for the three firms' LTFV sales was about 10 percent.

Views of Vice Chairman Parker and Commissioner Moore with respect to injury by reason of LTFV sales. The increased penetration of LTFV imports of PSP tape from Italy adversely affected the prices of the domestic industry, resulted in lost sales by U.S. producers, and adversely affected U.S. producers' profits. This clearly demonstrates that the U.S. industry producing PSP tape is being injured by reason of the LTFV imports from Italy. This injury will continue and intensify unless the remedy provided by the Antidumping Act, 1921, as amended, is invoked.

U.S. imports of PSP tape from Italian suppliers found by the Department of the Treasury to be selling at LTFV amounted to less than 8 million square yards in each of the years 1973-75, but then increased to more than 26 million square yards in 1976. The more than trebling of Italian imports from LTFV suppliers in 1976 resulted in those suppliers doubling their share of the U.S. market in that year as compared

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[1] Vice Chairman Joseph O. Parker and Commissioner George M. Moore determined in the affirmative with respect to present injury; Commissioner Italo H. Ablondi determined in the affirmative with respect to likelihood of injury.

[2] Prevention of establishment of an industry is not an issue in this investigation and will not be discussed further.

[2] Vice Chairman Parker and Commissioner Moore find that an industry is being injured, and Commissioner Ablondi finds that an industry is likely to be injured.

to their share in 1975. In 1976, the suppliers of LTFV imports from Italy obtained about one quarter of the total U.S. market for PSP tape. The increase in their share of the U.S. market continued in January–May 1977 as imports from these producers increased by approximately two-thirds over the quantity entered in the corresponding period in 1976.

U.S. producers' prices for PSP tape, led by continuing reductions in the price of tape imported from Italy, declined sharply during the last three quarters of 1975 and the first half of 1976. The underselling of U.S. producers resulting from LTFV imports from Italy caused price depression in the U.S. market and consequently to the U.S. industry. Since mid-1976, prices of the domestic PSP tape have remained at depressed levels in comparison with the prices that prevailed prior to late 1975. Moreover, the price reductions that have taken place since early 1975 occurred despite substantial increases in unit production costs incurred by domestic producers.

Evidence showing significant sales lost by domestic producers has been verified by the Commission as having resulted from lower priced LTFV imports from Italy.

The effect of LTFV imports in causing depressed prices and lost sales is also reflected in the financial experience of domestic producers of PSP tape. Since 1974, net operating profit of the firms reporting financial data to the Commission has fallen continuously—plummeting from a substantial profit in that year to a substantial loss in 1976. Likewise, the ratio of net operating profit (or loss) before taxes to net sales fell from a profit of more than 15 percent in 1974 to a loss of more than 10 percent in 1976. Moreover, the losses worsened during the first quarter of 1977, compared with the first quarter of 1976.

On the basis of the considerations discussed above, we conclude that an industry in the United States is being injured by reason of the importation of PSP tape from Italy sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

Views of Commissioner Ablondi with respect to likelihood of injury by reason of LTFV imports. The factors expressed by my colleagues were also factors which I considered in arriving at my determination in this investigation.

In addition, it should be noted that it was not until the early 1970's, when several large U.S. producers became actively engaged in the sale of PSP tape, that domestic production began to increase significantly. Prior to that time, European producers, which first developed and marketed the product, enjoyed a substantial share of the U.S. market, with Italian producers accounting for a significant share of sales. However, as domestic production increased, the share of the market supplied by Italian producers dropped sharply. Between 1973 and 1974, for instance, the share of domestic consumption held by Italian producers found to be selling at LTFV decreased by more than 40 percent.

Faced with continued erosion of their market position, Italian producers sought to recapture their market share by resorting to sales at LTFV. Since 1975, instead of continuing to decline in the face of increased domestic competition, the market share of the Italian producers has dramatically increased. Between 1975 and 1976 alone, shipments rose by 240 percent. During the first 5 months of 1977 shipments again increased, rising 66 percent above the level during the corresponding period in 1976. Though domestic consumption has also grown during this period, Italian LTFV producers have increased their market share to a level exceeding that in 1973.

It is significant that it was during this period of rapidly increasing imports that Italian producers emerged as the downside price leaders, as evidenced by the fact that after January 1975 the price of the imported product remained consistently below that of its U.S. counterpart. That these Italian producers were able to register their largest gains during a period which concided with the time that prices for the imported product were declining must be attributed in large part to sales at LTFV.

Such pricing measures by Italian LTFV producers seriously depressed prices received by U.S. producers. This fact, coupled with rapidly rising costs, resulted in even the largest U.S. PSP tape producers' experiencing losses on their PSP tape operations in 1976 and the first quarter of 1977. The continued availability of large quantities of low priced PSP tape at LTFV prices poses a serious threat to the economic viabilty of the PSP tape industry and is likely to lead to continued losses for the small U.S. producers which only began producing this product line within the last 2 or 3 years. In addition, three U.S. producers of tape other than PSP tape advised the Commission that they had studied the feasibility of producing PSP tape but had concluded that the pricing of LTFV imports would make the domestic manufacture of such tape unprofitable, and would not justify any investment in such operations.

On the basis of the considerations discussed above, I have concluded that an industry in the United States is likely to be injured by reason of the importation of PSP tape from Italy, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS FOR NEGATIVE DETERMINATION OF CHAIRMAN DANIEL MINCHEW AND COMMISSIONER CATHERINE BEDELL

On May 31, 1977, the United States International Trade Commission received advice from the Department of the Treasury that pressure sensitive plastic tape more than 1⅜ inches in width and not exceeding 4 mils in thickness from Italy is being sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on June 3, 1977, the Commission instituted investigation No. AA1921–167 under Section 201(a) of the act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Before the Commission may find in the affirmative in this investigation, it is necessary that the following two conditions be met:

(1) An industry in the United States is being or is likely to be injured, or is prevented from being established,[1] and

(2) The requisite injury must be by reason of the importation into the United States of the merchandise which Treasury has determined is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

Determination. On the basis of information obtained in the investigation, we determine that there is no injury or likelihood of injury to an industry in the United States by reason of the importation of pressure sensitive plastic tape more than 1⅜ inches in width and not exceeding 4 mils in thickness from Italy which is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

The imported article and the domestic industry. Pressure sensitive plastic tape more than 1⅜ inches in width and not exceeding 4 mils in thickness, the imported article which is the subject of this investigation, is a plastic-film-backed tape that firmly adheres to a variety of surfaces upon mere contact. The product's major use is as corrugated-box-sealing tape. Other uses are for the manufacture of printed labels, for tabbing, for color coding and for label protection.

In making this determination we have considered the domestic industry to consist of the facilities in the United States used in the production of pressure sensitive plastic tape more than 1⅜ inches in width and not exceeding 4 mils in thickness. There are nine known producers of the tape in question.

No injury by reason of LTFV imports. In our opinion the information gathered during the investigation indicates that an industry in the United States is not being injured. Furthermore, if the requisite injury had been established, there would be no persuasive indication that such injury was caused by LTFV imports.

The available information shows that the domestic industry producing pressure sensitive plastic tape is a healthy, growing industry which has experienced a substantial increase in production, shipments, sales, and employment in each of the last 4 years (1973–76). Furthermore, six new domestic producers have commenced production of this tape during the 4-year period. Other U.S. firms are reported to be seriously considering production of pressure sensitive plastic tape. In response to the increas-

[1] Prevention of the establishment of an industry is not an issue in the instant investigation and will not be discussed further.

ing demand for this tape, U.S. production was approximately three times greater in 1976 than it was in 1973. U.S. producers' shipments followed the same trend. Both production and shipments continued to increase sharply during January–May 1977, compared with the corresponding period in 1976. U.S. employment in the production of this tape tripled between 1973 and 1976 and then increased again by more than 70 percent during January–May 1977, compared with the corresponding period in 1976.

Certain U.S. producers contend that the profitability of their pressure sensitive plastic tape operations has suffered because of availability of low-priced LTFV imports of the tape in question. However, we are unable to find a causal relationship between the LTFV imports and U.S. producers' loss of profits. It is to be expected that when an industry expands from three to nine producers within a short period of time, severe price competition will be experienced as the new producers strive to obtain a share of the existing market. In this case it is evident that the new producers, which were primarily producing and marketing a new, lower priced type of tape (polypropylene), which was first sold in the United States in significant quantities in 1975, would adversely affect the profitability of the established U.S. producers of the considerably higher priced polyester tape. The lowest prices of at least one of the U.S. producers of polypropylene tape were as low as the prices of imported UPVC tape from Italy in certain months during the period in which Treasury found that imports were being sold at LTFV. In addition, the lowest prices quoted for the LTFV imports generally applied only to large shipments of as many as 1,000 cases, whereas the lowest prices offered by U.S. producers applied to quantities ranging from 20 to 200 cases. Thus, price comparisons between domestic producers and importers tend to overstate the price advantage of importers.

No likelihood of injury by reason of LTFV imports. The strong growth trends evidenced by the domestic industry lead us to believe that LTFV imports as described by Treasury are not likely to injure the domestic industry. Annual U.S. consumption of pressure sensitive plastic tape approximately tripled between 1973 and 1976 and increased again by about 30 percent in January–May 1977, compared with January–May 1976. It appears that U.S. consumption will continue to increase, particularly in light of estimations that the U.S. market for pressure sensitive plastic tape is substantially underdeveloped in comparison with the development of the European market for such tape. As the European market begins to recover from the recent recession, Italian exports are expected to focus once again on European demand for pressure sensitive plastic tape. This should result in reduced diversion of Italian exports to the U.S. market. Finally, we note that counsel for the chief supplier of imports of pressure sensitive plastic tape from Italy has notified the Commission of an increase in his client's list prices effective September 1, 1977.

Conclusion. We, therefore, conclude that an industry in the United States is not being and is not likely to be injured by reason of the importation of pressure sensitive plastic tape more than 1⅜ inches in width and not exceeding 4 mils in thickness from Italy which is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

Issued: September 1, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-26614 Filed 9-6-77;8:45 am]

DEPARTMENT OF JUSTICE

Bureau of Prisons

NATIONAL INSTITUTE OF CORRECTIONS ADVISORY BOARD

Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) will meet on Sunday, October 2, 1977, starting at 5 p.m. and on Monday, October 3, 1977, starting at 8 a.m., in the Conference Room of the Federal Bureau of Prisons (Room 500), 320 First Street NW., Washington, D.C.

This meeting is one of the regularly scheduled triannual meetings of the Advisory Board and will include a review of internal policies.

Signed at Washington, D.C., this 31st day of August 1977.

SHERMAN R. DAY,
Director.

[FR Doc.77-25962 Filed 9-6-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13912, File No. SR-Amex-77-3]

AMERICAN STOCK EXCHANGE, INC.

Order Disapproving Proposed Rule Change

AUGUST 31, 1977.

On March 14, 1977, the American Stock Exchange, Inc., 86 Trinity Pl., New York, N.Y. 10006, ("Amex") submitted a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, which would add Section 117 to Part 1 and section 1003A to Part 10 of the Amex *Company Guide*. Section 117 sets forth alternate criteria for the original listing of common stock and section 1003A provides for the prospective application of certain delisting criteria with respect to issues which might be listed pursuant to the altrenate criteria.[1]

On May 13, 1977, we instituted a proceeding, pursuant to section 19(b)(2) of the Act, to determine whether the proposed additions to Parts 1 and 10 of the *Company Guide* should be disapproved.[2] In our order instituting disapproval proceedings, we cited sections 6(b)(5) and 6(b)(8) of the Act as providing the grounds under consideration for disapproval. More specifically, we noted that implementation of the alternate listing criteria would expand the universe of securities eligible for listing on the Amex. To the extent that over-the-counter ("OTC") issues become eligible and indeed are listed under the alternate standards, we observed that trading in such issues would be governed by the Exchange's off-board principal restrictions, which are set forth in Amex Rule 5. Therefore, approval of SR-Amex-77-3 would serve to broaden the anticompetitive impact of those restrictions through diminution of potential intermarket competition in OTC issues which become listed on Amex. We questioned whether this result would be consistent with the legislative intention to foster the removal of impediments to the development of free and open markets and a national market system and whether the proposal would constitute the imposition of an undue burden on competition.

During our deliberation on SR-Amex-77-3, we expressed our willingness to approve this proposed rule change if the Amex would exempt from its off-board restrictions any security which became listed pursuant to the alternate standards. Amex has not adopted such an exemption but rather has urged that we review and approve the instant proposal without reference to any question arising from the maintenance of off-board principal restrictions generally.

ANALYSIS OF COMMENTS RECEIVED

The Amex submitted the only comments which we received in connection with the above-mentioned disapproval proceeding. Essentially, Amex contends that its alternate listing standards should be approved, without provision of an exemptive amendment to Amex Rule 5, on the following grounds: (1) Modification of any off-board trading restrictions should not occur until the Commission has concluded appropriate rulemaking proceedings and adopted an industry-wide approach respecting the elimination of such restrictions; (2) disapproval would be discriminatory to the Amex in light of Commission approval of two earlier amendments to the New York Stock Exchange's ("NYSE's") listing standards; and (3) approval concurrent with a narrow amendment of Amex

[1] The proposal was published in the *Federal Register* on March 24, 1977 (42 F.R. 15994), and interested persons were invited to submit written data, views and arguments.

[2] See Securities Exchange Act Release No. 13542 (May 13, 1977).

Rule 5 may impose administrative burdens on the Amex staff.

On June 23, 1977, we proposed amendments to Rule 19c-1 under the Act [17 CFR 240.19c-1] and Rule 19c-2 thereunder, to amend certain exchange rules which restrict the ability of members to effect transactions in certain listed issues, including those listed on the Amex, over-the-counter as principal or agent and we are currently conducting hearings on the potential impact of those proposals.[3] In the interim, we believe that the existing competitive balance between the exchanges and the OTC markets should not be upset through exchange rulemaking, which would subject additional securities and market makers therein to rules which have been identified as anti-competitive, while the Commission is actively considering whether the competitive burdens represented by those rules can be justified by reference to the purposes of the Act. Absent an amendment of Amex Rule 5, the Amex proposal would, as described above, expand the sweep of its existing Rule 5 to the securities of those issuers who became eligible and chose to list under the proposed new standards.

In its second argument, Amex represents that disapproval of SR-Amex-77-3 would be discriminatory to the Exchange in view of the Commission's prior approval of NYSE proposals designated SR-NYSE-75-23 and SR-NYSE-76-22;[4] the former provided limited downward flexibility in the NYSE listing and delisting criteria of aggregate market value of publicly-held shares, while the latter established alternate criteria for the original listing of common stock by foreign issuers. Both NYSE amendments expanded the universe of securities which might be listed on the NYSE and we were mindful that some OTC issues could be affected by those amendments. Nevertheless, remaining questions relating to the maintenance of exchange restrictions on off-board trading were not then ripe for resolution.[5] In our consideration of SR-Amex-77-3, however, we must give recognition to the fact that those questions now are in the process of being resolved. Indeed, on May 12, 1977, the day prior to actual initiation of these proceedings, we determined to commence formal proceedings with respect to remaining exchange rules concerning off-board trading. Thus, in the interval (approximately one year) since our approval of SR-NYSE-75-23 and SR-NYSE-76-22, our posture with respect to retention of remaining exchange off-board trading restrictions has evolved significantly.

Amex's final contention is that additional ministerial burdens might be created if approval of SR-Amex-77-3 is accompanied by a narrow amendment of the Exchange's off-board trading restrictions.[6] We do not find this argument persuasive. The necessary evaluations of whether an issuer meets the standards of financial soundness and suitability for trading of its shares in the Amex market must be made regardless of whether Rule 5 is amended and are not substantively related thereto. Even if we were to find that, as contended, additional burdens would be imposed upon the Amex staff, we do not believe that any advantages to be gained by avoiding those burdens would justify at this time our approval of a change in listing standards which would expand the sweep of an existing anticompetitive Amex rule.

Until we determine whether the maintenance of exchange off-board restrictions is necessary or appropriate in furtherance of the purposes of the Act, we are unable to find that SR-Amex-77-3 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, particularly with respect to the requirements of paragraphs (b)(5) and (b)(8) of section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change referred to above be, and it hereby is, disapproved.

By the Commission (Chairman Williams, Commissioners Evans and Pollack), Commissioner Loomis dissenting.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26000 Filed 9-6-77;8:45 am]

[3] *See* Securities Exchange Act Release No. 13662 (June 23, 1977) (42 FR 38510 (June 30, 1977)).

[4] The Commission approved SR-NYSE-75-23 on May 13, 1976 (Securities Exchange Act Release No. 12450) (41 FR 21852 (May 28, 1976)) and SR-NYSE-76-22 on May 20, 1976 (Securites Exchange Act Release No. 12741) (41 FR 21854 (May 28, 1976)). In neither instance did the Commission require or the NYSE propose an amendment of the NYSE's off-board trading restrictions

[5] In the Commission's December 19, 1975 order (Securties Exchange Act Release No. 11942) (41 FR 4507 (January 30, 1976)) announcing the adoption of Rule 19c-1 (17 CFR 240.19c-1) (which prescribed the elimination of certain exchange rules that impeded the ability of members to effect off-board agency transactions), we indicated that we were not taking any action with respect to off-board restrictions on principal transactions. Nevertheless, we stated that we would reconsider that decision early in 1977.

[6] For example, Amex asserts that determining whether an issuer qualifies to list common stock under proposed standards or those which presently apply would be complicated by the presence of a limited amendment to Rule 5 and, further, that such an amendment would create an additional class of listed securities.

APPALACHIAN POWER CO.

[Rel. No. 20151, (70-6039)]

Proposed Issue and Sale of Notes to Banks and to a Dealer in Commercial Paper and Request for Exception From Competitive Bidding

AUGUST 29, 1977.

Notice is hereby given that Appalachian Power Co. ("Appalachian"), 40 Franklin Road, Roanoke, Va. 24009, an electric utility subsidiary company of American Electric Power Co., Inc., a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Appalachian requests that, from the date of the granting of this application to December 31, 1978, the exemption from the provisions of section 6(a) of the Act afforded to it by the first sentence of section 6(b) of the Act, relating to the issue of short-term notes, be increased to the extent necessary to cover the issuance and sale of notes to banks and to dealers in commercial paper in an aggregate amount not to exceed $175,000,000 outstanding at any one time. In no event will the amount outstanding be in excess of the maximum amount allowable both under its Articles of Incorporation and the consent granted by its Cumulative Preferred stockholders permitting an increase in the amount of unsecured short-term debt that Appalachian may incur. The notes are to be issued from time to time prior to January 1, 1979, as funds are required, provided that none of the notes or commercial paper will mature later than June 30, 1979. As of August 17, 1977, Appalachian had short-term notes, including commercial paper, outstanding in an aggregate amount of $13,300,000.

Each note payable to a bank to be issued by Appalachian will mature not more than 270 days after the date of issuance or renewal thereof, will bear interest at an annual rate of interest not greater than the prime rate of commercial banks in effect at the time of issuance or in effect from time to time and will be prepayable at any time without premium or penalty. In the case of most of the banks from which Appalachian proposes to borrow, sufficient bank balances to meet operating and financial needs are kept at such banks to satisfy any compensating balance requirements of such banks in connection with the borrowings. If the average of such bank balances were maintained solely in order to fulfill the prevailing compensating balance requirements of such banks, generally up to about 20 percent, the effective interest cost to Appalachian of issuance and sale of such notes to such banks would be approximately 1.68 percent above a prime commercial rate of 6¾ percent, or about 8.43 percent. In the case of those banks in which Appalachian not maintain bank balances for operating and financial needs, Appalachian will be required to maintain compensating balances, generally 10 percent of the amount of the bank lines made available by such banks and additional compensating balances, generally 10 percent of the amount of any borrowings. If the full amount were borrowed from these banks, the effective interest cost to Appalachian would be approximately 1.68 percent above a prime commercial rate of 6¾

percent or about 8.43 percent. Appalachian will file with the Commission, by amendment, a list showing the names and addresses of the banks from which it proposes to borrow and the lines of credit it has established with such banks.

Appalachian also proposes to issue commercial paper in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000, which will be of varying maturities, with no maturiy more than 270 days after the date of issue and none will be prepayable prior to maturity. The commercial paper notes will be sold directly by Appalachian to Lehman Commercial Paper Incorporated (the "dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuace for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity of more than 90 days if such commercial paper notes would have an effective interest cost which exceeds the effective interest cost at which Appalachian could borrow from banks. The dealer will reoffer the commercial paper notes to not more than 200 of the dealer's customers identified and designated in a nonpublic list prepared by the dealer in advance, at a discount rate of ⅛ of 1 percent per annum less than the discount rate to Appalachian. It is expected that such customers of the dealer will hold the commercial paper prior to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on its nonpublic list.

The proceeds from the issue and sale of the notes will be used by Appalachian to reimburse its treasury for past expenditures made in connection with its construction program and to pay part of the cost of its future construction program. Such construction expenditures for the years 1977 and 1978 are estimated at approximately $280,000,000 and $400,000,000, respectively.

Appalachian claims exception from the competitive bidding requirements of rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof. Additionally, Appalachian requests exception from the competitive bidding requirements of rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof on the ground that it is not practicable to invite competitive bids for commercial paper.

The application states that expenses of approximately $12,000 are to be incurred in connection with the proposed transactions. It is stated that the State Corporation Commission of Virginia has jurisdiction over the proposed transactions and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than September 20, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26001 Filed 9-6-77;8:45 am]

[File No. 1-6209]

LOVE OIL CO. INC.

Application To Withdraw From Listing and Registration

AUGUST 23, 1977.

In the matter of Love Oil Co., Inc. common stock, $.10 par value.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Intermountain Stock Exchange ("ISE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

A large majority of the transactions in the Company's shares have been conducted in the over-the-counter market rather than through the Exchange. Further, the Company will continue to be subject to section 12(g) reporting requirements.

The ISE, by letters dated September 12, 1975, and October 17, 1975, initially objected to the issuer's application to withdraw from listing and registration on that exchange. ISE asserted that the issuer had not satisfied all requirements of the ISE rules governing delisting; in particular, the issuer had failed to provide timely notice of the stockholders' meeting at which the delisting resolution was voted upon. By letter dated August 4, 1977, ISE withdrew its objection to the issuer's application.

Any interested person may, on or before September 20, 1977, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished by the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26002 Filed 9-6-77;8:45 am]

[File No. 500-1]

MAGIC MARKER CORP.

Suspension of Trading

AUGUST 29, 1977.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Magic Marker Corp. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 11:10 a.m. (EDT) on August 29, 1977 through September 7, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26003 Filed 9-6-77;8:45 am]

[Release No. 20153, (70-6047)]

MIDDLE SOUTH UTILITIES, INC.

Proposal To Issue Common Stock for Contribution to Employee Stock Ownership Plan

AUGUST 29, 1977.

Notice is hereby given that Middle South Utilities, Inc., 225 Baronne Street, New Orelans, Louisiana 70112, ("Middle South"), a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below for a complete statement of the proposed transaction.

Pursuant to the terms of the Employee Stock Ownership Plan of Middle South Utilities, Inc. and Subsidiaries ("Plan"), adopted effective January 1, 1975, Middle

South and its subsidiaries contribute to a non-affiliated and independent trustee for participants in the Plan, First National Bank of Commerce, New Orleans, La. ("Trustee"), an amount equal to an additional investment tax credit ("Additional Credit") allowed to Middle South on its consolidated tax return for such purpose under the Internal Revenue Code of 1954, as amended. The Trustee is required to utilize any contributions under the Plan to acquire shares of Middle South's Common Stock, $5 par value ("Common Stock"). During 1976 contributions amounting to $1,629,183 were made and the Trustee acquired 100,820 shares of Common Stock through open market purchases. Middle South now proposes to make available, for acquisition by the Trustee directly from Middle South, through January 31, 1979, up to 300,000 authorized but unissued shares of Common Stock ("Additional Stock"). The Plan was enacted to provide participating employees of Middle South and certain of its subsidiaries with an opportunity to acquire ownership of Common Stock, thereby promoting in the employees an interest in Middle South and its subsidiaries.

Each employee of Middle South and companies in which it has an 80% interest, as defined in the Plan (collectively, including Middle South, "Employers"), becomes a participant in the Plan on the first day of the calendar year ("Plan Year") in which he completes one year of service, as defined in the Plan, or upon attainment of age 25, whichever is later. Participation ceases upon the first day of the Plan Year following the Plan Year in which employment terminates. There are currently 8,459 participants in the Plan.

No contributions to the Plan may be made by participants. The Employers make contributions to the Trustee for a Plan Year in an amount equal to the Additional Credit claimed under the Internal Revenue Code on their consolidated federal income tax return, filed during the Plan Year. Contributions may be reduced, subject to a maximum limitation, in order to defray expenses of administering the Plan. Additional expenses of the Plan are payable by Middle South. Contributions are permitted to be made in cash or Common Stock; however, the Employers presently make contributions exclusively in cash. The Trustee must invest and reinvest the cash contributions and any income thereon exclusively in Common Stock, which it acquires, at its discretion, through open market or private purchases or from Middle South. If Middle South offers Additional Stock to the Trustee and the Trustee chooses to accept such offer rather than to acquire Common Stock in the open market or elsewhere, the Additional Stock will be acquired for an amount equal to the value of such Stock based upon the average of the closing prices of the Common Stock for the twenty consecutive trading days immediately preceding the acquisition. If dividends are reinvested in Additional Stock, such Stock shall be acquired for an amount equal to the market value of such stock.

Contributions made with respect to a Plan Year are allocated to a participant's account as of the close of such Plan Year. Common Stock is allocated to each participant's account, subject to certain maximum limitations, in the same proportion to the total amount of Common Stock allocated with respect to such Plan Year as the participant's compensation during the Plan Year bears to the total compensation paid to all participants during such Plan Year, excluding for this purpose for any participant, all compensation in excess of $100,000. Dividends on Common Stock allocated to a participant's account are reinvested and the Common Stock purchased thereby allocated to the participant's account. A participant has a nonforfeitable right to all shares of Common Stock allocated to his account. Common Stock held in a participant's account shall become distributable to him (or to a beneficiary in the event of his death) upon the termination of his employment by the Employers; provided that in special circumstances of need and after obtaining approval, a participant may withdraw full shares of Common Stock which have been allocated to his account for at least 84 months. All distributions will be made in Common Stock, *provided* That, any fraction of a share shall be distributed in cash.

The Trustee was appointed and may be replaced by the Board of Directors of Middle South. The Trustee is responsible for the administration of the assets of the Plan held in trust under the Trust Agreement. The Board of Directors of Middle South has appointed a three-member committee to operate and administer the Plan. The committee's responsibilities include, but are not limited to, interpreting the Plan, resolving questions of eligibility, computing benefits and advising the Trustee concerning payments under the Plan. Each participant has the right to direct the Trustee as to the voting of the shares of Common Stock allocated to his account as of the end of the Plan Year preceding the record date. If a participant does not provide the Trustee with timely voting instructions, the participant's shares may not be voted by the Trustee.

The Plan may be amended from time to time and may be terminated at any time by resolution of the Board of Directors of Middle South. Upon termination of the Plan, the Trustee shall liquidate the assets of the Plan held in trust, *Provided*, That, as long as a participant is an employee of the Employers, his Common Stock must be held for at least 84 months. No amendment may cause the assets of the Plan to be used for or diverted to any purpose other than the exclusive benefit of the participants or their beneficiaries or may retroactively reduce a participant's account.

The decision as to whether to acquire the Common Stock in the open market, by private purchase or from Middle South is at the discretion of the Trustee. Middle South estimates, however, that the Additional Stock will be insufficient, based upon the recent market value of Common Stock, to cover (i) all investments of contributions by the Trustee for the tax years 1976 and 1977 and (ii) all reinvestments of dividends through January 31, 1979. Middle South currently estimates that contributions for the tax years 1976 and 1977 will amount to approximately $3,360,000 and $700,000, respectively. Proceeds derived by Middle South through investments and reinvestments will be utilized for the repayment of then outstanding bank loans made to Middle South.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $7,000, including legal fees of $5,000. It is stated that no state commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than September 19, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26004 Filed 9-6-77;8:45 am]

[Release 34-13805; File No. SR-NASD-77-12]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Proposed Rule Change by Self-Regulatory Organizations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that the National Association of Securities Dealers, Inc.

("NASD") filed with the Securities and Exchange Commission on August 5, 1977, and amended on August 24, 1977, a proposed rule change as follows:

NASD's STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The following is the full text of proposed paragraph G of Part IV of Schedule D under Article XVI of the By-Laws:

G. Refund of Charges to Subscribers.
The Board of Governors may, at any time, refund to subscribers any charges or portion of charges that it deems appropriate. Such action shall be subject to approval by the Securities and Exchange Commission.

NASD's STATEMENT OF PURPOSE OF PROPOSED RULE CHANGE

The proposed rule change would codify the Board of Governors' existing authority to refund NASDAQ charges to subscribers.

NASD's STATEMENTS AS TO BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE, COMMENTS RECEIVED, AND BURDEN ON COMPETITION

Section 15A(b)(5) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

Article XVI of the NASD By-Laws provides that the Board of Governors may amend Schedule D without recourse to the membership.

Comments of the membership were not solicited nor received.

It is felt that no burden on competition is imposed by the proposed rule change.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to ninety (90) days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or
(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before September 22, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

AUGUST 26, 1977.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26008 Filed 9-6-77;8:45 am]

[Release 34-13896; File No. SR-NASD-77-14]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Proposed Rule Change by Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) as amended by Pub. L. 94-29, 15 (June 4, 1975), notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission on August 23, 1977, and amended on August 24, 1977, a proposed rule change as follows:

NASD's STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The following is the text of action taken by the NASDAQ, Inc. Board of Directors and the NASD Board of Governors:

(A) A refund of $1,000,000 be dispersed to NASDAQ Level 1, 2, and 3 subscribers subsequent to September 30, 1977.
(B) The amount of an individual subscriber refund be determined on a pro rata basis of NASDAQ billings for Level 1, 2, and 3 services for fiscal year 1977.

NASD's STATEMENT OF PURPOSE OF PROPOSED RULE CHANGE

The Board of Governors determined at its meetings in July 1977 to refund $1,000,000 to NASDAQ subscribers. The refund will be applicable to Level 1, 2, and 3 subscribers on a pro rata basis to be calculated on billings for the period October 1, 1976, through September 30, 1977.

Subscribers to the NASDAQ Consolidated Quotations Service and the NASDAQ Transaction Reporting System will not participate in the refund. Both the NASDAQ, Inc. Board of Directors and the NASD Board of Governors determined to apply the refund only to those subscriber services in which the revenues of the particular service were at a level that exceeded current operating expenses and amortized development costs. The Consolidated Quotations Service and Transacation Reporting System financial data indicated that current revenues for each of these services were below such levels.

In addition, NASDAQ issuers will not participate in the refund in light of the fact that the basis for the NASDAQ entry and annual fees is to provide for the limited sharing by NASDAQ companies of the costs related to the regulation of the NASDAQ system.

NASD's STATEMENTS AS TO BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE, COMMENTS RECEIVED, AND BURDEN ON COMPETITION

Section 15A(b)(5) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

Comments of the membership were not solicited nor received.

BURDEN ON COMPETITION

It is felt that no burden on competition is imposed by the proposed rule change.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to ninety (90) days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or
(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submited on or before September 27, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 26, 1977.

[FR Doc.77-26009 Filed 9-6-77;8:45 am]

PACIFIC STOCK EXCHANGE INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

AUGUST 29, 1977.

In the Matter of An Application of the Pacific Stock Exchange Inc., For Unlisted Trading Privileges in a Certain Security.

The above named national securities exchange has filed an application with the Securities and Exchange Commis-

sion pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Lehman Corp., File No. 7-4977, Common Stock—$1 Par Value.

Upon receipt of a request, on or before September 13, 1977, from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26005 Filed 9-6-77;8:45 am]

PHILADELPHIA STOCK EXCHANGE INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

AUGUST 29, 1977.

In the Matter of An Application of the Philadelphia Stock Exchange, Inc., For Unlisted Trading Privileges in a Certain Security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Bell & Howell Co. (Delaware), File No. 7-4979, Common Stock—No Par Value.

Upon receipt of a request, on or before September 13, 1977, from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26006 Filed 9-6-77;8:45 am]

PHILADELPHIA STOCK EXCHANGE INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

AUGUST 29, 1977.

In the Matter of An Application of the Philadelphia Stock Exchange, Inc., For Unlisted Trading Privileges in a Certain Security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1-(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlised trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Lehman Corp. (Maaryland), File No. 7-4978, Common Stock—$1 Par Value.

Upon receipt of a request, on or before September 13, 1977, from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26007 Filed 9-6-77;8:45 am]

[Release No. 34-13901, 35-20154, IC-9914]

RE-EXAMINATION OF RULES RELATING TO SHAREHOLDER COMMUNICATIONS, SHAREHOLDER PARTICIPATION IN CORPORATE ELECTORAL PROCESS AND CORPORATE GOVERNANCE GENERALLY

AGENCY: Securities and Exchange Commission.

ACTION: Publication of issues to be considered at hearings and order of hearings.

SUMMARY: In Securities Exchange Act Release No. 13482 (April 28, 1977), 42 FR 23901 (May 11, 1977), the Commission announced that it would hold public hearings concerning shareholder communications, shareholder participation in the corporate electoral process and corporate governance. Subsequently, in Securities Exchange Act Release No. 13686 (June 27, 1977), 42 FR 33834 (July 1, 1977), the Commission indicated that in formulating the specific issues to be covered by the hearings it would consider the views of any person who submitted comments on or before August 1, 1977. Based upon its review of the written comments received, the Commission has published a series of questions which will be considered at the hearings. The Commission has also published an order which specifies procedures for the hearings.

DATES: Hearings will commence on September 29, 1977 in Washington, D.C.; on October 11, 1977 in Los Angeles, Calif.; on October 18, 1977 in New York, N.Y.; and on November 1, 1977 in Chicago, Ill.

ADDRESSES: All communications should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549 and should refer to File No. S7-693. All comments received in connection with these proceedings will be available for public inspection at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549; and at the following Regional Offices of the Commission: 10960 Wilshire Boulevard, Los Angeles, Calif. 90024; 26 Federal Plaza, New York, N.Y. 10007; and Everett McKinley Dirksen Bldg., 219 South Dearborn Street, Chicago, Ill. 60604. A staff summary of comments received by August 1, 1977, is also available for inspection. A copy of this summary and representative comment letters may be obtained by writing to Barbara L. Leventhal, Special Counsel, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Barbara L. Leventhal or Richard B. Nesson, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 (202-755-1750 or 202-755-1742).

SUPPLEMENTARY INFORMATION: The public hearings which are scheduled to commence on September 29, 1977, are for the purpose of giving the Commission the benefit of the views of interested members of the public with respect to the subjects of shareholder communications, shareholder participation in the corporate electoral process and, more generally, corporate governance, in order to assist the Commission in a broad re-examination of Regulation 14A (17 CFR 240.14a–1 et seq.) promulgated under section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)) relating to the solicitation of proxies and other applicable statutory provisions, rules and regulations. At the conclusion of these hearings, the Commission will determine whether it is necessary or appropriate in the public interest or for the protection of investors to propose amendments to Regulation 14A, to propose amendments to other applicable rules or to recommend legislation to Congress.

I. INTRODUCTION

In Securities Exchange Act Release No. 13482, the Commission stated that fundamental and far-reaching issues have been raised concerning the adequacy and effectiveness of shareholder participation in corporate governance. The release noted that numerous recent examples of an apparent breakdown in corporate accountability have led informed commentators to question the efficacy of existing methods of corporate governance.

The traditional concept that boards of directors serve as a check on corporate management and that the board is answerable to shareholders by virtue of their elective power has been questioned in light of the fact that board elections are frequently a ratification of management nominees and that shareholders who wish to participate more fully in the affairs of their corporations are often frustrated and discouraged by the difficulties such participation entails under the present regulatory system. The release indicated that the Commission would study these issues on a broad basis in connection with a re-examination of its proxy rules.

In response to the inquiries set forth in the release cited above, the Commission has received numerous thoughtful and useful letters of comment from interested persons. Many of these comments, however, express the view that it would not be practical or desirable to increase the role of shareholders in corporate governance through changes in the proxy rules. While the proxy solicitation process is indeed a central focus of the present inquiry, it is clear that the issues being studied transcend the proxy rules in significance, and include the broader and more fundamental question of how corporations can best be made more responsive to their shareholders and the public at large.

Accordingly, the Commission encourages comment on other means—unrelated to the proxy solicitation mechanism—to stimulate increased shareholder interest and participation in corporate governance and to improve corporate accountability. The Commission recognizes that some methods of achieving this goal may be beyond the scope of its existing authority. The Commission specifically requests public comments on the desirability of federal legislation such as a bill establishing minimum federal standards of corporate conduct and shareholders' rights. Based upon the results of this proceeding, the Commission will give careful consideration to the advisability of recommending such legislation to Congress.

II. ISSUES TO BE CONSIDERED AT THE HEARINGS

Securities Exchange Act Release No. 13482 (April 28, 1977), contained a number of inquiries on which public comments were requested. By August 1, 1977, the Commission had received approximately 140 letters of comment from interested members of the public, including corporations, business associations, bar associations, attorneys, public interest groups, individual investors, religious and educational organizations, academics and others.

The Commission has now completed its review of these comments and, based on this review, has determined that the questions set forth below be considered at the hearings. These questions are, in certain cases, the same as those previously published and in other cases reflect a modification of the earlier inquiries, either for the purpose of clarification or in response to specific suggestions offered by various commentators. These questions are as follows:

A. OBTAINING SHAREHOLDERS' VIEWS ON SIGNIFICANT MATTERS

(1) What types of socially significant matters, if any, are material (within the meaning of rule 14a–9) to shareholders in making informed voting decisions? In this regard, is there a difference between information necessary to an informed voting decision and information necessary to an informed investment decision?

(2) Whether or not information relating to socially significant matters, including matters relating to the environment and employment practices,[1] is material within the meaning of rule 14a–9, would it be appropriate for the Commission to exercise its rulemaking authority under section 14(a) to require disclosure of such information in proxy statements and/or annual reports to shareholders?

(a) If so, should the Commission specify matters which are proper subjects for disclosure? Alternatively, should corporate boards of directors be permitted to specify matters which are proper subjects for disclosure?

(b) What standards should be applied to identify which matters are proper subjects for disclosure?

(3) Should the Commission amend rule 14a–8 to modify the requirements for inclusion of shareholder proposals in management's proxy materials?

(a) Should the Commission require the inclusion in management's proxy materials of shareholder proposals which are not proper subjects for action by shareholders under the laws of the issuer's domicile? Is this result consistent with congressional intent in enacting section 14(a)?

(b) Should the Commission modify its existing requirements that the subject matter of proposals be significantly related to the business of the issuer and not related to the conduct of ordinary business operations of the issuer? If so, what standards should be applied?

(c) Should the Commission amend the existing requirement that shareholders or their representatives appear personally to present proposals at annual meetings?

(d) Should the right to have proposals included in management's proxy materials be subject to certain criteria, such as ownership of a minimum percentage or dollar value of a class of securities?

(4) Should the Commission amend its proxy rules to provide a means for shareholders to present their views on management proposals in management's proxy materials? If so, what means would be appropriate? Conversely, should the Commission place any limitations on the extent to which management may comment upon or make recommendations with respect to shareholder proposals?

(5) Should the Commission amend its proxy rules to require issuers to provide shareholders with shareholder lists upon request? If so, under what circumstances and subject to what conditions should shareholder lists be provided?

(6) Should the Commission amend its rules to require brokers who hold securities as nominees for their customers to forward to the beneficial owners nonmanagement proxy soliciting materials?

(7) What would be the costs and benefits of 1–6 above? Can these costs and benefits be quantified? If not, why?

B. SHAREHOLDER PARTICIPATION IN CORPORATE GOVERNANCE

(1) Should shareholders have access to management's proxy soliciting materials for the purpose of nominating persons of their choice to serve on the board of directors?

(a) Would a Commission rule granting shareholders such access be in conflict with state law? Is this result consistent with Congressional intent in enacting section 14(a)?

(b) If the Commission determines to adopt such a rule, what type of rule would be most appropriate? What criteria, if any, should be be applied to shareholders who wish to have access to management's proxy soliciting materials for the purpose of making nominations?

(i) For example, should the right to make nominations in management's proxy materials be conditioned on the ownership of a minimum percentage or dollar value of a class of securities?

(ii) Should there be a limitation on the number of nominees which must be included? If so, what limitations would be appropriate?

(iii) Should all nominations be screened by a nominating committee composed of outside directors or other disinterested persons?

(iv) What disclosures should be required of shareholders who utilize management's proxy soliciting materials for the purpose of making nominations?

(c) Are there soliciting activities preliminary to (1) making a shareholder nomination in management's proxy materials or (2) an election contest to which the proxy rules should not apply? For example, should the Commission amend rule 14a–2 to provide that formation of a group of more than 10 persons is exempt from the application of the proxy rules?

(d) Should shareholders utilizing management's proxy materials for the purpose of making nominations be subject to the requirements of rule 14a–11 (Special Provisions Applicable to Election Contests)?

(2) Should the Commission amend rule 14a–11 to reduce the costs and burdens currently incurred by shareholders and issuers

[1] In *Natural Resources Defenses Council v. Securities and Exchange Commission*, F. Supp. ——, CCH Fed. Sec. L. Rep. ¶96,507 (D.D.C., May 19, 1977), appeal pending C.A.D.C. No. 77–1761, the court, among other things, discussed the appropriateness of the Commission requiring disclosure of such information in proxy statements and information statements even if the information were not required in annual and periodic reports. *See* generally Securities Act Releases No. 5569 (Feb. 11, 1975), 40 FR 7013; No. 5627 (Oct. 14, 1975), 40 FR 51656; and No. 5704 (May 6, 1976), 41 FR 21632.

in election contests? If so, what amendments would be appropriate?

(3) To what extent should corporate funds be utilized by management and/or shareholders to solicit proxies for the election of directors?

(4) What additional disclosures, if any, should be required with respect to the financing of proxy solicitations or contests, including settlements thereof?

(5) Should the Commission further consider voting of securities held in "street" or nominee name, including procedures which result in "street" name stock generally being voted for management?

(6) Should institutions, such as bank trust departments, insurance companies, investment companies and pension funds, prior to exercising their voting power, be required to obtain the views of persons having an economic interest in the securities being voted? What types of proxy review policies and procedures are presently employed by institutions? To what extent do institutions exercise their voting power in favor of management?

(7) Are there situations involving conflicts of interest where affiliates or other persons should be required to vote their securities with the majority, or in proportion to the votes of shareholders who do not have such conflicts of interest, in some or all matters affecting the substantive rights of shareholders?

(a) Should other means of "neutralizing" such votes be considered?

(b) Does the Commission have authority to require such neutralization under the federal securities laws?

(8) To what extent might the self-regulatory organizations promulgate rules requiring companies to adopt procedures which improve corporate governance and shareholder democracy as a condition to listing or continued trading of a company's securities?

(9) Are there other steps the Commission could take to improve corporate governance, such as changes in the format of proxies?

(10) Should the Commission consider submitting or supporting legislation to improve corporate governance, such as a federal bill setting minimum standards of conduct for directors or federal chartering? If so, would an express federal private right of action be necessary?

(11) What would be the costs and benefits of 1–10 above? Can these costs and benefits be quantified? If not, why?

C. CHANGES RELATING TO MATTERS TO BE DISCLOSED IN PROXY STATEMENTS OR OTHERWISE IN CONNECTION WITH THE SOLICITATION OF PROXIES

1. Should the Commission amend its proxy rules, specifically Rule 14a–3(b) or Schedule 14A, to require disclosure in proxy statements and/or annual reports to shareholders of:

(a) Whether or not the issuer has a nominating committee, and if so, the identity of the members of this committee;

(b) The existence of any business or personal relationship (e.g., debtor-creditor, supplier-customer, investment banking, legal counseling), between any nominee or his affiliates and the issuer or its officers and directors;

(c) How much time incumbents have devoted to affairs of the corporation during the previous fiscal year and what aspects of the issuer's activities they have dealt with during that year; and

(d) Whether any directors have resigned from the board or have failed to stand for re-election in the last fiscal year and, if so, the reasons therefor?

2. To what extent would the disclosure of certain other board memberships and outside activities reflect potential conflicts of interest or give any indication of the time available for services to the issuer? Should such disclosure be required?

3. Should the Commission amend Rule 14a–3(b) to require issuers to make the annual report to shareholders available to outside or independent directors who wish to communicate their views on the performance of management or on other matters to shareholders?

4. Should the Commission amend its proxy rules, specifically Item 7 of Schedule 14A, to provide for more detailed or comprehensive disclosure of management remuneration and transactions? If so, what changes would be appropriate?

(a) Should Item 7(a) be amended to require a breakdown of aggregate direct remuneration into its various components, such as salary, bonuses, and personal benefits, including certain benefits sometimes referred to as "perquisites"?[2] In addition, should all personal benefits which exceed a specified dollar value be described separately?

(b) Should the total costs to the issuer of all personal benefits recevied by officers, directors and employees be disclosed in the aggregate and broken down by category?

(c) Should the disclosure requirements of Item 7 be made applicable to all officers and employees whose aggregate remuneration exceeds a specified dollar amount? Is so, what dollar amount would be appropriate?

(d) Should Item 7 be amended to require disclosure of remuneration for fiscal years in addition to the most recent year?

5. Should the Commission amend Rule 14a–3(b) and/or Schedule 14A, to require disclosure of whether or not post meeting reports or transcripts of annual meetings will be sent or made available to shareholders on request?

6. What would be the cost and benefits of 1–5, above? Can the costs and benefits of such disclosures be quantified? If not, why?

III. ORDER OF HEARINGS

Any interested person desiring to make an oral presentation of his/her views at the hearings is requested to write or call Barbara L. Leventhal or Richard B. Nesson, Division of Corporation Finance 202–755–1750 or 202–755–1742. It has been tentatively determined to limit oral statements to 20 minutes each plus such further time as may be necessary to answer questions. Depending upon the number of persons requesting to be heard, appearances may be more limited. Additional time may be granted at the discretion of the hearing officer upon written request timely submitted with copies of the witness' prepared statement. All witnesses shall be required to submit 25 copies of their prepared statements three business days in advance of their scheduled date of appearance.

Persons making oral statements should be prepared to respond to specific inquiries from the Commission staff. Any person may submit in writing to the hearing officer questions that he wishes to have directed to a particular witness or group of witnesses, but the hearing officer will determine in his sole discretion whether or to what extent to direct those questions to any witness.

[2] See Securities Act Release No. 5856 (August 18, 1977) in which the Commission emphasized its view that the existing reporting provisions under the Federal securities laws require registrants to include within the remuneration reported all forms of remuneration which are received by management from the corporation, including personal benefits sometimes referred to as "perquisites."

The Commission has designated Richard H. Rowe, Stanley Sporkin, Mary E. T. Beach, and Barbara L. Leventhal as hearing officers of the Commission. The Commission will issue orders designating additional hearing officers as necessary.

The hearings will be conducted for the Commission by the Division of Corporation Finance. Barbara L. Leventhal will act as chief hearing counsel for the Division of Corporation Finance in connection with these hearings.

Interested persons are invited to submit their views on the foregoing questions in writing at any time. Written submissions should be made in triplicate to George Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549. Such communications should refer to File No. S7–693.

This public rulemaking proceeding has been ordered by the Commission pursuant to Sections 14(a), 21(a), 22 and 23(a) of the Securities Exchange Act of 1934 and Rule 4(b) of the Commission's Rules of Practice.

(Secs. 14(a), 21(a), 22, 23(a), 48 Stat. 895, 899, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), 78u(a), 78v, 78w (a).)

By the Commission.

AUGUST 29, 1977.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-26018 Filed 9-6-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #1361]

IDAHO

Declaration of Disaster Loan Area

Adams County and adjacent counties within the State of Idaho, constitute a disaster area as a result of drought. The survey reflected damage to wells and severe crop losses during the 1976 crop year and continuing into the 1977 crop year. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 24, 1977, and for economic injury until the close of business on May 22, 1978, at:

Small Business Administration, District Office, 1005 Main St., Boise, Idaho 83702.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 23, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-25914 Filed 9-6-77;8:45 am]

[Declaration of Disaster Loan Area #1365]

IOWA

Declaration of Disaster Loan Area

The following 51 counties and adjacent Counties within the State of Iowa,

constitute a disaster area as a result of drought which caused severe crop losses during the 1976 crop year, and continuing into the 1977 crop year:

Adair	Lucas
Adams	Madison
Appanoose	Mahaska
Audubon	Marion
Benton	Marshall
Boone	Mills
Calhoun	Monroe
Carroll	Montgomery
Cass	Page
Clarke	Polk
Crawford	Pottawattamie
Dallas	Poweshiek
Davis	Ringgold
Decatur	Shelby
Fremont	Story
Greene	Tama
Guthrie	Taylor
Hamilton	Union
Hardin	Van Buren
Henry	Wapello
Iowa	Warren
Jasper	Washington
Jefferson	Wayne
Keokuk	Webster
Lee	Wright
Linn	

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 24, 1977, and for economic injury until the close of business on May 22, 1978, at:

Small Business Administration, District Office, 210 Walnut St., Des Moines, Iowa 50309.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 23, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-25919 Filed 9-6-77;8:45 am]

[Declaration of Disaster Loan Area # 1355 Amdt 1]

NORTH CAROLINA

Declaration of Disaster Loan Area

The above numbered Declaration (see 42 FR 41687) is amended by adding Cumberland, Columbus and Wilkes Counties and adjacent counties within the State of North Carolina. All other information remains the same.

Dated: August 25, 1977.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc.77-25916 Filed 9-6-77;8:45 am]

[Declaration of Disaster Loan Area No. 1288; Amdt. 2]

VIRGINIA

Declaration of Disaster Loan Area

The above numbered Declaration (see 42 FR 8253), and Amendment No. 1 (See 42 FR 18680) are further amended to reinstitute Disaster No. 1288 by extending the filing date for physical damage until the close of business on September 30, 1977, and for economic injury until the close of business on March 30, 1978.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 23, 1977.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc.77-25917 Filed 9-6-77;8:45 am]

[Declaration of Disaster Loan Area No. 1312; Amdt. 5]

VIRGINIA

Declaration of Disaster Loan Area

The above numbered Declaration and Amendments thereto (see 42 FR 20695, 21887, 23220, 30459, and 32604) are further amended by extending the filing dates for applications for loans for physical damage until the close of business on September 30, 1977, and for economic injury until the close of business on May 1, 1978.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 18, 1977.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc.77-25918 Filed 9-6-77;8:45 am]

[Declaration of Disaster Loan Area No. 1364]

VIRGINIA

Declaration of Disaster Loan Area

The following 50 counties and adjacent counties within the State of Virginia constitute a disaster area as a result of drought, which caused severe crop losses during the 1976 crop year and continuing into the 1977 crop year:

Accomack	James City
Albemarle	King and Queen
Amelia	King George
Appomattox	King William
Augusta	Lancaster
Bath	Louisa
Brunswick	Madison
Buckingham	Mathews
Caroline	Middlesex
Charles City	Nelson
Chesterfield	New Kent
Clarke	Northampton
Culpeper	Orange
Cumberland	Page
Dinwiddie	Powhatan
Fauquier	Prince George
Essex	Prince William
Fluvanna	Rappahannock
Frederick	Richmond
Gloucester	Rockbridge
Goochland	Rockingham
Greene	Shenandoah
Hanover	Spotsylvania
Henrico	Stafford
Highland	Warren

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on October 28, 1977 and for economic injury until the close of business on May 29, 1978, at:

Small Business Administration, District Office, Federal Building, Room 3015, 400 North Eighth St., Richmond, Va. 23240.

or other locally announced locations.

(Catalog of Federal Domestic Assistant Program Nos. 59002 and 59008.)

A. VERNON WEAVER,
Administrator.

[FR Doc.77-25919 Filed 9-6-77;8:45 am]

[Declaration of Disaster Loan Area No. 1313; Amdt. 4]

WEST VIRGINIA

Declaration of Disaster Loan Area

The above numbered Declaration and Amendments thereto (see 42 FR 20695, 21887, 30460 and 31856) are amended by extending the filing date for applications for loans for physical damage until the close of business on September 30, 1977, and for economic injury until the close of business on May 1, 1978.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 18, 1977.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc.77-25920 Filed 9-6-77;8:45 am]

[Declaration of Disaster Loan Area No. 1363]

WISCONSIN

Declaration of Disaster Loan Area

The Counties of Barron, Chippewa and Rusk and adjacent counties within the State of Wisconsin, constitute a disaster area because of physical damage resulting from tornadoes which occurred on July 30, 1977. Eligible persons, firms and organization may file applications for loans for physical damage until the close of businesses on October 24, 1977, and for economic injury until May 22, 1978, at:

Small Business Administration, District Office, 122 West Washington Ave., Room 700, Madison, Wis. 53703.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 23, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-25921 Filed 9-6-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[No. 473]

ASSIGNMENT OF HEARINGS

SEPTEMBER 1, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but increased parties should take appropriate steps to insure that they are notified

of cancellation or postponements of hearings in which they are interested.

MC 142978 W. L. Davis, Inc., now being assigned November 8, 1977 (1 day) for hearing at Omaha, Nebr., in a hearing room to be later designated.

MC 124211 Sub No. 284 Hilt Truck Line, Inc., now being assigned November 9, 1977 (3 days) for hearing at Omaha, Nebr., in a hearing room to be later designated.

MC 107012 Sub No. 232 North American Van Lines, Inc., now being assigned November 14, 1977 (1 week) for hearing in Omaha, Nebr., in a hearing room to be later designated.

MC 102567 Sub 194, McNair Transport, Inc., MC116077 Sub No. 382, Robertson Tank Lines, Inc. and MC 121496 Sub No. 3, Cango Corp. now being assigned November 28, 1977 (9 days) at Houston, Tex., in a hearing room to be later designated.

MC 125808 (Sub-No. 1), AAACON, Auto Transport, Inc.—Petition Seeking Modification of Permit (Certification), now assigned September 26, 1977, at New York, N.Y., will be held in the Tax Court, Room A-238, 26 Federal Plaza.

No. 36583, Oklahoma Intrastate Freight Rates and Charges—1977, now assigned October 12, 1977, at Oklahoma City, Okla., will be held at the Bankruptcy Court, Room 4214, Federal Building, 215 NW. 4th St.

MC 134035 (Sub-No. 18), Douglas Trucking Co., now assigned October 17, 1977, at Dallas, Tex., will be held in Room 5A15-17, Federal Building, 1100 Commerce St.

MC 119988 (Sub-No. 108), Great Western Trucking Co., Inc., now assigned October 18, 1977, at Dallas, Tex., will be held in Room 5A15-17, Federal Building, 1100 Commerce St.

MC 126421 (Sub-No. 7), Gypsum Transport, Inc., now assigned October 19, 1977, at Dallas, Tex., will be held in Room 5A15-17, Federal Building, 1100 Commerce St.

MC 83835 (Sub-No. 140), Wales Transportation, Inc., now assigned October 20, 1977, at Dallas, Tex., will be held in Room 5A15-17, Federal Building, 1100 Commerce St.

MC 128273 (Sub-No. 253), Midwestern Distribution, Inc., now assigned October 21, 1977, at Dallas, Tex., will be held in Room 5A15-17, Federal Building, 1100 Commerce St.

MC-F-13116 Gra-Bell Truck Line, Inc.—Purchase (Portion)—Great Lakes Express Co., MC-F-13096 Herriott Trucking Co., Inc.—Purchase—(Portion)—Great Lakes Express Co., MC-F-13100 The Cleveland, Columbus & Cincinnati Highway, Inc.—Purchase (Portion)—Great Lakes Express Co., MC-F-13101 Red Star Express Lines of Auburn, Inc., d.b.a. Red Star Express Lines—Purchase (Portion)—Great Lakes Express Co., MC-F-13102 Maiers Motor Freight Co.—Purchase (Portion)—Great Lakes Express Co., MC-F-13103 United Trucking Service, Inc.—Purchase—Portion)—Great Lakes Express Co., MC-F-13106 Branch Motor Express Co.—Control—Great Lakes Express Co., MC-F-13233 Arkansas Best Freight—Purchase (Portion)—Great Lakes Express Co., now being assigned October 11, 1977 for prehearing conference at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 98952 (Sub-No. 39), General Transfer Co., now assigned September 20, 1977, at Springfield, Ill., will be held at the Leland Building, 527 East Capitol.

MC-F-12718 Flamingo Transportation, Inc.—Control—Tarpon Transportation, Inc. is postponed indefinitely.

MC 142532 Sub 1, Sunshine Cartage Corp., now being assigned November 28, 1977 (1 week) at Miami, Fla., in a hearing room to be later designated.

MC 127810 (Sub-No. 3), Sherman & Boddie, Inc., now assigned September 15, 1977, at Washington, D.C., is canceled and application dismissed.

MC 100666 (Sub-No. 341), Melton Truck Lines, Inc., now assigned September 12, 1977, at Memphis, Tenn., is canceled and application dismissed.

MC 58923 Sub No. 45 Georgia Highway Express, Inc., now being assigned November 29, 1977 (9 days) for hearing in Atlanta, Ga., in a hearing room to be later designated.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-25978 Filed 9-6-77;8:45 am]

[No. 474]

ASSIGNMENT OF HEARINGS

September 1, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

Correction [1]

MC 82492 (Sub-No. 145), Michigan & Nebraska Transit Co., Inc., now being assigned October 27, 1977, for prehearing conference at Interstate Commerce Commission, Washington, D.C.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-25979 Filed 9-6-77;8:45 am]

EASTERN RAILROAD "YO-YO" FILINGS

September 1, 1977.

On August 31, 1977, the Eastern Railroads filed with the Interstate Commerce Commission tariffs proposing to increase by 7 percent the rates on various commodities. The railroads have notified the Commission of their desire that the increases be considered pursuant to sections 15(8)(b) and 15(8)(c) of the Interstate Commerce Act. Sections 15(8)(b) and 15(8)(c), commonly referred to as the "Yo-Yo" provisions, allow the railroads, under certain conditions, to increase by 7 percent or decrease by 7 percent their rates on selective commodities. The text of these sections is set forth as an appendix. The docket numbers assigned to the proposals and the commodities involved in the proposed adjustment are as follows:

No. 36670—Glass Containers—Eastern, Territory—7 Percent Yo-Yo, Increase, 1977.
No. 36671—Metal Closures—Eastern Territory—7 Percent Yo-Yo Increase, 1977.
No. 36672—Fresh Meat, Packing House Products—Eastern Territory—7 Percent Yo-Yo Increase, 1977.
No. 36673—Sewer Pipe Joint Compounds—Eastern Territory—7 Percent Yo-Yo Increase, 1977.
No. 36674—Moisture or Condensation Pipe Line Coating—Eastern Territory—7 Percent, Yo-Yo Increase, 1977.
No. 36675—Floor Sweeping Compounds-Eastern Territory-7 Percent Yo-Yo Increase, 1977.
No. 36676—Coal or Coal Briquettes-Eastern Territory-7 Percent Yo-Yo Increase, 1977.
No. 36677—Wood Chips-Eastern Territory-7 Percent Yo-Yo Increase, 1977.
No. 36678—Asphalt Additive, Paving and Paving Joint Compounds-Eastern Territory-7 Percent Yo-Yo Increase, 1977.
No. 36679—Pulpwood-Eastern Territory-7 Percent Yo-Yo Increase, 1977.
No. 36680—Butter Fat, Butter Grease-Eastern Territory-7 Percent Yo-Yo Increase, 1977.
No. 36681—Carpets-Eastern Territory-7 Percent Yo-Yo Increase, 1977.

Copies of the railroads' justification statements in support of each of the proposed increases may be obtained from the carriers by writing directly to:

Mr. Charles L. Smith, Chairman, TEA-Eastern Railroads, Two Pennsylvania Plaza, New York, N.Y. 10001.

For convenience of the public, copies of the justification statements may be examined at the following locations in the Interstate Commerce Commission Building at 12th and Constitution Avenue, NW., Washington, D.C. 20423:

Public Docket Room, Room 1221.
Section of Tariffs, Room 4331.
Public Information Office, Room 1211.

Appendix

SECTION 15(8)(b)
SECTION 15(8)(c)

"(b) Pending a hearing pursuant to subdivision (a), the schedule may be suspended, pursuant to subdivision (d), for 7 months beyond the time when it would otherwise go into effect, or for 10 months if the Commission makes a report to Congress pursuant to subdivision (a), except under the following conditions:

"(i) in the case of a rate increase a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part or, following promulgation of standards and procedures under section 1(5)(d) of this part, if the carrier is found to have market dominance, within the meaning of section 1(5)(c)(i) of this part, over the service to which such rate increase applies; or

"(ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part, or for the purposes of investigating such rate change upon a complaint that such rate change constitutes a competitive practice which is unfair, destructive, predatory or otherwise undermines competition which is necessary in the public interest.

"(c) The limitations upon the Commission's power to suspend rate changes set forth in subdivisions (b)(i) and (ii) apply only to rate changes which are not of

[1] This notice corrects the proceeding from hearing to prehearing conference.

general applicability to all or substantially all classes of traffic and only if—

"(i) the rate increase or decrease is filed within 2 years after the date of enactment of this subdivision;

"(ii) the common carrier by railroad notifies the Commission that it wishes to have the rate considered pursuant to this subdivision;

"(iii) the aggregate of increases or decreases in any rate filed pursuant to clauses (i) and (ii) of this subdivision within the first 365 days following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1976; and

"(iv) the aggregate of the increases or decreases for any rate filed pursuant to clauses (i) and (ii) of this subdivision within the second 365-day period following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1977.

Verified complaints by concerned persons, to be considered by the Commission in evaluating the "Yo-Yo" filings, must be filed on or before September 19, 1977. The verified complaint should make reference to the "Yo-Yo" Filing and be addressed to:

Suspension and Fourth Section Board, Room 4336, Interstate Commerce Commission, 12th & Constitution Avenue NW., Washington, D.C. 20423

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-25980 Filed 9-6-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

SEPTEMBER 1, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before September 22, 1977.

FSA No. 43422—*Anhydrous Ammonia from Rose Bluff, La.* Filed by Southwestern Freight Bureau, Agent (No. B-702), for interested rail carriers. Rates on anhydrous ammonia, in tank car loads, as described in the application, from Rose Bluff, La., to Sheffield, Ala., Rexburg, Miss., Memphis, Tenn., and points in Florida.

Grounds for relief—Market competition.

Tariff—Supplement 93 to Southwestern Freight Bureau, Agent, tariff 273-G, I.C.C. No. 5188. Rates are published to become effective on October 1, 1977.

AGGREGATE-OF-INTERMEDIATES

FSA No. 43423—*Anhydrous Ammonia from Rose Bluff, La.* Filed by Southwestern Freight Bureau, Agent (No. B-703), for interested rail carriers. Rates on anhydrous ammonia, in tank car loads, as described in the application, from Rose Bluff, La., to Rexburg, Miss., and Memphis, Tenn.

Grounds for relief—Maintenance of depressed rates published to meet market competition without use of such rates as factors in constructing combination rates.

Tariff—Supplement 93 to Southwestern Freight Bureau, Agent, tariff 273-D, I.C.C. No. 5188. Rates are published to become effective on October 1, 1977.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-25975 Filed 9-6-77;8:45 am]

SEPTEMBER 6, 1977.

[Notice No. 217]

MOTOR CARRIER TRANSFER PROCEEDINGS

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 77279. By application filed August 23, 1977, DICK IRVIN, INC., 218 12th Ave. N., Shelby, Mont. 59474, seeks temporary authority to transfer the operating rights of Robert Schmidt Trucking, Ltd., Box 356, Manning Alberta, Canada, under section 210a(b). The transfer to Dick Irvin, Inc., of the operating rights of Robert Schmidt Trucking, Ltd., is presently pending.

By the Commission.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc.77-25976 Filed 9-6-77;8:45 am]

[Notice No. 218]

MOTOR CARRIER TRANSFER PROCEEDINGS

SEPTEMBER 6, 1977.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 77280. By application filed August 23, 1977, WABASH VALLEY VAN & STORAGE CO., INC., d.b.a. ACME VAN & STORAGE, 115 Shelby Street, Vincennes, Ind. 47591, seeks temporary authority to transfer the operating rights of Robert O. Michels and Jerry D. Flynn, a partnership, d.b.a. Acme Van & Storage Co., 2237 Locust Street, Terre Haute, Ind., 47807, under section 210a (b). The transfer to Wabash Valley Van & Storage Co., Inc., d.b.a. Acme Van & Storage of the operating rights of Robert O. Michels and Perry D. Flynn, a partnership, d.b.a. Acme Van & Storage Co., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-25977 Filed 9-6-77;8:45 am]

REVISION OF RAILROAD COST METHODOLOGY

Public Meetings

AUGUST 30, 1977.

Section 307 of the Regulatory Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210; 90 Stat. 55) amends section 20(3) of the Interstate Commerce Act (49 U.S.C. 20(3)) to require the prescription of a new uniform cost and revenue accounting and reporting system for railroads. The required regulations and procedures were issued by the Commission on June 24, 1977, in No. 36367, Revision to the Uniform System of Accounts for Railroads. Published at 42 FR, July 7, 1977, page 35016.

In addition, amended section 20(3)(b) indicates that the prescribed cost accounts are to be used in determining fixed and variable costs and in assigning such costs to various functions, services or activities. To aid in such use, the Bureau of Accounts is revising its methodology for finding the costs of railroad services.

Professional consultants (Haskins & Sells, and Peat, Marwick, Mitchell & Co.) have been hired to provide recommendations to the Bureau on this subject. They published an interim draft report of their conclusions on August 29, 1977. The Bureau will hold informal meetings concerning this report on September 15 and 16, 1977. Copies of the report may be obtained from the Bureau's Section of Cost and Valuation by persons who will attend the meetings.

The meeting on September 15 will be held in Room 6381 of the Interstate Commerce Commission Building, Washington, D.C., beginning at 9 a.m. This meeting will be an all-day work session dealing with technical questions concerning the use of statistical analysis in the proposed rail cost methodology. The emphasis will be on determining variable and constant costs and on the feasibility of assigning expenses to services by the use of regression analysis.

The meeting on September 16 will be held in Room 6373 beginning at 9 a.m. and is also expected to continue all day. It will include an explanation of the cost methodology concept, a status report on work accomplished, and a report on work in progress.

Both sessions are open to all interested persons. In order that adequate seating accommodations can be assured, those expecting to attend are requested to notify Walter D. Vliet, 202-275-6175 on or before September 12, 1977.

Notice of these informal meetings shall be given to the general public by the deposit of a copy of this Notice in the Office of the Secretary, Interestate Commerce Commission, Washington, D.C., for public inspection, and by the delivery of a copy of the Notice to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

BRYAN BROWN, Jr.,
Acting Director.

[FR Doc.77-25974 Filed 9-6-77;8:45 am]

sunshine act meetings

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

CIVIL AERONAUTICS BOARD.

[M-50]

AUGUST 31, 1977.

TIME AND DATE: 10 a.m.; September 8, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 1. Request by Braniff Airways, Inc. for a waiver from the requirements of section 221.771 (Memo No. 7372, BE, BAS).

2. Docket 29123, IATA agreements affecting North/Central and South Pacific air fares (Memo No. 7386 BFR, BIA)

3. Dockets 31271 and 31283, Mainland-Hawaii general fare increase proposed by United and Continental (BFR).

4. General Fare increase proposed by Eastern (BFR).

5. Dockets 31253 and 31264, Mainland-Hawaii discount fare revisions by United (BFR).

6. Request of Alaska Airlines, Inc. on Behalf of Three Officers, for Waiver of Rules on Security Transactions (Memo No. 5755–F, BFR).

7. Docket 30859, Petition of Evergreen International Airlines, Inc. for Modification of Existing Part 288 Regulations pertaining to DC–9 Logair Rates (Memo No. 7383, BFR).

8. Dockets 30487; and 30673, Additional Nonstop Service between St. Louis and San Francisco/Oakland/San Jose; and new or improved air service in the Louisville-St. Louis/San Francisco markets. (Memo No. 7370, BOR, OGC, BLJ).

9. Docket 30387, TWA's application for San Diego-Kansas City/St. Louis nonstop authority (Memo No. 7374, BOR, OGC).

10. Docket 30132, Northwests' Motion for Issuance of an Order To Show Cause why the existing single-plane restriction in its Milwaukee-California markets should not be removed (Memo No. 7388, BOR).

11. United Air Lines' Transaction Agreement UA–106 (No. 24, filed August 18, 1977) Memo No. 6862–B, BOR, BAS, OGC).

12. Docket 30698, Mairsk Air I/S, Application for Renewal of Foreign Air Carrier Permit (Memo No. 5184–D, BOR, BIA).

13. Dockets 30821, 30893 and 30894, Petitions for Stay of Order 77–7–64 Pending Appeal (Memo No. 7251–A, BOR, OGC).

14. Dockets 30510, 30511, 30512, 30693, 30694, 30711, 30741, 30725, and 30726, Petition for reconsideration of Order 77–7–147 (Memo No. 7298–A, BOR, OGC).

15. Docket 19176, Petition of Transamerica Corp. and Trans International Airlines for prior approval of dividend payment (Memo No. 5787–B, BOR, BAS).

16. Report of the Ad Hoc Committee on Financial Security Aspects of the Board's Charter Regulations and Comments of Chairman Kahn requesting staff views. (For Information Memo dated 8–17–77, BOR).

17. Final rule on new Part 313 Implementation of the Energy Policy and Conservation Act (Memo No. 6647–A OGC).

18. Final rule to amend Part 241 of the Economic Regulations with affiliates and nontransport divisions (Memo No. 7082–A, OGC, BAS, BOR, BOE).

19. Docket 25476, Agreement to Reorganize Airline Tariff Publishers, Inc., revised draft order granting petitions for review of supplemental initial decision. (Memo No. 3736–F, OGC).

20. Civil Penalty Legislation; Comments of the Administrative Conference (Memo No. 7376, BOE).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202–673–5068.

[S–1243–77 Filed 9–2–77;9:15 am]

2

CIVIL AERONAUTICS BOARD

[M-49]

AUGUST 31, 1977.

TIME AND DATE: 10 a.m., September 7, 1977.

PLACE: Room 1027, 1825 Connecticut Ave. NW., Washington, D.C. 20428.

SUBJECT: Oral Argument, Dockets 31232, 31234, 31235, 31246, 31247, 31285 and 31305, Complaints of National Air Carrier Association, Brendan Tours, Inc., Charter Travel Corp., The Educational Cooperative, and Laker Airways Limited against Tariffs of Pan American World Airways, Inc., Trans World Airlines, Inc., British Airways, and Air India Proposing Stand-by, Budget, and Super-Apex Fares Over the North Atlantic; and Docket 29123, Agreement Adopted by the Traffic Conferences of the International Air Transport Association Relating to North Atlantic Passenger Fares Agreement C.A.B. 26858, R–1 through R–5.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202–673–5068.

[S–1244–77 Filed 9–2–77;9:15 am]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., September 9, 1977.

PLACE: 2033 K Street NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254–6314.

[S–1236–77 Filed 9–1–77;2:35 pm]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., September 7, 1977.

PLACE: 2033 K Street NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254–6314.

[S–1237 Filed 9–1–77;2:29 pm]

5

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 44622, September 6, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: September 6, 1977, 10 a.m.

CHANGES IN THE MEETING: Meeting is canceled.

[S-1241-77 Filed 9-1-77;3:50 pm]

6

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 44328 (S-1217-77).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (Eastern Time), Tuesday, September 6, 1977.

CHANGE IN THE MEETING: The meeting is postponed until further notice. A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission requires this change and that no earlier announcement was possible.

The vote was as follows:

In favor of change: Eleanor Holmes Norton, Chair; Ethel Bent Walsh, Commissioner; Daniel E. Leach, Commissioner.
Opposed: None.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat at 202-634-6748.

This Notice Issued September 1, 1977.

[S-1246-77 Filed 9-2-77;9:45 am]

7

FEDERAL ELECTION COMMISSION.

TIME AND DATE: 10 a.m., Thursday, September 8, 1977.

PLACE: 1325 K St. NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC

I. Future meetings—dates will be set.
II. Correction and approval of minutes—August 18, August 25.
III. Appropriations and budget—Report of the Budget Task Force concerning proposed fiscal year 1979 Budget for consideration and action by the Commission.
IV. Report from the Task Force on Independent Expenditures.
V. Proposed allocation formula for party committees to allocate between Federal and non-Federal accounts.
VI. Code of ethics.
VII. Office accounts.
VIII. Pending legislation.
IX. Presidential reorganization project.
X. Liaison with other Federal agencies.
XI. Pending litigation.
XII. Routine administrative matters—distribution of agenda items.

PORTIONS CLOSED TO THE PUBLIC (EXECUTIVE SESSION)

Audit matters. Compliance. Personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, press officer, telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-1238-77 Filed 9-1-77;2:35 pm]

8

FEDERAL POWER COMMISSION.

SEPTEMBER 1, 1977.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 8552B:

AGENCY HOLDING MEETING: Federal Power Commission.

TIME AND DATE: 10 a.m. (continued) September 8, 1977. 10 a.m., September 9, 1977.

PLACE: 825 North Capitol St.

STATUS: Open.

MATTERS TO BE CONSIDERED (Agenda). Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information room 1000.

GAS AGENDA
7672ND MEETING—SEPTEMBER 8, 1977
REGULAR MEETING—PART I
(10 A.M.)

G-1—Docket No. RP77-103, Algonquin Gas Transmission Co.
G-2—Docket No. RP73-43 (PGA77-3), Mid Louisiana Gas Co.
G-3—Docket No. RP77-109, Northwest Pipeline Corp.
G-4—Docket No. RP75-102, Panhandle Eastern Pipeline Co.
G-5—Docket No. RP74-100 (PGA76-2), National Fuel Gas Supply Corp. Docket No. RP76-101, National Gas Supply Corp.
G-6—Docket No. RP72-6, El Paso Natural Gas Co.
G-7—Docket No. RI76-22, Damson Oil Corp. (Operator), et al.
G-8—Docket No. RI73-60 (Phase III), Mitchell Energy Corp.
G-9—Docket No. RI77-48, Elms Brothers and Co.
G-10—Docket No. RI77-87, North American Royalties Inc.
G-11—Docket No. RI77-35, Dixie Well Service, Inc.
G-12—Docket No. RI77-37, Great Southern Oil & Gas Co.
Russell.
G-14—Docket No. RI77-19, Texas Energies, Inc.
G-15—Docket No. RI77-71, N. C. Ginther, et al.
G-16—Docket No. RI77-98, Infill Wells drilled pursuant to New Mexico Oil Conservation Commission Order No. R-1670-T.
G-17—Docket Nos. AR61-2 and AR 69-1, et al., area rate proceeding, et al. (Southern Louisiana area).
G-18—Docket No. CI77-306, Transco Exploration Co.
G-19—Docket Nos. CI75-191 and CI75-489, Cities Service Oil Co. Docket Nos. CI75-205 and CI75-479, Continental Oil Co.
G-20—Docket No. CI76-743, Ladd Petroleum Corp.
G-21—Docket Nos. G-8820, et al., Texaco Inc., et al. Docket No. CI77-222, Exxon Corp.
G-22—Docket No. CI77-119, Cities Service Oil Co.
G-23—Docket No. CI77-500, Hunt Oil Co.
G-24—Docket No. CI76-597, Producer's Gas Co.
G-25—Docket No. CS71-576, Alfred D. McKelvy.
G-26—Docket No. CP76-424, Kentucky West Virginia Gas Co.
G-27—Docket No. CP74-192, Florida Gas Transmission Co.
G-28—Docket No. CP76-517, Natural Gas Pipeline Co. of America.
G-29—Docket No. CP76-511, Natural Gas Pipeline Co. of America.
G-30—Docket No. CP76-85, et al., Algonquin Gas Transmission Co., et al.
G-31—Docket No. CP77-216, Distrigas of Massachusetts Corp. Docket Nos. CP77-217 and CP7-218, Distrigas Corp.
G-32—Docket No. CP71-68, et al., Columbia LNG Corp., et al. Docket No. CP77-418, Texas Eastern Transmission Corp. Docket No. CP71-290, Consolidated System LNG Co.
G-33—Docket Nos. CP77-448 and CP77-449, Natural Gas Pipeline Company of America and NGP-LNG, Inc.
G-34—Docket Nos. CP77-56, CP77-117 and RP76-153, Baca Gas Gathering System, Inc. Docket No. CP77-91, Panhandle Eastern Pipe Line Co.
G-35—Docket No. CP77-267, Mid Louisiana Gas Co., and Transcontinental Gas Pipe Line Corp.
G-36—Docket No. CP77-13, Transwestern Pipeline Co.
G-37—Section 157.7: Budget Facilities.
G-38—Docket No. CP77-398, Columbia Gas Transmission Corp.
G-39—Docket No. CP77-454, Florida Gas Transmission Co.
G-40—Docket No. CP77-452, Transcontinental Gas Pipe Line Corp. Docket Nos. CP77-466, CP77-467 and CP77-468, United Gas Pipe Line Co.
G-41—Docket No. CP76-537, Michigan Wisconsin Pipe Line Co.
G-42—Docket No. CP73-30, Lone Star Gas Co., a division of Enserch Corp.
G-43—(A) Docket No. CP77-397, Northern Natural Gas Co. (B) Docket No. CP77-39, Iowa Power and Light Co.
G-44—Docket No. CP77-264, Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.
G-45—Docket Nos. CP77-369 and CP77-370, Transcontinental Gas Pipe Line Corp.
G-46—Docket No. CP77-425, Algonquin Gas Transmission Co.
G-47—Docket No. CP77-440, Sea Robin Pipeline Co.
G-48—Docket No. CP77-376, Cities Service Gas Co.
G-49—Docket No. CP74-213, Michigan Wisconsin Pipe Line Co.
G-50—Docket No. G-3072, Exxon Corp.
G-51—Docket No. CP72-136, City of St. Joseph, Tenn., applicant, Texas Eastern Transmission Corp., respondent.
G-52—Docket No. CP68-296, United Cities Gas Co., applicant, East Tennessee Natural Gas Co., respondent.
G-53—Docket No. CP77-413, Algonquin LNG Inc., and Algonquin Gas Transmission Co.
G-54—Docket No. CP77-193, Northern Natural Gas Co.
G-55—Docket No. CP77-445, Colorado Interstate Gas Co., Docket No. CP77-455, El

Paso Natural Gas Co., Docket No. CP77-457, Northwest Pipeline Corp., Docket No. CP77-462, Transwestern Pipeline Co.

G-56—Docket No. CP76-246, Northern Natural Gas Co.

G-57—Docket No. CP76-464, Equitable Gas Co.

G-58—Docket No. CP77-474, Columbia Gulf Transmission Co., Tennessee Gas Pipeline Co., a division of Tenneco Inc.

G-59—Docket No. CP77-463, Trunkline Gas Co.

G-60—Docket No. CP77-438 (R-386), Columbia Gulf Transmission Co., Northern Natural Gas Co., Tennessee Gas Pipeline Co. and Trunkline Gas Co.

G-61—Docket No. CP76-107, Transwestern Pipeline Co.

G-62—Docket No. CP75-147, Natural Gas Pipeline Co. of America.

G-63—Docket No. CP76-52, Northern Natural Gas Co. Docket No. CP76-166, Northern Natural Gas Co., operating as Peoples Natural Gas Division—Operator.

G-64—Docket No. CP76-402, National Fuel Gas Supply Corp.

GAS AGENDA

7672ND MEETING—SEPTEMBER 8, 1977

REGULAR MEETING—PART II

CG-1—Docket No. RP73-65 (PGA No. 77-4), Columbia Gas Transmission Corp.

CG-2—Docket No. CP73-329 (PGA77-5), Chattanooga Gas Co.

CG-3—Docket No. RP73-113, Tennessee Gas Pipeline Co.

CG-4—South Texas Natural Gas Gathering Co.

CG-5—Docket No. RP72-133, United Gas Pipe Line Co.

CG-6—Docket No. CP77-430, Colorado Interstate Gas Co.

CG-7—Docket No. CP75-71, Natural Gas Pipeline Co. of America and Transwestern Pipeline Co.

CG-8—Docket No. CP68-75, Northern Natural Gas Co.

CG-9—Docket No. CP77-501, Arkansas Louisiana Gas Co.

CG-10—Docket No. CP77-505, Texas Gas Transmission Corp.

CG-11—(A) Docket No. CP77-483, Mississippi River Transmission Corp. (B) Docket No. CP77-484, Mississippi River Transmission Corp.

CG-12—(A) Docket No. CP77-490, Western Gas Interstate Co. (B) Docket No. CP77-491, Western Gas Interstate Co.

CG-13—Docket No. CP77-500, Michigan Gas Storage Co.

CG-14—Docket No. CP77-471, El Paso Natural Gas Co.

CG-15—Docket No. CP77-493, Mississippi River Transmission Corp.

CG-16—Docket Nos. G-12972, et al., Sun Oil Co., et al.

CG-17—Docket No. RP77-62, Tennessee Gas Pipeline Co., a division of Tenneco Inc.

CG-18—Docket No. CP76-462, *Southern Union Gas Co.*, applicant v. *Cities Gas Co.*, respondent. Docket No. CP77-77, *Southern Union Gas Co.*, applicant v. *Northern Natural Gas Co.*, respondent. Docket No. CP77-220, Western Gas Interstate Co.

CG-19—Docket No. CP77-330, et al., El Paso Eastern Co., et al.

CG-20—Docket No. RP75-79, *Lehigh Portland Cement Co.* v. *Florida Gas Transmission Co.*

MISCELLANEOUS AGENDA

7672ND MEETING—SEPTEMBER 8, 1977

REGULAR MEETING—PART I

M-1—Docket No. RM-76-13, the need for site selection and facility operation criteria for liquefied natural gas importation and storage terminals.

M-2—Docket No. RM74-16, Natural Gas Companies' annual report of proved domestic gas reserves: FPC Form No. 40.

M-3—Docket No. R-406, purchased gas adjustment provision in Natural Gas Pipeline Companies' FPC gas tariff.

M-4—Docket No. CP-75-96, et al., El Paso Alaska Co., et al. Docket No. RM77-6, order providing for suspension of proceedings and prescribing procedures pursuant to the provisions of the Alaska Natural Gas Transportation Act of 1976.

M-5—Seventh annual report on liquefied natural gas applications.

M-6—H.R. 5878, "A bill, to provide for a feasibility study on establishing price, allocation, and export controls on coal, natural gas, and certain other energy sources."

M-7—H.R. 2507—95th Congress, "To regulate commerce by assuring adequate supplies of energy resource products will be available at the lowest possible cost to the consumer, and for other purposes."

M-8—H.R. 8427—95th Congress, "to amend the Natural Gas Act to provide certain limitations on gas curtailment plans."

M-9—Justice Department Position re competitive practices of pipelines under "Outer Continental Shelf Lands Act Amendments of 1977." (H.R. 1614)—95th Congress.

M-10—Docket No. , implementation of the Metric Conversion Act of 1975, PL 94-168: Use of the international system of units in reporting data to the Federal Power Commission.

M-11—Proposed executive order "Legging of outside contracts."

M-12—H.R. 1907 and S. 1671, wilderness designation in the Custer and Gallatin National Forests, Wyoming and Montana.

M-13—H.R. 8793—95th Congress, a bill "To improve the Nation's energy resources by the establishment of a national power grid system."

MISCELLANEOUS AGENDA

767ND MEETING—SEPTEMBER 8, 1977

REGULAR MEETING—PART II

CM-1—The Iditarod Trail and other Alaskan gold rush trails.

CM-2—Dickey-Lincoln School Lakes Project, Saint John River, Maine.

CM-3—Illinois River, Oregon.

CM-4—Scioto subregion portion of the Ohio River Basin commission's comprehensive coordinated joint plan.

CM-5—Green Mountain Power Corp.

POWER AGENDA 7672ND MEETING—SEPTEMBER 8, 1977 REGULAR MEETING—PART I

P-1—Docket No. E-8176, Southern California Edison Co.

P-2—Docket No. ER77-549, Florida Power Corp. Docket No. ER77-550, Florida Power & Light Co. Docket No. ER77-516, Tampa Electric Co.

P-3—Docket No. ER76-40, Nevada Power Co.

P-4—Docket No. ER77-325, Appalachian Power Co.

P-5—Docket No. ER77-426, Appalachian Power Co.

P-6—Docket No. ER77-127, Oklahoma Gas & Electric Co.

P-7—Docket Nos. ER77-411, ER77-412, ER77-413, ER77-414, ER77-415 and ER77-416, Illinois Power Co.

P-8—Docket No. ER77-514, Central Power & Light Co.

P-9—Docket No. ER77-521, Arizona Public Service Co.

P-10—Docket No. ER76-285, Public Service Co. of New Hampshire.

P-11—Docket No. ER77-402, Philadelphia Electric Co.

P-12—Docket No. ER77-485, Carolina Power & Light Co.

P-13—Docket No. ER76-320, Connecticut Light & Power Co.

P-14—Docket No. ER77-522, Kansas City Power & Light Co.

P-15—Docket No. ER77-347, Wisconsin Power & Light Co.

P-16—Docket No. ER76-533, Central Vermont Public Service Corp.

P-17—Docket No. ER77-313, Union Light, Heat and Power Co.

P-18—Docket Nos. ER76-229, ER76-633, ER76-661, Central Louisiana Electric Co.

P-19—Docket No. E-7172, U.S. Department of the Interior, Southwestern Power Administration.

P-20—Docket Nos. E-7775, E-9101, E-9518, ER76-24, ER76-126, ER76-137, ER76-321 and E-9448, Appalachian Power Co.

P-21—Project No. 553, City of Seattle, Department of Lighting.

P-22—Project No. 5, Montana Power Co.

P-23—Project No. 2180, Owens-Illinois, Inc.

P-24—Project No. 2615, Central Maine Power Co., Scott Paper Co., Milstar Manufacturing Corp., and Kennebec River Pulp & Paper Co., Inc.

P-25—Project No. 1273, city of Parowan, Utah.

P-26—Project No. 2569, Niagara Mohawk Power Corp.

P-27—Project No. 2004, Holyoke Water Power Co.

P-28—Project No. 2735, Pacific Gas and Electric Co.

P-29—Project No. 2100, State of California, Department of Water Resources.

P-30—Project No. 2716—Virginia, Virginia Electric and Power Co.

P-31—Project No. 2570—Ohio & West Virginia, Ohio Power Co.

P-32—Project No. 362—Minnesota, Ford Motor Co.

P-33—Potential for hydroelectric development.

P-34—Project No. 2590, Consolidated Water Power Co.

POWER AGENDA, 7672ND MEETING—SEPTEMBER 8, 1977—REGULAR MEETING—PART II

CP-1—Docket No. ER77-459, Public Service Co. of New Mexico.

CP-2—Docket No. ER77-498, Iowa-Illinois Gas & Electric Co.

CP-3—Docket No. ER77-385, Pacific Power & Light Co.

CP-4—Docket No. ES77-50, Iowa Southern Utilities Co.

CP-5—Project No. 77, Pacific Gas & Electric Co.

CP-6—Project No. 2680, Consumers Power Co.

CP-7—Project No. 1961, Georgia Power Co.

CP-8—State Director, Bureau of Land Management, Denver, Colo. (C-24845).

CP-9—State Director, Bureau of Land Management, Denver, Colo. (C25602).

[S-1247-77 Filed 9-2-77;10:41 am]

9

FEDERAL RESERVE SYSTEM.

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Tuesday, September 13, 1977.

PLACE: 20th Street and Constitution Ave., NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed salary structure adjustments at the Federal Reserve Banks of Boston, Atlanta, and Kansas City.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: September 2, 1977.

[S-1248-77 Filed 9-2-77;11:18 am]

10

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 44110, September 1, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 8, 1977, 9:30 a.m. (NM-77-27).

CHANGE IN THE MEETING: The following agenda item, to be considered in closed session, has been added:

Discussion.—Proposed organization redesignation in the Bureau of Accident Investigation.

[S-1242-77 Filed 9-2-77;9:15 am]

11

POSTAL SERVICE.

The Committee on Postal Rates of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 7.5 (as amended, 42 FR 12862, 12863)) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Friday, September 9, 1977, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. 20260. The meeting is open to the public. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at 202-245-4632.

The Committee will discuss the Recommended Decision of the Postal Rate Commission, No. MC77-2, concerning Postponement of the Effectiveness of Section 002.1 of the Domestic Mail Classification Schedule. This Committee meeting is to be held in anticipation of a meeting of the Board of Governors which is scheduled to commence at 9 a.m. on the same day. The Commission's Recommended Decision is on the agenda for the Board meeting.

ROGER P. CRAIG,
Assistant Secretary.

[S-1240-77 Filed 9-1-77;2:35 pm]

12

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5 (as amended, 42 F.R. 12863)) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9 a.m. on Friday, September 9, 1977, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. 20260. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at 202-245-4632.

AGENDA

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the occurence of a recent Congressional hearing, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Status Report on Rate and Classification Matters. (Mr. McCaffrey, Assistant Postmaster Postmaster General for Rates and Classification Department, will present a review of the current status of the postal rate and mail classification proceedings that are pending before the Postal Rate Commission.)

4. Status Report on Five-year Plan. (Mr. Biglin, Senior Assistant Postmaster General, Finance Group, will present this report.)

5. Postal Rate Commission Budget for Fiscal Year 1978. (Under the Postal Reorganization Act, the Postal Rate Commission periodically prepares and submits to the Postal Service a budget of the Commission's expenses. The budget is to be considered approved as submitted if the Governors of the Postal Service do not act to adjust it by unanimous written decision. This matter is included on the agenda to give the Governors an opportunity to act on the Commission's budget.)

6. Recommended Decision of the Postal Rate Commission on Postponement of the Effectiveness of Section 002.1 of the Domestic Mail Classification Schedule. (Mr. Cox, General Counsel, will present the Recommended Decision on Postponement of the Effectiveness of Section 002.1 of the Domestic Mail Classification Schedule.)

ROGER P. CRAIG,
Assistant Secretary.

[S-1239-77 Filed 9-1-77;2:35 pm]

13

SECURITIES AND EXCHANGE COMMISSION.

TIME AND DATE: September 6, 1977, 10 a.m.

PLACE: Room 825, 500 North Capitol St., Washington, D.C.

STATUS: Closed meeting.

SUBJECT MATTER: Freedom of Information Act matters.

Chairman Williams, Commissioners Loomis, Evans, and Pollack voted to close the meeting and determined that no earlier notice thereof was possible.

SEPTEMBER 2, 1977.

[S-1229-77 Filed 9-2-77;11:09 am]

14

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, September 8, 1977.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS TO BE CONSIDERED:

A—PERSONNEL ACTIONS

1. Change of Status—James P. Darling from Assistant Director to Director of Power Resource Planning, Chattanooga, Tenn.

B—CONSULTING AND PERSONAL SERVICE CONTRACTS

1. Renewal of consulting contract with Mine Reclamation Consultants, Inc., Laramie, Wyoming—Division of Forestry, Fisheries, and Wildlife Development.
2. Renewal of personal service contract with Teledyne Engineering Services (formerly Teledyne Materials Research), Waltham, Mass.—Office of Engineering Design and Construction.
3. Renewal of consulting contract with National Economic Research Associates, New York, N.Y.—Office of Power.

C—PURCHASE AWARDS

1. Req. No. 143789—Reheater and superheater outlet pendant assemblies for Gallatin Steam Plant.
2. Amendment to Contracts 66P-76-T1 and 67P-76-T2 with General Electric for nuclear fuel for Browns Ferry Nuclear Plant.
3. Req. No. 144696—Steam chests and accessories for Widows Creek Steam Plant.
4. Amendment to Contract 76K38-86163-1 and -3 with Atwood and Morrill Company, Incorporated, and BIF, A Unit of General Signal Corp., for motor-operated and manual valves for Bellefonte Nuclear Plant.
5. Amendment to Contracts 73P65-12293 and 75P65-6087-1 with General Electric Company, for nuclear fuel for Hartsville and proposed Phipps Bend Nuclear Plants.
6. Req. No. 821085—Partial reissue for condenser cooling water conduits for proposed Phipps Bend Nuclear Plant.
7. Req. No. 821984—Butterfly valves and operators for Hartsville and proposed Phipps Bend Nuclear Plants.
8. Req. No. 547378—Revised partial reissue—Indefinite quantity term contract for diesel fuel oil for various TVA projects and warehouses.

9. Req. No. 821105 Reissue—125-ton polar cranes for Hartsville and proposed Phipps Bend Nuclear Plants.

10. Req. No. 820721—Partial reissue—Gate valves for Hartsville and proposed Phipps Bend Nuclear Plants.

11. Req. No. 822170—Water chilling equipment for Hartsville and proposed Phipps Bend Nuclear Plants.

D—Project Authorizations

1. No. 3270—Replacement of boiler roof tubes at Gallatin Steam Plant Units 1 and 2.

E—Fertilizer Items

None.

F—Power Items

1. New power contract with Union Carbide Corp., Sheffield, Ala.

2. New power contract with American Enka Co.

3. Lease and amendatory agreement with Warren Rural Electric Cooperative Corporation—Caneyville and Rosine substations.

4. Lease and amendatory agreement with Electric Plant Board of the city of Princeton, Ky.—Princeton substation.

5. Agreement with Southwest Tennessee Electric Membership Corporation—establishment of 13-kV delivery point at TVA's proposed Mason substation.

6. Agreement with Upper Cumberland Electric Membership Corp.—establishment of 13-kV delivery point at TVA's proposed Algood substation.

7. Agreement with Cherokee Electric Cooperative—transfer of delivery point.

G—Real Property Transactions

1. Resolution relating to grant of permanent road easement to Robert L. Livingston, et al., affecting a portion of Union Mississippi substation land in Union County, Miss.—tract XUNMSS–1H.

2. Resolution relating to grant of permanent easement to the city of Sheffield, Ala., affecting approximately 44 acres of Muscle Shoals reservation land—tract XT2NPT–8E.

3. Resolution relating to abandonment of easement rights affecting 0.7 acre of Norris Reservoir land in Campbell County, Tenn.—tract XNR–62.

4. Contract with Hawkins County, Tenn., for highway adjustments in the proposed Phipps Bend Nuclear Plant area.

5. Contract with Trousdale County, Tenn., for highway adjustments in the Hartsville Nuclear Plant area.

6. Supplemental agreement between TVA and Tennessee Pulp and Paper Company—diversion of water impounded by Pickwick Dam.

7. Grant of permit and right of way to Amoco Pipeline Co. affecting approximately 23.3 acres of Wheeler Reservoir land in Limestone and Morgan Counties, Ala.—tracts XCSPD–1P, XWR–610P, and XWR–612P.

8. Filing of condemnation suits.

H—Unclassified

1. Agreement with Electric Power Research Institute for concurrent scrubber project.

2. Resolution relating to payments in lieu of taxes to states and counties, as provided under section 13 of the TVA Act, as amended.

3. Supplement to contract among Tennessee Valley Authority, South Cumberland Area Recreation Commission, and State of Tennessee, covering arrangements for land purchases in the Savage Gulf Wilderness Natural Area.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–3257, Knoxville, Tenn. Information is also available at TVA's Washington Office 202–343–4537.

[S–1245–77 Filed 9–2–77;9:15 am]

15

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 44622.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Week of September 5.

CHANGES IN THE MEETING:

Wednesday, September 7

10 a.m. New Mexico Uranium Mill Lawsuit (approx. 1 hr) (Rescheduled from September 8) (Closed—Exemption 10)

11 a.m. Affirmation of ALAB–425—Exxon (Public Meeting) (Rescheduled from 2:30 p.m., Sept. 7) (approx. 5 min.)

2:30 p.m. (approx.) Discussion of Draft Administration Bill for Nuclear Plant Licensing Reform (Closed—Exemption 9) (Continuation of September 1 meeting) (Additional meeting). (Meetings on: Policy Statement on Alternative Site Evaluations under NEPA for Nuclear Generating Stations; and Mandatory Licensee Participation in the Nuclear Plant Reliability Data System are postponed to a date to be announced.)

Thursday, September 8

9 a.m. 1. Discussion of Proposed Testimony on Export Legislation (as announced) (Closed—Exemption 9). 2. Discussion of Draft Administration Bill for Nuclear Plant Licensing Reform (Continuation of September 7 meeting) (Closed—Exemption 9).

1:30 p.m. Draft Order in Seabrook (as announced) (Closed—Exemption 10). (The meeting on: Commission Review of Director's Denial of Petition for Revocation of Bailly Construction Permit is postponed to a date to be announced.)

Friday, September 9

9:30 a.m. Joint NRC/ACRS Meeting (approx. 1 hr) (as announced) (public meeting).

10:30 a.m. Discussion of Draft Administration Bill for Nuclear Plant Licensing Reform (Closed—Exemption 9) (Continuation of September 8, meeting).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee 202–634–1410.

Dated: September 2, 1977.

Walter Magee,
Chief, Operations Branch,
Office of the Secretary.

[S–1255–77 Filed 9–6–77;10:10 am]

federal register

WEDNESDAY, SEPTEMBER 7, 1977

PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Base Flood Elevation Determinations for Various Communities

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-3257]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Town of Gordo, Ala.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Gordo, Ala. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Town Hall, Gordo, Ala.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Dave Housel, Town Hall, P.O. Drawer P, Gordo, Ala. 35466.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Gordo, Ala., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Little Bear Creek	U.S. Highway 82	247
	Old U.S. Highway 82	249
	Illinois Central Gulf RR.	249
	1st Ave.	251
Long Branch	Illinois Central Gulf RR.	248
	1st Ave.	255

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25208 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3261]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Village of Hacienda, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Village of Hacienda, Fl. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Village Office, 3841 State Road 84, Fort Lauderdale, Fla. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Sherman F. Crise, Village Office, 3841 State Road 84, Fort Lauderdale, Fla. 33312.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Hacienda, Fla., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North New River Canal	Entire city	7

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25209 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3262]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of College Park, Ga.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed

base flood elevations (100-year flood) listed below for selected locations in the City of College Park, Ga. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 3667 Main Street, College Park, Ga. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Ralph Presley, City Hall, 3667 Main Street, College Park, Ga. 30337.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of College Park, Ga., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Public L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Camp Creek	Downstream corporate limits (East Point-College Park).	847
	Camp Creek Parkway.	858
	Fairway Dr.	876
	Rubby Lane (upstream side).	902
	Lyle Rd.	918
Sullivan Creek	Riverdale Rd.	918
	West Fayetteville Rd.	927
	Sullivan Rd.	943
	Interstate 85 (downstream north bound).	946
	Interstate 85 (upstream side, south bound).	949
	Fulton-Clayton County line (eastern side).	974
	Fulton-Clayton County line (western side).	981

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25210 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3263]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Henderson, Ky.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Henderson, Ky.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, Henderson, Ky.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Dick Brown, City Manager, City of Henderson, City Hall, P.O. Box 716, Henderson, Ky. 42420.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Henderson, Ky., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Audubon Park Creek.	Watson Lane.	401
	Green St.	390
Highway 812 tributary.	Adams Lane.	390
	Kentucky Highway 812.	387
	Pennyville-Audubon Parkway Interchange.	386
	U.S. Highway 41.	384
North Fork Canoe Creek.	Louisville & Nashville R.R.	391
	Kimsey Lane.	391
	U.S. Highway 41.	391
	5th St.	390
	Louisville & Nashville R.R.	390
	Kentucky Highway 54.	389
	Washington St.	387
	Kentucky Highway 812.	386
	Louisville & Nashville R.R.	386
	Kentucky Highway 136.	386
Sellers Ditch.	Highway 285.	383
	Illinois Central Gulf R.R.	378
Canoe Creek.	Old Madisonville Rd.	385
	Illinois Central Gulf R.R.	384
	U.S. Highway Alternate 41.	377
	County Rd.	375
	U.S. Highway 60.	375

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25211 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3264]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Alexandria, La.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Alexandria, La.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, Alexandria, La.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Carroll Lanier, City Hall, Alexandria, La. 71301.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Alexandria, La., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new building and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Red River	Kansas City Southern RR.	93
	Alexandria Pineville Expressway (U.S. Highways 71 and 165).	93
	Murray Ave. (U.S. Highway 165).	93
	U.S. Highways 71, 165, and 167.	93
Chatlin Lake Canal.	Midway Ave. (Hudson Blvd.).	72
	Kansas City Southern RR.	74
	Willow Glen River Rd.	75
	Kansas City Southern RR.	76
	Maple St.	76
	Casson St.	76
Chatlin Lake Canal West.	Missouri Pacific RR.	77
	Kansas City Southern RR.	77
	Fulton St.	78
Mill Bayou	Jones Ave.	76
	Broadway Ave.	76
	Applewhite St.	76
Sandy Bayou	Darpit St.	75
	Renea St.	76
	3d St.	76
Hynson Bayou	Midway Ave. (Hudson Blvd.).	72
	Tulane Ave.	72
	Willow Glen River Rd.	74
	Hammond Alley	75
	New York Ave.	76
	Broadway Ave.	76
	Cypress St.	77
	Hoop St.	77
	Houston St.	78
	Masonic Dr.	79
	Bryn Mawr Dr.	81
	Georges Lane	82
	Monroe St.	82
Horseshoe Drainage Canal.	Willow Glen River Rd.	73
	Lee St. (extension)	73
	Sterks Rd.	74
	MacArthur Dr. (U.S. Highway 71).	74
	Masonic Dr. (U.S. Highway 165).	76
	Alden Court	77
	Jackson St. (extension).	78
	Warren St.	79
	Twin Bridges Rd. (State Highway 488).	80
Philip Bayou	3d St.	75
	Missouri Pacific RR.	75
	Graham Rd.	76
	Texas and Pacific RR.	78
	State Highway 1	78
Bayou Rapides	4th St.	79
	MacArthur Dr. (U.S. Highways 71, 165, and 167).	79
Bayou Rapides Diversion Channel.	State Highway 28	73
	Bayou Rapides Rd.	73
East Prong Bayou	Road to watertank (unnamed).	72
	Joyce St.	74
	Unnamed bridge	74
Bayou Robert	Gene Ball Dr.	80
	Caroline St.	80
	Masonic Dr.	80
	Twin Bridges Rd.	80
	Heyman Lane	81

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969, (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25212 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3265]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Town of Auburn, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Auburn, Mass.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Town Hall, 104 Central St., Auburn, Mass.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. John Wheeler, Executive Secretary, Town of Auburn, Board of Selectmen, Town Hall, 104 Central Street, Auburn, Mass. 01507.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh St., SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Auburn, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Kettle Brook	Rockland St.	497
	Sword St.[1]	488
Dark Brook (from Kettle Brook to Auburn Pond).	Southbridge Street Bridge[1].	498
	Auburn Street Bridge.[1]	493
Dark Brook (Auburn Pond to Central St.).	Church Street Bridge.	516
	Auburn Mall	504
Stone Brook (Swanson Rd. to Washington St.).	Mill Terrace Bridge	510
	Central Street-Massachusetts Turnpike I-90.	503
Stone Brook (Pondville Pond to South St.).	South Street Bridge[2]	545
	Elm Street Bridge[1]	519
Unnamed tributary from Rockland St. to Leesville Pond.	Sword St	496
Dark Brook (Stoneville Pond to Leicester Street Bridge).	Leicester Street Bridge.	607
	Inwood Street Bridge[1].	560
	Rochdale Street Bridge.[2]	521

[1] Upstream.
[2] Downstream.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25213 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3266]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Township of Chesterfield, Macomb County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Township of Chesterfield, Macomb County, Mich.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review on the Display Table, in the Lobby of the Township Hall, 501 77 North Grothiot, Mount Clemens, Mich.

Any person having knowledge, information, or wishing to make comment on these proposed elevations should immediately notify Mr. Otis Dean Smith, Township Supervisor, Township Hall, 501 77 North Grothiot, Mount Clemens, Mich. 48043.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh St., SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Chesterfield, Macomb County, Mich. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by §1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Salt River	Jefferson Ave.	578.5
	Callens Rd.	578.5
	23 Mile Rd.	580.0
	24 Mile Rd.	585.0
	Washington Ave.	591.0
	Interstate 94	595.0
	Upstream corpolate limits.	602.0
Fish Creek	Callens Rd.	578.5
	23 Mile Rd.	583.0
	Sass Rd.	589.0
	24 Mile Rd.	592.0
Auvase Creek, Sutherland-Oemig drain.	Jefferson Ave.	578.5
	Sugarbush Rd.	579.0
	Graham Rd.	581.0
	Cotton Rd.	584.0
	Douglass Rd.	587.0
Deer Creek	Downstream corporate limits.	613.0
	Hagen Rd. (downstream).	614.0
	Hagen Rd. (upstream).	615.0
	Upstream corporate limits.	621.0

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).))

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25214 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3267]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Maple Grove, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Maple Grove, Minn.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 14310 93rd Avenue North, Maple Grove, Minn. 55369.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Richard Reimer, City Hall, 14310 93rd Avenue North, Maple Grove, Minnesota 55369.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh St. SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Maple Grove, Minn., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Elm Creek	Elm Rd	920
	Bass Lake Rd	911
	Interstate 94	894
	Territorial Rd	875
Rush Creek	97th Ave	928
	Interstate 94	913
	105th Ave, North	912
	Territorial Rd	906

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25215 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2828]

NATIONAL FLOOD INSURANCE PROGRAM

Revision of Proposed Flood Elevation Determinations for Town of Ellisburg, Jefferson County, N.Y.

AGENCY: Federal Insurance Administration.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his proposed determinations of flood elevations for the town of Ellisburg, Jefferson County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (sec. 1917.4(a)).

Due to recent engineering analysis, this notice revises the proposed determinations of base flood elevations published in 42 FR 18235 on April 5, 1977, and in the Jefferson County Journal published on March 23, 1977, and March 30, 1977, and hence supersedes those notices.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Town Hall, Ellisburg, N.Y.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. William Fulkerson, Town Supervisor, Town Hall, Ellisburg, N.Y. 13636.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain managementmeasures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sandy Creek	State Route 193	391
	State Route 289	442
	Mathers Mills Rd	483
Bear Creek	Milk Plant Rd	594
	Church Rd	616
	Wardwell Settlement Rd.	617
	Route 11 (upstream side).	621
	Queens Farm Reservoir Dam.	665
	Upstream corporate limits.	709
Skinner Creek	South corporate limits.	249
Lake Ontario	Northwest corporate limits.	251
	Jefferson Park Rd	251
	Montario Rd	251
	Renshaw Bay Rd	249

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25216 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3268]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Town of Mentz, Cayuga County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the town of Mentz, Cayuga County, N.Y. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Town Clerk's Office, 11 Pine Street, Port Byron, N.Y.

Any person having knowledge, information, or wishing to make a comment

on these proposed elevations should immediately notify Mr. Herbert Marshall, Supervisor of Mentz, Baptist Hill Road, R.D. No. 1, Port Byron, N.Y. 13140.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the town of Mentz, Cayuga County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Seneca River	O'Neill Rd.	334
	State Route 38	384
	Upstream town limits.	384
New York State Barge Canal.	Confluence with Owasco Outlet.	384
	Upstream town limits.	384
Owasco Outlet	Sperry Rd.	384
	State Route 38 (Canal St.).	385
	New York Central Rd. (Wilt St.).	390
	Village of Port Byron, north corporate limit.	391
	Village of Port Byron, south corporate limit.	408
	Hayden Rd. (downstream).	416
	Hayden Rd. (upstream).	419

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25217 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3269]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Village of Randolph, Cattaraugus County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Village of Randolph, Cattaraugus County, N.Y. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Bulletin Board in the Village Hall, 1 Bank Street, Randolph, N.Y.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Hon. Sam P. Abbott, Mayor of Randolph, N.Y. 14722.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administration, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Randolph, Cattaraugus County, N.Y. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Little Conewango Creek.	Main Street Bridge	1,274
	Downstream corporate limits.	1,271
	Elm Creek Confluence.	1,276
	Upstream corporate limits.	1,278
	College St. (extended).	1,274
Elm Creek	Upstream corporate limits.	1,289
	Weeden Rd. crossing	1,285
	Conewango Rd. (extended).	1,279
Battle Creek	Upstream corporate limits.	1,375
	State Route 17 crossing:	
	Upstream side	1,343
	Downstream side	1,339
	Main St. crossing	1,314
	Con Rail crossing	1,307
	Center St. crossing:	
	Upstream side	1,302
	Downstream side	1,300
	Jamestown St. crossing.	1,292
	Downstream corporate limits.	1,271

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25218 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3270]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Charlotte, N.C.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Charlotte, N.C. These base flood elevations are the basis for the flood plain management measures that the

community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the proposed base flood elevations are available for review at City Hall, 600 East Trade Street, Charlotte, N.C.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor John M. Belk, City Hall, 600 East Trade Street, Charlotte, N.C. 28202.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Charlotte, N.C., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sugar Irwin Creek	Nevin Rd	723
	Dalecrest Dr	707
	Starita Rd	705
	I-85	697
	Statesville Ave	670
	La Salle St	668
	I-77	658
	I-77	650
	West 5th St	648
	West 4th St	646
	Southern RR	645
	West Morehead St	641
	Walnut Ave	637
	Independence Blvd	634
	Southern RR	633
	West Blvd	630
	Remount Rd	629
	Barringer Dr	620
	Clanton Rd	615
	Southern Ry	609
	Yorkmount Rd	602
	York Rd	585
	Arrowood Rd	578
	I-77	568
	Nations Fork Rd	562
	Pineville-Rock Hill Rd	539
	West Trade St	647
Kennedy Branch	Slater Rd	733
	Cindy Lane	733
Stewart Creek	Capps-Hill Mine Rd	728
	Hoskins Rd	693
	I-85	664
	Southwest Blvd	675
	La Salle St	672
	Northwest Expressway	669
	Seaboard Coastline RR	667
	West Trade St	660
	Rozzelles Ferry Rd	656
	Piedmont Northern RR	650
	State St	646
	Tuckaseegee Rd	644
	Freedom Dr	638
	Morehead St	637
Stewart Creek tributary, No. 1	Berryhill Rd	655
	Piedmont Northern RR	639
Stewart Creek tributary, No. 2	Lander St	690
	Gallagher St	683
	Lakewood Dr	678
	Parkway Ave	663
	Coronet Way	657
Stewart Creek tributary, No. 3	Hoskins Rd	720
	Piedmont Northern RR	708
	I-85	690
Irwin Creek tributary	Fieldcrest Rd	624
Taggart Creek	Denver Ave	687
	Mulberry Church Rd	687
	Wilkinson Blvd	684
	Southern RR	671
	Morris Field Dr	636
	West Blvd	622
	Wilmount Rd	607
Kings Branch	I-77	635
	Archdale Dr	619
	Arrowood Rd	568
Little Sugar Creek	Kentbrook Dr	719
	Wellingford St	716
	North Tryon St	712
	Sugar Creek Rd	704
	Craighead Rd	695
	East 36th St	693
	Southern RR	691
	do	685
	Brevard St	680
	North Davison St	676
	Parkwood Ave	672
	East 18th St	668
	Seaboard Coast Line RR	663
	Northwest Freeway	649
	Elizabeth Ave	648
	4th St	646
	East 3d St	644
	Independence Blvd	641
	East Morehead St	633
	Brunswick Ave	630
	East Blvd	624
	Princeton Ave	615
	Hillside Ave	611
	Brandywine Ave	606
	Woodlawn Rd	603
	Park Rd	593
	Tyvola Rd	588
	Archdale Rd	580
	Sharon Rd. west	563
	N.C. 51	554
	U.S. 521	552
Derita Branch	Craighead Rd	714
	North Tryon St	693
Dairy Branch	Cumberland Ave	626
Briar Creek	Plaza Rd	710
	Shamrock Dr	681
	Eastway Dr	680
	Country Club Dr	674
	Central Ave	657
	Commonwealth Ave	653
	Independence Blvd	652
	Seaboard Coast Line Rd	645
	East 7th St	640
	Randolph Rd	632
	Providence Rd	625
	Sharon Rd	623
	Colony Rd	615
	Barclay Downs Dr	600
	Park Rd	591
Briar Creek tributary, No. 2	Galway Dr	707
	Gratton Dr	695
Briar Creek tributary, No. 1	Colony Rd	618
	Barclay Downs Dr	600
Little Hope Creek	Woodlawn Rd	625
	Montford Dr	620
	Mockingbird Lane	615
	Seneca Pl	615
Little Hope Creek tributary	Bradbury Dr	622
McMullen Creek	Addison Dr	667
	Lyncrest Pl	667
	Randolph Rd	659
	Providence Rd	644
	Arborway	631
	Fairview Rd	623
	Colony Rd	610
	Sharon View Rd	605
	Mountain Brook Rd	597
	Quail Hollow Rd	568
	Johnson Rd	543
	North Carolina Highway 51	530
McMullen Creek tributary	Sharon Amity Rd	685
	Addison Dr	670
Cambell Creek	Albermarle Rd	700
	Executive Center Dr	695
	Idlewild Rd	676
	Margaret Wallace Rd	660
Edward's Branch	Shetfield Dr	667
	Woodland Dr	662
	Eastway Dr. and Independence Blvd	677
	Independence Blvd	658
	Briar Creek Rd	652

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25219 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3271]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Town of Wendell, N.C.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Wendell, N.C.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Town Hall, Corner 4th and Pine Streets, Wendell, N.C.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor June Perry, Town Hall, Corner 4th and Pine Streets, Wendell, N.C. 27591.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Wendell, N.C., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plan management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be use to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hominy Branch	North Carolina State Rd. 2329.	273
Little River	Southern Ry.	226
	U.S. 64.	227
Lizard Lick Creek	U.S. 64.	231
	North Carolina State Rd. 2253.	257
Buffalo Branch	do.	273
Buffalo Creek	North Carolina State Rd. 2258.	262
	North Carolina State Rd. 1007.	267
	Southern Ry.	270

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25220 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3272]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Unincorporated Areas of Trumbull County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the unincorporated areas of Trumbull County, Ohio.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Trumbull County Office, Warren, Ohio.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Chairman Anthony Bernard, 160 High Street, N.W., Warren, Ohio 44481.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the unincorporated areas of Trumbull County Ohio, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The Community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mahoning River	Downstream at McDonald Highway	859
	Downstream of West Park Ave.	865
	Downstream of State Route 422	888
	Downstream of the Ohio Turnpike.	898
West branch of the Mahoning River.	Downstream of Newton Falls corporate limits.	901
Mosquito Creek	Downstream of State Route 82.	869
	Downstream of North River Rd.	872
	Downstream of New State Route 5.	877
Meander Creek	Downstream of Salt Spring Rd.	861
	Downstream of Johnson Planck Rd.	913
Chocolate Run	Downstream of State Route 422.	899
	Downstream of Kincaid Rd.	903
Duck Creek	Downstream of Hewitt Gifford Rd.	896
	Downstream of Selkirk Bush Rd.	908
	Downstream of Hallock Young Rd.	934
Mud Creek	Eastern Lordstown corporate limits.	873
Crab Creek	Southern county line.	889
	Downstream of Interstate 80.	968
Little Yankee Run.	Chestnut Ridge Rd. (downstream of Hubbard).	861
	Interstate 80 (downstream of Hubbard).	896
	U.S. Route 62.	929
	Chestnut Ridge Rd. (upstream of Hubbard).	955
Shenango River	Confluence of Big Yankee Creek.	847

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25221 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3273]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Borough of Chambersburg, Franklin County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Borough of Chambersburg, Franklin County, Pa.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the first floor of the Borough Office, 100 South 2nd Street, Chambersburg, Pa.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Honorable William Stover, Mayor of Chambersburg, 70 West King Street, Chambersburg, Pa. 17201.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Chambersburg, Franklin County, Pa. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–40128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Conococheague Creek.	Honeywell Ave	564
	Dam, 1st one upstream of corporate limits.	577
	Near Irva Dr	586
	Unnamed bridge near Linden Ave.	593
	London St	597
	Western Maryland RR. (1st crossing).	599
	West King St	602
	Commerce St	606
	Con Rail (1st crossing).	607
	Con Rail (2d crossing).	608
	Upstream corporate limits.	609
Falling Spring Creek.	At Conococheague Creek.	603
	West King St	612
	North Main St	615
	North 2d St	617
	North 3d St	619
	Kennedy St	621
	North 4th St	621
	Con Rail	621
	5th Ave	621
	North 7th St	622
	Plasterer Ave	628
	Walker Rd	634
	Lincoln Highway East.	639
	Upstream corporate limits.	640

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680), February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25222 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3274]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Township of Sewickley, Westmoreland County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Township of Sewickley, Westmoreland County, Pa. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Lobby Bulletin Board, Sewickley Township Municipal Building, Mars Hill Road, Hermanie, Pa.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Frank Malpezzi, Township Supervisor of Sewickley, P.O. Box 28, Hermanie, Pa. 15637.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Sewickley, Westmoreland County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Youghiogheny River.	Guffy Hollow Rd. tributary.	759
	Across from Buena Vista.	761
	At Scott Haven	764
	Across from Blythedale upstream corporate limits.	765
	Along L. R. 64258	769
Sewickley Creek	From Youghiogheny River to 2,000 ft above Speer St.	769
	State Route 153 (downstream crossing).	907
	Con Rail Bridge (downstream crossing).	912
	State Route 153 (upstream crossing).	914
	Con Rail Bridge (upstream crossing).	916
	I-70	918
	State Route 100	922
Little Sewickley Creek.	State Route 113	865
	Greenhills Rd.	878
	Irwin-Herminie Rd.	883
	Township Route 398	901
	Con Rail (1st crossing).	911
	Con Rail (2d crossing).	918
	Con Rail (3d crossing).	930
	Upstream corporate limits.	935
Tributary No. 1 to Little Sewickley Creek in Northern Sewickley Township.	1,200 ft downstream of Township Route 345.	951
	700 ft downstream of Township Route 345.	956
	Just downstream of Township Route 345.	962
	Just upstream of Township Route 345.	964
	1,000 ft upstream of Township Route 345.	970
	At private drive crossing stream 1,600 ft upstream of Township Route 345.	976
	Just downstream	975
	Just upstream	977
	200 ft above private drive.	978

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968, as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25223 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3261]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Borough of Walnutport, Northampton County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Borough of Walnutport, Northampton County, Pa. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Walnutport Borough Hall, Lincoln Avenue, Walnutport, Pa.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Henry Kline, President of Walnutport Borough Supervisors, Walnutport Borough Hall, Lincoln Avenue, Walnutport, Pa. 18088.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Walnutport, Northampton County, Pennsylvania in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Lehigh River	Downstream corporate limits.	357
	Foot of Gap St.	358
	South end of Lehigh St.	360
	300 ft downstream of Main St.	362
	100 ft upstream of Main St.	363
	At U.S.G.S. gaging station.	365
	At upstream corporate limits.	366

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25224 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3260]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Pflugerville, Travis County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Pflugerville, Travis County, Tex.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh St., SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Pflugerville, Travis County, Tex., in accordance with section

110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, Pflugerville, Tex.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Clarence W. Bohls, P.O. Drawer 860, Pflugerville, Tex.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Gilleland Creek.....	Upstream of Pflugerville Rd. (FM 1825).	673
	Upstream of East Pflugerville Loop.	693
	Western corporate limits.	700

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: June 24, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25225 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3259]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Town of Barre, Washington County, Vt.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Barre, Washington County, Vt.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Town Hall, Barre, Vt.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Chairman of the Board of Selectmen of the Town of Barre, Wendell Pelkey, Websterville, Vt. 05678.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Barre, Washington County, Vt., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stevens Branch....	South of city of Barre.	665
	Upstream of Snowbridge Rd.	728
	Southern corporate limits.	741
Jail Branch.....	East of city of Barre....	717
	Upstream of Waterman St. (Vermont Route 110).	1,077

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25226 Filed 9-6-77; 8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3312]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Pomeroy, Garfield County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Pomeroy, Garfield County, Wash.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the bulletin board in the City Hall, Pomeroy, Wash.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Hal Partlow, Mayor of Pomeroy, P.O. Box 370, Pomeroy, Wash. 99347.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh St. SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Pomeroy, Garfield County, Wash., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pataba Creek	Upstream corporate limits.	1,932
	Columbia St	1,896
	18th St	1,886
	15th St	1,878
	12th St	1,864
	9th St	1,853
	7th St	1,846
	4th St	1,830
	1st St. (extended)	1,819
	Downstream corporate limits.	1,763

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25227 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3313]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Point Pleasant, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Point Pleasant, W. Va. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Municipal Building, 400 Viand Street, Point Pleasant, W.Va.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor John Musgrave, Municipal Building, 400 Viand Street, Point Pleasant, W.Va. 25550.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Point Pleasant, W.Va., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by Section 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ohio River	New York Central RR.	570
Kanawha River	do	570
	West Virginia State Route 2.	570

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25228 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3314]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Burlington, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Burlington, Wis. These base flood elevations are the basis for the flood plan management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 300 North Pine Street, Burlington, Wis.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor John H. Thate, City Hall, 300 North Pine Street, Burlington, Wis. 53105.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Burlington, Wis., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management re-

quirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fox River	Chicago, Milwaukee & St. Paul RR.	757
	Jefferson St	758
White River	Bridge St. (downstream side).	759
	Bridge St. (upstream side).	761
	Milwaukee Ave	763
	Milwaukee Ave. above Echo Lake Dam.	766

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25229 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3315]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Village of Butler, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Village of Butler, Wis.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Village Hall, 12621 W. Hampton Avenue, Butler, Wis. 53007.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Clarence Everard, Village President, Village of Butler, Village Hall, 12621 W. Hampton Avenue, Butler, Wis. 53007.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Butler, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Menominee River	North 12th St	710
	West Silver Spring Rd.	723
	Silver Spring Rd	724

(National Flood Insurance Act of 1968 (Title XIII of Houning and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25230 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3316]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Village of Campbellsport, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Village of Campbellsport, Wis.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Village Hall, 177 Main Street, Campbellsport, Wis.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Phillip Ketter, Village President, Village of Campbellsport, Village Hall, 177 Main Street, Campbellsport, Wis. 53010.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Campbellsport, Wis., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies es-

tablished by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Upper Milwaukee River.	Dam	968
	Main St	980
	New Cassel St	986

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25231 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3317]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Greenfield, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Greenfield, Wis.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 7325 West Forest Home Avenue, Greenfield, Wis.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Howard J. Wahlen, City Hall, 7325 West Forest Home Avenue, Greenfield, Wis. 53220.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Greenfield, Wis., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Root River	Morgan Ave	730
	Beloit Rd	727
	108th St. (State Trunk Highway 100).	726
	Cold Spring Rd	724
	State Trunk Highway 15 South (U.S. Highway 45).	723
	State Trunk Highway 15 North (U.S. Highway 45).	723
	Layton Ave. (County Trunk Highway "Y").	722
	Abandoned railroad bridge.	722
	Forest Home Ave. (State Trunk Highway 31).	721

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25232 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3318]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Village of Waunakee, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base elevations (100-year flood) listed below for selected locations in the Village of Waunakee, Wis. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Village Hall, 204 West Third Street, Waunakee, Wis.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Ms. Ann Helt, Village President, Village of Waunakee, Village Hall, 204 West Third Street, Waunakee, Wis. 53597.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Waunakee, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also

be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Six Mile Creek	State Trunk Highway 113.	915
	Madison St.	911
	State Trunk Highway 19 and State Trunk Highway 113.	907
	Division Creek	897

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25233 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3319]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for City of Gillette, Wyo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of Gillette, Wyo. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 400 South Gillette Avenue, Gillette, Wyo.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Michael B. Enzi, City Hall, P.O. Box 540, 400 S. Gillette Avenue, Gillette, Wyo. 82716.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of Gillette, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980 which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stone Pile Creek	Highway bridge	4,576
	Railroad bridge	4,563
	do	4,537
	Interstate 90	4,505
East branch	Upstream limit	4,533
	Downstream limit	4,528
West branch	Upstream limit	4,574
	Downstream limit	4,559
Donkey Creek tributary	36-in concrete pipe	4,549
	Twin 48-in concrete pipe.	4,525
	do	4,524
	do	4,523
	do	4,522
	do	4,521

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 82, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25234 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3320]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Natrona County, Wyo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in Natrona County, Wyo. These base flood elevation are the basis for the flood plain management measures that the community is required to their adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City-County Building, Casper, Wyo. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. John P. Burke, Chairman, Board of Commissioners of Natrona County, City-County Building, Casper, Wyo. 82601.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations 100-year flood) for Natrona County, Wyo., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities.

These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North Platte River	Burlington Northern RR.	5,070
	New Mystery Rd.	5,074
	Pipeline Bridge	5,080
Casper Creek	New Yellowstone Rd.	5,126
	Old Yellowstone Rd.	5,129
	Highway 20	5,152
Squaw Creek	State Highway 220	5,198
Wolf Creek	do.	5,177
Garden Creek	Outer Dr.	5,422
	Garden Creek Rd.	5,618
Sage Creek	15th St.	5,224

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25235 Filed 9-6-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3258]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Uinta County, Wyo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selection locations in Uinta County, Wyo.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Uinta County Courthouse, Evanston, Wyo.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Judge C. Stuart Brown, Box 1, Kemmerer, Wyo. 83101.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for Uinta County, Wyo., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year-flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Blacks Fork	Highway bridge	6,645
	Bridge	6,627
Groshon Creek	Highway Box Culvert.	6,665
Little Black Fork	Highway bridge	6,659

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25236 Filed 9-6-77;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 7, 1977

PART III



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

■

SURFACE MINING RECLAMATION AND ENFORCEMENT

Proposed Implementation Provisions

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Parts 700, 710, 715, 716, 717, 720, 721, 722, 723, 725, 740, 795, 830]

SURFACE MINING RECLAMATION AND ENFORCEMENT PROVISIONS

Proposed Rules

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

ACTION: Proposed rules.

SUMMARY: The regulations in this chapter set out the Department of the Interior's Surface Mining Reclamation and Enforcement program as required by the Surface Mining Control and Reclamation Act of 1977 (Act). These regulations require the Secretary of the Interior to publish initial environmental protection regulations that are applicable to all coal mining operations regulated by the States until a State has an approved regulatory program or a Federal regulatory program is implemented in that State.

DATES: Comments must be received by October 7, 1977. Public hearings will be held starting at 1 p.m. on September 20, 1977, and continuing if necessary at 9 a.m. on September 21, and 22, 1977.

ADDRESSES: Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240. Public hearings will be held at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C.; Kiel Auditorium, 1416 Market Street, St. Louis, Mo.; Public Library Auditorium, 1347 Broadway, Denver, Colo.; and Morris Harvey College, Riggleman Hall, 2300 McCorkle Avenue, Charleston, W. Va.

FOR FURTHER INFORMATION CONTACT:

Paul Reeves, Office of Surface Mining Reclamation and Enforcement, 202–343–4237.

SUPPLEMENTARY INFORMATION: The Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, requires the Secretary of the Interior to publish initial environmental protection regulations that are applicable to all coal mining operations regulated by the States until a State has an approved regulatory program or a Federal regulatory program is implemented in that State. These regulations, especially dealing with water quality, were developed in consultation with the Environmental Protection Agency. The Act also requires the Secretary to implement a Federal enforcement program by February 3, 1978, which lasts for the duration of the initial program in each State. Regulations for Federal financial assistance to States for reimbursement of incremental enforcement costs during the initial regulatory program and for development, administration and enforcement of permanent State regulatory programs for the control of surface coal mining and reclamation operations are also required by the Act.

The public is urged to comment on these proposed regulations. The Department of the Interior believes that full public participation in the rulemaking process will improve the quality of its regulatory program and to this end has already held informal public information meetings in Washington, D.C. (42 FR 39491, August 4, 1977) and has already established a continuing liaison with State regulatory authorities.

In light of the volume of comments expected on the regulations proposed and the short time available to meet the statutory deadline for final regulations, we request that, wherever possible, comments be identified by the pertinent section number of the regulations in the left hand margin, and presented section-by-section on separate pages. We also request that wherever possible, people making written and oral presentations at the public hearings preface their comments on individual sections by identifying that section by number. Individuals making oral statements at the public hearing are requested to limit their statements to 15 minutes. A brief discussion of the major parts in the proposed regulations follows.

Part 700 is a general statement of the scope, objectives and applicability of these regulations. It also states the responsibilities of the Secretary, the Director and the States and defines terms used throughout the chapter. The authority of the Secretary, the Director of the Office of Surface Mining Reclamation and Enforcement and other governmental bodies is described, their responsibilities distinguished and the Federal-State delegation of duties described.

Part 710 introduces the initial regulatory program. Initial performance standards which will apply to private and public lands before a permanent State program is approved by the Secretary are included.

Part 715 contains the general initial performance standards and includes regulations governing the operator's general obligation to comply with the initial standards requiring restoration of disturbed areas to suitable post mining use, backfilling and grading, disposal of spoil and waste materials in other areas, topsoil handling, protection of the hydrologic system, construction, inspection and maintenance of dams, use of explosives, and revegetation.

Part 716 contains the special initial performance standards and includes regulations governing steep slope mining, prime farmlands, mountaintop removal, special bituminous coal mines, anthracite coal mines, Alaska coal mining operations and underground mines.

Part 717 contains procedures for adoption of State laws and regulations when they prescribe more stringent standards of performance than the general or special performance standards of this chapter provide.

Part 720 sets forth the regulations governing enforcement activities to be carried out by the States during the initial regulatory program.

Part 721 provides for Federal inspections on the basis of (1) at least two consecutive State inspection reports indicating a violation; (2) information provided by a State or person indicating a violation; (3) random inspections of each operation at least once each six months; and (4) the Secretary's own initiative.

Part 722 sets out the general procedures governing issuance by Federal inspectors of orders of cessation, notices of violation and orders to show cause.

Part 723 contains the regulations governing the assessment of civil penalties and prescribes the use of a mandatory point system in determining the amount of the penalty.

Part 725 sets forth the policies and procedures for reimbursements to States for the incremental costs of enforcing performance standards during the initial regulatory program.

Part 740 sets forth the policies and procedures for grants to States to develop, administer and enforce approved State programs for the control of surface coal mining and reclamation.

Part 795 provides for financial and other assistance to eligible small coal mine operators in determining the hydrologic consequences of mining and reclamation. The analyses are to be performed by qualified public and private laboratories and paid for by the regulatory authority.

Part 830 provides a procedure for dealing with acts of job discrimination due to exercise of rights under the Act.

GENERAL

Part 700 is intended to reiterate the purposes and objectives of the Act and familiarize the public with the various programs and procedures the new Office of Surface Mining will be implementing.

The authority and responsibility sections describe the chain of authority in general terms from the Secretary to the Director of the Office to the various Federal and State authorities. The Assistant Secretary, Energy and Minerals, although not mentioned in the Act, will perform key Secretarial duties under the Act and has general Secretarial responsibility for the program.

Definitions are either taken directly from the Act or derived from generally accepted sources. These definitions are applicable to all parts of the regulations, except where stated otherwise in a particular part or section.

For the purpose of these regulations, the term "permit" includes a mining plan approved under 30 CFR Part 211 held by a lessee of Federal or Indian lands; "State regulatory authority" includes the State agency during the initial program as well as the permanent regulatory program; and "surface coal mining and reclamation operations" includes all surface and underground coal mining operations. These broader definitions are required to fully implement the Congressional intent expressed in the Act and legislative history.

The regulations in § 700.12 describe how interested persons can obtain con-

sideration of rulemaking proposals regarding matters within the authority of the Office. The regulations contain public notice requirements and provide for an opportunity to request hearings. They have been designed to encourage public participation in the policymaking process of the Office.

Part 710, Initial Regulatory Program, includes the rules and procedures applicable during the initial period between promulgation of these rules and the implementation of a permanent Federal or State program. Dates and deadlines are set out in this part which affect Federal, State, and private lands. Proposed rules for Indian lands are being published separately as 25 CFR 177, Subpart B.

Section 710.11 states who is covered by the provisions of the Act and regulations. Surface and underground coal mining operations in States regulating coal mining are covered by these regulations during the initial regulatory program.

SMALL OPERATOR EXEMPTION

Under section 502 of the Act, the initial performance standards will apply to virtually all operators on private lands where coal mining operations are regulated by a State, nine months from the date of enactment. However, certain small operators with permits may be exempted for a period of up to seven months to January 1, 1979, from complying with the performance standards, except the standard governing the handling of spoil in § 716.2 of the proposed regulations.

The proposed regulations in § 710.12 establish procedures for obtaining this exemption. They require submission of information and documents essential to determine an applicant's right to the exemption. Although consideration was given to a simple affidavit under oath as a means of establishing eligibility, the virtue of simplicity is more than outweighed by the need to strictly enforce the tonnage restrictions on eligibility. In determining total annual production, the Secretary will attribute to each person production from operations in which that person has a substantial interest.

The procedure for processing each application calls for a recommendation to the Director by the State regulatory authority and an opportunity for public comment. In accordance within the legislative history, the proposed regulations provide the States the opportunity to play a significant role while saving for the Secretary the authority to make the final decision and residual authority to process an appliaction completely in the event that a State fails to make a timely recommendation.

DRAFTING INFORMATION

The principal authors of the proposed regulations in Parts 700 and 710 are: Michael Bradley, Office of Surface Mining Task Force, Edward Clair, Office of the Solicitor, and Neil Strauss, Office of Hearing and Appeals, Department of the Interior.

GENERAL PERFORMANCE STANDARDS

Parts 715, General Performance Standards, and 716, Special Performance Standards, propose standards of performance for coal mining operations. The Congress has defined "surface coal mining operations" in the Act to include "surface impacts incident to an underground coal mine". The Department is preparing these initial regulations to control the more serious adverse environmental impacts of mining, both deep and surface. The regulations recognize the distinct difference between surface coal mining and underground coal mining by referencing those standards for underground mining which differ from surface mining in a separate section of the regulations.

The Department's intention is to promulgate enforceable standards that are understood by the operator and the regulatory authority. This intention is reflected by relatively detailed development of most standards. However, the Department solicits technical information that will improve the clarity of the regulations while meeting the intent of the Act to protect society and the environment from the adverse effects of coal mining.

Section 715.12, *Signs and markers*, deals with signs throughout the permit area. The marking of permit areas, blasting areas and other special activity areas where caution must be exercised by the operator and other personnel is common practice in many States. While minimum spacing requirements are proposed, the specific dimensions and lettering requirements are expected to be regulated by the State regulatory authority during the initial regulatory program.

Section 715.13, *Postmining use of land*, proposes criteria and procedures to determine the postmining use of the land which serves as a reference point for other performance standards of the Act. It has been suggested that the Act is not a land use Act and the Department agrees that land planning activities are limited to those relating to coal mining operations. The Department considers the identification of an achievable postmining land use within a permit area to be essential to achieving the purposes of the Act. It is necessary to provide criteria for the regulatory authority to judge proposals as reasonably achievable and compatible with land use in the surrounding area. The regulations are not intended to create, but rather to support existing land planning capabilities.

Section 715.14, *Backfilling and grading*, implements the requirement to establish a postmining land surface configuration which closely resembles the general configuration of the land surrounding the mine. The section contains backfilling, compaction and grading requirements to ensure that highwalls, regular ridges, inappropriate piles of spoil, and unapproved depressions are eliminated to meet the appropriate original contour. The section provides a means for quantifying pre- and postmining slopes in a manner intended to preclude creation of unstable slopes.

Section 715.15, *Disposal of spoil and waste materials in areas other than the mine working or excavations*, requires two general methods of excess spoil placement, one on moderate sloping areas where no stream channels are to be blocked and the other, the more complex situation involving head-of-hollow fills. The Department has evaluated a number of alternatives regarding the amount of detail contained in the head-of-hollow fill section of the regulations. It believes that the regulations proposed are necessary and appropriate to ensure that spoils placed in unmined areas are constructed to remain as stable as the surrounding natural slopes. The regulations contain standards that are currently complied with by many operators and which do not prohibit the construction of head-of-hollow fills where safe and necessary. The Department feels it important to have regulatory authorities direct operators in the specifics of construction of fills. To leave all design and construction procedures to the operator without detailed analysis of such designs and specific approval of actual construction methods is not considered adequate protection of the environment or of society.

Section 715.16, *Topsoil handling*, spells out requirements for removal, replacement and stockpiling of topsoil. The section recognizes the extreme importance of the A-horizon of certain soils as a seed source and growth medium. Operators are encouraged to remove and replace the A-horizon separately where it is thick enough to be mechanically separated from the underlying horizons. This procedure is practiced with success at a number of mines. The section is also designed to allow the use of other materials as topsoil when the existing topsoil is of insufficient quantity or of poorer quality than the other strata. In order to show that the alternative strata are acceptable, soil analyses, field trials or greenhouse data are required. The Department believes that situations involving areas previously mined and not reclaimed where the original topsoil was buried would be adequately handled under the alternate strata section where material suitable for plant growth would be evaluated.

Section 715.17, *Protection of the hydrologic system*, incorporates the effluent limitations promulgated by the Environmental Protection Agency and, following the directives of the Act, also covers the quality of waters flowing from the permit area after active mining and regrading (during revegetation). The Department has proposed two modifications to existing effluent limitations and especially solicits public comment regarding the proposals. The first modification is related to coal mines in the interior western United States and specifies more stringent effluent limitations for total suspended solids which are generally equal to those permit conditions recommended by EPA regional offices in that geographic area. This modification "re-

gionalizes" the regulations in order to control, to the maximum practical extent, soil erosion in an area where soil is critical to revegetation success and water is essential.

The second modification requires that discharges from the permit area caused by precipitation events equal to or less than the 25-year, 24-hour event meet the effluent limitations. Since emphasis of the Act is on the protection of the water resource, the Department determined that its was necessary to specify a precipitation event likely to occur during mining operations. Other measures of precipitation events considered were (1) a 10-year, 24-hour event and (2) a 24-hour event occuring during the life of the mine. Public comment regarding design criteria is invited. Such comments should, wherever possible, be supported by data showing size of precipitation events, impoundments, and water quality.

The regulations stress protection and reestablishment of the essential elements of the hydrologic balance in alluvial valley floors. The Department believes that Congress was resolved to protect alluvial valley floors at an early date and, while coal exchange provisions are still under development, new operations are required to perform detailed surveys and provide representative baseline data (such data are presently characterized in the paper titled "Subirrigated Alluvial Valley Floors", prepared by the Environmental Protection Agency, Region VIII —Table 4, 1860 Lincoln Street, Denver, Colo. 80295) prior to consideration for approval of mining plans and permits.

Section 715.18, *Dams constructed of refuse materials*, provides for control of impoundments constructed of refuse materials. This compliments the authority of the Mining Enforcement and Safety Administration (MESA), which has jurisdiction over such structures from the standpoint of employee health and safety. The Office jurisdiction will extend to the areas of public safety and protection of the environment. The Congress specified that regulations covering design, construction, operation, maintenance, modification, abandonment, and removel of structures be promulgated by the Secretary in cooperation with the Chief of Engineers, U.S. Army. The proposed regulations reflect initial coordination between the three agencies and provide minimum design criteria consistent with criteria governing similar structures built by the Corps of Engineers.

Section 715.19, *Use of explosives*, requires that explosives be used only in accordance with State and Federal law and regulations promulgated by the regulatory authority. Technical studies of damage to structures indicate that amplitude and frequency of the vibration level govern the given damage evaluation of structures.

The blasting standards are based on the premise that the maximum peak particle velocity of ground motion should not exceed 2 inches per second at any public building, dwelling, or commercial structure. Although this criterion is widely used by regulatory agencies, the Department recognizes that many people advocate a lower particle velocity. Technical data on a standard of 0.5 inches per second is being assembled and the Department will specifically consider the more stringent standard before final rules are promulgated. Public comment is specifically invited on this important question.

The proposed standards also provide a delay time of 8 milliseconds between subcharges and a 5 second interval between charges. Standard tables are presented relating weight of explosive and distance to maximum particle velocity. If blasting is done in accordance with the standard tables, it will be presumed that the particle velocity criteria are met. When blasting is not done in accordance with the standard tables, seismograph records will be required on every shot.

Section 715.20, *Revegetation*, provides two measures of reclamation success, both of which are "regionalized" for various climates characterized by annual precipitation amounts. The Department has chosen to be relatively specific by establishing quantitative measures of productivity and stabilizing ability of vegetation. One measure is an absolute measure of vegetative growth on reclaimed lands. The other is a measure of growth on lands reclaimed to hayland, pasture, wildlife, habitat, or rangeland relative to ungrazed or otherwise protected areas ("exclosures") in the surrounding lands. A number of experts assisted with the development of the two tables and the Department believes the requirements are reasonable. Any additional measurements or observations supporting or affecting these standards are solicited.

Special Performance Standards

Part 716 provides environmental protection performance standards applying to special coal mining situations including mining on steep slopes, mountaintop removal, special bituminous coal mines, anthracite coal mines, coal mines located in Alaska, prime farmland, and underground mining for coal. It should be made clear that no coal operation, other than those anthracite operations to which § 716.5 applies, may rely entirely on the guidance given in the Special Performance Standards to regulate the entire coal mining and reclamation operations. Rather, operations will be guided by a combination of these special and the general performance standards.

Section 716.2, *Steep-slope mining*, closely resembles the Act (Section 515 (d)).

Section 716.3, *Mountaintop removal*, treats the backfilling and grading requirements of mountaintop removal activities. The Department is proposing to specify maximum slopes of regraded land on the mined mountaintop in a manner that allows retention of the maximum amount of spoil on that area compatible with longterm stability, water quality and use of the land.

Section 716.4, *Special bituminous coal mines*, implements the special exemption provided by Congress in section 527 of the Act. The Department is not aware of any special bituminous coal mines that meet the criteria of the Act other than those located in Wyoming. It has, in consultation with that State, adopted the portions of Wyoming's regulations pertaining to the backfilling and grading of such mine pits.

Section 716.5, *Anthracite coal mines*, implements the special provisions for anthracite coal mines authorized by Congress in section 529 of the Act.

Section 716.6, *Coal mines in Alaska*, implements the authority of the Secretary to suspend performance standards of Part 715 for Alaska mining in section 708 of the Act.

Section 716.7, *Prime farmland*, proposes standards of performance for coal mining operations conducted on land that is considered prime farmland. Such farmlands must meet criteria prescribed by the Secretary of Agriculture.

On the basis of the legislative history and the intent of the Act, the Department proposes to issue prime farmland performance standards as a part of the initial program to apply to any permit issued on or after August 3, 1977. The basis for this decision is section 510(d)(1) of the Act which states that prime farmland provisions shall "apply to all permits issued after the date of enactment of this Act." In addition, the conferees agreed that the protection for prime farmland should apply to all permits issued after enactment and expected the Secretary to issue regulations to implement the prime farmland provisions as soon as possible (July 12, 1977, Congressional Record, H6968).

The prime farmland provisions do not apply to land that has been used for the production of cultivated crops for less than 5 years out of the 20 years preceding the date of the permit application. The 20 year requirement is based upon farm real estate financing. Such financing is predicated on the ability of the farmer receiving a loan to repay the loan over a period of time.

Section 716.8, *Surface effects of underground mines*, contains performance standards for the surface effects of underground mining. It references the performance standards in Part 715 that apply to underground coal mining operations. The Department intends to have the standards of Part 715 apply to surface impacts of underground mining such as access and haul roads, repair areas, storage areas, processing areas, shipping areas, and areas on which structures, facilities, or materials are sited. Activities associated with underground coal mining are to be governed by those particular performance standards of Part 715 reference in § 716.8 in a manner which recognizes the distinct differences between surface and underground mining.

The Department tried the alternative of repeating those sections of Part 715 now referenced in § 716.8 but found the resulting material to add unnecessarily to the length of the regulations. The

Department will consider all recommendations regarding mechanisms to insure that underground coal mining operations meet the appropriate standards while keeping the regulations concise and understandable.

ADOPTION OF STATE STANDARDS

Part 717 carries out the intention of sections 201 and 501, of the Act to allow for the future adoption of State performance standards that are more stringent than the Federal standards. Each State may request the Secretary to review its standards in relation to the Federal standards to determine which is more stringent and whether the State's standards may be adopted by the Secretary.

DRAFTING INFORMATION

The principal authors of the proposed regulations in Parts 715 and 716 and 717 are George Davis and John Hardaway, Environmental Protection Agency, under the general supervision of Paul Reeves, Office of Surface Mining Task Force, and Jack Martin, Office of the Solicitor, Department of the Interior.

STATE ENFORCEMENT ACTIVITIES

The proposed regulations in Part 720 reflect the expectation of Congress that the States will enforce the federal performance standards during the initial period and will issue permits based on these standards. The regulations contain mandatory reporting requirements as required by the Act. Each State must supply the Office with copies of State permits issued on or after February 4, 1978, and with copies of their inspection reports relating to the federal initial performance standards. Where States have divided regulation of blasting from water quality inspections and other surface mining inspections, reports relating to each area of the initial performance standards will be required.

FEDERAL INSPECTION

The proposed regulations provide in Part 721 for Federal inspections on the basis of at least two consecutive state inspection reports indicating a violation, or from information provided by any person which gives rise to a reasonable belief that a violation had or was occurring, or on a random basis. Since the Act contemplates active citizen involvement in the reporting of violations to the regulatory authorities, the Office is required to inspect if it receives information and has a reasonable belief that a violation is or may have occurred.

The proposed regulations further specify that Federal enforcement actions may not be nullified simply because it was later determined that there was insufficient information to create a reasonable belief. Such a provision is deemed necessary to avoid the incongruous result of invalidating enforcement actions because of subtle, delicate judgments concerning the quality and quantity of information received. The proposed regulations are believed to be in accord with the Congressional mandate to have Federal inspections in response to any reasonable evidence of a violation to help achieve maximum compliance with the initial standards.

The concept of "significant, imminent environmental harm to land, air or water resources" is approached in the proposed regulations by first defining environmental harm, then defining an imminent environmental harm and finally dealing with the concept of "significant" as it relates to environmental harm. An environmental harm is defined in the proposed regulations as any adverse impact on land, air or water resources, including plant and animal life. An environmental harm is considered "imminent" if the harm can reasonably be expected to cause such harm if the condition or practice is not abated within a reasonable time. Such definition of imminent is consonant with the concept of imminent danger which is defined in the Act. As in the case of imminent danger, a finding of imminent environmental harm must take into account the time it will reasonably take to abate the condition or practice and whether the significant environmental harm may reasonably be expected to occur during that time. If so, then a cessation order under section 521(a)(2) of the Act would be appropriate.

An environmental harm may be "significant" even if not irreparable so long as it is appreciable and not readily reparable. Such a concept takes into account situations where measurable damage to the environment can reasonably be expected to occur but which cannot be repaired without difficulty.

The proposed regulations also deal with procedures for revoking or suspending a permit when it is determined that a pattern of violations exists or existed if those violations were either caused by the unwarranted failure of the permittee to comply with the Act, regulations or permit, or were willfully caused.

In seeking a regulatory scheme for determining when an operator has a pattern of violations, the option was considered of having an automatic finding of a pattern after a certain number of the same or related types of violations had occurred regardless of the circumstances. This would clearly define for all parties the exact conduct which would occasion the suspension or revocation of a permit. Such a scheme, however, was considered inappropriate because of the lack of flexibility and latitude in its application. It was considered more desirable to base the issuance of show cause orders upon a consideration of the circumstances surrounding the alleged pattern.

The regulations provide that a pattern exists if the operator violates unrelated provisions of the Act more than 50% above the national norm. The national norm will be determined by the Office as the enforcement data is obtained during the initial regulatory program.

CIVIL PENALTIES

Four statutory criteria are considered: History of previous violations at the particular mine; seriousness; negligence; and demonstrated good faith in achieving rapid abatement after notification of the violation. The Office must notify the person to be assessed of the amount of the proposed assessment within 30 days of the issuance of the notice of violation or cessation order. The person to be assessed has a right to administrative review and appeal to the courts.

The Office considered various methods for governing the determination of whether to assess a penalty. First, the Office considered adopting no regulations governing civil penalty assessments and considering each order and notice on a case-by-case basis using only the language of section 518 of the Act to guide the determination of an assessment. The Department believes such an approach would be inefficient in dealing with a substantial volume of notices and orders, would provide minimum guidance to the mining industry, the States and the public about the calculations of civil penalties and might reduce uniformity.

Second, the Office considered using a test of seriousness for the determination of whether to assess a penalty and using a schedule of proposed assessments with six levels. Such an approach may limit flexibility in determining which violations are assessed and may be less sensitive than the proposed point system in weighing and balancing the four statutory criteria.

Third, the Office considered the present proposal in various forms in which a point system is used both to make the determination of whether to assess and how much to assess.

This proposed system contains a threshold number above which penalties will be set. The Department believes that the proposed system provides reasonable specificity without eliminating flexibility to adjust the number and characteristics of violations for which civil penalties are assessed. The Department is still considering each of the above alternatives and solicits comments regarding the system which should be adopted.

The proposed regulations provide for mandatory assessment for each day a cessation order is unabated if the cessation order was issued for failure to timely abate a prior notice of violation. Other multiple day assessments are discretionary except all continuing violations that are assigned more than 70 points must be assessed separtely for at least two days.

The present proposal affords the person against whom an assessment is proposed the opportunity for a conference with a representative of the Office to discuss the facts and circumstances surrounding the violation and the proposed penalty assessment. The proposed penalty may be adjusted for errors of fact and law but issues of collectibility and conflicting evidence cannot be resolved by the conference officer. Any adjustments proposed by the conference officer must be documented in the record and are subject to management review. All conferences are open to the public.

In arriving at the proposed regulations, the Office considered not providing for a conference but merely allowing for the submission of written information. This proposal would be less effective in achieving early and efficient adjustments of mistaken assessment.

DRAFTING INFORMATION

The principal authors of the proposed regulations in Parts 720, 721, 722 and 723 are: Richard Hall, Office of Surface Mining Task Force, Marcus McGraw, Office of the Solicitor, and Neil Strauss, Office of Hearings and Appeals, Department of the Interior.

REIMBURSEMENT TO STATES

The Act places primary responsibility for enforcement of the initial regulations on the States. Initial performance standards must be applied to new operations for which a permit is issued on or after six months from enactment and to existing operations nine months after enactment. As a consequence, States will need to incorporate the performance standards into all new permits issued on and after February 4, 1978. Existing permits will need to be revised or modified effective May 4, 1978. Enforcement of the initial standards will then be included as part of the States' ongoing inspection and enforcement program. A Federal enforcement program will provide oversight and backup to the State programs. This State-Federal enforcement program will continue until a permanent State regulatory program is approved by the Secretary and implemented by the State, or until June 4, 1980, whichever occurs first.

PROGRAM DEVELOPMENT GRANTS

The Act authorizes the Secretary to make annual grants for the development, administration, and enforcement of State regulatory programs. Program development grants are awarded independently of the administration and enforcement grants. However, the development of an approved State regulatory program, with or without Federal assistance, is a necessary prerequisite for administration and enforcement grants. Development grants may be made to assist each State in the development of those components of a State regulatory program acceptable to the Secretary. Administration and enforcement grants will be available to assist the States in carrying out the functions necessary to maintain an approved State program.

DRAFTING INFORMATION

The principal author of the proposed regulations in Parts 725 and 740 is: Carl Close, Office of Surface Mining Task Force, Department of the Interior.

SMALL OPERATOR ASSISTANCE PROGRAM

Part 795 of the proposed regulations establishes procedures for providing assistance to eligible small operators to obtain data which will be required for permit applications under permanent program regulations. The proposed procedures are published at this time since it is assumed that assistance must start, in some cases, a full year before the permit application is filed. Under the proposed regulations, assistance may be started up to 6 months before the State submits a proposed regulatory program for the Secretary to approve.

The procedures are designed to require the operator to establish eligibility for assistance, including a showing that his production and production which can be attributed to him will be less than 100,000 tons per year. The assistance available includes laboratory services to determine the probable hydrologic consequencies and to prepare a statement of the results of test borings or core sample analysis. Assistance does not include the cost for actual core or test borings.

The proposed regulations provide for development of a national list of qualified laboratories to provide authorized assistance. State regulatory authorities could designate, under approved State programs, additional laboratories. Comments on this process and the option of designating laboratories on a case-by-case basis are solicited.

DRAFTING INFORMATION

The principal author of the proposed regulations in Part 795 is: Donald Willen, Office of Surface Mining Task Force, Department of the Interior.

The regulations in Part 830 make it possible for employees to freely cooperate in the administration and enforcement of the Act, and discourage persons from discriminating against them for doing so. Section 703 of the Act prohibits persons from discriminating against or discharging employees or representatives of employees because the employee or representative exercised their statutory rights under the Act. Statutory rights of employees under the Act include but are not limited to the right to file a proceeding under the Act, the right to institute or cause to be instituted a proceeding under the Act and the right to testify in any proceeding resulting from the administration or enforcement of the provisions of the Act.

Regulations provide for an informal conference with the person making the complaint, the alleged discriminating official and the Regional Director, upon conclusion of an investigation by the Office. The intent of the conference is to attempt to resolve problems informally without going to formal administrative proceedings.

There are two important reasons why the Informal Conference was provided. First, it will save all parties time and money. Second, it permits conciliation efforts to take place in a less formal atmosphere with all parties participating voluntarily in a good faith effort to resolve the complaint. The resolution arrived at would be a concensus rather than an imposed resolution.

The regulations also commit the Office to file a proceeding on behalf of an employee when an investigation indicates the complaint has reasonable cause. This provision was placed in the regulations to assure that non-union as well as union employees would receive the maximum protection under the Act, even when the employee might not be able to obtain the legal counsel necessary to institute a proceeding.

Regulations that would require the employee to file his own proceedings or that would require the Office to participate only as a friend of the court were rejected as not fulfilling the intent of the Act.

DRAFTING REGULATION

The principal author of the proposed regulations in Part 830 is: Jesse Jackson, Office of Surface Mining Task Force, Department of the Interior.

Interested persons may submit written comments on the proposed regulations to the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, no later than October 7, 1977.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: September 2, 1977, 9:00 a.m.

LEO M. KRULITZ,
Acting Secretary of the Interior.

It is proposed to add Parts 700, 710, 715, 716, 717, 720, 721, 722, 723, 740, 795, and 830 to Title 30, Chapter VII to read as follows:

PART 700—GENERAL

Sec.

700.1 Scope.
700.2 Objectives.
700.3 Authority.
700.4 Responsibilities under the Act.
700.5 Definitions.
700.11 Applicability.
700.12 Petitions to initiate rulemaking.
700.13 Prior notice of citizen suits.
700.14 Requests for records.

AUTHORITY: Secs. 201 and 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

§ 700.1 Scope.

(a) This chapter sets forth the rules and procedures through which the Secretary of the Interior will implement the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). The Act requires the Secretary to establish procedures for development and approval of programs for the regulation of surface coal mining and surface effects of underground coal mining in each State. The Act also requires the Secretary to establish an initial regulatory program which applies limited environmental performance standards to State, Federal, Indian, and private lands until the implementation of a permanent regulatory program.

(b) Regulations authorized under the Act and contained in this chapter include but are not limited to—

(1) Environmental performance standards for surface coal mining and reclamation operations during the initial and permanent regulatory programs;

(2) Inspection and enforcement procedures during the initial and permanent regulatory programs, including the assessment of civil penalties;

(3) Assistance to small operators in meeting permit application requirements of the permanent regulatory programs;
(4) Requirements and approval procedures for State programs;
(5) Requirements for surface coal mining and reclamation operations on Federal lands;
(6) Procedures for State and Federal designation of areas unsuitable for surface coal mining operations and lands unsuitable for non-coal mining;
(7) Conflict of interest standards for State and Federal employees;
(8) Requirements and procedures for approval of State mining permits during the permanent regulatory program;
(9) Requirements for posting, release, and forfeiture of performance bonds;
(10) Standards prohibiting discrimination against employees for reporting violations of the Act and regulations;
(11) Procedures for administering the Abandoned Mine Reclamation Fund, including approval of State plans and programs, procedures for implementing Federal programs; and
(12) Procedure for grants for State mining and mineral research institutes.

§ 700.2 Objectives.

The objectives of the regulations are to—
(a) Establish a nationwide regulatory program to protect society and the environment from adverse effects of surface coal mining and surface impacts of underground coal mining.
(b) Establish environmental, enforcement and administrative standards for regulatory programs;
(c) Create a program for the reclamation of previously mined and inadequately reclaimed lands; and
(d) Establish procedures for public review of the administrative and enforcement programs through access to data, hearings, inspections, and standing to sue for damages for non-compliance with the Act.

§ 700.3 Authority.

(a) The Secretary is authorized to administer the programs required by the Act, except—
(1) Provisions of the Act authorizing the Secretary of Agriculture to establish programs for the reclamation of rural lands, identification of prime agricultural lands and other responsibilities described in the Act. Regulations promulgated by the Secretary of Agriculture are in Title 7 of the Code of Federal Regulations.
(2) Other provisions of the Act for which responsibility is specifically assigned to other Federal agencies including the Environmental Protection Agency, Corps of Engineers, Council on Environmental Quality, and the Energy Research and Development Administration.
(3) Authority retained by the States to enforce State laws or regulations which are not inconsistent with the Act or these regulations.

§ 700.4 Responsibilities under the Act.

(a) The Director of the Office of Surface Mining Reclamation and Enforcement, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary except for—
(1) Initial approval or disapproval of State regulatory programs under section 503 of the Act; and
(2) Designation of Federal lands as unsuitable for mining under sections 522 and 601 of the Act.
(b) The States are responsible for the regulation of surface coal mining and reclamation operations and the reclamation of abandoned mine lands in accordance with procedures in this chapter.
(c) The Secretary may delegate to a State certain authority for regulating coal mining on Federal lands through a cooperative agreement.

§ 700.5 Definitions.

As used throughout the regulations of this chapter, except where otherwise indicated—
Act means the Surface Mining Control and Reclamation Act of 1977, (Pub. L. 95–87).
Auger mining means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.
Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by A.S.T.M. designation 0–388–66.
Director means the Director, Office of Surface Mining Reclamation and Enforcement or his representative.
Federal lands means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands: *Provided*, That for the purposes of this Act lands or mineral interests east of the one hundredth meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority shall not be subject to sections 714 (Surface Owner Protection) and 715 (Federal Lessee Protection) of the Act.
Federal lands program means a program established by the Secretary pursuant to section 523 of the Act to regulate surface coal mining and reclamation operations on Federal lands.
Federal program means a program established by the Secretary pursuant to section 504 of the Act to regulate surface coal mining and reclamation operations on lands within a State in accordance with the requirements of the Act.
Fund means the Abandoned Mine Reclamation Fund established pursuant to section 401 of the Act.
Imminent danger to the health and safety of the public means the existence of any conditions or practice, or any violation of a permit or other requirement of the Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such conditions, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.
Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.
Indian tribe means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.
Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.
Operator means any person, partnership or corporation engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.
Permit, except as used in references to permits during the initial regulatory program, means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program. During the initial regulatory program, permit means a permit to conduct surface coal mining and reclamation operations issued by a State under State law. During the initial regulatory program, permit also means a mining plan approved pursuant to Part 211 of this Title held by a lessee of Federal lands during the initial program.
Person, means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.
Regulatory authority means the State regulatory authority where the State is administering the Act under an approved State program or the Secretary where the Secretary is administering the Act.
Secretary means the Secretary of the Interior or his representative.
Significant, imminent environmental harm to land, air, or water resources is determined as follows:
(a) An environmental harm is any adverse impact on land, air, or water resources, including plant and animal life.
(b) An environmental harm is imminent if a condition or practice exists which is causing or may reasonably be expected to cause such environmental harm if the condition or practice is not abated within a reasonable time.

(c) An environmental harm may be significant even if it is reparable. An environmental harm is significant if that harm is appreciable and not readily reparable.

State lands means all lands including private lands within a State except Federal or Indian lands.

State program means a program established by a State pursuant to section 503 to regulate surface coal mining and reclamation operations on lands within such State in accord with the requirements of the Act and regulations issued by the Secretary under the Act.

State regulatory authority means the department or agency in each State which has primary responsibility at the State level for administering the Act under both the initial and permanent regulatory programs.

Surface Coal Mining Operations means: (a) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: *Provided, however,* that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percentum of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to section 512 of the Act; and (b) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

Surface coal mining and reclamation operations and all activities necessary and incident to the reclamation of such operations. This term includes the term "surface coal mining operations."

§ 700.11 Applicability.

The regulations in this chapter apply to all surface coal mining and reclamation operations except—

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) The extraction of coal for commercial purposes by surface mining which affects two acres or less;

(c) The extraction of coal as an incidential and non-commercial part of Federal, State, or local government-financed highway or other construction;

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale; and

(e) The extraction of coal on Indian lands which are covered by 25 CFR 177, Subpart B.

§ 700.12 Petitions to initiate rulemaking.

(a) Any person or State may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation issued under the Act. The petition shall be filed in the Office of the Director, Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior, Washington, D.C. 20240.

(b) The petition shall set forth a concise statement of the facts and law which require issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of a petition, the Director shall publish a notice in the FEDERAL REGISTER seeking comments from the public on the proposed change, and may hold a public hearing, may conduct an investigation or take other actions to determine whether or not the petition should be granted.

(d) Within 90 days from the date of receipt, the Director shall issue a written decision either granting or denying the petition. If the petition is granted the Director shall commence a rulemaking proceeding. If the petition is denied, the Director shall notify the petitioner in writing setting forth the reasons for denial.

§ 700.13 Prior notice of citizen suits.

A person who intends to commence a civil action on his own behalf under section 520 of the Act shall give notice of intent to do so in accordance with the regulations of this section.

(a) Notification shall be given by certified mail to the Secretary and the Director in all cases and to the head of the State regulatory authority if the complaint involves or relates to a specific State. A copy of the notification shall be provided by first class mail to the Regional Director of the Office if the complaint involves or relates to a specific region.

(b) Notification shall be given by certified mail to the alleged violator if the complaint alleges a violation of the Act, or of any regulation, order, or permit issued under the Act.

(c) Service of a notice under this section is complete upon mailing to the last known address of the person being notified.

(d) A person giving notice regarding an alleged violation of the Act or any regulation, order, or permit issued under the Act shall state, to the extent known—

(1) Sufficient information to enable the recipient to identify the provision of the Act, rule, regulation, order, or permit allegedly violated;

(2) The action or omission alleged to constitute a violation;

(3) The person or persons responsible for the alleged violation;

(4) The dates or dates of the alleged violation;

(5) The name, address, and telephone number of the person giving notice; and

(6) The name, address, and telephone number of legal counsel, if any.

(e) A person giving notice regarding an alleged failure by the Secretary of a State regulatory authority to perform a mandatory act or duty under the Act shall state, to the extent known—

(1) The provision or provisions of the Act containing the mandatory act or duty allegedly not performed;

(2) Sufficient information to enable the recipient to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

(3) The name, address, and telephone number of the person giving notice; and

(4) The name, address, and telephone number of legal counsel, if any.

§ 700.14 Request for records.

(a) Records required to be made available locally to the public under the Act shall be located at the office having jurisdiction over the area involved.

(b) Other records or documents may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

PART 710—INITIAL REGULATORY PROGRAM

Sec.

710.1 Scope.
710.2 Objectives.
710.3 Authority.
710.4 Responsibility.
710.5 Definitions.
710.11 Applicability.
710.12 Special exemption for small operators on State lands.

AUTHORITY: Secs. 201, 501 and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201)

§ 710.1 Scope.

(a) This part provides general introductory and applicability material for the initial regulatory program required by section 502 or other sections of the Act which require early implementation of the Act for surface coal mining and reclamation operations. The initial reg-

ulatory program is effective until permanent regulatory programs are approved in accordance with sections 503, 504 or 523 of the Act.

(b) The initial regulatory program which this part introduces includes:

(1) General performance standards of Part 715 of this chapter;

(2) Special performance standards of Part 716 of this chapter;

(3) Adoption of State standards of Part 717 of this chapter;

(4) Inspection and enforcement procedures of Parts 720–723 of this chapter; and

(5) Reimbursements to States of Part 725 of this chapter.

§ 710.2 Objectives.

(a) The objectives of the initial regulatory program are to—

(1) Protect the health and safety of the public and minimize the damage to the environment resulting from surface coal mining and the surface effects of underground coal mining during the interval between enactment of the Act and adoption of a permanent State or Federal regulatory program; and

(2) Coordinate the State and Federal regulatory programs to accomplish the purposes of the Act.

§ 710.3 Authority.

(a) The Secretary is directed to implement an initial regulatory program within six months after the date of enactment of the Act in each State which regulates surface coal mining until a State program has been approved or until a Federal program has been implemented.

(b) The Secretary is also authorized to regulate surface coal mining operations on Federal lands by the Mineral Leasing Act of February 25, 1920, as amended, (30 U.S.C. 181–287) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359) and on Indian lands by various Indian Lands Act. Additional regulations under these Acts are in 30 CFR Part 211, 43 CFR Part 3040 and 25 CFR Part 177.

§ 710.4 Responsibility.

(a) Under the general direction of the Assistant Secretary, Energy and Minerals the Director is responsible for administering the initial regulatory program established by the Secretary.

(b) The States are responsible for issuing permits and inspection and enforcement on State lands to insure compliance with the initial performance standards in Parts 715–716 of this chapter. States are required to file copies of inspection reports with the Office. States are also responsible for assuring that permits are not issued which would be in conflict with the prohibitions against mining found in section 510 of the Act, particularly in regard to alluvial valley floors and prime farm lands.

§ 710.5 Definitions.

As used throughout the initial regulatory program the following terms have the specified meanings unless otherwise indicated:

Acid drainage means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.

Acid-forming materials means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

Alluvial valley floors means unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with § 715.7 of this chapter.

Aquifer. A zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

Combustible material means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat.

Compaction means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

Disturbed area means those lands that have been affected by surface coal mining and reclamation operations.

Diversion means a channel constructed for the purpose of transporting water from areas where it is in excess to areas where it can be used or disposed of safely.

Downslope means the land surface between a valley floor and the outcrop of the lowest coalbed being mined along each highwall.

Embankment means an artificial deposit of materials that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Ground water means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

Highwall means the face of an exposed overburden and coal in an open cut of a surface or underground coal mine.

Hydrologic balance means an accounting of the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the relationship between precipitation, runoff, evaporation, and the change in ground- and surface-water storage and is usually expressed by a hydrologic equation.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

Impoundment means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment or waste.

Intermittent or perennial stream means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of ground-water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

Leachate means a liquid that has percolated through soil, rock or waste and has extracted dissolved or suspended materials.

Noxious plants means species that have been included on official State lists of noxious plants for the State in which the operation occurs.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil which overlies the coal to be mined.

Outslope means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

Premining land use means the highest and best use of the land which could have been achieved, taking into account the locally accepted best land management practices, prior to any mining.

Productivity means the vegetative yield produced by a unit area for a unit of time.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Roads means access and haul roads constructed, used, reconstructed, improved or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all Federal, State and county roads are excluded.

Recurrence interval means the precipitation event expected to occur, on the average, once in a specified interval. For example, the 25-year 24-hour precipita-

tion event would be that 24-hour precipitation event expected to be exceeded on the average once in 25 years. Magnitude of such events are as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

Runnoff water means precipitation that flows along the land surface before it enters a defined stream channel and becomes concentrated streamflow.

Sediment means undissolved organic and inorganic material transported or deposited by water.

Settling pond means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

Slope means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., 1*v* to 5*h*=20 percent=11.6 degrees).

Soil horizons means a soil profile that consists of two or more layers lying one below the other and parallel to the land surface. The layers are known as horizons and are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are—

(a) *A horizon.* The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

(b) *B horizon.* The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron or aluminum than the A or C horizons.

(c) *C horizon.* The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Spoil means overburden that has been removed during surface mining.

Stabilize means any method used to prevent movement of soil, spoil piles or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting or revegetating.

Surface water means water, either flowing or standing, on the surface of the earth.

Suspended solids means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter as differentiated from dissolved solids. Dissolved solids are solids that pass into solution.

Topsoil means the A soil horizon and underlying unconsolidated materials including those portions of the B and C soil horizons that have properties capable of producing desirable vegetation.

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water or weathering processes, may produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic-mine drainage means water that is discharged from active or abandoned mines and from other areas affected by coal mining operations and which contain a substance which through chemical action or physical effects is likely to kill, injure or impair an organism.

Watercourse means a natural stream course that heads in a given drainage basin and has a channel with a well-defined bed between visible banks or through a definite depression in the land and has a permanent or periodic supply of water.

Water table means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 710.11 Applicability.

(a) *Operations on State lands.* (1) The requirements of the initial regulatory program do not apply to surface coal mining and reclamation operations which occur on lands within a State which does not regulate such operations.

(2) General obligations. (i) A person conducting coal mining operations shall have a permit if required by the State in which he is mining and shall comply with State laws and regulations that are not inconsistent with this chapter.

(ii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(iii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(3) Performance Standards Obligations. (i) A person who conducts any coal mining operations under an initial permit issued by a State on or after February 3, 1978, shall comply with the requirements of the initial regulatory program. Such permits shall contain terms that comply with the relevant performance standards of the initial regulatory program.

(ii) On and after May 3, 1978, any person conducting coal mining operations shall comply with the initial regulatory program, except as provided in § 710.12.

(iii) A person shall comply with the obligations of this section until he has received a permit to operate under a permanent State or Federal regulatory program.

(b) *Operations on Indian Lands.* On or after December 16, 1977, a person conducting coal mining operations on Indian lands shall comply with the General Performance Standards of Parts 715 and 716 of this chapter insofar as they are incorporated in Part 177, Subpart B, of Title 25 of the Code of Federal Regulations.

(c) *Operations on Federal Lands.* (1) A person conducting coal mining operations on Federal lands that commence operations on or after February 3, 1978, shall comply with the General Performance Standards of Part 715 of this chapter and the Special Performance Standards of Part 716 of this chapter.

(2) Any person conducting coal mining operations on Federal lands on and after May 3, 1978 shall comply with the General Performance Standards of Part 715 of this chapter and the Special Performance Standards of Part 716 of this chapter.

(d) *Operations on all lands.* (1) The requirements of this chapter apply to operations conducted after the effective date of these regulations on lands from which the coal has not yet been removed and to any other lands used, disturbed or redisturbed in connection with or to facilitate mining or to comply with the requirements of the Act or these regulations.

(2) Any pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations, unless—

(i) It is physically impossible to bring the structure or facility into compliance by the effective date.

(ii) The permittee or operator submits to the regulatory authority by February 3, 1978, a plan designed by a professional engineer for the reconstruction of the structure or facility.

(iii) The regulatory authority approves the plan and

(iv) Reconstruction is started and completed as soon as possible. No plan shall be approved unless construction is to begin by May 4, 1978, and is to be completed by November 4, 1978, at the latest.

§ 710.12 Special exemption for small operators on State lands.

(a) As used in this section—

(1) *Permittee* means a person holding a permit under State law and to whom the permit was originally issued.

(2) *Renewed permit* means any extension of the original area or duration of a permit.

(b) If a person is an eligible permittee under paragraph (c) of this section and intends to conduct surface coal mining operations on or after May 3, 1978, that permittee may receive from the Director a limited exemption from the General Performance Standards of Part 715 of this chapter and the Special Performance Standards of Part 716 of this chapter. The exemption shall not—

(1) Include the Special Performance Standard of § 716.2(a)(1) of this chapter regarding the handling of spoil;

(2) Apply to surface coal mining operations to be conducted under a permit or renewed permit issued on or after August 3, 1977;

(3) Include any general or special performance standard to which a permittee is required to comply by a State;

(4) Relieve the permittee of the general obligations imposed by § 710.11(a) of this part regarding conditions or practices creating imminent danger or caus-

ing significant, imminent environmental harm; and

(5) Relieve the permittee of any obligations under State law, regulation or permit.

(c) A permittee is eligible for an exemption under this section—

(1) If the actual and attributed production of that permittee is estimated by the Director not to exceed 1,000,000 tons of coal during the year ending on December 31, 1978; and

(2) If that permittee—

(i) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or

(ii) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by 12 yields a product of 100,000 tons or less.

(d) Applications for an exemption under this section shall be submitted to the Regional Director of the Office with a copy to the State regulatory authority.

(e) The request for exemption shall include—

(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.

(2) The name, location, Mining and Enforcement and Safety Administration identification numbers and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each permit was issued or renewed and will expire.

(3) The date and method by which the permittee was created if the permittee is not an individual.

(4) A listing of all surface and underground coal mining operations showing—

(i) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(ii) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

(5) A copy of coal severence tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation once a week for two weeks stating—

(i) That an application for a small operator exemption will be filed;

(ii) The name and address of the permittee;

(iii) The location of the surface coal mining operations to which the exemption will apply; and

(iv) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement at the appropriate regional office address.

(f) Production from the following operations shall be attributed to the permittee—

(1) All coal produced by operations benefically owned entirely by the permittee.

(2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a 5-percent interest.

(3) All coal produced by persons who directly or indirectly control the permittee by reason of stock ownership direction of the management or in any other manner whatsoever.

(4) The pro rata share of coal produced by operations so controlled by the person who controls the permittee.

(g) The Director shall grant the request for an exemption if, upon the basis of the request and any State regulatory authority of public comments, he finds that—

(1) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(2) The exemption will not be inconsistent with State law, regulation or permit terms.

(h) Any person aggrieved by the decision of the Director under this section may appeal within 20 days from receipt of that decision to the Office of Hearings and Appeals under 43 CFR Part 4; The Office of Hearing and Appeals and the Secretary shall have the authority to stay the exemption during the pending of the appeal.

(i) The exemption shall be effective on the date approved. It shall remain in effect until expiration or renewal of the State permit to which it applies, December 31, 1978, or until reversed, whichever is earlier.

PART 715—GENERAL PERFORMANCE STANDARDS

Sec.

715.11 General obligations.
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AUTHORITY: Secs. 201 and 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

§ 715.11 General obligations.

(a) *Compliance.* All surface coal mining and reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part according to the time schedule specified in § 710.11 of this chapter. Special Initial Performance Standards are established by Part 716 of this chapter for—

(1) Surface coal mining operations on steep slopes.

(2) Surface coal mining operations involving mountain-top removal.

(3) Special bituminous coal mines.

(4) Anthracite surface coal mining operations.

(5) Surface coal mining operations in Alaska.

(6) Surface coal mining operations on prime farmlands.

(7) Surface effects of underground coal mines.

Where State environmental protection standards are adopted for a specific State because they are more stringent than the standards of this part, they will be published in Part 717 of this chapter.

(b) *Authorizations to operate.* A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

(c) *Mine Maps.* Any person conducting surface coal mining and reclamation operations on and after May 3, 1978, shall submit two copies of accurate maps of the mine and permit area at a scale not to exced 1:1000, certified by a surveyor or engineer. The maps shall show as of May 3, 1978 the lands from which coal has not yet been removed, lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the State regulatory authority and one copy shall be submitted to the Regional Director, OSM, before June 3, 1978.

§ 715.12 Signs and markers.

(a) *Specifications.* All signs required to be posted shall be of a standard design that can be seen and read easily from a distance of 100 feet and they shall be made of durable material. The signs and other markers required by paragraphs (b), (c), and (d) of this section shall be maintained during all operations and until release of all bonds for the permit area. All signs and markers shall be displayed conspicuously within the permit area and conform to local ordinances and codes.

(b) *Mine and permit identification signs.* Signs identifying the mine area shall be displayed at all points of access to the mine property from public highways. Signs shall show the name, business address, and telephone number of the permittee or operator and identification numbers of mining and reclamation permits or other authorizations to operate.

(c) *Perimeter markers.* The perimeter of the mine property shall be clearly marked by durable markers that extend at least 3 feet above the ground. Permit numbers must be permanently affixed to the markers. On mine areas of 10 acres or more, the markers shall be spaced a maximum of 400 feet apart; on mine areas of less than 10 acres, the markers shall be spaced a maximum of 200 feet apart. Within the perimeter of the mine property, identification markers shall be established showing the boundary of coal which has not been removed prior to May 3, 1978. Temporary markers may be used during coal removal operations

but the boundary shall be re-established by permanent markers after final surface configuration in an area is established.

(d) *Buffer zone markers.* Buffer zones as defined in § 715.17 shall be marked at not more than 200-foot intervals along the interior boundary of the buffer zone. The signs shall read "Buffer Zone—Limited Access" and be placed so as to be seen by all persons employed on the mine property.

(e) *Blasting signs.* If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the mine property.

(f) *Topsoil markers.* Where topsoil or other vegetation supporting material is segregated and stockpiled according to § 715.16(c), the stockpiled material shall be marked with signs that read "Topsoil." These signs shall remain in place until the material is removed.

§ 715.13 Postmining use of land.

(a) *General.* All disturbed areas shall promptly be restored (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses approved under criteria and procedures of paragraph (d) of this section.

(b) *Criteria for establishing premining use of land.* Criteria for establishing the premining use of the land shall be those uses which the lands have previously or were capable of supporting within the mine property, areas surrounding the mine property, or areas located in similar terrain and climate within the region that have been managed using methods considered practicable for the region. The appropriateness of postmining land use plans shall not be judged on the basis of lands that (1) were previously mined and not reclaimed to meet the standards of this part, (2) were badly eroded or overgrazed so as to change the vegetation community to one unsuitable for grazing, or (3) are otherwise determined by the regulatory authority to have been poorly managed. However, if the lands within the mine property were previously mined and not reclaimed to the standards of this part, the postmining use of the land shall be evaluated against the highest possible use compatible with surrounding unmined lands. If the premining use of the land was changed within five years of the beginning of mining, the comparison of post mining use to premining use shall include a comparison to the historic use of the land as well as its use immediately preceding mining.

(c) *Land-use categories.* Proposed land uses will be considered subject to this section when they change from one to another of the land-use categories identified in this paragraph. The regulatory authority shall consider the following categories, at a minimum, to represent differing land uses. When an alternative postmining use is proposed the permittee or operator shall meet the requirements of paragraph (d) of this section and all other applicable environmental protection performance standards of this part and Parts 716 and 717 of this chapter.

(1) *Heavy industry.* Manufacturing facilities, powerplants, airports or similar facilities.

(2) *Light industry and commercial services.* Office buildings, stores, parking facilities, apartment houses, motels, hotels or similar facilities.

(3) *Public services.* Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, roads, underground and surface utilities and other servicing structures and appurtenances.

(4) *Residential.* Single- and multiple-family housing (other than apartment houses over three stories) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than 5 percent of the total area of housing capacity, associated open space, and minor parking and recreation facilities supporting the housing.

(5) *Agricultural.* (i) Cropland. Land used primarily for the production of cultivated crops for harvest. Land used for facilities in support of farming operations are included.

(ii) Rangeland. Land used for grazing by livestock and big game animals on which the climax (natural potential) plant community is dominated by grasses, grasslike plants, forbs and shrubs.

(iii) Hayland or pasture. Land used for meadow grasses which are cut and cured for livestock feed.

(iv) Forest. Land used primarily for the production of adapted wood crops.

(6) *Fish and wildlife habitat.* Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife; may include impoundments that have a capacity of less than 20 acre-feet and a surface area at the high-water mark of less than 2 acres.

(7) *Combined uses.* Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

(d) *Criteria for approving alternative postmining use of land.* An alternative postmining land use may be approved by the regulatory authority, after consultation with the land owner or the surface management agency on Federal lands, if the following criteria are met. Proposals to remove an entire coal seam running through the upper part of a mountain, ridge, or hill must also meet these criteria in addition to the requirements of § 716.3 of this chapter.

(1) The proposed land use is compatible with adjacent land use and, where applicable, with land-use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land-use policies and plans shall accompany the request for approval.

(2) Available data on the long-term expected need and market show that the proposed land use can be achieved and maintained.

(3) Specific and feasible plans have been prepared which included a time schedule showing how the proposed land use will be achieved within a reasonable time after mining and how the achieved land use will be sustained. The regulatory authority may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(4) Completion of the necessary public facilities is assured as evidenced by appropriate letters of commitment to provide them in a manner compatible with the operator's plans.

(5) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment if the financing is to be provided by someone other than the permittee or operator.

(6) The plans are designed by a registered professional engineer, or other professional, who is knowledgeable about the proposed land-use category and will ensure that the plans conform to nationally accepted standards to assure adequate land stability, drainage, and vegetation cover, and will provide an appropriate aesthetic design for the postmining use of the site.

(7) The proposed use or uses will not present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(8) The use or uses will not involve unreasonable delays in reclamation.

(9) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the regulatory authority and appropriate State and Federal fish and wildlife management agencies.

(10) Proposals to change from premining land uses of rangeland, fish and wildlife habitat, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable Federal, State, and local laws, shall be reviewed by the regulatory authority to assure that—

(i) There is a firm written commitment by the permittee or by the land owner or land manager to provide sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable, and will not pose an actual or probable threat of water diminution or pollution; and

(ii) There is sufficient water available and committed to maintain crop production.

(iii) The quality and quantity of topsoil has been shown to be sufficient to support the proposed use over a period of years.

(iv) The proposed cropland use will be maintained after release of applicable bonds and is not proposed only as a temporary alternative to re-establishing the premining use of the land.

(11) The regulatory authority has provided by public notice not less than 45 days nor more than 60 days for interested citizens and local, State and Federal agencies to review and comment on the proposed land use.

§ 715.14 Backfilling and grading.

In order to achieve the approximate original contour, the permittee or operator shall, except as provided in paragraphs (d), (e), and (g) of this section, transport, backfill, compact unless otherwise approved by the regulatory authority, and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this section. Land above the highway may be disturbed only in the amount necessary to comply with this section and § 715.17. The postmining graded slope must be determined by the premining average of natural slopes in the area as defined in paragraph (a) of this section.

(a) *Slope measurements.* (1) To determine the average natural slope of the area before mining, 10 slopes, or more as specified by the regulatory authority in accordance with site conditions, must be surveyed, measured, and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below the coal outcrop; or, where this is impractical, at locations specified by the regulatory authority. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the regulatory authority to be representative of the premining configuration of the land.

(2) After the disturbed area has been graded and the topsoil replaced, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the regulatory authority. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

(b) *Moderate slopes.* Where natural slopes are determined according to paragraph (a) of this section to average less than 20 degrees, or such lesser slope as the regulatory authority requires, the final graded slopes shall not exceed either the average maximum natural slope or any lesser slope as specified by the regulatory authority based on consideration of soil, climate, or other characteristics of the surrounding area.

(c) *Steep slopes.* (1) Where natural slopes are determined according to paragraph (a) of this section to average 20 degrees of more, or such lesser slope as the regulatory authority defines as "steep slope," the final graded slopes shall not exceed either the average maximum natural slope or any lesser slope as specified by the regulatory authority based on consideration of soil, climate, or other characteristics of the surrounding area.

(2) In order to conserve soil moisture and to control erosion on final graded slopes, cut-and-fill terraces along mine benches may be allowed if the terraces are compatible with the postmining land use approved under § 715.13, will prevent erosion, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(i) The width of the individual terrace bench shall not exceed 20 feet.

(ii) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(iii) The slope of the terrace face shall not exceed $1v:2h$ (50 percent).

(iv) The terrace shall have adequate slopes to divert drainage away from the face of the terrace and into drainage systems that are stabilized by vegetation or other stabilization methods that will require minimal maintenance after mining.

(v) Culverts and underground rock drains shall not be used on the terrace unless approved by the regulatory authority.

(3) All operations on natural slopes of 20 degrees or more as stated as paragraph (c)(1) of this section shall meet the provisions of § 716.2 of this chapter.

(d) *Mountaintop removal.* Where surface mining operations will remove entire coal seams in the upper part of a mountain, ridge, or hill by removing all of the overburden, final graded top plateau slopes on the mined area shall be less than $1v:5h$ so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed $1v:2h$, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor 1.5 will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraph (e) of this section shall be eliminated. All mountaintop removal operations shall meet the provisions of § 716.3 of this chapter.

(e) *Depressions.* The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the regulatory authority to minimize erosion, conserve soil moisture or promote revegetation. However, the depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of power grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access to the area.

(f) *Definition of thin and thick restored overburden.* The thin overburden provisions of paragraph (g) of this section apply where the final thickness is less than 0.8 of the initial thickness. The thick overburden provisions of paragraph (h) of this section apply where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area.

(g) *Thin overburden.* In surface coal mining operations carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet the following standards if the operations do not meet the criteria specified in § 716.4 of this chapter:

(1) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(2) Eliminate highwalls by reshaping to stable slopes not exceeding $1v:2h$ (50 percent), or such lesser slopes as the regulatory authority may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(4) Transport, backfill and grade to ensure that impoundments are constructed only where it has been demonstrated to the regulatory authority's satisfaction that all requirements of § 715.17 have been met and that the impoundments have been approved by the regulatory authority as meeting the requirements of this part and all other applicable Federal and State regulations.

(h) *Thick overburden.* In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet the following standards:

(1) Transport, backfill, and grade all spoil and wastes not required in the surface mining area to achieve approximate original contour to the lowest practicable grade.

(2) Deposit, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with § 715.15.

(3) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance in accordance with

§ 715.17 and to provide long-term stability.

(4) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.

(5) Eliminate all highwalls and depressions except as stated in paragraph (e) of this section by filling with spoil and suitable waste materials.

(i) *Regrading to remove rills and gullies.* When rills or gullies deeper than 6 inches form in areas that have been regraded and the top soil replaced but vegetation has not yet been established, the permittee shall fill, compact, or otherwise stabilize the rills and gullies and reseed or replant the areas according to § 715.20.

(j) *Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill.* (1) *Cover.* All undisturbed coal seams and any acid-forming, toxic-forming, combustible materials or any other waste materials as identified by the regulatory authority that are exposed, used, or produced during mining shall be treated to neutralize potential toxicity and permanently covered with a minimum of 5 feet of nontoxic and noncombustible material, in order to prevent water pollution, adverse effects on plant growth and land uses, and sustained combustion.

(2) *Stabilization.* Backfilled materials shall be compacted wherever necessary to prevent leaching of toxic materials into surface or subsurface waters in accordance with § 2020.17(g) and wherever necessary to ensure the stability of the backfilled materials. The equipment to be used, the method of compacting material and the design specifications shall be approved by the regulatory authority before the toxic materials are covered.

(3) *Use of waste materials as fill.* Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by means of chemical and physical analyses that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

(k) *Grading along the contour.* All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil in accordance with § 715.16, shall be done along the contour to minimize subsequent erosion and instability. If grading along the contour would be hazardous to equipment operators, grading in a direction other than generally parallel to the contour may be approved by the regulatory authority.

§ 715.15 Disposal of spoil and waste material in areas other than the mine workings or excavations.

(a) *Disposal of spoil and wastes in other than valley or head-of-hollow fills.* Spoil and waste material not required to achieve the approximate original contour may be transported to and placed in a controlled (engineered) manner in disposal areas other than the mine workings or excavations only if all the following conditions, in addition to the other requirements of this part, are met:

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority.

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the regulatory authority.

(3) Where the slope in the disposal area exceeds $1v:5.5h$ (18 percent), or where otherwise required by the regulatory authority, structures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be used to stabilize the fill.

(4) The disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented.

(5) The spoil and wastes shall be placed, compacted, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure long-term stability. The final configuration of the land must be suitable for land uses approved in accordance with § 715.13.

(6) The fill shall be designed using recognized professional standards and approved by a registered professional engineer.

(7) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated before the surplus material is placed in the disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.

(8) The fill shall not interrupt or encroach upon active drainage channels in a way that will impound water or cause an increase in suspended solids in the surface drainage outside the permit area over that existing before surface coal mining and reclamation operations.

(9) The fill shall be inspected for stability by a registered engineer or qualified professional specialist at least quarterly and during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved plan. The registered engineer shall provide a certified report, after each inspection that the fill has been constructed as specified by the design approved by the regulatory authority.

(b) *Disposal of spoil in valley or head-of-hollow fills.* Waste material must not be disposed of in valley or head-of-hollow fills. Spoil to be disposed of in natural valleys must be placed in accordance with the following requirements.

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority and be appropriately bonded.

(2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce the drainage area above the fill.

(3) A system of underdrains constructed of durable rock shall be installed along the natural drainageways of the disposal area. The drainage system shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, a maximum of 10 percent of the rock must be less than 12 inches in size; however, no rock can be larger than 25 percent of the width of the drain. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain in feet	
		Width	Height
Less than 1,000,000 yd³	Sandstone	10	4
Do.	Shale	16	8
More than 1,000,000 yd³	Sandstone	16	8
Do.	Shale	16	16

(3) Spoil shall be placed and compacted to designed densities in lifts that are less than 4 feet thick.

(4) Terraces shall be constructed to stabilize the face of the fill. The height of each terrace shall not exceed 50 feet and the width shall not be less than 20 feet.

(5) The tops of the fill and each terrace shall be graded no steeper than $1v:20h$ (5 percent) to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the face of the fill unless approved by the regulatory authority.

(6) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill area into protected channels.

(7) The outslope of the fill shall not exceed $1v:2h$ (50 percent). The regulatory authority may require a flatter slope because of the physical, climatological, and other characteristics of the site.

(8) The fill shall be inspected for stability by a registered engineer or qualified professional specialist at least quarterly and during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved plan. The registered engineer

shall provide a certified report, after each inspection, that the fill has been constructed and maintained as specified by the design approved by the regulatory authority.

§ 715.16 Topsoil handling.

To prevent topsoil from being contaminated by spoil and waste materials, the permittee or operator shall remove the topsoil as a separate operation from areas to be mined. Topsoil shall be immediately redistributed according to the requirements of paragraph (b) of this section on areas graded to the approved postmining configuration. If sufficient graded areas are not immediately available because of climatic conditions or size of the area on which topsoil can be distributed, the topsoil shall be segregated, stockpiled, and protected from wind and water erosion or contaminants which lessen its capability to support vegetation.

(a) *Topsoil removal.* (1) All topsoil to be salvaged shall be removed before drilling for blasting, blasting, or mining to prevent loss and contamination of the topsoil with undesirable materials. All topsoil shall be removed unless otherwise approved by the regulatory authority to provide for use of alternative soil horizon or to avoid retention of excessive B horizon material. Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

(2) Where the A horizon of the topsoil is identified by surveys and soil core (or equivalent) analyses to be of sufficient depth to permit separate removal and to be of high quality in terms of plant-growth medium or native-seed source, the regulatory authority shall require that the entire A-horizon be removed separately and segregated from the other soil horizons and replaced as the surface soil layer.

(3) Overburden may be used instead of, or as a supplement to, topsoil only where the available topsoil is of inadequate quantity or quality to sustain vegetation, and if all the following requirements are met:

(i) The permittee demonstrates that the overburden is more suitable for vegetation by the results of chemical and physical analyses, which shall include determinations of pH, percent organic matter, nitrogen, phosphorous, potassium, texture class, water holding capacity, potential acidity or other analyses as required by the regulatory authority, and by the results of any field-site trials or greenhouse results required by the regulatory authority.

(ii) The chemical and physical analyses and the field-site trials are accompanied by a certification from a qualified soils scientist.

(iii) The alternative overburden is removed, segregated, stockpiled, and replaced in conformance with this section.

(b) *Topsoil redistribution.* (1) After final grading and before the topsoil is replaced, regarded land shall be scarified or otherwise treated to eliminate slippage surfaces.

(2) Topsoil shall be redistributed in a manner that—

(i) Achieves a uniform thickness throughout the regraded area.

(ii) Prevents excess compaction of the spoil and topsoil; and

(iii) Protects the topsoil from wind and water erosion before it is seeded or planted.

(3) Water erosion shall be minimized by spreading soil or finishing grading of soil along the contour, unless this action would be hazardous to equipment operators. Grading in a direction other than generally parallel to the contour shall be approved by the regulatory authority before final grading.

(c) *Topsoil storage.* If the permit allows storage of topsoil, the stockpiled topsoil shall be placed within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. If stockpiles are to be in place for more than 30 days, they shall be selectively placed and protected from wind and water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetation cover as defined in § 715.20(g) or by other methods that have been demonstrated to provide equal protection such as snow fences, chemical binders, and mulching. The regulatory authority may require more stringent standards if a high potential exists for loss of topsoil through erosion, and shall prohibit moving the topsoil once it is placed in a storage area until it is moved to a regraded area for redistribution.

(d) *Nutrients and soil amendments.* Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the topsoil to produce soil that will support the reclamation requirements of § 715.20.

§ 715.17 Protection of the hydrologic system.

The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance of and to prevent long-term changes in the prevailing hydrologic balance, on or off site. Changes in water quality and quantity, in the depth to ground water, or in the location of surface-water drainage channels will be limited to changes that do not violate applicable Federal and State regulations and do not adversely affect the post-mining use of the disturbed lands. The permittee shall conduct all operations in such a way as to minimize water pollution and, where necessary, use treatment methods to control water pollution. Practices that will minimize pollution include but are limited to stabilizing disturbed areas through shaping and grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching topsoil, sealing off acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, the permittee shall operate and maintain the necessary water-treatment facilities. However, the permittee shall emphasize mining and reclamation practices that will prevent or minimize water pollution in preference to water-treatment facilities.

(a) *Water-quality standards and effluent limitations.* All drainage from the disturbed area, including areas revegetated and not released from bond, shall be discharged through a settling pond, or a series of settling ponds. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the disturbed area is small and settling ponds are not necessary to meet water-quality standards and effluent limitations. Discharges from the entire permit area must meet all applicable Federal and State water-quality standards and the following numerical effluent limitations:

Effluent limitations, in milligrams per liter except for hydrogen-ion concentration

Effluent characteristic	Maximum allowable [1]	Average of daily values for 30 consecutive discharge days [1]
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids [2]	70.0	35.0
Hydrogen-ion concentration.	Within the range 6.0 to 9.0.	

[1] Based on a representative sampling schedule.

[2] In Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45 mg/l (maximum allowable) and 30 mg/l (average of daily values for 30 consecutive discharge days) based on a representative sampling schedule.

(1) Any overflow or other discharge of surface water from the permit area that would result from an event larger than a 25-year 24-hour frequency event will not be subject to these effluent standards.

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharge that violates the standards and limitations of this paragraph or other applicable standards. If the pH of discharged waters normally is less than 6.0, and the mine normally produces more than 500 tons of coal per operating day, an automatic lime feeder or other neutralization device approved by the regulatory authority shall be installed, operated, and maintained.

(b) *Surface-water monitoring.* (1) Equipment necessary to measure the quality and quantity of surface-water discharges from the permit area and to identify the effects of surface mining and reclamation operations on the surface water shall be installed, maintained, and operated, and shall be removed when no longer required. Total iron, total manganese, total suspended solids, pH, and flow must be measured on a daily basis whenever a discharge

occurs unless it can be demonstrated to the satisfaction of the regulatory authority that different analyses are required. The regulatory authority may require additional analyses.

(2) Daily samples shall, for all discharges that occur more than 1 hour (continuous or intermittent flow), be comprised of at least four samples representative of actual conditions, composited for a daily analysis. Chemical analysis must be performed as specified in 40 CFR 136. The results of these measurements shall be submitted to the regulatory authority on a monthly basis, but within 60 days of collection. However, if the discharge is subject to regulation by a Federal or State permit issued in compliance with section 301 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1311), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the monitoring and reporting requirements of this paragraph, if the reported data meets the requirements of this paragraph. Violations of permit conditions must be reported to the regulatory authority immediately after receipt of analytical results by the permittee.

(c) *Diversion and conveyance of overland flow from disturbed areas.* In order to prevent acid and other toxic mine drainage from polluting surface and ground water and to minimize erosion, overland flow shall be diverted away from disturbed areas by means of temporary or permanent diversion structures, and the following requirements shall be met:

(1) Temporary diversion structures are those used during mining and reclamation. When no longer needed to protect disturbed areas, the structures shall be removed and the area reclaimed. They shall be constructed to safely pass the peak runoff from a precipitation event with a 10-year recurrence interval, or a larger event as specified by the regulatory authority.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property and avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the regulatory authority. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner that does not increase the total suspended solids leaving the permit area on a seasonal basis above those levels that existed before mining and in excess of requirements set by applicable Federal and State law.

(4) Discharges from diversions that pass entirely through undisturbed areas shall meet applicable water-quality standards for the receiving streams. Discharges from diversions that pass through disturbed areas must comply with paragraph (a) of this section.

(5) Surface water shall not be diverted into underground mine workings unless it is demonstrated to the satisfaction of the regulatory authority that such diversion will abate water pollution or otherwise eliminate public hazards resulting from underground mining.

(d) *Stream channel diversions.* (1) Flow from perennial, intermittent, and ephemeral streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with local, State, and Federal law and approved regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

(i) The average stream gradient shall be maintained and the channel designed to remain stable after mining and reclamation operations are completed.

(ii) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a 10-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions; or larger events as specified by the regulatory authority.

(iii) Channel banks shall be protected from erosion by measures such as seeding, planting and applying riprap.

(iv) Fish and wildlife habitat and water and vegetation of significant value for wildlife food or shelter shall be protected in consultation with appropriate fish and wildlife management agencies.

(v) Diversions shall be designed, constructed, and maintained in a manner that does not increase the total suspended solids leaving the permit area on a seasonal basis above those levels that existed before mining. Applicable State and Federal water-quality standards shall be met.

(2) All temporary diversion structures shall be removed before release of applicable bonds unless the regulatory authority approves the retention of those structures.

(3) Buffer zone. No land shall be disturbed within 100 feet of an intermittent or perennial stream not approved for mining unless authorized by the regulatory authority. The area not to be disturbed shall be designated a buffer zone and marked with signs as specified in § 715.12.

(e) *Settling ponds.* Settling ponds shall be constructed in appropriate locations in each drainage area prior to any mining in that drainage area in order to control sedimentation or otherwise treat water in accordance with paragraph (a) of this section. These ponds may be used individually or in a series, and they shall meet the following criteria:

(1) The minimum storage volume shall equal the sum of—(i) The volume of runoff to be controlled from the drainage area above the settling pond that results from a 10-year 24-hour precipitation event;

(ii) 0.2 acre-feet of storage for each of disturbed area within the upstream drainage area; and

(iii) additional storage as necessary to meet the effluent standards of paragraph (a) of this section.

(2) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the peak runoff from a precipitation event with a 25-year recurrence interval, or larger event as specified by the regulatory authority.

(3) All settling ponds shall be examined for structural weakness, erosion and other hazardous conditions in accordance with inspection requirements contained in § 77.216–3 of this Title.

(4) All settling ponds shal. be removed and the disturbed areas regraded, revegetated, and stabilized before release of applicable bonds unless the regulatory authority approves retention of the ponds.

(5) Sediment shall be removed from settling ponds when the volume of sediment accumulates to 50 percent of the sediment storage volume required in paragraph (e)(1) of this section. The sediment shall be disposed of in a way that prevents it from entering surface water, contaminating subsurface water, and causing adverse effects due to its chemical and physical characteristics on infiltration, vegetation, or water quality. Sediment that has been removed from settling ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with § 715.16.

(6) Discharges from settling ponds shall meet the water-quality and effluent requirements of paragraph (a) of this section.

(7) If a settling pond includes an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from the design storm as specified by the regulatory authority. This design storm shall not have a recurrence frequency of less than 50 years.

(ii) Ponds shall be designed and constructed with a safety factor of at least 1.5 for embankment slope stability.

(iii) The minimum top width of the embankment shall not be less than the quotient of $\frac{H+35}{5}$ where H is the height of the embankment as measured from the upstream toe to the top of the embankment.

(iv) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.

(8) All ponds shall be designed and constructed under the supervision of, and inspected and certified after construction

for compliance with design requirements, by a registered professional engineer.

(f) *Discharged structures.* Discharges from settling ponds and diversions shall be controlled using available technology, such as energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening and enlargement of stream channels.

(g) *Acid and toxic materials.* Drainage from acid forming and toxic forming mine materials into ground and surface water must be prevented by—

(1) Identifying and burying in the permit area spoil and waste materials that can be toxic or otherwise harmful to vegetation and can adversely affect water quality. The material shall be buried with a minimum of 5 feet of nontoxic material or using other procedures in accordance with § 715.14. Material shall not be buried or stored within 100 feet of any perennial or intermittent stream, or used in construction of dams, embankments or roads or where they will pollute surface and ground water.

(2) Burying all material within 30 days, or less if specified by the regulatory authority. If necessary to store the material, piles shall be stored on impermeable material and protected from erosion and contact with surface water.

(3) Casing, sealing, or otherwise managing boreholes, shafts, wells, and auger or other horizontal holes to prevent pollution of surface or ground water, and to prevent mixing of ground waters of significantly different quality (unless mixing is approved by the regulatory authority). All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into aquifers, shall be plugged permanently in a manner approved by the regulatory authority.

(4) Taking such other actions as required by the regulatory authority.

(h) *Recharge capacity of reclaimed lands.* The disturbed area shall be reclaimed to restore approximate premining infiltration rates and to restore the ability of the reclaimed area to transmit water to the ground-water system. All available measures shall be used to ensure that the recharge capacity of the reclaimed land will support the approved postmining use of the land.

(i) *Restoration of ground-water systems.* Backfilled materials shall be selectively placed to reestablish ground-water systems to approximate premining conditions.

(j) *Alluvial valley floors west of the 100th meridian west longitude.* (1) Essential elements of the hydrologic functions of alluvial valley floors shall be preserved throughout the mining and reclamation process by maintaining or establishing:

(i) The gradient of streams;

(ii) Aquifers, aquicludes, capillary zones, and perched water zones;

(iii) Quantity and quality of surface and ground water;

(iv) Depth to, and seasonal fluctuations of, ground water where ground water supports a subirrigated vegetation system;

(v) Configuration and stability of the land surface in the flood plain as they allow or facilitate irrigation with flood waters and maintain erosional equilibrium; and

(vi) Soil profiles, including physical and chemical characteristics of the substrate (or plant-growth medium) which provide moisture holding capacity and thereby provide for sustained vegetation growth through the dry months.

(2) Surface mining and reclamation operations conducted in or adjacent to alluvial valley floors located west of the 100th meridian west longitude shall not interrupt, discontinue, or preclude farming on these alluvial valley floors unless the premining land use of such alluvial valley floors has been undeveloped rangeland with no regular cropping of hay or unless the area of the affected alluvial valley floor is of small acreage and provides negligible support for one or more farmer's production. This paragraph (j)(2) does not apply to those surface coal mining operations that—

(i) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities in the period identified in this paragraph; or

(ii) Had specific permit approval by the State regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within the affected alluvial valley floor.

(3) Before new surface mining and reclamation operations which may be authorized under paragraph (j)(2) of this section are commenced, the permittee shall submit and the regulatory authority shall approve detailed surveys and baseline data to establish standards against which the requirements of paragraph (l) of this section can be measured. The surveys and data shall include—

(i) A map at a scale determined by the regulatory authority showing the location of the alluvial valley floor.

(ii) Baseline data covering a full water year for each of the hydrologic elements identified in paragraph (l) of this section.

(iii) Such other data as the regulatory authority may require.

(k) *Ground-water monitoring.* Ground-water levels and quality of the ground water shall be monitored as approved by the regulatory authority, to determine the effects of surface coal mining operations on ground water. When mining is done below the water table, the water levels shall be monitored in representative ground-water wells within the area which may be influenced by the mining or in such other wells that can adequately reflect hanges in water levels. Where existing wells are inadequate to measure long-term changes, the permittee may be required by the regulatory authority to drill and complete wells to measure water quantity and quality in the permit area. When determined necessary by the regulatory authority, the permittee also may be required to drill and complete wells to measure water levels on and off site subject to surface owner consent. These wells must monitor all aquifers that may be affected by mining.

(l) *Hydrologic impact of roads.* (1) *General.* Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained and reclaimed so as to control diminution or degradation of water quantity or quality. The land over which roads are constructed for surface coal mining and reclamation operations shall be reclaimed in accordance with this part, unless retention of a road is approved under § 715.13, as being an integral and contributing part of the postmining use of the land.

(2) *Construction.* (i) All roads, insofar as possible, shall be located on benches, ridges, or flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams unrelated to coal haulage. Roads shall not be located in stream beds; nor shall they be located within the 100-year flood plain of any stream unless it can be demonstrated that the roads will not restrict the flow of the base flood (a flood that has a 1 percent or greater chance of occurring in any year), nor increase erosion or cause significant sedimentation or flooding. However, nothing in this paragraph will be construed as prohibiting relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent hydrologic disturbances, roads shall be constructed in compliance with the following grade restrictions, or other grade determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed $1v{:}10h$ (10 percent).

(B) The maximum grade greater than 10 percent shall not exceed $1v{:}6.5h$ (15 percent) for more than 300 feet.

(C) There shall not be more than 300 feet of maximum grade within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water carriers, cross drains, and ditch-relief drains. For access and haul roads that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak flow from a 25-year 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by the construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of the structures. Ditch relief and cross

drains shall be spaced according to grade. Drainage from access and haul roads shall meet the water-quality requirements of § 715.17.

(iv) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used in the surface material. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) *Maintenance.* (i) Access and haul roads shall be routinely maintained by measures such as, but not limited to, wetting, scraping, or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(m) *Hydrologic impacts of other transport facilities.* Railroad loops, spurs, siding or other transport facilities shall be constructed, maintained and reclaimed so as to control diminution or degradation of water quantity or quality.

§ 715.18 Dams constructed of refuse materials, general.

(a) No mine or processing refuse materials shall be used in existing or new dams without the approval of the regulatory authority. The permittee or operator shall design, locate, construct, operate, maintain, modify, abandon, and remove all dams (used either temporarily or permanently) when constructed of mine refuse materials, tailings, coal processing wastes, or other liquid or solid wastes in accordance with the requirements of this section.

(b) *Definitions.—Refuse materials.* Coal mine waste materials excavated or removed during surface coal mining and reclamation operations or separated from mined coal. The material may be a mixture of coal, slack coal, or waste coal; organic material; shale, claystone, sandstone, siltstone, or limestone, or related materials.

Safety factor. The ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(c) *Dams constructed of refuse materials.* (1) Refuse shall not be used in the construction of dams unless demonstrated to have no adverse effect on stability.

(2) Plans for dams or impoundments shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mining Enforcement and Safety Administration pursuant to § 77.216-2 of this title.

(3) Dams and impoundments subject to this paragraph shall meet the following requirements:

(i) Design of impoundments shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severe property or environmental damage, in which case a design based on a minimum flood event of 100-year frequency may be approved by the regulatory authority. An intermediate-sized design flood may be required depending on site conditions.

(ii) The design freeboard distance between the lowest point on an impounding structure and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(iii) Impounding structures shall have minimum stability factors as follows:

Case	Loading condition	Minimum safety factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation	1.5
III	Steady seepage from spillway or decant crest	1.5
IV	Earthquake (cases II and III with seismic loading)	1.0

(iv) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (c)(3)(iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, previous drainage zones or blankets, toe drains, or relief wells.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the required freeboard will not be diminished.

(vii) Impoundments created by dams of refuse materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(viii) Closed-circuit coal waste shall not be used in dams constructed of refuse materials unless demonstrated to maintain or enhance dam stability.

(ix) During construction of dams subject to this paragraph, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to appropriate designs and upon completion of construction, the structure shall be certified as having been designed in accordance with accepted professional policies by a registered professional engineer.

(x) A permanent identification marker, at least 6 feet high and showing the dam number assigned pursuant to § 77.215-1 of this title, and the name of the person operating or controlling the dam shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams shall be routinely inspected by a registered professional engineer in accordance with MESA regulations pursuant to § 77-216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs, ditches and spillways cleaned, any combustible materials present on the surface removed, and any other appropriate maintenance procedures followed.

(6) All dams subject to this section shall be recertified annually as having been constructed and modified in accordance with current prevalent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be included in the annual recertification report. The certification will include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year, and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of dams shall be approved by the regulatory authority.

(8) All refuse dams shall be removed and the disturbed areas regraded, revegetated, and stabilized prior to the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (§ 715.13).

§ 715.19 Use of explosives.

(a) *General.* (1) The permittee or operator shall comply with all applicable local, State and Federal law and regulations and the requirements of this section in the storage, handling, preparation, and use of explosives.

(2) Blasting operations that use more than the equivalent of 5 pounds of TNT shall be conducted according to a time schedule approved by the regulatory authority.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall—

(i) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

(ii) Be capable of using mature judgment in all situations;

(iii) Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

(iv) Possess current knowledge of the local, State and Federal laws and regulations applicable to his work; and

(v) Have obtained a certificate of completion of training and qualification as required by State law or the regulatory authority.

(b) *Preblasting survey.* (1) Upon the request of a resident or owner of a man-made dwelling or structure, including pipes, cables, transmission lines, wells or water systems, within one-half mile of any portion of the permitted area, the permittee or operator shall conduct a preblasting survey of such structures and submit the survey to the regulatory authority. The area and scope of the survey shall be decided by the regulatory authority.

(2) Personnel approved by the regulatory authority shall conduct the survey to determine the condition of the structures in terms of resistance to vibrations of structural and nonstructural elements, and to document any preblasting damage, weakness, and other physical factors that could reasonably be expected to be effected by the blasting. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and the quantity and quality of such water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall specify the recommended weights of individual charges that would prevent damage to the structures examined in the area and State, if applicable, the effects repeated blasting will have on structural fatigue. Copies of the report shall be provided to the person requesting the survey, and to the regulatory authority on request. Based upon this survey report, the regulatory authority shall require the permittee or operator to prevent damage to structures and water systems by measures such as reinforcing the structures (provided consent of the owner is received), redesign of the blasting plan, or prohibition of blasting in the vicinity of the structure.

(c) *Public notice of blasting schedule.* At least 10 days, but not more than 20 days before beginning a blasting program in which explosives that use more than the equivalent of 5 pounds of TNT are detonated, the permittee or operator shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by certified mail to local governments and public utilities and to each residence within one-half mile of the blasting sites described in the schedule. The permittee or operator shall republish and redistribute the schedule by certified mail at least every 3 months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the time periods and locations when blasting will occur. The blasting schedule shall contain at a minimum—

(1) Identification of the specific areas in which blasting will take place. The individual blasting areas shall not be larger than 300 acres with a generally contiguous border.

(2) Dates and times when explosives are to be detonated in not more than 4-hour increments.

(3) Proposed weight and type of the explosives to be detonated at one time;

(4) Anticipated effects of blasting on people, private and public property, land, and water within and adjacent to the permit area;

(5) Methods to be used to control access to the blasting area;

(6) Types of audible warning and all clear signals to be used before and after blasting; and

(7) A description of possible emergency situations (defined in paragraph (e)(1)(ii) of this section) which have been approved by the regulatory authority as reasonable, when it may be necessary to blast at times that are significantly different from those described in the schedule. This description shall identify the circumstances under which emergency situations may occur and the reasons that blasting cannot be conducted at the scheduled time.

(d) *Public notice of changes on blasting schedules.* A revised blasting schedule shall be prepared by the permittee or operator before blasting in areas not covered by a previous schedule or whenever the proposed frequency, size, and weight of individual detonations are scheduled to be materially changed. If the change involves blasting in areas not covered by a previous schedule the procedures outlined in paragraph (c) of this section shall be followed. If the change involves only the size, weight, or frequency of blasts the permittee or operator shall notify, by the most appropriate means, the governmental bodies and individuals to whom the original schedule was sent.

(a) *Blasting procedures.* (1) *General.* (i) All blasting shall be conducted only during the daytime hours, defined as 1 hour after sunrise until 1 hour before sunset. Based on public requests or other considerations, including the proximity to residential areas, the regulatory authority may specify more restrictive time periods.

(ii) Blasting may not be conducted at times more than 1 hour different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or operator safety requires unscheduled detonation and the emergency conditions have been announced in accordance with paragraph (c)(7) of this section.

(iii) Audible warning and all-clear signals shall be given and shall be of different character and audible within a range of one-half mile from the point of the blast. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by § 715.12.

(iv) Access to the blasting area shall be regulated to protect the public, livestock, and, where required by the regulatory authority, wildlife, from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least 10 minutes before each blast and until the permittee's or operator's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exists and access to and travel in or through the area can safely resume.

(v) All primed blast holes shall be detonated within 24 hours.

(vi) To prevent damage from air blast 2.6 feet of stemming for every inch of borehole diameter shall be used.

(vii) Except where lesser distances are approved by the regulatory authority (based upon a preblasting survey and premining seismic studies, and with written consent of the owner) blasting shall not be conducted within—

(A) 1,000 feet of any building used as a residence, school, church, hospital, nursing facility, or power generating station;

(B) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid transmission pipelines, or gas or oil collection lines, water and sewage lines; and

(C) 500 feet of an underground mine except with the concurrence of the Mining Enforcement and Safety Administration.

(2) *Blasting standards.* (i) In all blasting operations, except as otherwise stated, the maximum peak particle velocity of the ground motion in any direction shall not exceed 2 inches per second at the immediate location of any dwelling house, public building, school, church, or commercial or institutional building.

(ii) The maximum peak particle velocity of ground motion does not apply to property owned or leased by the permittee which is inside the permit area.

(iii) No two consecutive subcharges within any charge shall be separated by a delay time of less than 8 milliseconds. *Charge* means a quantity of explosive or equivalent that is to be detonated within a period of 5 seconds. *Subcharge* means a quantity of explosive or equivalent that is to be detonated within a period of less than 8 milliseconds.

(iv) Tables for determining the maximum weight of explosives to be used per delay are given in paragraphs (e)(2)(vi) and (vii) of this section. If the blasting is done in accordance with these tables, the regulatory authority will consider the vibrations to be within the 2 inches per second limit.

(v) The weight of explosives to be used per delay period shall be determined by the formula.

$$W = \left(\frac{D}{50}\right)^2$$

where W = the weight of explosives, in pounds, and D = the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building.

(vi) For distances greater than 300 feet, the following table will be used:

Distance in feet:	Weight, in pounds
350	49
400	64
500	100
600	144
700	196
800	256
900	324
1,000	400
1,100	484
1,200	576
1,300	676
1,400	784
1,500	900
1,600	1,024
1,700	1,156
1,800	1,296
1,900	1,444
2,000	1,600
2,500	2,500
3,000	3,600
3,500	4,900
4,000	6,400
4,500	8,100
5,000	10,000

For distances not in the table, the formula in paragraph (e)(2)(v) of this section shall be used.

(vii) If on a particular site the peak particle velocity continuously exceeds one-half inch per second after a period of 1 second following the maximum ground particle velocity, the regulatory authority shall require the total time delay of blasting operations to be less than 200 milliseconds or the charge per delay be reduced to comply with this limit.

(viii) For distances less than 300 feet the following table will be used:

Actual distance, in feet:	Pounds per delay interval of 8 milliseconds or greater
5–10	⅛
11–15	¼
16–20	½
21–25	¾
26–30	1.0
31–300	(1)

[1] 1 lb.+⅛ lb. for each foot of distance above 30 feet.

(3) *Seismograph measurements.* (i) Where a seismograph is used to monitor the velocity of ground motion and the velocity of limit of 2 inches per second is not exceeded, the tables in paragraphs (e)(2)(vi) and (viii) of this section need not be used. However, if the tables are not being complied with, a seismograph shall be used for every shot.

(ii) The use of a modified table for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition accompanied by seismograph reports. However, in no case shall the regulatory authority approve the use of a modified table where the velocity limit of 2 inches per second would be exceeded.

(iii) The regulatory authority may require a seismograph recording of any or all blasts.

(4) *Records of blasting operations.* A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the regulatory authority, and the public upon request. The record shall contain the following data:

(i) Name of permittee, operator, or other person conducting the blast;

(ii) Location, date, and time of blast;

(iii) Name, signature, and license number of blaster in charge;

(iv) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building;

(v) Weather conditions;

(vi) Type of material blasted;

(vii) Number of holes, burden, and spacing;

(viii) Diameter and depth of holes;

(ix) Types of explosives used;

(x) Total weight of explosives used;

(xi) Maximum weight of explosives per delay period of 8 milliseconds or less;

(xii) Maximum number of holes per delay period of 8 milliseconds or less;

(xiii) Method of firing and type of circuit;

(xiv) Type and height of length of stemming;

(xv) If mats or other protections were used;

(xvi) Type of delay electric blasting caps used, and delay periods used;

(xvii) Seismograph records, where required, including—

(A) Seismograph reading, including exact location of seismograph and its distance from the blast;

(B) Name of person taking the seismograph reading; and

(C) Name of person and firm analyzing the seismograph record.

§ 715.20 Revegetation.

(a) *General.* (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to § 715.13.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetation cover and recovery of productivity levels compatible with approved land uses. The vegetation cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands shall, regardless of the approved postmining land use, be seeded or planted to achieve a vegetation cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetation cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(3) On Federal lands, the surface management agency shall be consulted regarding when revegetation is satisfactorily accomplished, what species are selected, and when the area is ready for utilization and management.

(b) *Use of introduced species.* Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species will be of equal or superior utility for the approved postmining land use, or is necessary to achieve a quick, temporary and stabilizing cover. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and may not include poisonous or potentially toxic species incompatible with the approved postmining land use.

(c) *Timing of revegetation.* Seeding and planting of land that has been regraded and the topsoil replaced shall be conducted during the first normal period for favorable planting conditions after final grading. The normal period for favorable planting shall be that planting time generally accepted locally to meet specific site conditions and climate. Any disturbed areas, except water areas and surface areas of haul roads, which have been graded shall be planted with a temporary cover of small grains, grasses, or legumes at a commensurate level with that needed to establish adequate cover to control erosion. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use form in regraded topsoil and overburden materials as specified in § 715.14, additional regrading or other stabilization practices will be required before seeding and planting.

(d) *Mulching.* Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing climate conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Mulches shall be anchored to the soil surface where appropriate to ensure effective protection of the soil and vegetation. The minimum amounts of mulch to be applied per acre are: for straw or hay, 2,000 pounds; for wood fiber, 1,000 pounds; for bark materials, 30 cubic yards. If the permittee can demonstrate that other wood products, composted waste, or other materials are more suitable for achieving successful revegetation and erosion control, the regulatory authority may authorize substitution of such other materials. Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Annual grains such as oats, rye, and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining land use.

(e) *Methods of revegetation.* (1) The permitee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species,

seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The revegetation procedures shall be designed to require only that degree of fertilization and maintenance procedures required to meet the standards of this section for the approved postmining use of the land.

(2) Where hayland, pasture, or rangeland is to be the postmining land use, the land shall be revegetated to the satisfaction of the regulatory authority. The species of grasses, legumes, or forbs for seeding or planting shall be selected by the permittee to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority, in consultation with the surface owner and permittee, shall determine when the revegetated area is ready for livestock grazing. When hoofed wildlife populations are large enough to cause damage, grazing by such wildlife must be controlled by appropriate methods until the seedlings are well established and can sustain normal grazing. The regulatory authority shall determine when the revegetated area is ready for wildlife grazing.

(3) Where an agricultural use that will require using tillage equipment such as plows, cultivators, and tractors is to be the postmining land use, the permittee shall use adequate erosion and sediment control practices approved by the regulatory authority.

(4) Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate in combination with an herbaceous cover of grains, grasses, legumes, or forbs that provides a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area.

(5) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate State and Federal wildlife management agencies and, upon the approval of the regulatory authority, shall select species to be seeded or planted. The permittee shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space, and shall space and distribute plant groupings and water resources to fulfill the requirements of wildlife.

(6) Where development of residential, recreational, industrial, or public service uses is to be the postmining land use, the lands must be revegetated initially according to paragraph (a) of this section. Final revegetation requirements must be approved by the regulatory authority.

(f) *Standards for measuring success of revegetation.* (1) The revegetation standards in the following table are minimum requirements for revegetation of disturbed areas.

Standards for revegetation

[Herbaceous species=grass, legumes, and nonleguminous forbs; woody plants=woody shrubs, trees, and vines; ground cover=area covered by the combined aerial parts of plants and litter that are produced naturally on site, expressed as a percentage of the total area of measurement]

Average annual precipitation, in inches	1 yr	5 yr	10 yr
A. Areas planted only in herbaceous species (percent ground cover of herbaceous species at the end of the growing season):			
Up to 10	6	8	10
10.1 to 16	10	20	30
16.1 to 26	20	30	40
More than 26	50	70	NA

Average annual precipitation, in inches	1 yr		5 yr		10 yr	
	Percent ground cover	Number of woody plants per acre	Percent ground cover	Number of woody plants per acre	Percent ground cover	Number of woody plants per acre
B. Areas planted to mixtures of herbaceous and woody species (percent ground cover of herbaceous species and number of plants per acre of woody species at the end of the growing season):						
Up to 10	6	2,700	5	2,000	4	1,500
10.1 to 16	7	800	10	900	15	1,000
16.1 to 26	20	400	25	400	30	400
More than 26	40	600	50	[1]400	NA	NA

[1] On steep slopes, the minimum number of woody plants must be increased to 600 per acre.

(2) (i) When revegetation requirements are based on returning the permit lands to premining land uses of hayland, pasture, wildlife habitat, or rangeland, the regulatory authority may also require the permittee to set aside and fence exclosures of land not to be disturbed by mining activity or domestic livestock. These exclosures, which must be representative of geology, soils, slope, aspect and vegetation in the permit area, will be used to estimate normal vegetation productivity, plant cover, species, plant succession, and plant self-regeneration. The regulatory agency shall approve the estimating techniques used to judge the degree of success achieved in the revegetated areas. These exclosures and estimations may be required before revegetation procedures are approved.

(ii) When exclosures are required, the degree of progress and success in revegetating shall, at a minimum, meet the standards in the following table. More stringent standards may be established by the regulatory authority based on natural conditions in the area. The permittee and the regulatory authority shall use those standards as guides to indicate potentials for ultimate revegetation success and to determine whether remedial measures are necessary to improve chances for success.

Standards for revegetation when exclosures are required

[Ground cover=area covered by the combined aerial parts of plants and litter that are produced naturally onsite, expressed as a percentage of the total area of measurement; biomass yield=the total yield of living plants above ground in an area at the end of the growing season]

Average annual precipitation, in inches	End of growing season		
	1 yr	5 yr	10 yr
A. Number of adapted species in revegetated areas:			
Up to 10	3	12	15
10.1 to 16	6	14	20
16.1 to 26	6	20	25
More than 26	8	25	30
B. Ground cover of perennial plants expressed as a percent of the ground cover in the exclosures:			
Up to 10	90	80	85
10.1 to 16	70	80	85
16.1 to 26	70	80	90
More than 26	80	90	NA
C. Biomass yield of perennial plants expressed as a percent of the biomass yield in the exclosures:			
Up to 10	90	80	80
10.1 to 16	70	80	85
16.1 to 26	70	80	90
More than 26	80	90	NA

(g) *Seeding of stockpiled topsoil.* Topsoil stockpiled in compliance with § 715.16 must (if not to be redistributed within 30 days) be seeded or planted with an effective cover of nonnoxious, quick growing annual and/or perennial plants or protected by other approved measures as specified in § 715.16.

PART 716—SPECIAL PERFORMANCE STANDARD

716.1 General obligations.
716.2 Steep-slope mining.
716.3 Mountaintop removal.
716.4 Special bituminous coal mines.
716.5 Anthracite coal mines.
716.6 Coal mines in Alaska.
716.7 Prime farmland.
716.8 Surface effects of underground mine.

AUTHORITY: Secs. 201 and 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

§ 716.1 General obligations.

(a) This part establishes special initial performance standards that apply in the following special circumstances:

(1) § 716.2 applies to surface coal mining operations on steep slopes.

(2) § 716.3 applies to surface coal mining operations involving mountaintop removal.

(3) § 716.4 applies to special bituminous coal mines.

(4) § 716.5 applies to anthracite surface coal mining operations.

(5) § 716.6 applies to surface coal mining operations in Alaska.

(6) § 716.7 applies to surface coal mining operations on prime farmlands.

(7) § 716.8 applies to underground coal mining operations.

(b) All surface coal mining and reclamation operations subject to this Part shall comply with the applicable special performance standards in this part. Such operations shall also comply with all general performance standards in Part 715 of this chapter unless specifically exempted *in this part* from the requirement of Part 715.

§ 716.2 Steep-slope mining.

(a) The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operation, and other regional characteristics, shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where the mining is governed by § 716.3.

(1) Overburden or waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or permitted to remain on the downslope. Material in excess if that required to meet the provisions of § 715.14 of this chapter must be disposed of in accordance with the requirements of § 715.15 of this chapter.

(2) First-cut overburden shall be stored within the permit area. The storage piles must be designed and constructed to minimize erosion and to maximize stability. Any material temporarily stored for more than 30 days must be protected by an effective cover of nonnoxious, quick-growing annual and/or perennial plants or other approved means as specified in § 715.20 of this chapter.

(3) Where the backfilled slope is 50 feet or more in length, terraces when approved by the regulatory authority, shall be sloped to safely and quickly discharge runoff water to stable drainage channels located off the fill area and must be constructed to meet the requirements of §§ 715.14(c) and 715.17 of this chapter.

(4) Woody materials that can cause instability must not be mixed into the backfill.

§ 716.3 Mountaintop removal.

(a) Coal surface mining and reclamation operations that remove entire coal seams runnig through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining are exempt from the requirements of § 715.14 of this chapter for achieving approximate original contour, if the following requirements are met:

(1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.

(2) The alternative land-use criteria in § 715.13(d) of this chapter is met and the proposal is approved by the regulatory authority.

(3) All other applicable requirements of Part 715 of this chapter are met.

(b) Surface coal mining and reclamation operations conducted under this section shall comply with the following standards:

(1) An outcrop barrier at least 15 feet wide measured on the top of the coalbed perpendicular to the highwall be retained to prevent slides and erosion.

(2) The final graded top plateau slopes on the mined area shall be less than lv:5*h* so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed lv:2h, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 will be attained.

(3) The resulting level or gently rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the outslope in protected, stable channels.

(4) Damage to natural watercourses below the area to be mined shall be prevented.

(5) Spoil will be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under § 715.13 of this chapter. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of § 715.15 of this chapter.

(c)(1) The permit giving approval for mountaintop removal shall be reviewed not more than 3 years after the date of issuance and shall be renewable only upon demonstration by the permittee that all operations are proceeding in accordance with the terms of the applicable permit, time, schedule, and reclamation plan.

(2) The terms of a permit for mountain top removal may be modified by the regulatory authority if it is determined that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution, or to assure successful revegetation.

§ 716.4 Special bituminous coal mines.

(a) *Definition.* Special bituminous coal surface mines as used in this section means those bituminous coal surface mines that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

(1) Excavation of the mine pit takes place on a relatively limited site for an extended period of time. For the purposes of this section, mine pit means an open-pit mine in which the surface opening is at least the full size of the excavation and has a contiguous border. The pit generally is quite deep and is formed by the removal of relatively large amounts of overburden to obtain lesser amounts of coal. The term as used in this section applies only to mining operations that extract coal from seams dipping 15 degrees or steeper from the horizontal.

(2) Excavation of the mine pit follows a coal seam that inclines 15 degrees or more from the horizontal, and as the excavation proceeds downward it expands laterally to maintain stability of the pitwall or as necessary to accommodate the orderly expansion of the total mining operations.

(3) (i) Surface and mining operations in the mine pit have taken place since January 1, 1972, and

(A) operations in the mine pit are removing more than one coal seam, and

(B) mining has begun on the deepest coal seam scheduled to be mined; or

(ii) Surface coal mining operations are begun after August 3, 1977, and the operations are conducted on lands immediately adjacent to operations meeting the criteria of paragraph (a)(3)(i) of this section.

(4) The amount of material removed from the pit is large in proportion to the surface area disturbed.

(5) There is no practicable alternative to the deep open-pit method of mining the coal.

(6) There is no practicable way to entirely reclaim the land as required by Part 715 of this chapter.

(b) *Requirements for special bituminous coal mines operating prior to July 1, 1973.* Those portions of a special bituminous coal mine approved for operation prior to July 1, 1973, including the

orderly expansion of such a mine pit to the extent authorized by State law, shall at a minimum meet the general performance standards of Part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for those operations associated with spoil storage areas. The standards of Part 715 also apply to the mine pit with the exception of § 715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) In the final mine area, highwalls may be allowed to remain, benches may be allowed and details of the benches shall be included in the mine plans submitted to the regulatory authority for approval.

(2) The exposed pit floors will be sloped and graded to provide access to the area, and topsoil shall be applied and the floor area seeded according to the requirements of §§ 715.16 and 715.20. Where water impoundments are included as part of the mine plan, riprap may be used if necessary to prevent erosion.

(3) Spoil piles will be graded and contoured with no more than an overall slope of 17 degrees allowed, and terraces may be used to break the slope when it can be shown that terraces will accomplish the required reclamation. For the postmining land use, steeper slopes may be permitted upon approval of the regulatory authority, provided it can be demonstrated that such method will provide the required results.

(c) *Requirements for other special bituminous coal mines.* Those portions of a special bituminous coal mine which do not meet the criteria of paragraph (b) of this section shall, at minimum, meet the general performance standards of Part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for these operations associated with spoil storage areas. The standards of Part 715 also apply to the mine pit with the exception of § 715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) *Slope specifications.* Slope specifications for the postmining land use shall be based on an average of the natural slopes measured in the immediate area of the mine site, and the maximum inclination of thee slope in the reclaimed area shall not be greater than this average slope. However, slopes steeper than the average of the natural slopes may be approved by the regulatory authority if it can be demonstrated that returning the mined area to a slope equal to or less than the average natural slope would greatly increase the amount of disturbed land. Measurements of individual slopes, locations at which measurements are made, and the average natural slope as determined from the individual slope measurements shall be submitted for approval for the regulatory authority. The regulatory authority may make an independent slope survey to verify the average natural slope.

(2) *Postmining land uses that do not include water impoundment.*

(i) The final mine area shall be backfilled, graded, and contoured to the extent necessary to return the land to the use approved by the regulatory authority.

(ii) All backfilling, grading, and contouring shall be done in a manner to preserve the original drainage system or to provide substitute drainage systems approved by the regulatory authority.

(iii) Terraces or benches may be used only if it can be demonstrated that contouring methods will not provide the required results. Detailed plans of dimensions and design of the terraces or benches, check dams, erosion prevention techniques, and slopes of the terraces or benches and their intervals shall be submitted to the regulatory authority for approval before construction.

(iv) Depressions that will accumulate water shall not be allowed unless they are approved under paragraph (c)(3) of this section.

(3) *Postmining land uses that include permanent water impoundment.* (i) The exposed mine pit area shall be sloped, graded, and contoured to blend with the topography of the surrounding terrain and to provide for access to the area. Where necessary to prevent erosion, riprap shall be used.

(ii) Under certain conditions where it can be demonstrated by the permittee that the pitwall can be stabilized by terracing or other techniques, it may be permissible to leave one-half the proposed shoreline, as measured along the circumference, composed of the stabilized pitwall. The remaining part of the shoreline shall be graded and contoured to blend with the topography of the surrounding terrain and to provide access to the area. Detailed explanations of the techniques to be used to stabilize the pitwalls shall be submitted for approval by the regulatory authority. The regulatory authority may verify the effectiveness of the proposed stabilization techniques from a study made by an independent engineering company and based on this information and an onsite inspection, the regulatory authority will then determine the acceptability of the proposed stabilization techniques.

(d) In the event of an amendment or revision to the State of Wyoming's regulatory program, regulations, or decisions made thereunder governing such mines, the Secretary shall issue such additional regulations as necessary to meet the purpose of these regulations.

§ 716.5 Anthracite coal mines.

(a) Permittees of anthracite coal surface mines in those States where the mines are regulated by State environmental protection standards shall be subject to the environmental protection standards of the State regulatory program in existence on August 3, 1977, instead of the Part 715 of this chapter.

(b) The environmental protection provisions of Title 25, Rules and Regulations, Part 1, Department of Environmental Resources, Commonwealth of Pennsylvania, shall apply to reclamation of anthracite surface mines operated in the Commonwealth of Pennsylvania instead of Part 715 of this chapter. In addition, the regulations of the Commonwealth of Pennsylvania pertaining to standards for air and water quality shall apply instead of the regulations of Part 715 of this chapter.

(c) If a State's regulatory program or regulations for anthraciate coal mining and reclamation operations in force on August 3, 1977 are amended, the Secretary, upon receipt of a notice of amendment shall issue additional regulations as necessary to meet the purposes of this Act.

§ 716.6 Coal mines in Alaska.

(a) Permittees of surface coal mining operations in Alaska from which coal has been mined on or after August 3, 1976, shall conduct operations in a manner that, at a minimum, meets all the general performance standards of Part 715 of this chapter.

(b) The Secretary, after consultation with the Governor of Alaska, may modify the applicability of any environmental protection standard to any surface coal mining operation if he determines that it is necessary to ensure the continued operation of the mine.

(c) Any person may petition the Secretary to modify the applicability of a performance standard to a coal mine in Alaska. No particular form of petition is required. However, the petition shall be in writing and shall identify clearly—

(1) The performance standard involved;

(2) The alternative methods to be used to protect the environment and public health and safety;

(3) The reasons why a modification is requested with full descriptions of the impacts continued requirements for compliance with the performance standard to be modified would have on mining and reclamation and of the impacts the proposed method would have on the environment and public health and safety; and

(4) The location of the mine.

(d) If the Secretary determines that the petition presents reasonable justification for modifying the performance standard, he may grant a temporary suspension of enforcement of the performance standard, and he shall publish a notice of intention to modify the applicability of the performance standard in the FEDERAL REGISTER and in a newspaper of general circulation in the area of Alaska where the affected coal mine is located. A public hearing shall be held in Alaska and any person may testify for or against the proposed modification. The Secretary, after considering the public comment, and consulting with the Governor of Alaska, shall publish his decision in the FEDERAL REGISTER and in the same newspaper in which the original notice was published.

§ 716.7 Prime farmland.

(a) (1) *Applicability.* Permittees of surface coal mining and reclamation operations conducted on prime farmland as defined in paragraph (b) of this section and identified in paragraph (c) of this section and that has been used for

the production of cultivated crops, including nurseries, orchards, and other specialty crops, and small grains for a period of at least 5 years out of the 20 years preceeding the date of the permit application, shall comply with the general performance standards of Part 715 of this chapter in addition to the special requirements of this section.

(2) The requirements of this section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this section regarding actions to be taken before a permit is issued. However, operations conducted under existing permits must be in accordance with the special requirements of paragraph (g) of this section. Permit renewals or revisions shall not include continguous or noncontiguous expansions that were not in the original permit area or in a mining plan previously approved.

(b) *Definition.* Prime farmland means those lands that meet the criteria prescribed by the Secretary of Agriculture as published in the FEDERAL REGISTER on August 23, 1977. These criteria are included here for convenience. Terms used in this section are defined in U.S. Department of Agriculture publications: Soil Taxonomy, Agriculture Handbook 436; Soil Survey Manual, Agriculture Handbook 18; Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60. To be considered prime farmland the soils must meet all of the following criteria—

(1) The soils have—

(i) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches or in the root zone, if the root zone is less than 40 inches deep, to produce the commonly grown crops in 7 or more years out of 10; or

(ii) Xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (A dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown); or

(iii) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality.

(2) The soils have a soil temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that at a depth of 20 inches have a mean annual temperature higher than 32 degrees F. In addition, the mean summer temperature at this depth in soils with an 0 horizon is higher than 47 degrees F.; in soils that have no 0 horizon the mean summer temperature is higher than 59 degrees F.

(3) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep.

(4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.

(5) The soils can be managed so that, in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.

(6) The soils are not flooded frequently during the growing season (less often than once in 2 years).

(7) The soils have a product of K (erodibility factor) x percent slope of less than 2.0 and a product of I (soil erodibility) x C (climatic factor) not exceeding 60.

(8) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degrees F. or higher.

(9) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

(c) *Identification of prime farmland.* Prime farmland shall be identified on the basis of soil surveys and, if required by the regulatory authority, data on irrigation drainage flood control, and subsurface water management submitted by the applicant. The requirement for submission of soil surveys may be waived by the regulatory authority if the applicant demonstrates that no prime farmlands are involved according to procedures in paragraph (d) of this section. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey which includes the procedures set forth in Soil Taxonomy, Agriculture Handbook 436; and Soil Survey Manual, Agriculture Handbook 18. The surveys shall include—

(1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with paragraph (b) of this section;

(2) A map designating the exact location and extent of the prime farmland; and

(3) A description of each soil mapping unit.

(d) *Negative determination of prime farmland.* Where the permittee can demonstrate one or more of the following situations, the land shall not be considered as prime farmland, and a soil survey and other information required by paragraph (c) of this section shall not be required for identification:

(1) No lands within the proposed permit boundaries have been used for the production of cultivated crops for a period of at least 5 years out of 20 years preceding the date of the permit application.

(2) The slope of all land within the permit area is 10 percent or greater.

(3) Land within the permit area is not irrigated or naturally subirrigated and, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is 14 inches or less.

(4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.

(5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in paragraph (a) of this section is submitted to the regulatory authority by a qualified person other than the permittee, and is approved by the regulatory authority.

(e) *Plan for restoration of prime farmland.* The applicant shall submit to the regulatory authority a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the regulatory authority in judging the technological capability of the applicant to restore prime farmlands. The plan shall include—

(1) A description of the original undisturbed soil profile showing the thickness of each soil horizon that is to be removed, stored, and replaced.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil horizons in their natural occurring sequence;

(3) The location of areas to be used for stockpiling the soil horizons and plans for its stabilization before redistribution.

(4) If applicable documentation such as agricultural school studies or other data from comparable areas that supports the use of other suitable material instead of the B or C soil horizon to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and

(5) Plans for seeding or cropping the restored mine land and conservation practices to control erosion and sedimentation during the first 12 months after regrading is completed. Proper adjustments for seasons must be made so that regraded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(6) Agricultural school studies, company data, or other scientific data that prove that the permittee using his proposed method of reclamation will achieve the equivalent or higher levels of yield after mining as existed before mining.

(f) *Consultation with Secretary of Agriculture and issuance of permit.* (1) The regulatory authority may grant a permit which shall incorporate the plan submitted under paragraph (e) of this section if it finds in writing that the proposed plan—

(i) Demonstrates the technological capability to restore the prime farmland

within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) Is feasible and will achieve compliance with the standards of paragraph (g) of this section.

(2) Prior to the granting of any permit that includes prime farmlands, the regulatory authority shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through their State Conservationist, located in each State.

(g) *Special requirements.* For all prime farmlands to be mined and reclaimed, the permittee shall meet the following special requirements:

(1) Determine from a soil survey the depth and thickness of the A and B horizons and any underlying C horizon that collectively constitute the root zone of the locally adapted crops. If other underlying material, below the root zone of the natural soil, is to be used in soil reconstruction instead of the B horizon, these strata must be shown to be texturally and chemically equal or better suited to plant growth and of equal or greater thickness than the B horizon.

(2) Remove all soil horizons to be used in the reconstruction of the soil before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air and water pollution, the regulatory authority shall specify methods of treatment to control erosion of exposed overburden.

(i) Remove separately the entire A horizon in a manner that prevents mixing or contamination with other material before replacement.

(ii) Remove separately the B horizon of the natural soil or, if determined by the regulatory authority to be of insufficient thickness for soil reconstruction, a combination of B horizon and underlying C horizon that will constitute the reconstructed root zone, in a manner that prevents mixing or contamination with other material.

(iii) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil. To use such material, the requirements of § 715.16 of this chapter shall be met.

(3) If stockpiling of soil horizons is allowed by the regulatory authority, the A horizon and B horizon must be stored separately, the stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than 30 days must meet the requirements of § 715.16(c).

(4) Scarify the final graded land before the soil horizons are replaced to eliminate slippage surfaces.

(5) Replace the material from the B horizon, or other suitable material specified in paragraph (g)(2) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(6) Replace the A horizon as the final surface soil layer to the thickness of the original soil as determined in paragraph (g)(1) of this section in a manner that—

(i) Prevents excess compaction of both the A horizon and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper 20 inches of the reconstructed soil profile; and

(ii) Protects the A horizon from wind and water erosion before it is seeded or planted, and

(iii) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

§ 716.8 Surface effects of underground mines.

All underground coal mining operations shall comply with the following standards and shall not be required to comply with those sections of Part 715 of this chapter that are not specifically listed in this section.

(a) The requirements of § 715.11(b) of this chapter, authorization to operate.

(b) The requirement of § 715.12(a) of this chapter, sign and marker specifications; § 715.12(b), mine identification signs; § 715.12(e) as regards blasting of surface areas.

(c) The requirements of § 715.14 of this chapter, backfilling and grading, except the standards regarding mountaintop removal and thin and thick restored overburden. These requirements apply only to the surface areas disturbed to provide access to the mine and such other surface areas disturbed during the mining operation as are identified by the regulatory authority. The requirements apply at the conclusion of mining operations.

(d) The requirements of § 715.15 of this chapter, disposal of spoil and waste materials.

(e) The requirements of § 715.17 of this chapter, protection of the hydrologic system, in regard to surface discharges and surface areas that are disturbed, except that the requirements of §§ 715.17 (h) and (j) shall not apply.

(f) The requirements of § 715.18 of this chapter, dams constructed of refuse materials.

(g) The requirements of § 715.19 of this chapter in regard to explosives used during surface operations.

(h) The requirements of § 715.20 of this chapter in regard to revegetation of surface areas disturbed. The requirements apply at the conclusion of mining operations.

PART 717—ADOPTION OF STATE STANDARDS

§ 717.1 Procedures for adoption.

(a) Any State law or regulation which is determined by the Secretary under the procedures in this section to be a more stringent performance standard for regulation of surface coal mining and reclamation operations than that provided under a performance standard in Part 715 or Part 716 of this chapter shall be adopted by the Secretary and applied in that State in lieu of the requirements of the standards in Part 715 or 716.

(b) A State may request the Secretary to review the provisions of any State law or regulation to determine whether such law or regulation provides a more stringent performance standard than comparable provisions in Part 715 or 716 of this chapter. No particular form of request is required. However, the request shall be in writing and shall include the text of the State law or regulation, identification of the comparable performance standard in Part 715 or Part 716 of this chapter, and an analysis of the reasons why the State law or regulation is a more stringent standard.

(c) If the Secretary determines that the requirements of State law or regulation may be more stringent than the comparable performance standard in Part 715 or Part 716 of the chapter, he shall initiate rulemaking under the procedures of section 501 of the Act for adoption of the standard.

(Secs. 201 and 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201))

PART 720—STATE ENFORCEMENT ACTIVITIES

Sec.
720.11 Enforcement authority.
720.12 Enforcement responsibilities.
720.13 Permits.
720.14 Reporting obligations.

AUTHORITY: Secs. 201, 501 and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

§ 720.11 Enforcement authority.

Nothing in these regulations shall be interpreted to preclude a State from exercising its authority to enforce State law, regulations, and permit conditions unless—

(a) Compliance with the State law, regulation or permit condition will preclude compliance with these regulations.

(b) The Secretary has published in the FEDERAL REGISTER a list of state laws and regulations which have been preempted.

§ 720.12 Enforcement responsibilities.

If a State regulates the conduct of surface coal mining operations, the Act contemplates that the State will enforce the performance standards of Parts 715 and 716 of this Chapter that are more stringent than the requirements of State law

and the obligations of operators under Part 710 of this Chapter.

§ 720.13 Permits.

On or after February 4, 1978, if a State is enforcing the performance standards of Parts 715 and 716 of this Chapter that are more stringent than State law, that State shall develop and incorporate terms in initial, revised, or renewed permits that comply with those standards.

§ 720.14 Reporting obligations.

(a) During the initial regulatory program, each State regulatory authority shall submit to the district manager of the Office with jurisdiction over the inspected surface coal mining operation, or other office designed by the Director, within 5 days after its completion a copy of each State report which contains observations of the condition of the mine site and relates to the obligations imposed by these regulations.

(b) Any State issuing an initial, revised, or renewed permit on or after February 4, 1978, to conduct surface coal mining operations shall submit a copy of the application and the permit to the district manager of the Office with jurisdiction over the surface coal mining operation, or to such other office as the Director designates.

PART 721—FEDERAL INSPECTIONS

Sec.
721.11 Extent.
721.12 Right of entry.
721.13 Inspections based on citizen requests.
721.14 Failure to give notice and lack of reasonable belief.

AUTHORITY: Secs. 201, 501 and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201)

§ 721.11 Extent.

The authorized representatives of the Secretary shall conduct inspections of surface coal mining operations subject to regulations under the Act—

(a) On the basis of not less than two consecutive State inspection reports indicating a violation of the Act, regulations or permit conditions required by the Act;

(b) On the basis of information provided by a State or any person which gives rise to a reasonable belief that the provisions of the Act, regulations or permit conditions required by the Act are being violated, or that a condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources; and

(c) On a random basis of at least one complete inspection each 6 months. A complete inspection is an onsite review of the entire area disturbed or affected by mining.

§ 721.12 Right of entry.

(a) Authorized representatives of the Secretary, without advance notice and upon presentation of appropriate credentials and without a search warrant, shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records to be maintained are located.

(b) The authorized representatives may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act, the regulations or the permit.

§ 721.13 Inspections based on citizen requests.

(a) *Citizen reports* (1) Any person who suspects or knows of a violation of the Act, regulations or permit conditions required by the Act or of any imminent hazard may report this information in writing to the Office of Surface Mining Reclamation and Enforcement office nearest to the surface coal mining operation to which the information relates or to any other Office of Surface Mining Reclamation and Enforcement office. Written complaints must be signed and include a phone number where the complaining party can be contacted. The complaint or other information shall be considered as having a reasonable basis if it alleges facts which, if proven to be true, would be sufficient to show a violation of the Act, regulations or permit. Unless the Office has reason to believe that the information is incorrect, or determines that even if true it would not constitute a violation, the Office shall conduct an inspection.

(2) The identity of any person supplying information to the Office relating to possible violations or imminent hazards shall remain confidential within the Office unless the person supplying the information consents in writing to disclosure.

(b) *Right to accompany the authorized representative of the Secretary.* (1) If a Federal inspection is conducted as a result of information provided to the Office, the person who provided the information shall be notified when the inspection is to occur and the person will be allowed to accompany the authorized representative during the inspection.

(2) Any person accompaying an authorized representative of the Secretary has a right of entry to, upon and through the mining and reclamation operations about which he supplied information only if he is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property.

(c) *Notification of results of investigation.* Within 10 days of the inspection or, if no inspection, within 10 days of the complaint, the Office shall notify the person in writing of the following—

(1) The results of the investigation, including a description of any inspection which occurred and any enforcement action taken; copies of Federal inspection reports, notices of violation, and cessation orders may be forwarded to the person in satisfaction of this requirement.

(2) If no inspection was conducted, an explanation of the reason for not inspecting;

(3) A statement as to the person's right to informal review of the actions or inactions of the Office.

(d) *Review of action of local offices.* A person who does not agree with the action taken by the Office on his report may request the Regional Director to review the complaint and actions taken. The Regional Director shall advise the person in writing of the results of the review.

§ 721.14 Failure to give notice and lack of reasonable belief.

No notice of violation or cessation order may be vacated by reason of failure to give notice required by the Act prior to the inspection or by reason of a subsequent determination that prior to the inspection the Office did not have information sufficient to create a reasonable belief that a violation had occurred.

PART 722—ENFORCEMENT PROCEDURES

Sec.
722.1 Scope.
722.11 Imminent hazards.
722.12 Non-imminent hazard violations.
722.13 Failure to abate.
722.14 Service of notice.
722.15 Review at minesite of cessation orders.
722.16 Inability to comply.
722.17 Pattern of violation.

AUTHORITY: Secs. 201, 501 and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

§ 722.1 Scope.

The regulations of this part set forth general procedures governing issuance of orders of cessation, notices of violation, and orders to show cause under section 521 of the Act.

§ 722.11 Imminent hazards.

(a) If an authorized representative of the Secretary finds conditions, or practices, or violations of applicable performance standards, which create an imminent danger to the health or safety of the public the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation.

(b) If an authorized representative of the Secretary finds conditions or practices, or violations of applicable performance standards, which can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation.

(c) An authorized representative of the Secretary shall impose affirmative obligations on an operator which the authorized representative deems necessary to abate the condition, practice or violation if—

(1) A cessation order is issued under paragraph (a) or (b) of this section; and

(2) The cessation of mining or reclamation activities will not completely abate the imminent danger to public

health or safety or the significant, imminent environmental harm or eliminate the practices or conditions that contributed to the imminent danger or significant, imminent environmental harm.

(d) When imposing affirmative obligations under this section, the authorized representative shall require abatement of the danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.

(e) An authorized representative of the Secretary may terminate a cessation order issued under paragraph (a) or (b) of this section by written order when the authorized representative of the Secretary determines that the conditions or practices or violations which caused the danger to life or the environment have been eliminated.

§ 722.12 Non-imminent hazard violations.

(a) If an authorized representative of the Secretary finds a violation which is not an imminent hazard, the authorized representative shall issue a notice of violation fixing a reasonable time for abatement.

(b) An authorized representative may extend the time to abate a violation by written notice if the failure to abate within the time set was not caused by the permittee's or operator's lack of diligence.

(c) The total time for abatement as originally fixed and subsequently extended shall not exceed 90 days.

§ 722.13 Failure to abate.

An authorized representative of the Secretary shall order cessation of surface coal mining and reclamation operations, or the portion relevant to the violation, when the authorized representative has issued a notice of violation under § 722.12 and determines that the permittee or operator has failed to abate the violation within the time originally fixed or subsequently extended. In a cessation order issued under this section, the authorized representative shall impose affirmative obligations to abate the violation in the manner provided in § 722.11.

§ 722.14 Service of notice.

Notices and orders issued under this part shall be given to the permittee or operator or his designated agent. If no designated agent is at the mine site, service will be made upon any person who appears to be in charge of the mining or reclamation operation. The person receiving service shall be responsible for any immediate compliance actions required by the notice or order. Service is complete on delivery at the mine. However, a copy of each notice or order shall be mailed to the permittee or operator within 5 days.

§ 722.15 Review at minesite of cessation orders.

(a) Within 30 days after the permittee or operator has received any cessation order issued under this part, the District Manager or his delegate shall conduct an informal hearing at the minesite or within such reasonable proximity to the mine that it may be visited during the conduct of the hearing. No hearing will be required where the condition, practise or violation in question has been abated or the operator waives the hearing.

(b) Any request made to the Office of Surface Mining Reclamation and Enforcement for a substantial modification or vacation of a cessation order shall be deemed a request for an informal hearing under this section.

(c) Notice of the time, place and subject matter of the hearing shall be given to the operator or permittee, any citizen who filed a report which led to the cessation order to be reviewed and the state regulatory authority. Notice of the hearing also shall be posted at the appropriate district or field office and at the mine site and, to the extent possible, shall be given by newspaper in the area of the mine.

(d) The requirements of section 554 of Title 5 of the United States Code shall not govern the conduct of the hearings required by this section. The District Manager of his delegate may accept oral or written arguments, presentations of evidence, or any other relevant information from any person attending.

(e) The District Manager or his delegate shall within 15 days of the close of the informal hearing affirm, modify, or vacate the order. The decision shall be in writing and shall be sent to the permittee or operator, any citizen who filed a reprof which led to the cessation order reviewed and the State regulatory authority.

(f) Informal review under this subsection shall not affect the rights of any person to request formal review under section 525(a)(1) of the Act. A request for informal review under this section of the Act shall not affect the 30 day time period for filing a request for formal review under section 525(a)(1) of the Act.

§ 722.16 Inability to comply.

(a) Neither a notice of violation nor a cessation order issued under this part may be vacated because of inability to comply.

(b) A permittee or operator may not be deemed to have shown good cause for not suspending or revoking a permit by showing inability to comply.

(c) Unless caused by lack of diligence, inability to comply may be considered in mitigation of the amount of a Civil penalty under part 2033 of this Chapter and of the duration of the suspension or revocation of the permit under § 722.17.

§ 722.17 Pattern of violations.

(a) The regulations of this section set forth the procedures governing the suspension or revocation of State permits based on a pattern of violations arising during Federal inspections during the initial regulatory program.

(b) *Definitions* As used in this Section—

(1) *"Violations of the same or related requirements of the Act, regulations or permit conditions"* means noncompliance with any single section Parts 715, 716 or 717 of this chapter.

(2) *"Violations of different requirements of the Act, regulations or permit conditions"* means noncompliance with different sections of Part 715, 716 or 717 of this chapter.

(3) *"Unwarranted failure to comply"* means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or these regulations due to indifference, lack of diligence, lack of reasonable care, or the failure to abate any violation of such permit, the Act or regulations due to indifference, lack of diligence or lack of reasonable care.

(4) *"Willful violation"* means an intentional action or omission which violates the Act, regulations or permit conditions required under the Act.

(c) *Order to show cause.* (1) If a Regional Director of the Office determines that a pattern of violations exists or has existed and that such violations are caused by the unwarranted failure of the permittee or were willfully caused, the Regional Director shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The Regional Director may determine that a pattern of violations exists or has existed, after considering the circumstances, including—

(i) The number of willful violations or violations caused by unwarranted failure to comply with the same or related requirements of the Act, regulations or permit conditions during 2 or more Federal inspections.

(ii) The number of willful violations or violations caused by unwarranted failure to comply with different requirements of the Act, regulations or permit conditions.

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Regional Director shall deem a pattern to exist if the number of willful violations or violations caused by unwarranted failure to comply with the Act, regulations or permit conditions is at a rate 50 percent above the national norm during two months of any four month period. The national norm will be determined by comparing the number of willful and unwarranted violations issued per inspection day to permittees in the initial regulatory period. The norm will be determined semi-annually and the norm for the proceeding half year will be utilized in determining whether a pattern exists. The national norm may be computed by a sampling or other statistically-valid method when the data exists for the computation.

(d) *Suspension or revocation of permit.* (1) The order to show cause shall be issued and a public hearing, if requested, shall be conducted under the procedures of 43 CFR Part 4.

(2) If the Secretary finds that a pattern of violations exists or has existed, the permit shall be either suspended or revoked and the permittee directed to complete necessary reclamation operations.

PART 723—CIVIL PENALTIES

Sec.
723.1 Scope.
723.2 Objective.
723.11 When assessment made.
723.12 When to assess after a notice of violation.
723.13 Determination of amount of penalty.
723.14 Assessment of separate violation for each day.
723.15 Procedures for assessment of civil penalties.
723.16 Procedure for conference.
723.17 Request for hearing.
723.18 Availability of records.

AUTHORITY: Sec. 201, 501 and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201)

§ 723.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations. This part governs when a civil penalty is assessed and how the amount is determined and sets forth applicable procedures. This part applies to cessation orders and notices of violation issued to permittees or operators under Part 722 of this chapter during a Federal inspection.

§ 723.2 Objective.

Civil penalties are assessed under section 518 of the Act to deter violations of the Act and to insure the maximum compliance with the Act on the part of the coal mining industry.

§ 723.12 When to assess after a notice of

(a) The Office will review each notice of violation and cessation order issued in accordance with the assessment procedures described in this section to determine whether a civil penalty will be assessed, the amount of the penalty and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

(b) The Office shall assess a civil penalty for each violation contained in a cessation order. If a cessation order is issued for a condition or practice which is not a violation, no civil penalty shall be assessed.

(c) In determining whether to assess a civil penalty the Office shall consider—

(1) The permittee or operator's history of previous violations at the particular coal mining operation;

(2) The seriousness of the violation;

(3) Whether the permittee or operator is negligent; and

(4) The demonstrated good faith of the permittee or operator is attempting to achieve rapid compliance after notification of the violation. The Office shall make this determination by use of a point system described in § 723.12.

§ 723.12 When to assess after a notice of violation.

(a) *General.* The Office determines whether to assess a penalty following the issuance of a notice of violation by a point system that takes into account the four criteria in § 723.4(c). Points are assigned based on each of the four criteria. If the total is more than 30 points, a penalty is assessed.

(b) *History of previous violations.* The Office shall assign one point for each past violation and five points for each past cessation order issued as a result of a violation up to a maximum of 30 points. Each violation which underlies a cessation order shall be counted separately from the cessation order itself. Violations and cessation orders which shall be counted are those, resulting from a Federal inspection, that have not been vacated or dismissed at the time of the assessment being computed and that occurred or were issued within the year preceding the violation under consideration. The Office shall count each violation without regard to whether it led to a civil penalty assessment.

(c) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation according to the following schedules.

(1) *Probability of occurrence.* The probability of the occurrence of the event against which a standard is directed may account for a maximum of 15 penalty points. The Office shall use the following definitions and schedules—

(i) Probability of occurrence:	Points
None or insignificant	0- 5
Unlikely	5-10
Likely	10-15
Occurred	15

(2) *Extent of potential or actual damage.* The extent of the potential or actual damage in terms of area and impact on the public or environment may account for a maximum of 15 penalty points based on the following—

(i) If the damage or impact against which the standard violated is designed to protect would remain within the permit area (or in the case of a deep mine, the area of surface structures), the Office shall assign zero to seven points depending on the duration and extent of the damage or impact.

(ii) If the damage or impact, against which the standard violated is designed to protect, would extend outside the permit area (or in the case of a deep mine, the area of surface structures), the Office shall assign eight to fifteen points depending on the duration and extent of the damage or impact.

(3) The Office shall assign up to 15 points for seriousness for any failure to keep records, to give notice or to conduct any measuring or monitoring required by the regulations or a permit based upon the extent to which enforcement is obstructed. If the method of assigning points for seriousness under paragraph (c) (1) and (2) of this section produces more points, the higher points shall be assigned.

(d) *Negligence.* (1) The Office shall assign up to 25 points based on the negligence of the permittee or operator, either through act or omission, in causing or failing to correct the condition or practice which is a violation. A violation which occurs through no negligence shall not be assigned penalty points for negligence. A violation which is caused by negligence shall be assigned 12 points or less depending on the degree of negligence. A violation which occurs through a greater degree of fault than negligence shall be assigned 13 through 25 penalty points depending on the degree of fault.

(2) In determining the degree of negligence involved in a violation and the number of penalty points to be assigned, the following definitions apply—

(i) *No negligence* means an inadvertent violation of the Act, regulations or permit conditions which was unavoidable by the exercise or reasonable care.

(ii) *Negligence* means the failure of a permittee or operator to prevent the occurrence of any violation of his permit or any requirement of the Act or the regulations due to indifference, lack of diligence, or lack of reasonable care, or the failure to correct any violation of such permit or the Act or the regulations due to indifference, lack of diligence or lack of reasonable care.

(iii) Examples of greater degree of fault than negligence are reckless, knowing or intentional conduct.

(3) In calculating points to be assigned for negligence, the actions of all persons working on the mine site shall be attributed to the permittee or operator.

(e) *Good faith in attempting to achieve compliance.* (1) The Office shall subtract or add points based on the degree of good faith of the permittee or operator in attempting to achieve rapid compliance after notification of the violation. The points shall be assigned according to the following schedule—

Degree Of Good Faith:	Points
Rapid	−10
Normal	0
Lack of good faith	10

(2) In determining the permittee's or operator's degree of good faith in attempting to achieve rapid compliance, the following definitions apply—

(i) *Rapid Compliance* means that the permittee or operator took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved more rapidly than reasonably required.

(ii) *Normal Compliance* means the permittee or operator abated the violation within the time given for abatement.

(iii) *Lack of Good Faith* means the permittee or operator did not show diligence in attempting to abate the violation and the violation was not timely abated.

(3) If the consideration of this criteria is impractical because the length of the abatement period, the assessment may be made without considering this criteria. Any such assessment may be reconsidered upon the permittee or operator's request after abatement is completed.

§ 723.13 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under § 723.12 to a dollar amount according to the following schedule:

25 and below-500	48-2,800
26-600	49-2,900
27-700	50-3,000
28-800	51-3,100
29-900	52-3,200
30-1,000	53-3,300
31-1,100	54-3,400
32-1,200	55-3,500
33-1,300	56-3,600
34-1,400	57-3,700
35-1,500	58-3,800
36-1,600	59-3,900
37-1,700	60-4,000
38-1,800	61-4,100
39-1,900	62-4,200
40-2,000	63-4,300
41-2,100	64-4,400
42-2,200	65-4,500
43-2,300	66-4,600
44-2,400	67-4,700
45-2,500	68-4,800
46-2,600	69-4,900
47-2,700	70 and above 5,000

§ 723.14 Assessment of separate violations for each day.

(a) If a cessation order is issued for failure to abate a violation within the time set in a prior notice of violation or cessation order, the Office shall assess separately each day the violation underlying the cessation order remains unabated. The daily penalty shall be the amount assessed for the violation or $750.00, whichever isg reater. The daily assessment of a penalty shall not be made for any period that the obligation to abate is suspended.

(b) The Office may assess separately each day of any continuing violation. In making this determination, the Office shall consider the factors listed in $750.00, whichever is greater. The daily permittee or operator which resulted from a failure to comply.

(c) The Office shall separately assess a minimum of two days for any continuing violation which is assigned more than 70 points under § 723.12.

§ 723.15 Procedures for assessment of civil penalties.

(a) With 10 days of service of a notice or order, the permittee or operator may submit information in writing pertaining to the violation involved to the District Office with jurisdiction over the mine and to the inspector who issued the notice or order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve the permittee or operator, by certified mail return receipt requested, with 30 days of the issuance of the notice or order, with a copy of the proposed assessment and of the worksheets showing the computation.

§ 723.16 Procedure for conference.

(a) If a written request from the permittee or operator is received within 15 days from receipt of a proposed assessment, the Office shall arrange for a conference to review the assessment. The permittee or operator may submit additional material for consideration during the conference. The Office may contact the permittee or operator to discuss the assessment prior to the conference if necessary to expedite the review.

(b) The Office shall consider all relevant information on the violation in question presented by the permittee or operator and may recalculate either up or down or vacate the proposed penalty. No information as to which the permittee or operator claims confidentiality shall be considered as a basis for reduction of a proposed assessment. When new facts warrant the imposition of a higher penalty, it shall be proposed in the manner provided in § 723.15. Every change in a proposed assessment shall be fully documented in the file including a written explanation of the reason the penalty has changed.

(c) Notice of the time and place of the conference shall be posted at the Office Surfacing Mining Reclamationt and Enforcement field office with jurisdiction over the mine at least five days prior to the conference. Any person shall have a right to attend the conference.

(d) If the issues are resolved, the agreement shall be in writing and signed by both parties. If payment is not received within 10 days, the Office may—

(1) Enter the agreed upon amount as a final order of the Secretary; or

(2) Rescind the agreement and reinstate the original proposed assessment.

(e) A reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 agreed to during a conference shall be approved by the Regional Director or his designee before it is final and binding on the Secretary.

§ 723.17 Request for hearing.

(a) Within 30 days from receipt of the proposed assessment, the permittee or operator may request a hearing before the Office of Hearings and Appeals by filing a petition and tendering full payment of the proposed assessment to be held in escrow.

(b) The timely filing of a request for a conference under § 723.16 suspends the running of the 30-day period for requesting a hearing. The suspension shall continue until the completion of the conference, which shall be held within 60 days from the date of the request for the conference. The permittee or operator shall have 15 days after completion of the conference to request a public hearing.

(c) The Office of Hearings and Appeals conducts the hearings and issues orders or otherwise terminates the petition pursuant to its procedures in 43 CFR Part 4. The Office of Hearings and Appeals may determine whether a violation occurred. When determining the amount of the penalty the Office of Hearings and Appeals shall use the point system and conversion table contained in this part.

§ 723.18 Availability of records.

All records and files created or used in the assessment process under this part shall be available for public inspection.

PART 725—REIMBURSEMENTS TO STATES

Sec.

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AUTHORITY: Secs. 201, 501 and 502, Pub. L. 95-87; 91 Stat. 445 (30 U.S.C. § 1201)

§ 725.1 Scope.

This part sets forth policies and procedures for reimbursements to States for costs of enforcing performance standards set forth in Parts 715 and 716 of this chapter during the initial regulatory program.

§ 725.2 Objectives.

The objectives of assistance under this part are:

(a) To assist the States in meeting the increased costs of administering the initial performance standards.

(b) To encourage the States to build strong reclamation and enforcement programs.

§ 725.3 Authority.

Section 502(e)(4) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to reimburse States for costs of enforcing the performance standards of the initial regulatory program.

§ 725.4 Responsibility.

(a) The Director shall administer the grant program for reimbursements to States for costs of enforcing performance standards during the initial regulatory program

(b) The Regional Director of each of the Office regions shall receive, review, and approve grants applications under this part.

§ 725.5 Definitions.

As used in this part, the following terms have the specified meanings:

Agency means the State agency designated by the Governor to receive and administer grants under this part.

Base program means the State program to regulate surface coal mining prior to August 3, 1977.

§ 725.11 Eligibility.

(a) *Assumption of responsibility.* To be eligible for a grant for reimbursements for the cost of enforcing performance standards during the initial regulatory program, the State shall assume responsibility for enforcement of the initial regulatory program including the specific

responsibilities identified under part 2030 of this chapter.

(b) *Designation of State agency.* In order to receive a grant for reimbursements for costs of enforcing performance standards during the initial regulatory program, the Governor of a State shall designate in writing one agency to submit grant applications, receive and administer grants under this part.

(c) *Periods covered by reimbursement grants.* An agency may apply for a reimbursement grant for any period during the initial regulatory program and for a reasonable start-up period beginning no earlier than August 3, 1977.

§§ 725.12 Coverage of grants.

An agency may use grant money under this part to cover costs in excess of the base program for administering and enforcing the initial regulatory program. The Regional Director shall determine the base program from the State fiscal year budget in effect on August 3, 1977. Costs of the following activities are eligible for reimbursement—

(a) Incorporation of the initial performance standards of Parts 715 and 716 of this chapter in new permits issued by the State.

(b) Modification of existing permits to include the initial performance standards of Parts 715 and 716 of this chapter.

(c) Additional inspections required to enforce the initial performance standards of Parts 715 and 716 of this chapter.

(d) Inspections which are more detailed than inspections before the initial regulatory program.

(e) Responses to complaints related to the initial performance standards of Parts 715 and 716 of this chapter.

(f) Enforcement actions required to secure compliance with the initial performance standards of Parts 715 and 716 of this chapter.

(g) Additional administrative activities related to hiring additional inspectors, revising permits, conducting inspections, preparing, copying and submitting reports required by Part 720, and submitting applications for reimbursement grants under this part.

§ 725.13 Amount of grants.

The Office shall pay 100 percent of the incremental costs to the agency of enforcing the performance standards during the initial regulatory program.

§ 725.14 Grant periods.

The Regional Director shall approve a grant for a period of 1 year or less. The Regional Director shall fund a program that extends over more than 1 year by consecutive annual grants.

§ 725.15 Grant application procedures.

(a) The agency may submit its application for a grant to the Regional Director no later than December 15, 1977, for the first year and no later than October 31 of each year thereafter.

(b) The agency shall use the short form application for nonconstruction programs and other procedures specified by Federal Management Circular 74-7, "Uniform administrative requirements for grants-in-aid to State and local governments" (34 CFR 256). No preapplication is required.

(c) Agencies shall include in Part III of the standard application sufficient information to enable the Regional Director to determine the Agencies' base programs and increases over the base programs eligible for reimbursement grants. Agencies shall include the following information, plus any other relevant data:

(1) A summary of the State permit, inspection and enforcement program, prior to the addition of the requirements of the Act of 1977, including—

(i) Permit requirements and the system for issuing permits;

(ii) Mining and reclamation plan requirements;

(iii) Coverage and frequency of inspections;

(iv) Actions required to enforce mining and reclamation requirements;

(v) The number and nature of responses to complaints; and

(vi) Other regulatory activities and related administrative functions affected by the performance standards of the initial regulatory program specified in Parts 715 and 716 of this chapter.

(2) A statement of the number of employees and annual budget required to carry out functions described in paragraph (c)(1) of this section.

(3) A copy of all State constitutional, statutory and regulatory provisions applicable to the enforcement and administration of the initial regulatory program.

(4) An opinion of the State's chief legal officer as to whether and to what extent the State is authorized to enforce and administer the initial regulatory program.

(5) A statement of the additional work required to enforce the initial regulatory program for each of the agency activities described in paragraph (c)(1) of this section.

(6) The additional staff and funds required for the increased workload described in paragraph (c)(5) of this section.

(d) The Regional Director may waive the resubmission of information required by paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) of this section in applications for a second or third reimbursement grant.

§ 725.16 Grant agreement.

(a) If a Regional Director approves of an agency's grant application, the Regional Director shall prepare a grant agreement which includes—

(1) The approved scope of the program to be covered by the grant.

(2) The base program budget and estimated costs in excess of the base program.

(3) The amount of the grant.

(4) Commencement and completion dates for the segment of the program covered by this grant and for major phases of the program to be completed during the grant period.

(5) Permissible transfers of funds to other State agencies.

(b) The Regional Director shall limit grants under this part to the additional costs to an agency for enforcing the initial regulatory program.

(c) The Regional Director may not permit an agency to delegate or transfer its responsibility for the use of grant funds.

(d) Except as may be provided by the grant agreement, costs may not be incurred prior to the executive of the agreement.

(e) The Regional Director shall transmit four copies of the grant agreement, by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Regional Director.

(f) The Regional Director shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Regional Director signs the agreement.

(g) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or to enter into any grant amendment, including grant increases to cover cost overruns.

§ 725.17 Grant amendments.

(a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Regional Director or by mutual action of the agency and the Regional Director.

(b) The agency shall promptly notify the Regional Director in writing by certified mail, return receipt requested, of events or proposed changes which may require a grant amendment, such as—

(1) Rebudgeting;

(2) Changes which may affect the approved scope or objective of a program; or

(3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Regional Director shall promptly approve or disapprove each proposed amendment, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The grant amendment establishes the effective date of the action. If no date is specified in the grant amendment then the date the Regional Director signs the amendment will be the effective date of the action.

§ 725.18 Grant reduction and termination.

(a) *Conditions for reduction or termination.* (1) If an agency fails to carry out its responsibilities pursuant to Part 720 of this chapter the Regional Director shall reduce or terminate the grant.

(2) If any agency violates the terms of a grant agreement, the Regional Director may reduce or terminate the grant.

(3) If an agency fails to enforce the initial performance standards of Parts

715 and 716 of this chapter the Regional Director may reduce or terminate the grant.

(4) If an agency fails to enforce the conflict of interest provisions of Part 705 of this chapter the Director shall terminate the grant.

(5) If an agency fails to submit reports required by this part or Parts 720 and 705 of this chapter the Director may reduce or terminate the grant.

(b) *Grant reduction and termination procedures.* (1) The Regional Director shall give at least ten days' written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Regional Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Regional Director shall afford the agency opportunity for consultation prior to reducing or terminating a grant.

(3) The Regional Director shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However, any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the agency.

(5) The agency shall reduce the amount of outstanding commitments insofar as possible and report to the Regional Director the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate, the agency shall not make any new commitments without the approval of the Regional Director.

(7) The Regional Director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74–7.

(c) *Appeals.* (1) Agencies may appeal the Regional Director's decision to reduce or terminate a grant to the Director within 30 days of the Regional Director's decision.

(2) Agencies shall include in an appeal—

(i) The decision being appealed, and

(ii) The facts which the Agencies believe justify a reversal or modification of the decision.

(3) The Director shall act on appeals within 30 days of their receipt.

§ 725.19 Audit.

The agency shall conduct a final audit following the end of each grant pursuant to the procedures in Federal Management. Circular 74–7.

§ 725.20 Administrative procedures.

Administrative procedures governing accounting, payment, property, and related requirements are contained in Federal Management Circular 74–7.

§ 725.21 Allowable costs.

(a) The Regional Director shall determine costs which may be reimbursed according to Federal Management Circular 74–4, "Cost principles applicable to grants and contracts with State and local governments" (34 CFR 255).

(b) Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement or this part.

(c) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(d) Costs must not be allocated to or included as a cost of any other Federally assisted program.

§ 725.22 Financial management.

(a) Agency accounting for grant funds shall be in accordance with the requirements of Federal Management Circular 74–7. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency accounting records shall be supported by source documentation.

(f) The agency shall schedule audits to determine the fiscal integrity of financial transactions and reports, and compliance with the terms of the grant agreement.

(g) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 725.23 Reports.

(a) The agency shall, for each grant made under this part submit annually to the Regional Director a Financial Status Report in accordance with Federal Management Circular (FMC) 74–7, Attachment H. This report shall be accompanied by a performance report prepared according to Attachment I of FMC 74–7.

(b) The Regional Director shall require through the grant agreement that annual reports also provide the relation of financial information to performance and productivity data, including unit cost information.

§ 725.24 Records.

(a) The agency shall maintain complete records in accordance with Federal Management Circular 74–7. This includes books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Contractors, including contractors for professional services, shall maintain books, documents, papers, and records which are pertinent to a specific grant award.

(c) The agency's records and the records of its contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor, or any authorized representative.

(d) For completed or terminated grants, the agency and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to FMC 74–7.

§ 725.25 Disclosure of information.

All grant applications received by the Regional Director constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and shall be disclosed unless exempt from disclosure under 5 U.S.C. 522(b).

PART 740—GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

Sec.

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AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201).

§ 740.1 Scope.

This part sets forth policies and procedures for grants to States to—

(a) Develop state programs for the regulation and control of surface coal mining and reclamation operations;

(b) Administer and enforce state programs for the regulation and control of surface coal mining and reclamation operations; and

(c) Administer cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.

§ 740.2 Objectives.

The objectives of assistance under this part are—

(a) To assist the States in meeting the costs of administering reclamation and enforcement programs consistent with the Act;

(b) To encourage the States to build strong reclamation and enforcement programs; and

(c) To encourage the States to assume jurisdiction over surface coal mining regulation and reclamation operations.

§ 740.3 Authority.

Section 705 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to make grants to States for developing, administering and enforcing State regulatory programs.

§ 740.4 Responsibility.

(a) The Director shall administer the State grant program for the development, administration, and enforcement of State programs under this part.

(b) The Regional Director of each of the Office regions shall receive, review, and approve grant applications under this part.

§ 740.5 Definitions.

As used in this part, agency means the State agency designated by the Governor to receive and administer grants under this part.

§ 740.11 Eligibility for program development grants.

(a) *Designation of State agency.* In order to receive a program development grant the Governor of a State shall designate in writing to the Director one agency to submit the grant applications, and to receive and administer the grants.

(b) *Periods covered by program development grants.* (1) An agency may apply for a program development grant for any period for which it does not have an approved State program. This is limited to periods during—

(i) The initial development of a State program;

(ii) The revision of a State program which has been disapproved by the Secretary; and

(iii) The revision of a State program from which the Secretary has withdrawn his approval.

(2) The Director shall limit grants for (b)(1) (ii) and (iii) of this paragraph to the costs of making revisions necessary to secure approval of the State programs.

(3) The Director shall not approve grants for costs incurred prior to August 3, 1977.

(c) *Limits on duration of grants.* (1) The Regional Director shall limit a State's program development grants to a maximum period of 18 months unless at least one of the following conditions exists—

(i) The 18-month period is insufficient because new legislation is required.

(ii) The State requests extension of the grant period for a reason found appropriate by the Regional Director.

(2) If one of the two conditions in this paragraph exists, the Director may extend the grant period to a maximum of 24 months.

§ 740.12 Eligibility for administration and enforcement grants.

(a) *Approved program required.* In order to receive a grant to administer and enforce a State program, the State must have an approved State regulatory program.

(b) *Designation of a State agency.* In order to receive a grant to administer and enforce a State program, the Governor must designate a single agency to receive and administer administration and enforcement grants, including cooperative agreement grants described in § 740.16.

(c) *Nondiscrimination.* The agency shall monitor the compliance activity of its subrecipients with respect to the nondiscrimination provisions in § 740.19.

(d) *When an agency may apply.* An agency may apply for an administration and enforcement grant so long as the State program is approved by the Secretary.

§ 740.13 Submission of estimated annual budgets and allocation of funds.

(a) *Program Development Grants.* As early as possible prior to the Federal fiscal year in which the program development grant will be requested an agency shall submit to the Regional Director a summary of its program development budget. The Director will use these budget summaries in preparing the Federal budget estimates which he is required to submit.

(b) *Administration and Enforcement Grants.* (1) For the fiscal years beginning on and after October 1, 1979, the agency shall submit to the Regional Director an initial estimate of its coal regulatory program budget, including the costs of administering State-Federal cooperative agreements pursuant to § 211.75 of this title, 18 months prior to the Federal fiscal year in which the grant will be requested. Agencies may include those activities required to administer and enforce the regulatory program in their regulatory program budget. The Director will use these budget summaries in preparing the Federal budget estimates which he is required to submit.

(2) For the fiscal year beginning October 1, 1979, and each year thereafter, the agency shall submit to the Regional Director a current regulatory program budget 3 months prior to the beginning of the Federal fiscal year for which a grant will be requested.

(c) *Allocation of funds.* (1) The Director shall allocate to the agencies the full amount requested and approved in the revised or actual budgets provided that the amount available in the Federal budget is sufficient.

(2) If the funds available to the Director for grants are insufficient to cover the total grant needs, including cooperative agreement grants, the Director shall allocate the funds available according to the proportion of each agency's budget to the total of all agencies' budgets.

(3) Allocation of a specific amount of funds to an agency does not assure that grants for that amount will be approved. Each agency must apply for and secure approval of grants in accordance with the requirements of this part.

(4) On July 1 of each year the Director shall reallocate any funds which are not requested by agencies as of June 1 of that year. Such funds shall be allocated only to those agencies which have received less than the allowable percentage of their eligible costs. Allocation shall be based on the proportion of each agency's mutually agreed upon costs to total mutually agreed upon costs in all agencies' regulatory program budgets for the current Federal fiscal year.

(5) Agencies which are allocated additional funds on July 1 may have until August 15 to submit new or revised grant applications for the additional amounts.

§ 740.14 Coverage of grants.

(a) *Program development grants.* An agency may use grant money under this part to develop—

(1) New or revised State laws, regulations, and procedures;

(2) Revised or expanded inspection systems;

(3) Training programs for inspectors and other personnel;

(4) New or revised organizational structures;

(5) Information and communications systems, including data processing systems;

(6) A planning process including a data base and information system to receive and act upon petitions to designate lands unsuitable for mining;

(7) An application for the initial administration and enforcement grant to the extent not covered by indirect costs or other cost items;

(8) Other components necessary to obtain an approved State program, as mutually agreed upon by the Regional Director and the agency receiving a grant.

(b) *Administration and enforcement grants.* An agency may use grant money under this part to administer an approved State regulatory program.

§ 740.15 Amount of grants.

(a) *Amount of program development grants.* (1) For the first year of a program development grant the Regional Director shall approve grants for not more than 80 percent of the total of agreed upon costs pursuant to § 740.14 (a).

(2) For the second year of a program development grant the Regional Director shall approve grants for not more than 60 percent of the total agreed upon costs pursuant to § 740.14(a).

(b) *Amount of administration and enforcement grants.* (1) If no program development grant has been awarded, the Regional Director may approve the first administration and enforcement grant

for 80 percent of the agreed upon costs for administration and enforcement of the program.

(2) If a program development grant has been awarded for only 1 year, the Regional Director may approve an administration and enforcement grant for 60 percent of the agreed upon costs for administration and enforcement of the program.

(3) If a program development grant has been awarded for more than 1 year but less than 2 years, the Regional Director may approve the first administration and enforcement grant for 60 percent for that proportion remaining in the second year and for 50 percent for the proportion allocated to the third year.

(4) For the third and following years, the Regional Director may approve administration and enforcement grants for 50 percent of the agreed upon costs for administration and enforcement of the program.

§ 740.16 Special provisions for States with cooperative agreements.

(a) *Eligibility.* The Director may approve additional grants to States which have cooperative agreements pursuant to § 211.75 of this Title, for State regulation of surface coal mining and reclamation operations on Federal lands. This includes—

(1) States which had cooperative agreements on August 3, 1977, which have been modified to comply with the initial regulatory program.

(2) States which enter into cooperative agreements following approval of the State's regulatory program.

(b) *Coverage of grants.* An agency may use cooperative agreement grants to carry out the functions assigned to the State under the agreement.

(c) *Amount of grants.* The Regional Director may approve grants for the approximate amount which he determines the Federal Government would have expended for regulation of coal mining on the Federal lands being regulated by the State, except that no grant may exceed the actual costs to the State.

(d) *Grant periods.* The Regional Director shall approve a grant for a period of 1 year or less. The Regional Director shall fund a program that extends over more than 1 year by consecutive annual grants.

(e) *Application procedures.* (1) States with cooperative agreements in effect on August 3, 1977, may apply for cooperative agreement grants using the procedures set forth in § 740.18 (a), (b), (d), and (e).

(2) States with cooperative agreements established in conjunction with approved State regulatory programs may apply for cooperative agreements grants by including a supplement to an annual administration and enforcement grant application submitted according to § 740.18. The State shall include in the supplemental section:

(i) A separate Part II for the costs of the cooperative agreement; and

(ii) A separate Part III describing the specific activities required by the cooperative agreement for the period for which the grant is requested.

(f) *Other requirements.* The procedures and requirements set forth in §§ 740.17 through 740.26 are applicable to cooperative agreement grants.

§ 740.17 Grant periods.

The Regional Director shall approve a grant for a period of 1 year or less. The Regional Director shall fund a program that extends over more than 1 year by consecutive annual grants.

§ 740.18 Grant application procedures.

(a) The agency may submit its application to the Regional Director for a grant as soon as it is notified by the Regional Director that funds are available, but not later than May 31 of each calendar year.

(b) The agency shall use the short form application for nonconstruction programs and other procedures specified by Federal Management Circular 74-7, "Uniform administrative requirements for grants-in-aid to State and local governments," (34 CFR 256). No preapplication is required.

(c) For program development grant applications, agencies shall include in Part III of the standard application—

(1) An analysis and evaluation of the current State laws and changes required therein to conform to the requirements of the Surface Mining Control and Reclamation Act of 1977; unless previously submitted under Part 725 of this chapter;

(2) A description of the changes expected to be required in State regulations, organization, staffing, training and other policies and operations in order to develop a State program which can be approved; and

(3) A program to develop the legislation, regulations, procedures, organization, staffing, training materials and procedures, etc., necessary to obtain program approval.

(d) For administration and enforcement grants and cooperative agreement grants, agencies shall include in Part III of the standard application a description of the specific operations in the approved program which will be implemented during the period for which the grant is requested.

§ 740.19 Grant agreement.

(a) If the Regional Director approves an agency's grant application, the Regional Director shall prepare a grant agreement which includes—

(1) The approved scope of the program to be covered by the grant;

(2) The approved budget, including the Federal share;

(3) Commencement and completion dates for the segment of the program covered by the grant and for major phases of the program to be completed during the grant period.

(4) Permissible transfers of funds to other State agencies.

(b) The Regional Director may not permit an agency to delegate or transfer its responsibility for the use of grant funds.

(c) Pre-agreement costs for program development grants shall be allowed only as specified in the grant agreement.

(d) The Regional Director shall transmit four copies of the grant agreement by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies of it within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Regional Director.

(e) The Regional Director shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Regional Director signs the agreement.

(f) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns.

§ 740.20 Grant amendments.

(a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Regional Director, or by mutual action of the agency and the Regional Director.

(b) The agency shall promptly notify the Regional Director in writing by certified mail, return receipt requested, of events or proposed changes which may require a grant amendment, such as—

(1) Rebudgeting;

(2) Changes which may affect the approved scope or objective of a program; or

(3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Regional Director shall promptly approve or disapprove each proposed amendment, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The grant amendment establishes the effective date of the action. If no date is specified in the grant amendment then the date the Regional Director signs the amendment will be the effective date of the action.

§ 740.21 Grant reduction and termination.

(a) *Conditions for reduction or termination.* (1) If an agency violates the terms of a grant agreement, the Regional Director may reduce or terminate the grant.

(2) If an agency fails to implement, enforce or maintain an approved program, the Regional Director shall terminate the administration and enforcement grant.

(3) If an agency fails to implement, enforce or maintain only a part of the

program, the Regional Director shall reduce the grant to the amount of the program being operated by the agency.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Regional Director may reduce or terminate the grant—

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252), Nondiscrimination in Federally Assisted Programs, which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits or, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations at 41 CFR 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs.

(b) *Grant reduction and termination procedures.* (1) The Regional Director shall give at least 10 days written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Regional Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Regional Director shall afford the agency opportunity for consultation prior to reducing or terminating a grant.

(3) The Regional Director shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the agency.

(5) The agency shall reduce the amount of outstanding commitments insofar as possible and report to the Regional Director the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate the agency shall not make any new commitments without the approval of the Regional Director.

(7) The Regional Director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74–4.

(c) *Appeals.* (1) Agencies may appeal the Regional Director's decision to reduce or terminate a grant to the Director within 30 days of the Regional Director's decision.

(2) Agencies shall include in an appeal—

(i) the decision being appealed, and

(ii) the facts which the agency believes justify a reversal or modification of the decision.

(3) The Director shall act upon appeals within 30 days of their receipt.

§ 740.22 Audit.

The agency shall conduct a final audit following the end of each grant pursuant to the procedures in Federal Management Circular 74–7.

§ 740.23 Administrative procedures.

Administrative procedures governing accounting, payment, property and related requirements are contained in Federal Management Circular 74–7.

§ 740.24 Allowable costs.

(a) The Regional Director shall determine costs which may be reimbursed according to Federal Management Circular 74–4, "Cost principles applicable to grants and contracts with State and local governments" (34 CFR 255).

(b) Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement or this part.

(c) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(d) Costs must not be allocated to or included as a cost of any other federally assisted program.

§ 740.25 Financial management.

(a) Agency accounting for grant funds shall be in accordance with the requirements of Federal Management Circular 74–7. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made of a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency accounting records shall be supported by source documentation.

(f) The agency shall schedule audits to determine the fiscal integrity of financial transactions and reports, and compliance with the terms of the grant agreement.

(g) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 740.26 Reports.

(a) The agency shall, for each grant made under this part, submit annually to the Regional Director a Financial Status Report in accordance with Federal Management Circular (FMC) 74–7, Attachment H. This report shall be accompanied by a performance report prepared according to Attachment I of FMC 74–7.

(b) The Regional Director shall require through the grant agreement that annual reports provide the relation of financial information to performance and productivity data, including unit cost information.

§ 740.27 Records.

(a) The agency shall maintain complete records in accordance with Federal Management Circular 74–7. This includes books, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Contractors, including contractors for professional services, shall maintain books, documents, papers, and records which are pertinent to a specific grant award.

(c) The agency's records and the records of its contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor or any authorized representative.

(d) For completed or terminated grants the agency and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to FMC 74–7.

§ 740.28 Disclosure of information.

All grant applications received by the Regional Director constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and shall be disclosed unless exempt from disclosure under 5 U.S.C. 552(b).

PART 795—SMALL OPERATOR ASSISTANCE

Sec.

795.1 Scope.
795.2 Objective.
795.3 Authority.
795.4 Responsibilities.
795.5 Definitions.
795.11 Program initiation procedures.
795.12 Program services.
795.13 Eligibility for assistance.
795.14 Filing for assistance.
795.15 Application approval, notice and reimbursement.
795.16 Data requirements.
795.17 Qualified laboratories.
795.18 Assistance funding.
795.19 Applicant liability.

AUTHORITY: Secs. 201, 501 and 502, Pub L. 95–87, 91 Stat. 445 (30 U.S.C. 1201).

§ 795.1 Scope.

This part comprises the small operator assistance program. (Program) and governs the procedures for providing assistance to qualified small mine operators who request assistance under section 507 (c) of the Act, for—

(a) The determination of the probable hydrologic consequences of mining and reclamation, under section 507(b)(11) of the Act; and

(b) The statement of physical and chemical analysis of core samples, under section 507(b)(15) of the Act.

§ 795.2 Objective.

The objective of this section is to meet the intent of section 507(c) of the Act by—

(a) Providing financial and other necessary assistance to the qualified small operator; and

(b) Assuring that the regulatory authority shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

§ 795.3 Authority.

The Secretary shall provide financial and other assistance under section 507 (c) of the Act to the extent funds are appropriated by Congress specifically for this Program.

§ 795.4 Responsibilities.

(a) *General.* Once the regulatory authority initiates the Program, it shall—

(1) Review requests for assistance and determine qualified operators;

(2) Develop and maintain a list of qualified laboratories and authorize reimbursement for appropriate laboratory contracts;

(3) Conduct periodic on-site evaluations of the Program activities with the appropriate small operator; and

(4) Participate with the Office in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency and other appropriate agencies or institutions.

(b) *State.* A State shall include a Program within its proposed State regulatory program for approval by the Secretary.

(c) *Office.* The Office shall develop oversight policies and procedures to implement the Program. These shall include policies and procedures for—

(1) Data acquisition, analysis and interpretation;

(2) Interstate coordination and exchange of data;

(3) Model contract stipulations; and

(4) National certification of labs.

(d) The Office and the regulatory authority shall insure that equal opportunity in employment provisions are included within any contract or other procurement documents applicable under 41 CFR 1–12.8.

§ 795.5 Definitions.

As used in this part—

Monitoring means the collection of environmental data by either continuous or periodic sampling methods.

Probable cumulative impacts means the expected total qualitative and quantitive, direct and indirect effects of mining and reclamation activities on the hydrologic regime.

Probable hydrologic consequence means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; the stream channel conditions; and the aquatic habitat on the permit area and other affected areas.

§ 795.11 Program initiation procedures.

(a) The State shall notify the Office six (6) months prior to submission of its State program for approval under section 503 of the Act. The notification shall include—

(1) A statement of the intent to submit a proposed State regulatory program;

(2) A description of actions taken to develop a State regulatory program for approval and a summary schedule of actions to be taken; and

(3) A declaration of whether—

(i) The State elects to receive funding and commence the administration of the Program, or

(ii) The State elects to have the Office administer the Program on behalf of the State through a cooperative arrangement until such time as the proposed State regulatory program is approved.

(b) If the State elects to administer the Program, it may submit a grant application for funding of the program under the procedures of Part 740 of this chapter. The Office shall review the State's grant application and information provided under paragraph (a) of this section and approve or disapprove the State's request.

(c) If the State elects to have the Office administer the Program, the Office shall implement the Program within the State.

§ 795.12 Program services.

To the extent possible with appropriate funds, the regulatory authority shall for qualified small operators who request assistance—

(a) Select and pay a qualified laboratory to—

(1) Determine for the operator, the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with § 295.16.

(2) Prepare a statement of the results of test borings or core samplings in accordance with § 795.16.

(b) Collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

§ 795.13 Eligibility for assistance.

An applicant is eligible for assistance if he—

(a) Intends to apply for a permit pursuant to the Act; and

(b) Establishes that the probable total actual and attributed production of the applicant for each year of the permit will not exceed 100,000 tons. Production from the following operations shall be attributed to the permittee—

(1) All coal produced by operations beneficially owned entirely by the permittee;

(2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a 5 percent interest.

(3) All coal produced by persons who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner whatsoever.

(4) The pro rata share of coal produced by operations so controlled by the person who controls the permittee.

§ 795.14 Filing for assistance.

Each applicant shall submit the following information:

(a) A statement of intent to file a permit application;

(b) The names and addresses of—

(1) The potential permit applicant;

(2) The potential operator if different from the applicant.

(c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under § 795.13. The schedule shall include for each location—

(1) The name under which coal is or will be mined;

(2) The permit number and Mining Enforcement and Safety Administration identification number;

(3) The actual coal production for the year preceeding the application for assistance and that portion of the production attributed to the applicant; and

(4) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant.

(d) A description of—

(1) The method of surface coal mining operation proposed;

(2) The anticipated starting and termination dates of each mining and reclamation phase;

(3) The number of acres of land to be affected by the proposed mining; and

(4) A general statement on the probable depth and thickness of the coal resource.

(e) A U.S. Geological Survey topographic map of 1:24,000 scale or larger

or other topographic map of equivilent detail which clearly shows—

(1) The area of land to be affected and the natural drainage above and below the affected area;

(2) The names of property owners within the area to be affected and of adjacent lands;

(3) The location of existing structures and developed water sources within the area to be affected and on adjacent lands;

(4) The location of existing and proposed test borings or core samplings; and

(5) The location and extent of known working of any underground mines.

(f) Copies of documents which show that—

(1) The applicant has a legal right to enter and commence mining within the permit area; and

(2) A legal right of entry has been obtained for the Office, regulatory authority and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

§ 795.15 Application approval, notice and reimbursement.

(a) If the regulatory authority finds the applicant eligible, it shall:

(1) Determine the minimum data requirements necessary to meet the provisions of § 795.16.

(2) Procure the services of one or more qualified laboratories. A copy of the contract and the final approved report shall be provided to the applicant.

(b) The regulatory authority shall inform the applicant in writing if the application is denied and of the reasons for denial.

§ 795.16 Data requirements.

(a) *General.* This section describes the minimum requirements for the collection of data to meet the objective of the Program. The regulatory authority shall determine the data collection requirements for each applicant or group of applicants. The data requirements will be based on—

(1) The extent of currently available hydrologic and core analysis data for the applicable basin or subbasin area provided by the regulatory authority; and

(2) The data collection and analysis guidelines developed and provided by the Office.

(b) *Specific provisions.* (1) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off-site shall be made by a qualified laboratory. The data for this determination shall include—

(i) The existing and projected surface and ground water seasonal flow regime, including water level and water table evaluations. The regulatory authority shall specify duration and return frequencies to be used in the determination.

(ii) The existing and projected seasonal quality of the surface and ground water regime. This shall include measurements and estimates of dissolved and suspended solids, pH, iron, manganese, surface and channel erosion and other water quality parameters specified by the regulatory authority.

(2) A statement of the result of test borings or core samplings from the proposed permit area, and including—

(i) Logs from any drill holes, including identification of each stratum and water level penetrated;

(ii) The coal seam thickness and its chemical analysis including sulfur content;

(iii) The chemical analysis of potentially acid or toxic forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined.

(c) *Exemptions.* The statement by a qualified laboratory under paragraph (b) (2) of this section may be waived by the regulatory authority by a written determination that data available for the permit area is adequate to make the required determinations of the consequences of mining.

(d) *Data availability.* Data collected under this Program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

§ 795.17 Qualified laboratories.

(a) *General.* (1) As used in this section, *qualified laboratory* means a designated qualified public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under this Program.

(2) The Office shall establish and periodically publish in the FEDERAL REGISTER a list of qualified laboratories which may be used by regulatory authorities under the procedures of this section. A State regulatory authority may designate qualified laboratories under procedures included in an approved State regulatory program.

(3) Persons who desire to be included in the list of qualified laboratories established by the Office shall apply to the Office and provide such information as is necessary to establish the qualifications required by paragraph (b) of this section.

(b) *Basic qualifications.* (1) To qualify for designation, the laboratory shall demonstrate that it—

(i) Is staffed in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry with experienced professional personnel.

(ii) Is capable of collecting necessary field data and samples.

(iii) Has adequate space for material preparation, cleaning and sterilizing necessary equipment, stationary equipment, storage, and space to accommodate periods of peak work loads.

(iv) Meets the Occupational Safety and Health Act or the equivalent State safety and health program.

(v) Has the financial capability and business organization necessary to perform the work.

(vi) Has analytical, monitoring and measuring equipment capable of meeting the standards and methods contained in—

(A) *Standard Methods for the Examination of Water and Waste Water, 14th Edition*, 1976. This publication is available from the American Public Health Association, 1015 18th Street, N.W., Washington, D.C. 20036.

(B) *Methods for Chemical Analysis of Water and Waste*, 1974. This publication is available from the Office of Technology Transfer, U.S. Environmental Protection Agency, Industrial Environmental Research Laboratory, Cincinnati, Ohio 45268.

(vii) Has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate recommended methods or guidelines for data acquisition of the Office or other Federal or State agencies.

(2) The qualified laboratory shall be capable of performing either the determination or statement under paragraphs § 795.16 (b) (1) or (b) (2). Subcontractors may be used to provide the services required provided their use is defined in the application for designation and approved by the Office.

§ 795.18 Assistance funding.

(a) *Use of Funds.* Funds authorized for this Program shall not be used to cover State administrative costs or the costs of test boring or core sampling.

(b) *Allocation of funds.* The regulatory authority shall to the extent practicable establish a formula for allocating funds among qualified small operators if available funds are less than those required to provide the services pursuant to this Part. This formula shall include such factors as the applicant's—

(1) Anticipated date of filing a permit application;

(2) Anticipated date for commencing mining; and

(3) Performance history.

§ 795.19 Applicant liability.

(a) The applicant shall reimburse the regulatory authority for the cost of the laboratory services performed pursuant to this Part if the applicant—

(1) Submits false information;

(2) Fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report; or

(3) If the regulatory authority finds that the applicant's actual and attributed annual production of coal exceeds 100,000 tons for the first year of mining under the permit for which the assistance is provided.

(b) The regulatory authority may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

PART 830—PROTECTION OF EMPLOYEES

SEC.
830.1 Scope.
830.11 Protected activity.
830.12 Procedures for filing an application for review of discrimination.
830.13 Investigation and conference.
830.14 Filing of complaints.
830.15 Formal adjudicatory proceedings.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat 445 (30 U.S.C. 1201)

§ 830.1 Scope.

This part establishes procedures regarding—

(a) The reporting of acts of discriminatory discharge or other acts of discrimination under the Act caused by any person.

(b) The investigation of applications for review and holding of informal conferences about the alleged discrimination; and

(c) The filing of formal complaints of discrimination with the Office of Hearings and Appeals.

§ 830.11 Protected activity.

No person may discharge or in any other way discriminate or cause to be discharged or discriminated against any employee or any representative of employees because that employee or representative has—

(a) Filed, instituted or caused to be filed or instituted any proceedings under the Act by—

(1) Reporting violations to the State regulatory authority, the Secretary, or any employer's representative;

(2) Requesting an inspection; or

(3) Any other action

(b) Made statements or has testified—

(1) In any informal or formal adjudicatory proceeding;

(2) In any informal conference proceeding;

(3) In any rulemaking proceeding;

(4) In any investigation or other proceeding under the Act.

(c) Has exercised on his own behalf or on behalf of others any right granted by the Act.

§ 830.12 Procedures for filing an application for review of discrimination.

(a) *Who may file.* Any employee, or his authorized representative, who believes that he has been discriminated against by any person in violation of § 830.11 may file an application for review. For the purpose of these regulations, an application for review means the presentation of a written report of discrimination.

(b) *Where to file.* The employee or representative may file the application for review at any location of the Office and each office shall maintain a log of all filings.

(c) *Time for filing.* The employee or representative may file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed—

(1) On the date delivered if delivered in person to the Office, or

(2) On the date mailed to the Office,

(d) *Running of the time for filing.* The time for filing begins when the employee knows or has reason to know of the alleged discriminatory activity.

§ 830.13 Investigation and conference procedures.

(a) Within 15 days after receipt of any application for review, the Office shall mail a copy of the application for review to the person alleged to have caused the discrimination and shall notify the employee and the alleged discriminating person that the Office will investigate the complaint. The employer may file a response to the application for review within 10 days after he receives the copy of the application for review. The response shall specifically admit, deny or explain each of the facts alleged in the application unless the employer is without knowledge in which case he shall so state.

(b) The Office shall initiate an investigation of the alleged discrimination within 30 days after receipt of the application for review. The Office shall complete the investigation with 60 days from the date it was initiated. If circumstances surrounding the investigation prevent completion within the 60-day period, the Office shall notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

(c) Within 10 days after completion of the investigation the Office shall hold an informal conference with the parties to discuss the findings and preliminary conclusions of the investigation. The purpose of this informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the employer, the employee and the representative of the Office. If the Office concludes on the basis of a subsequent investigation that the employer has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Office shall take appropriate action to obtain compliance with the agreement.

(d) Following the investigation and informal conference, the Office shall complete a report of investigation which shall include a summary of the conference. Copies of this report shall be available to the parties in the case.

§ 830.14 Filing of complaints.

(a) If the Office concludes that a violation has probably occurred which was not resolved at the informal conference, the Director shall file a complaint with the Office of Hearing and Appeals within 20 days from the completion of the informal conference.

(b) The employee may file a complaint of discrimination with the Office of Hearings and Appeals—

(1) After 90 days has elapsed from the filing of his application; or

(2) Within 20 days following notification by the Director that no formal proceedings will be initiated.

§ 830.15 Formal adjudicatory proceedings.

(a) Formal adjudication of a complaint filed under this part shall be conducted in the Office of Hearings and Appeals under 43 CFR Part 4.

(b) After filing an application for review under this part, an employee may seek temporary relief in the Office of Hearings and Appeals under 43 CFR Part 4.

NOTE.—The proposed regulations submitted by the Office of Surface Mining Reclamation and Enforcement, Department of the Interior, for publication in the FEDERAL REGISTER have been redesignated to conform to CFR codification practices. For the convenience of the user, the following table shows the relationship between the part numbers on the original document and the corrected part numbers as published in the FEDERAL REGISTER.

Old Part No.	New Part No.
1000	700
2000	710
2020	715
2021	716
2022	717
2030	720
2031	721
2032	722
2033	723
2040	725
2160	740
2480	795
2900	830
4100	837

[FR Doc.77-25928 Filed 9-6-77;8:45 am]

[30 CFR Part 837]

ABANDONED MINE RECLAMATION FUND FEE COLLECTION AND PRODUCTION RECORDS

Proposed Rules

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

ACTION: Proposed Rules.

SUMMARY: These regulations provide each coal mine operator with methods to determine his reclamation fee obligation to the Abandoned Mine Reclamation Fund (fund) and provide instructions for the payment of the fee with a production statement of the proper location. This document implements the provisions of the Surface Mining Reclamation and Control Act of 1977 which promote the reclamation of coal and non-coal mined areas that have not been adequately reclaimed.

DATES: Comments must be received before October 7, 1977. Public hearings will be held September 20, 1977.

ADDRESSES: Comments should be addressed to: Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240. Public hearings will be

held at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C.; Kiel Auditorium, 1416 Market Street, St. Louis, Mo.; Public Library Auditorium, 1347 Broadway, Denver, Colo.; and Morris Harvey College, Riggleman Hall, 2300 McCorkle Avenue, Charleston, W. Va.

FOR FURTHER INFORMATION CONTACT:

Paul Reeves, Office of Surface Mining Reclamation and Enforcement, 202-343-4237.

SUPPLEMENTARY INFORMATION: Coal mining activities have imposed large social and environmental costs on the public in many areas of the country in the form of unreclaimed lands, water pollution, and a decline in natural beauty. Uncontrolled coal mining practices, in many areas of the country, have resulted in degradation of the quality of life in local communities.

A major goal of the "Surface Mining Control and Reclamation Act of 1977" (Act) is to promote the reclamation of coal and noncoal mined areas that have not been adquately reclaimed. Part 837 addresses the financial aspect of reclaiming mined areas that were not adequately reclaimed before the enactment of this Act. The Act establishes an Abandoned Mine Reclamation Fund (fund) to be administered by the Secretary of the Interior, and supported by a reclamation fee imposed on coal production. The revenues derived from the reclamation fee are to be deposited in the fund for use by the Secretary, the Secretary of Agriculture and the States under approved programs for the purpose of reclaiming abandoned mined lands.

Two initial questions were at what point to determine the "value of a ton of coal at the mine", as used in section 402 of the Act, and how should the fee be levied on in situ coal consumed. Two approaches were considered. The first approach was to require the coal operator to weigh his coal as soon as it is extracted from the earth, or removed from deposits that are not in their original geological locations (reclaimed coal). This approach would require an operator to weigh the coal before any coal preparation process. The second approach was to base the reclamation fee on the weight and value of the coal at the time of its bona fide sale, transfer or use. The second approach is proposed since it represents the first common point where weights are usually determined within the industry.

The statuory definition of "surface coal mining operations" includes "in situ distillation or retorting" and therefore such operations are subject to the provisions of the Act including the reclamation fee payment provisions. It was determined that the amount of coal consumed or used by in situ distillation or retorting could be calculated by measuring the gas produced at the wellhead if the Btu value of the coal were known.

The regulations state that the reclamation fee shall be paid by the operator on each ton of coal produced for sale, transfer, or use, including the products of in situ mining, and the fee shall be determined by the weight, value, and Btu content at the time of initial bona fide sale, transfer, or use. Coal that was mined before October 1, 1977, but has not yet been sold, transferred or used will not be subject to the fee. The fee for coal produced during the fourth quarter, 1977, will be due no later than January 30, 1978.

DRAFTING INFORMATION

The principal authors of these proposed regulations are: Daniel Jones and George Williams, Abandoned Lands Work Group and Edward Clair, Office of the Solicitor, Department of the Interior.

Interested persons may submit written comments on the proposed regulation to the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240 no later than October 7, 1977.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: September 2, 1977, 8:50 a.m.

LEO M. KRYLITZ,
Acting Secretary of the Interior.

It is proposed to add Part 837 to Title 30, Chapter VII, to read as follows:

PART 837—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

Sec.

837.1 Scope.
837.2 Objectives.
837.3 Responsibility.
837.5 Definitions.
837.11 Applicability.
837.12 Reclamation fee.
837.13 Fee computations.
837.14 Determination of percentage based fees.
837.15 Reclamation fee payment.
837.16 Production records.

AUTHORITY: Sec. 201, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

§ 837.1 Scope.

This part sets out the procedures for the collection of fees for the Abandoned Mine Reclamation Fund (fund).

§ 837.2 Objectives.

The objectives of this part are to establish—

(a) Methods for determining the reclamation fee payable on coal production.

(b) Procedures for paying the reclamation fee to the Director.

(c) Requirements for production recordkeeping and reporting.

§ 837.3 Responsibility.

(a) The Secretary of the Interior administers the fund.

(b) The Director, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for administering the provisions of this part.

§ 837.5 Definitions.

As used in this part—

Anthracite, bituminous and subbituminous coal means all coals other than lignite coal.

Calendar quarter means a 3-month period within a calendar year. The first calendar quarter begins on January 1 of a calendar year and ends on the last day of March. The second calendar quarter begins on the first day of April and ends on the last day of June. The third calendar quarter begins on the first day of July and ends on the last day of September. The fourth calendar quarter begins on the first day of October and ends on the last day of December.

Coal preparation means the treatment of coal to improve its quality, and usually refers to the removal of impurities and the sizing of the coal to meet market specifications.

Fee compliance officer means any person authorized by the Secretary to exercise his authorty in matters relating to this part.

In situ coal mining means the process of recovering energy from coal in its natural geological location by igniting the coal seam and recovering the gas at the wellhead.

Lignite coal means consolidated lignitic coal having less than 8,300 British thermal units per pound, moist, and mineral-matter-free. British thermal units per pound are determined by Parr's formula, page 213, equation 3, D-388 (reapproved 1972), Part 26, 1976 Annual Book of ASTM Standards.

Reclaimed coal means coal recovered from a deposit that is not in its original geological location. Examples of these deposits are refuse piles or culm banks; refuse, culm or retaining dams and ponds that are or have been used during the mining or preparation process; and stream coal deposits.

Surface coal mining means the extraction of coal from the earth by removing the materials over the coal seam before recovering the coal and includes auger coal mining.

Ton means 2,000 pounds avoirdupois (.90718 metric ton).

Underground coal mining means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods and includes in situ mining.

Value means gross value.

§ 837.11 Applicability.

The regulations in this chapter apply to all surface coal mining and reclamation operations except—

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) The extraction of coal for commercial purposes by surface mining which affects two acres or less;

(c) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction; and

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale.

§ 837.12 Reclamation fee.

(a) The operator shall pay a reclamation fee on each ton of coal produced for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless he can substantiate the amount of coal produced by each mining method by acceptable engineering calculations or other reports which the Director may require.

(d) In computing the tons of coal produced for reclamation fee purposes in the fourth calendar quarter of 1977, the operator may deduct the tons of coal immediately available for sale, transfer, or use on September 30, 1977, from coal produced for sale, transfer, or use during the fourth calendar quarter of 1977. If the operator makes this deduction, he shall attach to his fourth quarter, 1977, OSM form 4100–1, a sworn and notarized statement of the amount of coal immediately available for sale, transfer, or use on September 30, 1977, and the quantity of such coal produced by surface and underground mining respectively.

§ 837.13 Fee computations.

(a) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than $3.50 per ton, in which case the fee is 10 percent of the value.

(1) If the value of a ton of coal is equal to or greater than $3.50 per ton, multiply the number of tons produced in the calendar quarter by $0.35. Example: If the tonnage is 1,000, then 1,000 tons×$0.35=$350, which is the fee.

(2) If the value of a ton of coal is less than $3.50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1. Example: If the value of a ton of coal is $2 and the tonnage is 1,000, then $2×1,000 tons×0.1=$200.

(b) *Underground mining fees.* The fee for anthracite, bituminous, and subbituminous coal is 15 cents per ton unless the value of such coal is less than $1.50 per ton, in which case the fee is 10 percent of the value.

(1) If the value of a ton of coal is equal to or greater than $1.50 per ton, multiply the number of tons produced in the calendar quarter by $0.15. Example: If the tonnage is 1,000, then 1,000 tons×$0.15=$150, which is the fee.

(2) If the value of a ton of coal is less than $1.50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1. tiply the number of tons produced in a Example: If the value of a ton of coal is $1 and the tonnage is 1,000, then $1× 1,000 tons×0.1=$100, which is the fee.

(c) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than $5 per ton, in which case the fee charged is 2 percent of the value.

(1) If the value of a ton of lignite is equal to or greater than $5 per ton, mulcalendar quarter by $0.10. Example: If the tonnage is 1,000, then 1,000 tons× $0.10=$100, which is the feet.

(2) If the value of a ton of lignite is less than $5 per ton, multiply the value of a ton of lignite by the total number of tons produced in the calendar quarter by 0.02. Example: If the value is $4 and the tonnage is 1,000, then $4×1,000 tons× 0.02=$80, which is the fee.

(d) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on BTUs per ton in place equated to the gas produced at the site. The fee for in situ mined lignite is 10 cents per ton based on the BTUs per ton of coal in place equated to the gas produced at the site. For example, if the BTU value of in situ coal is determined to be 23 million BTUs per ton, then for every 23 million BTUs of gas produced at the wellhead, one ton of coal will be deemed produced for the purposes of this part.

(1) The BTU value of a ton of in place coal shall be determined by analyses, certified by an independent laboratory, of the coal seam that is effected for potential BTU value of a ton of in place coal.

(2) For anthracite, bituminous, and subbituminous coal the fee shall be computed as follows: $F=(G/C)\times V_1$.

(3) For lignite coal the fee shall be computed as follows: $F=(G/L)\times V_2$.

(4) For the purposes of this paragraph:

F=Reclamation fee.
C=million BTUs per ton of coal in place.
L=million BTUs per ton of lignite in place.
G=gas produced at the wellhead in million BTUs.
V_1=$0.15/ton equivalent; or if the value of a ton of coal equivalent is less than $1.50, multiply the value by 0.1 and substitute the result for V_1 in the appropriate formula.
V_2=$0.10/ton equivalent, or if the value of a ton of lignite equivalent is less than $5 multiply the value by 0.02 and substitute the result for V_2 in the appropriate formula.

§ 837.14 Determination of percentage based fees.

(a) If the operator submits a fee based on a percentage of the value of coal, he shall include with his fee and production report documentation supporting the alleged coal value. Based on this information and any additional documentation, including examination of the operator's books and records, that the Director may require, the Director may accept the valuation submitted by the operator, or may determine the value of the coal.

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee plus statutory interest within thirty days of notification by the Director that an additional fee payment is due.

§ 837.15 Reclamation fee payment.

(a) Each operator shall pay the reclamation fee on a calendar quarter basis.

(b) The fee for the fourth calendar quarter of 1977 shall be paid no later than January 30, 1978.

(c) Each operator shall use OSM Form 4100–1, Coal Production and Reclamation Fee Report form, for each quarterly payment period for each mine.

(d) The reclamation fee payment for each calendar quarter shall be paid no later than 30 calendar days after the end of the calendar quarter. Delinquent payments are subject to an interest charge at the statutory rate.

(e) The OSM Form 4100–1 and check or money order for each coal mine shall be made payable to Director, Office of Surface Mining Reclamation and Enforcement and shall be sent in the same envelope to:

Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, P.O. Box 25065–DFC, Denver, Colo. 80225.

§ 837.16 Production records.

(a) Each operator shall maintain, on a current basis, books and records that contain at least the following information and data—

(1) Tons of coal sold or transferred, amount received per ton, name of party to whom sold or transferred, and the date of each sale or transfer.

(2) Tons of coal used by the operator during production or coal preparation, and date of consumption.

(3) For in situ coal mining operations, total BTU value of gas produced, the BTU value of a ton of coal in place certified by an independent laboratory, and the amount received for gas sold or used.

(b) The fee compliance officer shall have access to the mine for the purpose of determining compliance with the regulations in this part.

(c) Each operator shall make any book or record available at reasonable times for inspection and copying by the fee compliance officer.

(d) The operator shall maintain books and records for a period of 7 years from the end of the calendar quarter in which the fee was due.

[FR Doc.77-25929 Filed 9-6-77;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 7, 1977

PART IV



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

LIBRARIES AND LEARNING RESOURCES; EDUCATION, INNOVATION AND SUPPORT

Technical Amendments

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 134—LIBRARIES AND LEARNING RESOURCES; EDUCATION INNOVATION AND SUPPORT

PART 134b—EDUCATIONAL INNOVATION AND SUPPORT

Technical Amendments

AGENCY: Office of Education, HEW.

ACTION: Final regulation.

SUMMARY: The Office of Education is amending its regulations because of technical amendments to the governing statute. These amendments are necessary to conform to the existing regulations to the statute, as amended.

EFFECTIVE DATES: Pursuant to Section 431(d) of the General Education Provisions Act, as amended, these regulations will be transmitted to Congress concurrently with their publication in the FEDERAL REGISTER. That section provides that regulations shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions concerning Congressional action and adjournment.

FOR FURTHER INFORMATION CONTACT:

Dr. Milbrey L. Jones, Telephone: 202–245–2488.

SUPPLEMENTARY INFORMATION: These amendments specifically authorize the Commissioner to waive the requirements of section 406 of the Act directing State and local educational agencies to serve private school children when a local educational agency or the State educational agency has "substantially failed" to provide for services to those children. In this situation, the Commissioner would arrange to provide the Title IV benefits to these children. Secondly, the amendments remove the authority to fund private educational organizations for demonstration nutrition and health projects under section 431(a)(2) of Part C of the Act.

Those affected by these amendments to the regulations are State and local educational agencies, and private educational organizations in the case of nutrition and health projects. State educational agencies continue to have the opportunity to remedy "substantial failure'"' by a local educaional agency. If the Commissioner waives the requirement of section 406 of the Act in a case of "substantial failure", the affected State or local educational agency will lose only the funds necessary to implement an arrangement by the Commissioner to provide services to private school children. Private educational organizations are eliminated as a potential type of grantee of nutrition and health projects under Part C of Title IV.

The statute does not indicate circumstances in which a waiver for "substantial failure" would not be granted. Consideration was given to developing criteria for the granting of such waiver; however, it is felt that due to the multiplicity of factual situations that might arise, it is best to make such determinations on a case-by-case basis. This is consistent with § 134.104 of the existing regulations for granting a waiver of the requirements of section 406 of the Act in the case of legal prohibition.

One comment was received on the Notice of Proposed Rulemaking published in the FEDERAL REGISTER (42 FR 16159) on March 25, 1977. The comment and the Commissioner's response to it follow:

Comment. A commenter objected to the elimination of private educational organizations as a potential type of grantee under Part C of Title IV on the grounds that this limitation would restrict the ability of the private sector to create model projects designed to improve nutrition and health services for areas with high concentrations of children from low-income families.

Response. No change has been made to the provision in the proposed rule. The purpose of this amendment to the regulation is to conform the regulation to the statutory amendments made by sections 324 and 501(r) of Pub. L. 94–482. Those amendments have revoked the Commissioner's authority to fund private educational organizations for demonstration nutrition and health projects.

After considering the comment the Commissioner hereby adopts the proposed regulations which were published in the FEDERAL REGISTER on March 25, 1977, with no changes.

NOTE.—The Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

(Catalog of Federal Domestic Assistance No. 13.570–571; Libraries and Learning Resources, Education Innovation and Support)

Dated: July 22, 1977.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: August 30, 1977.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Parts 134 and 134b of Title 45 of the Code of Federal Regulations are amended as follows:

1. By revising the first two lines of the Comment following paragraph (b) of § 134.105 to read as follows:

§ 134.105 Provision of services by the State educational agency.

* * * * *

Comment. These two paragraphs provide State educational agencies with an opportunity to * * *

2. By adding a new § 134.105(c) to read as follows:

* * * * *

(c) If a State educational agency does not make satisfactory arrangements under § 134.105(a) within a reasonable period of time, the Commissioner may waive the requirements for the participation on an equitable basis of children enrolled in private elementary and secondary schools.

(20 U.S.C. 1806(e))

3. By revising § 134.108(b) to read as follows:

§ 134.108 Suspension and termination.

* * * * *

(b) If no waiver is granted under § 134.104 or § 134.105(c) and the State educational agency fails to take action under § 134.105(a), section 434(c) of the General Education Provisions Act requires that payments shall be withheld from such State or local educational agency until there is no longer any such failure to comply.

(20 U.S.C. 1232c(c); 1806)

4. By revising § 134.108(d) to read as follows:

* * * * *

(d) This section shall not apply where the Commissioner has granted a waiver under §§ 134.104(a) or 134.105(c).

(20 U.S.C. 1232c(c); 1806 (d), (e))

§ 134.108 [Amended]

5. By deleting the comment following § 134.108(d).

Subpart C [Removed]

6. In Part 134b, by deleting Subpart C—Health and Nutrition, § 134b.20.

Subpart D [Redesignated]

7. By retitling Subpart D as Subpart C.

8. By revising the table of contents listing for Subpart D—*Strengthening State and Local Educational Agencies* in Part 134b to retitle it as Subpart C.

9. By revising the first four lines of paragraph (b) of § 134b.2 to read as follows:

§ 134b.2 Authorized activities.

* * * * *

(b) For the support of demonstration projects by local educational agencies designed to improve nutrition and health * * *

* * * * *

[FR Doc.77–25964 Filed 9–6–77;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 7, 1977
PART V

SECURITIES AND EXCHANGE COMMISSION

■

BENEFICIAL OWNERSHIP DISCLOSURE REQUIREMENTS

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 239, 240, 249]

[Release Nos. 33-5859 34-13900; File No. S7-714]

Beneficial Ownership Disclosure Requirements

Solicitation of Comments

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of comments.

SUMMARY: Certain institutions have raised substantial practical and interpretative questions in complying with the rules, now scheduled to take effect on April 30, 1978, governing the disclosure of the beneficial ownership and related information of certain equity securities. Institutions have also objected to the exclusion of certain persons from those permitted to use the abbreviated acquisition notice and the duplication of disclosure which they believe would result if rules are adopted requiring institutional investment managers to report information with respect to accounts over which investment discretion is exercised. Although the Commission is not proposing to amend the new rules at this time, it is requesting public comment with respect to the objections raised by institutional investors in order to assure that its regulatory actions are fully responsive to the public interest.

DATE: Comments must be received on or before September 30, 1977.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Comment letters should refer to Commission File Number S7-714. All comments received will be available for public inspection in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

John Granda, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202—755-1750) or Edward A. Scallet, Office of the General Counsel, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202—755-1234).

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of Pertinent Rules

In order to assist all interested persons in understanding the issues upon which the Commission is soliciting comments, a brief summary of the new rules which are pertinent to those issues follows. The summary is brief and the attention of all interested persons is directed to the actual text of the rules and forms for a more complete understanding.[1]

Generally, Section 13(d) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and Rule 13d-1 (17 CFR 240.13d-1) thereunder, require that a Schedule 13D (17 CFR 240.13d-101) be filed by any person (or group of persons) within 10 days of any acquisition, if after such acquisition such person or group is the beneficial owner of more than five percent of certain classes of equity securities specified in Section 13(d)(1).

The Commission in its new rules[2] defined the term "beneficial owner" for certain purposes to include any person who directly or indirectly has or shares voting and/or investment power in such security (Rule 13d-3) (17 CFR 240.13d-3). The holder of a right to acquire beneficial ownership of a security and a pledge under a defaulted pledge agreement are also deemed to be beneficial owners under certain circumstances (Rule 13d-3). Under the new rules, the acquisition by a group of the beneficial ownership of the securities owned by its members is deemed to occur upon the date of the agreement to act together for a prescribed purpose (Rule 13d-6) (17 CFR 240.13d-6). The new rules also require aggregation of securities of the same issuer held by a beneficial owner in several different accounts or trusts (Rule 13d-3).

A new short form (Form 13D-5) (17 CFR 240. 13d-102) was adopted to be used by certain institutional investors in reporting their beneficial ownership so long as such ownership was neither acquired nor is maintained for the purpose (or with the effect) of changing or influencing the control of the issuer. The short form may be filed within 10 days after the end of the calendar quarter in which the triggering acquisition was made, and thereafter the form is to be amended on a quarterly basis to reflect all material changes as well as increases and decreases of beneficial ownership during the quarter until ownership has dropped to five percent or less of the subject securities.

B. Institutional Investor Concerns

The Commission has received three rulemaking petitions pursuant to the Commission's rules of practice (17 CFR 201.4) seeking to have the Commission amend Rule 13d-5 (17 CFR 240. 13d-5) to permit insurance companies to use the short form acquisition notice.[3] Two of those petitions also seek amendment of Rule 13d-6 to limit paragraph (b) thereof to agreements relating to equity securities of an issuer.[4] Because the petitions largely reflect similar concerns representative excerpts are set forth below.[5]

The member banks of the New York Clearing House Association have articulated their concerns regarding the new rules in a submission by that organization which is also set forth below.

Additional concerns raised by institutional investors are contained in the letters of comment on proposed Rule 13f-1 (17 CFR 240. 13f-1) published in Securities Exchange Act Release No. 13396, March 22, 1977, 42 FR 16831. Those letters have been made part of Commission File Number S7-714 and are available for public inspection and copying.

II. Issues Upon Which the Commission Solicits Comments

The Commission, at this time, is not proposing to amend or modify the new rules announced in February, 1977. While these rules may impose some burdens on institutional investors and others, that concern must be balanced against the need for full and accurate disclosure of the beneficial ownership of equity securities. This is the balance the Commission's rules attempted to achieve. Similarly, the decision to exclude insurance companies from the list of persons eligible to use the short form was based on several factors.[6]

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[1] The text of the rules and a more complete description of the rules and illustrations thereof are set forth in Securities Exchange Act Release No. 13291, February 24, 1977, 42 FR 12342.

[2] Certain of these rules codify existing case law. See, e.g., "GAP Corp. v. Millstein," 453 F.2d 709 (C.A. 2, 1971) certiorari denied, 406 U.S. 910 (1972).

[3] Petitions have been received from the American Insurance Association, the American Council of Life Insurance, and The Prudential Insurance Company of America.

[4] American Council of Life Insurance and The Prudential Insurance Company of America.

[5] The full petitions are contained in Commission File Number S7-714 and are available for public inspection and copying.

[6] In its release announcing the adoption of its beneficial ownership disclosure rules (Securities Exchange Act Release No. 13291, 42 FR 12342), the Commission articulated the bases for its determination with respect to insurance companies, as follows:

As originally proposed, the short form would have been available to insurance companies, as defined in Section 3(a)(19) of the Exchange Act. However, the Commission has determined that the considerations which would make use of a short form appropriate for broker-dealers, banks, investment companies, investment advisers and employee benefit plans do not apply equally to insurance companies. The rationale for precluding insurance companies from using the short form is based, in part, upon the lack of any uniform legal requirement restricting such companies in the amount of securities they may acquire in a given issuer and on the fact that the transactions by which an insurance company or its affiliates may become the beneficial owners of securities, even taking into account the aggregation and attribution aspects of the new rules, generally involve volitional investment decisions of a character different from those generally made by the other entities entitled to use Form 13D-5. Moreover, even though certain aspects of the operations of insurance companies are subject to regulation under state law, the Commission does not believe such regulation to be an adequate substitute for the protection to investors provided by disclosure under Section 13(d).

In reaching its decision regarding insurance companies, the Commission was aware

Nevertheless, the Commission believes that it should solicit comments on, and give due consideration to, the issues which have been highlighted by the institutional investors, and for that reason, has previously announced the deferral of the effective date of the rules from August 31, 1977 to April 30, 1978 (Securities Exchange Act Release No. 13844, August 10, 1977, 42 FR 41405). The Commission requests that persons commenting on these issues furnish detailed empirical and other evidentiary support buttressing their objections to and suggestions for any proposed modification in the new rules.

While the Commission will consider comments on any aspect of the new rules, including any of the matters raised in the petitions and submissions referred to above, the issues upon which the Commission specifically desires comment are set forth below. In considering the issues which have been raised, consideration should be given to the question of whether it will also be necessary to revise the definition of beneficial ownership, presently set forth in Rule 13d-3. Accordingly, the Commission specifically invites comments on the question whether, and, how, the definition of beneficial ownership should be revised to alleviate the institutions' problems in a manner consistent with the purposes of Section 13(d) of the Exchange Act.

In responding to the following questions, please furnish specific cost date with respect to: (1) Compliance with the new rules as they now stand; and (2) compliance with the rules as amended in any manner recommended by the commentator.

1. *Availability of the short form.* (a) Should insurance companies generally, or life insurance companies or property and casualty companies specifically, qualify for inclusion in Rule 13d-5 as a class of beneficial owners entitled to use Form 13D-5 in lieu of Schedule 13D?

(b) Should a group whose members are individually eligible to use Form 13D-5 be permitted to use that form regardless of whether the securities are acquired in a private placement?

(c) Should two or more persons who are beneficial owners of the same securities and who are otherwise eligible to use Form 13D-5 be permitted to file a single Form 13D-5?

(d) Should the attribution of beneficial ownership from a subsidiary, which is not qualified to use the short form, to its parent, which is so qualified, preclude the parent from utilizing the short form?

2. *Overlap under proposed Rule 13f-1.* (a) Should the disclosures required by rules under Section 13(f) provide the exclusive reporting obligation for the securities beneficially owned by institutional investors who disclaim any intention of investing for purposes of influencing control or management?

(b) Can the purposes of Sections 13 (d) and (f) be effected without duplicative reporting?

3. *Practical problems.* (a) Should the reporting and/or disclosure requirements of Form 13D-5 be based on beneficial ownership as of the end of the calendar quarter rather than at any time during the quarter?

(b) Should Form 13D-5 be required to be filed within some period of time in excess of the present 10 days after the end of the calendar quarter; and, if so, what is an appropriate period of time?

4. *Definitional and interpretative problems.* (a) When should a pledgee under an agreement as to which there has been a default be deemed the beneficial owner of the pledged securities?

(b) Should persons qualified to file the short form be exempted from the requirement that they be deemed the beneficial owner of securities which they have the right to acquire within 60 days either through the conversion of convertible securities or through the exercise of options, warrants or rights?

(d) Would an exemption for persons qualified to file Form 13D-5 from the requirement to aggregate securities held by foreign branches and subsidiaries in unrelated investment accounts be inconsistent with the purposes of Section 13d?

(e) If two or more persons agree to act together solely for the purpose of acquiring, holding, or disposing of a non-equity security of an issuer, should Rule 13d-6 (b) be amended so that the group formed thereby will not be deemed to be the beneficial owner of the equity securities beneficially owned by such persons?

In addressing the issues raised in this release commentators should feel free to consider the materials accumulated in Commission File No. S7-580 [7] in connection with the beneficial ownership rules proposed by the Commission in Exchange Act Release No. 11616 (40 FR 42212).

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 29, 1977.

ATTACHMENTS TO RELEASE NOS. 33-5859
34-13900

EXCERPT FROM THE PETITION OF THE AMERICAN INSURANCE ASSOCIATION RELATING TO RULE 13D-5

III. THE COMMISSION'S ACTION IN AMENDING PROPOSED RULE 13D-5 TO EXCLUDE INSURANCE COMPANIES WAS CONTRARY TO ITS REGULATORY PURPOSES UNDER THE EXCHANGE ACT AND THE WILLIAMS ACT

The Williams Act amendments to the Exchange Act were designed to fill the gap in the disclosure provisions of existing securities legislation which occurred:

(1) When a person or group of persons seeks to acquire a substantial block of equity securities of a corporation by a cash tender offer or through open market or privately negotiated purchases and (2) when a corporation repurchases its own equity securities.[13]

Congress recognized the need for protection of investors "caught in the midst of a battle for corporate control" set off by an outside tender offer. It therefore provided that any person or group which acquired 10 percent or more of any class of registered equity security (as well as certain investment company securities) or which made a tender offer for such securities must disclose information as to the size of its holding, the source of its funds, any contracts or arrangements relating to the shares, and any plans to change the business or corporate structure of the acquired firm.[14]

Congress did not intend to require extensive disclosure on the part of purchasers whose acquisition of securities was not intended to or did not have the effect of changing or influencing control of the issuer or otherwise did not fall within the purposes of the Act. This purpose was reflected in amended sections 13(d)(5)(D) and 14(d)(8)(D) of the Exchange Act.[15]

Subsequently, the Williams Act was amended to reduce the triggering level of securities acquisitions for reporting requirements to 5 percent, to include certain insurance company securities, and to allow the Commission to adopt a short form notice of acquisitions under section 13(d):

> The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules or regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owed by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.[16]

In its 1975 Release, the Commission proposed a definition of "beneficial ownership" which would include persons acquiring securities in the ordinary course of business and not with a view toward affecting corporate control. The Commission proposed the adoption of a short form acquisition notice.[17] In so doing it noted that the proposed standard for use of the short form by institutional investors was the standard established in 13(d)(5): Such an investor must have acquired its securities "in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer nor in connection with, or as a participant in, any transaction having such purpose or effect." [18]

Benefit of the short form was to be limited to the list of institutional investors specified in the proposed rule on the grounds that "they are the ones most likely to have acquired more than a five percent interest in

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of a number of private enforcement investigations pending at that time which tended to reveal a pattern by certain insurance companies of utilizing their assets to engage in or assist activities in violation of the Williams Act. Its release referred to the factors that the Commission believes facilitated the conduct under scrutiny.

[7] The materials contained in that file are available for public inspection and copying.

[13] S. Rep. No. 550, 90th Cong., 1st Sess. 1 (1967); H.R. Rep. No. 1711, 90th Cong., 2d Sess 2 (1968).

[14] S. Rep. 550, supra, at 4; H.R. Rep. 1711, supra, at 4.

[15] S. Rep. 550, supra, at 8, 10; H.R. Rep. 1711, supra, at 9, 11.

[16] Pub. L. 91-567 (1970), 15 U.S.C. 78m(d)(5). The provision for short-form reporting did not apply to tender offers under section 14.

[17] 40 FR 42213 (September 11, 1975).

[18] Id.

an issuer in the ordinary course of their business." [19]

Insurance companies clearly meet these standards in their investment activities. State laws regulating insurance companies restrict the percentage of outstanding equity securities of any issuer which an insurance company may acquire. These restrictions also set a ceiling on the percentage of any insurer's assets which may be invested in one issuer's securities. The effect of state regulation is to limit the possibility of insurance companies engaging in takeover bids through ordinary investment operations, whether through tender offers or otherwise.

As the Commission itself concluded in its 1971 study of institutional investors, insurance companies do not purchase securities with the intent of gaining control of the investment vehicle.[20] Rather, the insurance company seeks a combination of return and safety in its investments. Thus, companies which are typically subject to takeover bids—because of declining stock prices, inert management, or temporary large cash balances—would probably be unattractive investments. The insurance company seeks to invest in a management, not to enter into a contest with it.

The principles of diversification and limitation of downside risks guide insurance portfolio managers in their activities. Statutory limitations on investments rarely impinge on a portfolio decision because insurance companies are even more committed to diversification and risk avoidance than regulators require.

Insurance company investments are also subject to full public scrutiny. Uniform reporting forms are prescribed by the National Association of Insurance Commissioners which require disclosure of all investment holdings as well as sales and purchases during each calendar year. The information filed by each company is available to the public through state commissioners' offices as well as through privately-owned reporting services.

Congress has recognized that state regulation combined with uniform disclosure requirements effectuates registration under the Exchange Act with respect to the insurance industry. In amending the Exchange Act in 1964, Congress exempted insurance companies from the registration requirements established by section 12(g): *Provided*, That certain conditions were met, including state regulation of the company's proxies and filing by the company of an annual statement substantially conforming that prescribed by the National Association of Insurance Commissioners.[21]

The Commission's action appears to contradict the intent of Congress as expressed in the 1964 amendments. The statutory language reflects a Congressional determination that the basic pattern of State regulation of insurance companies should not be disturbed unnecessarily by the Federal securities laws. Furthermore, Congress expressed its belief that State regulation, when combined with uniform disclosure requirements, was sufficient to achieve the purposes of the Exchange Act.

No evidence to contradict these facts appear in the record of the Rule 13d-5 rulemaking. The Commission's negation of its own past pronouncements, of Congressional intent as expressed in the Exchange Act and the Williams Act amendments, and of its own proposed rules is without factual support. For this reason, the Commission should now amend Rule 13d-5 to include insurers.

IV. The Commission's Stated Rationale for the Exclusion of Insurance Companies From the Coverage of Rule 13d-5 Lacks a Basis in Fact or Reason

A. The Insurance Industry Is Subject to Effective State Regulation With Respect to Securities Acquisitions

In its brief rationale for excluding insurance companies from the benefits of Rule 13d-5, the Commission stated:

> The rationale for precluding insurance companies from using the short form is based, in part, upon the lack of any uniform legal requirement restricting such companies in the amount of securities they may acquire in a single issuer * * * Moreover, even though certain aspects of the operations of insurance companies are subject to regulation under state law, the Commisison does not believe such regulation to be an adequate substitute for the protection to investors provided by disclosure under Section 13(d)."[22]

This statement recognizes that insurance company investments are a matter of State regulation. It ignores, however, the pervasive character of such regulation, as well as the applicability of New York law to the majority of insurance companies and their assets. By comparison to the insurance industry, other institutional investors which have been granted the benefits of Rule 13d-5, are relatively unregulated.[23]

In view of the disparity between the goal of the Williams Act—disclosure of acquisitions—and the imposition of State legal requirements limiting portfolio acquisitions, it appears that this portion of the Commission's rationale is inapplicable to the stated purposes of the Rule. This is particularly true in light of the near-total, lack of similar limitations on other institutional investors. However, it is worth reviewing what the Commission would have found had it addressed the question of State regulation of insurance companies.

As the Commission stated in its 1971 study of institutional investors, "Insurance company equity investments are severely restricted by state insurance laws." [24] These restrictions are applied in two ways. First, insurance companies are restricted as to the percentage of their assets which may be placed in equity investments, and further restricted as to the percentage of assets which may be committed to any one equity vehicle. Second, and more directly relevant to the Williams Act, insurance companies are limited in the percentage of the outstanding shares of any one issuer which they may acquire.

As the Commission found in its Institutional Investor Study, while statutory limits vary from State to State, of New York's Insurance Law provides a nationwide standard.[25] New York requires that non-domiciliary insurance companies must substantially comply with the investment limitations placed on New York companies.[26] It is estimated that 70 percent of the insurance companies in the United States and 80 percent of total insurance company assets are subject to New York regulation.[27] In addition, most other insurance companies which are not subject to New York regulatory requirements confine themselves to the amounts and types of investments authorized by New York.[28]

Under New York law insurance companies' investments in common stocks or shares are limited to those institutions which meet the following requirements:

> (i) 'All the obligations and preferred stock, if any, of such institutions are eligible as investments' under applicable provisions of the New York Insurance Law;
>
> (ii) 'Such institution shall have earned, during (the past seven fiscal years), an aggregate sum which would have been sufficient to pay dividends of four per centum per annum upon the par value (or in the case of commonstocks or shares without par value, then upon the stated capital in respect thereof) of all its common stocks or shares outstanding during such period;' and
>
> (iii) With some exceptions, the common stocks or shares of any such institution other than a bank, trust company or insurance company are registered on a national exchange pursuant to the Securities Exchange Act of 1934.[29]

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[19] Id. at 42214.

[20] See pp. 39–40, infra.

[21] Section 12(g)(2)(G) of the Exchange Act, 15 U.S.C. section 781(g)(2)(G). Similarly, insurance policies were declared exempt from regulation as securities in section 3(a)(8) of the Securities Act of 1933, and insurance companies were specifically exempted from the coverage of the Investment Company Act of 1940 by section 3(c)(3) of that statute. In both instances, the exemptions were based on Congressional recognition of the preeminent role of state regulation of the insurance business. See H.R. Rep. No. 85, 73d Cong., 1st Sess. 15 (1933); 77 Cong. Rec. 2936–38, 2946 (1933) (Securities Act of 1933); "Hearings before House Comm. on Interstate and Foreign Commerce on H.R." 10065, 76th Cong., 3rd Sess. 61–62 (1940); 86 Cong. Rec. 10070–71 (1940) (Investment Company Act of 1940). See also *SEC* v. *Variable Annuity Co.*, 359 U.S. 65 (1959).

[22] SEC Docket at 1785.

[23] *See* Securities and Exchange Commission, "Institutional Investor Study Report," H.R. Doc. No. 92–64 (hereinafter cited as "Institutional Investor Study"), pt. 2, at 144–46 (investment advisers), 439–50 (bank trust departments); pt. 3, at 901–04 (offshore funds), 980–1004 (pension-benefit plans) (1971).

[24] Id., pt. 2, at 687 (emphasis added).

[25] See note 26, infra.

[26] N.Y. Ins. L. § 90 (McKinney 1966). See "Institutional Investor Study," pt. 2 at 687.

[27] A. M. Best Co., "Aggregates and Averages" (1974); N.Y. State Ins. Dept., "Statistical Tables from Annual Statements" (1974). Such limitations are generally in accord with policies adopted by insurance company portfolio managers, and therefore represent no great administrative burden to the company. See "Institutional Investor Study", pt. 2 at 823.

[28] The "Institutional Investor Study" stated: Most companies responding to the Study's questionnaires have found the New York statute to be the primary restraint upon their common stock investment decisions, regardless of where the companies are domiciled. While a few smaller companies domiciled in relatively liberal States and not doing business in New York have been able to substantially exceed New York's bounds, even most medium-sized insurers confine themselves to amounts and types of issues authorized by New York law.

* * * * *

Because few States are more restrictive than New York, and because most large companies and groups do business there, the New York standards amounts to a national standard for most purposes.

[29] N.Y. Ins. Law 81(13)(a) (McKinney 1976 Supp). If a company's shares are otherwise registered under the Exchange Act, price quotations on the shares are available through NASDAQ, the company earned at least $300,000 in the last fiscal year, its total assets are at least $7,000,000, and at least 900 persons own shares, the stock may be eligible for purchase. Id.

Except in the case of acquisition of shares in qualified insurance subsidiaries of life insurance companies and qualified mortgage companies, insurance companies may not invest in more than 5 percent of total issued and outstanding shares in any one institution, nor may such investment in the common shares of an institution exceed 1 percent of the insurance company's admitted assets.[30] In addition, no more than 10 percent of an insurance company's admitted assets may be committed to all securities, debt and equity, of any one issuer.[31] Finally, no more than 10 percent of the admitted assets of an insurance company or 100 percent of its surplus, whichever is less may be committed to investments in common stocks and shares.[32]

B. INSURANCE COMPANY INVESTMENTS ARE WIDELY DISCLOSED

A second issue, that of the role of State regulators in enforcing disclosure of insurance company investments is more relevant to the Williams Act. Again, had the Commission studied this issue it would have found such disclosure more complete ,than any contemplated by its Williams Act rules. The contrast which can be drawn to banks and other financial institutions is favorable to the insurance industry.[33]

Insurance companies are required to report all investments to State regulatory offices in the States in which they transact business. The National Association of Insurance Commissioners ("NAIC") has promulgated a statement blank to be filed by fire and casualty companies on an annual or quarterly basis. Schedule D of that blank is attached hereto as Appendix II.* By reference to Schedule D, it can be seen that insurance companies must report equity holdings by type and country of origin, at book value, market value, and actual cost. Separate schedules within the form show all stock holdings, acquisitions, and dispositions for the past reporting period.

The information filed with State insurance commissioners on the NAIC form is both comprehensive and open to public inspection. Comparative data for insurance companies nationwide is gathered and made available through surveys of the insurance industry published annually by the A. M. Best Company ("Best's Market Guide") and United Statistical Associates ("Corporate Holdings of Insurance Companies".)[34]

Thus, from the perspective of disclosure, investments by insurance companies are at least as accessible to the public as are those of other institutional investors, and are more accessible than those of banks. There exists no reason for treating insurers differently than other institutions under the Williams Act. In fact, the Commission could have achieved its overall purpose simply by requiring insurance companies to file a copy of Schedule D of the NAIC blank. Precedent for using NAIC standards as a benchmark in securities law disclosure requirements for insurance companies can be seen in section 12(g)(2)(G) of the Exchange Act, which exempts insurance company securities from registration under section 12(g) where the company files annual reports prescribed by NAIC with state authorities.

The conclusion to be drawn from this discussion of State regulation of insurance companies and the availability of public information on the investment holdings of insurance companies is that the Commission did not consider the relevant factual background when it excluded insurance companies from the coverage of Rule 13d–5.

C. TRANSACTION ENGAGED IN BY INSURANCE COMPANIES IN THE ACQUISITION OF SECURITIES INVOLVE INVESTMENT DECISIONS SIMILAR TO THOSE MADE BY OTHER INSTITUTIONAL INVESTORS

The Commission's final rationale for excluding insurance companies from the coverage of Rule 13d–5 is based on the following assertion: [T]he transactions by which an insurance company or its affiliates may become the beneficial owners of securities, even taking into account the aggregation and attribution aspects of the new rules, generally involve volitional investment decisions of a character different from those made by other entities entitled to use Form 13D–5.[35]

This aspect of the Commission's rationale introduces a puzzling element into the discussion of the behavior of institutional investors. In the many studies, hearings, and reports issued by the Commission and Congress during the period prior to the enactment of the Williams Act amendments and thereafter, the AIA has been unable to locate any discussion of whether institutional investments were "volitional." An "involuntary" investment is difficult to imagine in the present economic structure of the United States, except if that term were to apply in instances where the institutional investor as agent acts at the express direction of some principal. Obviously, such situations are relatively rare in the overall scale of investments by mutual funds, bank trust departments, and insurance companies.

Investment decisions might be said to be influenced negatively by regulations which restrict certain types of investment. To the extent of those restrictions, such decisions might conceivably be said to lack volition to some degree. However, as previously established, insurance companies are subject to State regulatory restrictions which are at least as stringent than those affecting other institutional investors. Therefore, from this perspective there is no basis for a statement that insurance companies possess greater volition in their decisions than do other investors.

To the contrary, the Commission itself has concluded that the behavior of insurance companies as investors is similar to that of other institutions.[36] The principal emphasis of insurance investment activities is security of the investment.[37] This policy (enforced by State regulatory limitations) means that insurance companies commit a small proportion of their assets to equity securities and spread their equity investments among many companies.[38] Insurance companies purchase equities of companies which are perceived to be well-managed.

In adopting rule 13d–5 in its present form, the Commission has created a distinction between insurance companies and other institutional investors which may seriously affect the ability of insurers to compete in public and private capital markets. Banks, broker-dealers, mutual funds, pension funds, and other institutions will have access to reports on significant transactions by insurance companies within ten days after they occur. No comparable information will be available to insurance companies on their competitors' investment operations.

The Commission's exclusion of insurance companies from use of the quarterly short form report would encourage insurers to invest only in the largest blue chip securities. Obviously five percent of the outstanding shares in IBM or Exxon represents a far larger investment than five percent of most companies listed over-the-counter, on the American Stock Exchange or on regional exchanges. An insurance company would become subject to Schedule 13D reporting requirements if it invested a reasonable amount of funds in a small over-the-counter stock. No such reporting requirements would arise from investing the same amount of funds in IBM. Similar investment patterns by bank trust departments concerned the Congress in 1973, as evidenced by hearings on the IImpact of Institutional Investors in the Stock Market.[39] The Commission should weigh with serious concern the consequences of encouraging a revival of the "two-tier" market through onerous reporting requirements for insurance companies.

Further, insurance companies are among the largest participants in the private placement market. The distinction in reporting under Section 13(d) between insurance companies and other large participants in the market for private placements could put insurers at another competitive disadvantage. In its 1977 Release, the Commission stated that "a group of institutional investors, each of whom alone meets one of the standards of rule 13d–5(a)(2), upon agreeing to act together for the purpose of acquiring securities in a private placement, may utilize the short form." If an insurance company is a member of such a group, the insurance company alone would have to report its acquisition on Schedule 13D within ten days, even though all members of the group acquired fungible securities for the same purposes. This and similar inconsistencies resulting from comprehensive reporting requirements placed solely upon insurers may well have a chilling effect upon private placements.

Vigorous competition exists today among all types of institutional money managers. Balancing equities between money managers which are exchange members and money managers which are not exchange members was one of the fundamental objectives in the Securities Acts Amendments of 1975, as evidenced by SEC Release No. 34–13388. Requiring insurance companies to report securities

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[30] Id., section 81(13)(b).

[31] Id., section 87.

[32] Id., section 81(13)(c). This limitation is subject to a "leeway" amount of 4 percent of admitted assets which the company may invest as it chooses. Id. section 81(17). However, the limitation on investment in a single company provided for in section 81(13)(b) must be observed even under the leeway provision.

[33] See, e.g., Committee on Government Operations, "Disclosure of Corporate Ownership, S. Doc. No. 93–62, 93d Cong., 2d Sess. at 5–7, 146 (1974) [hereinafter cited as "Disclosure of Corporate Ownership"]; Committee on Government Operations, "Corporate Ownership and Control," Committee Print, 94th Cong., 1st Sess. at 3, 9 (1975) ((hereinafter cited as "Corporate Ownership and Control")).

* Appendix is contained in Commission File No. S7–714.

[34] "Disclosure of Corporate Ownership" at 146; "Corporate Ownership and Control" at 9.

[35] 11 SEC Docket at 1785 (emphasis added).

[36] "Institutional Investment Study," pt. 5 at 2849. Banks are far more likely to be closely related to the management of their investment vehicles. Id. at 2848.

[37] Id., pt. 2 at 827.

[38] See, e.g., "Corporate Ownership and Control" at 13–16. This comparison of mutual fund and insurance company holdings in twelve corporations shows in each case that the average percentage of insurance company ownership is far lower than the average percentage of mutual fund ownership.

[39] Senate Comm. on Finance, Subcomm. on Financial Markets. "The Impact of Institutional Investors in the Stock Market", Pts. 1 and 2 (Committee Print, 1973).

transactions much sooner than other institutional investors could put insurers at a competitive disadvantage. In communicating with potential clients, other money managers would be able to discuss the pros and cons of investment strategies pursued by insurance companies, while the insurers, competing for the same clients, could only guess at the investment posture of other institutional managers. Certainly the Commission should have considered fully the possible anticompetitive effects of singling out insurers for disparate treatment before adopting present rule 13d-5.

The Federal Communications Commission ("FCC") recently investigated the specific question of whether insurers should be treated differently than banks and other institutional investors with respect to equity ownership of broadcast licensees. Its conclusion was that the investment activities of insurance companies should be subject to exactly the same regulatory requirements as those of other institutions.

The FCC has long maintained rules limiting the multiple ownership of broadcast stations and cable television systems. These rules prohibit the ownership of two or more stations in any of the three broadcast services (AM radio, FM radio, or television) in the same area of service. Further, no entity or person may own or have a controlling interest in more than 7 AM, 7 FM, and 7 television stations.[40] For purposes of these rules, the FCC had considered a 1 percent equity interest in a broadcast licensee as a "cognizable interest" which through which a person might exercise some element of control in the corporation.[41]

Over the course of several years the FCC raised this limitation for various institutional investors.[42] In 1975, the FCC proposed further raising its benchmark to a uniform 5 percent for insurance companies, investment companies, and banks. The arguments in favor of such a change were outlined in the FCC's decision:

> The reason most frequently suggested for adoption of the increased benchmark is that banks, insurance companies, and investment companies are "passive" investors who cannot exercise managerial influence over their portfolio companies. Most commentators point out that the charters and prospectuses of these institutional investors as well as state and federal regulation limit the amount of stock they can purchase in any one company. Consequently, these parties believe that banks, insurance companies and investment companies, who all play the same passive investment role, should be subject to the same benchmark. Also, those commentators reason that 5 percent is a reasonable and realistic benchmark because it will have a beneficial effect on the degree of investment in the broadcast and cable businesses and at the same time will guard against any undue concentration of control.[43]

Despite the arguments of those opposed to raising the benchmark percentage for fear of concentrating ownership in the broadcast media, the FCC decided to adopt the proposed rule change on the grounds taht it would increase institutional investment in broadcast and cable companies, thereby strengthening the "economic foundation" of these industries. The FCC further concluded that increasing the benchmark would not cause "undue concentration of control." It noted that opponents of the proposal had cited no instance, nor had the FCC staff found any, in which institutional investors had used their minority interest to influence the management of a widely-held broadcast or cable company.[44]

The FCC specifically recognized that insurance companies are entitled to equal treatment with other institutional investors under its multiple ownership rules. Unlike this Commission's recent proceeding, the FCC's investigation focused on the insurance industry and considered a full record.[45] The FCC's conclusion is parallel to those reached by Congress and the Commission in previous studies of institutional investors.

EXCERPT FROM PETITION OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA RELATING TO RULE 13d-6

V. RULE 13d-6(b) WILL HAVE CAPRICIOUS AND MISCHIEVOUS RESULTS IF APPLIED TO THE ORDINARY COURSE OF BUSINESS LENDING ACTIVITIES OF LIFE INSURANCE COMPANIES

1. *The acquisition of equity securities in private placements by life insurance companies.* As we have on other occasions explained to the Commission, an integral part of the business of a life insurance company is the investment of the excess of the net premiums, investment income and principal repayments that remains after payment of benefits under its policies and contracts. A substantial part of this money is loaned to corporate borrowers for a variety of purposes, most often for construction or improvement of plant and for working capital. The loans are individually negotiated, are made pursuant to lengthy and carefully drawn loan agreements and result in the acquisitions of debt securities by the insurance company, most often in the form of a promissory note or notes. The loans are ordinarily for medium and long term—from 5 to 20 years.

Some indication of the volume of these transactions may be found in reports of the Commission's Office of Economic Research and in the Statistical Bulletins from 1956 through 1974. Over $106 billion of debt securities were privately placed with institutional investors with almost $8 billion sold in 1973 and more than $6 billion sold in 1974.[6]

For the most part this lending activity does not involve the acquisition of equity securities. Sometimes, however, it does give rise to the acquisition of equity securities by life insurance companies. In recent years a sizeable amount of corporate financing, particularly by utilities, has been carried out through the issuance and sale of preferred stock. Many of these issues are redeemable and include provisions for sinking funds. Some of these issues are registered, and insurance companies, either individually or through the supposed creation of a "group" (discussed below), sometimes acquire or are deemed to acquire more than 5 percent of such an issue (which is often, it should be noted, very much less than 5 percent of the voting power of the outstanding securities).

On other occasions the lending transaction will involve the issuance of convertible debt, once again giving rise to the acquisition of equity securities. Finally, certain borrowers, which though perfectly creditworthy, are thought for reason of size or other factors to present greater risk, will compensate for that risk by issuing to the lenders warrants to acquire common stock of the company.

2. *Concurrent loans by several insurance companies.* On numerous occasions several life insurance companies will concurrently make loans to a single issuer, where the amount of the borrowing is larger than any single company cares to make on its own. When this occurs it is both convenient and sensible for the lenders to retain the same outside counsel, to work cooperatively with each other and to end up with essentially the same form of loan agreement. There is in no sense whatever a joint venture among the participating companies, and throughout the transaction each retains the unqualified right to act independently. At the conclusion of the transaction, that is, shortly after the closing, the cooperative effort ceases and the parties go their own ways. They have no continuing joint or common interest. They are in fact competitors of each other. In that capacity they do not exchange information about their portfolio holdings or investment decisions. One company may well want to dispose of the equity securities acquired in such a transaction, but it would not inform the others of such intention. The companies wish to and will act independently of each other.[7] The Commission staff has nevertheless taken the position that in these circumstances the several participating life insurance companies constitute a "group" for purposes of Section 13(d) and hence, even though none of the participating companies may acquire more than 5 percent of an issue, a Schedule 13D filing has been required where the companies have acquired in the aggregate more than the required percentage. This serves to increase substantially the number of occasions when a Section 13(d) report must be filed.

Rule 13d-6(b), as recently adopted, appears to incorporate this interpretation of the staff and provides that when two or more persons agree to act together to acquire securities of an issuer—not necessarily equity securities—the group formed thereby is deemed to have acquired beneficial ownership of all securities of the issuer owned by each member of the group. This attribution rule may well be desirable when applied to acquisitions of the kind comprehended by Section 13(d)(1) and as to which a Schedule 13D must be filed; when several persons act together to affect control of an issuer, information about the securities of that issuer previously owned by each of them is obviously of interest to other affected persons. It makes no sense at all, however, as applied to life insurance company lending activities, whether or not a short form is permitted. Indeed, we have serious doubts about the validity of this interpretation, as applied to non-control acquisitions. The release cites *GAF Corp. v. Milstein*, 453, F. 2d 709 (2nd Cir. 1971), cert. denied, 406 U.S. 910 (1972), in support of this position. *Milstein*, however, dealt only with the question of whether

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[40] Cross ownership of cable television systems with networks, television broadcast stations, or television translator stations is also forbidden, as is ownership of a daily newspaper and a broadcast station in the same community.

[41] *See* Multiple Ownership and Cross Ownership, 59 F.C.C. 2d 970 (1976).

[42] 13 F.C.C. 3d 257 (1968) (limit for investment companies raised to 3 percent); 34 F.C.C. 2d 889 (1972) (limit for bank trust departments raised to 5 percent, except in the case of cable television systems).

[43] 59 F.C.C.2d at 973-74.

[44] Id. at 975.

[45] Petitions from the insurance industry were the main impetus for the FCC proceeding. See Notice of Proposed Rulemaking, 40 FR 26551 (1975).

[6] Tables entitled "New Corporate Securities Offered for Cash in the United States" and "Securities Offerings," Office of Economic Research; Statistical Bulletin, Vol. 34, No. 5 (May 1975), p. 422.

[7] The loan agreements may provide that certain action may be taken with the consent of the holders of a stated percentage of the issue, but this does not call for a continuation of the original cooperative activity, and in any event these actions are associated with the debt rather than the equity aspects of the transaction.

a filing under Section 13(d) was required when the group was formed or whether a further acquisition was necessary. No issue was raised as to whether securities other than those of the class the group was formed to acquire should be presumed also to have been acquired. Moreover, the Court said explicitly that groups "would not be required to file unless the members conspired to pool their securities interests *for one of the stated purposes.*" (453 F. 2d at 719, emphasis supplied.) Nonetheless, we do not ask that this interpretation be withdrawn but, as the discussion below indicates, only that the extent of the presumed beneficial ownership be suitably determined.

As explained above, there are thousands of loans made annually by life insurance companies where no equity securities are involved. Many of these loans are made by "groups" of life insurance companies. As the rules are now framed, such a group, from the date the group is formed until the loan is actually made on the closing date when the group disbands, will be deemed to own all of the common stock, all of the preferred stock and all of the warrants and convertible debentures owned by each of the participants. In many cases more than 5 percent of a registered class will be deemed to have been acquired. We doubt that the Commission has the power to declare that when two life insurance companies agree simply to lend money to an issuer, acquiring notes or debentures in the process, they must be deemed, contrary to fact, to have acquired the equity securities, if any, previously owned by each of them. But in any event we cannot understand why anyone should care about this hypothetical and transient ownership or why two reports should be filed pursuant to Section 13(d), one to announce the decision by the group of companies to make the loan and the other to announce that the loan has been made and that, coincidentally, the unnecessary attribution of ownership has disappeared.

To require a poll to be taken of every life insurance company that participates in a simple lending transaction to determine whether all of them own in the aggregate more than 5 percent of a class of equity security, and to require two or more reports to be filed in those circumstances, is to go far beyond the intendment of the statute for no apparently sensible reason. Yet many such reports will have to be filed if the rule is allowed to stand as it now reads.

Even where a "group" of life insurance companies is formed to acquire equity securities, as, for example, where preferred stock is to be acquired instead of debt securities, there is no reason whatever to attribute ownership of all other classes of equity securities, as there might possibly be where an acquisition is for the purpose of affecting control. When persons agree to work together for the purpose of obtaining or affecting the control of an issuer, it may be important to know what other securities of that issuer are owned by each of them, even where their agreement does not in terms extend to such other securities. But where a routine, ordinary course of business acquisition is made by a group, there is no occasion to inquire what other securities of the issuer are owned by each of them since this is not relevant to any concern of the public, particularly a concern of the kind that gave rise to the Williams Act. At most, the attribution should be limited to the class or classes of securities that the group has been formed to acquire.*

This point was made by Prudential in comments made when these rules were proposed, but the current release offers no explanation of why so broad an attribution rule was adopted for non-control acquisitions. This is not in keeping with the Commission's obligations under the applicable law. As the Court of Appeals for the District of Columbia recently observed:

"An agency need not respond to frivolous or repetitive comment it receives. However, where apparently significant information has been brought to its attention, or substantial issues of policy or gaps in its reasoning raised, the statement of basis and purpose must indicate why the agency decided the criticisms were invalid. Boilerplate generalities brushing aside detailed criticism on the basis of agency 'judgment' or 'expertise' avail nothing; what is required is a reasoned response, in which the agency points to particulars in the record which, when coupled with its reservoir of expertise, support its resolution of the controversy. An agency may abuse its discretion by proceeding to a decision which the record before it will not sustain, in the sense that it raises fundamental questions for which the agency has adduced no reasoned answers." *NRDC v. United States Nuclear Regulatory Commission* (C.A.D.C., July 21, 1976), cert. granted, 45 U.S. Law Week 3570 (1977).

While we believe that, even in the case of acquisitions that are intended to affect control, it would be preferable if Rule 13d–6(b) were limited to transactions where two or more persons act together to acquire equity securities of an issuer, our concern is with ordinary course of business non-control acquisitions, and so the amendment recommended below applies solely to such transactions. We suggest, therefore, that Rule 13d–6(b) should be amended to add the following:

"* * * *Provided, however*, That if the group is of the type specified in Rule 13d–5(a)(2)(vii), then it shall be deemed to have acquired beneficial ownership of securities of the persons comprising the group only if it has been formed for the purpose of acquiring, holding, or disposing of one or more classes of equity securities of an issuer, and in such case the group shall be deemed to have acquired beneficial ownership of the securities of such class or classes beneficially owned by such persons, for purposes of Section 13(d)(1)."

This would preserve the present attribution rule for acquisitions intended to be covered by Section 13(d) and provide a more limited and more sensible attribution rule for group non-control acquisitions.

VI. CONCLUSION

The Commission should amend Rule 13d–5(a)(2) to add life insurance companies to the categories of persons entitled to use Form 13D–5 and should amend Rule 13d–6 in the manner suggested above.

Respectfully submitted,

The Prudential Insurance Co. of America.

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MARCH 21, 1977.

SUBMISSION OF THE NEW YORK CLEARING HOUSE ASSOCIATION

[File No. S7–687]

OUTLINE OF COMMENTS REGARDING RECENTLY ADOPTED AMENDMENTS TO REGULATION 13D

I. BASIC POSITION

The Securities and Exchange Commission's resulted in a regulation which is unworkable as applied to commercial banks.** The cost to commercial banks of even attempting to comply with the revised Regulation would run into millions of dollars. These enormous costs are unjustified in view of proposed Rule 13f–1 which was issued under the statute Congress intended to provide for institutional investor disclosure. Rule 13f–1 will provide such necessary disclosure, although a number of amendments are required to avoid problems similar to those created by Regulation 13D.

A duplication of such disclosure by means of a separate reporting system under Regulation 13D would, because of various technical differences between the two regulations, create enormous additional expense without any resulting benefit to the investing public. Such duplication is contrary to the express intention of Congress in enacting Section 13(f) of the 1934 Act and the basic concern expressed by a number of government officials regarding the burden of duplicative and non-productive paperwork.

II. SPECIFIC PROBLEMS UNDER REGULATION 13D

(a) Initial Creation of a Computerized Reporting System or Other Mechanism to Comply with Regulations 13D Could Cost Certain Individual Banks Millions of Dollars and the Aggregate Cost for Banks Generally Might Exceed Fifty Million Dollars. In order to comply with the Regulation 13D reporting requirements, major banks throughout the country will be required to develop sophisticated computer systems to track and report the relevant data These systems must provide information regarding thousands of securities held in thousands of different accounts, and must indicate whether a bank's "beneficial ownership" of each security has exceeded the 5 percent threshold test.

The cost of establishing a computer system for the domestic trust department operations of a major bank with a very limited branch system is in the area of $250,000. This is a "bare-bones" cost estimate which would be far exceeded at many major banks. Even this estimate assumes the availability, from a commercial reporting service, of a list of all "Section 13(d) securities" and the amount of shares equivalent to 5 percent of the total outstanding, as well as acknowledgment by the Commission that banks may rely upon such a list. If this assumption is inaccurate, the costs are incalculable. At the present time, commercial reporting services include only securities that are listed on a national securities exchange or are quoted on the automated quotation system of a registered securities association (e.g., the NASDAQ system).**

A major part of the expense in establishing the computer system is attributable to the need to include convertible securities and options in calculating the percentage holdings of the underlying equity security. This expense would not arise under proposed Rule 13f–1, which does not include a percentage test. The expense is not justified because it is inappropriate to assume that banks would exercise conversion rights for the purpose of acquiring a controlling position. At the very

* As Rule 13d–5(a)(2)(vii) now reads, a "group" qualifies for use of Form 13D–5 only if the securities were acquired in a Section 4(2) transaction. We assume this refers only to the securties that the group was formed to acquire and not to the securities previously owned by the individual members of one recent amendments to Regulation 13D have group that are presumed to be owned by Rule 13d–6(b). It would be helpful if the Commission could confirm that this reading is correct.

* This outline does not consider the question of the legality of these amendments, which was discussed in The New York Clearing House Association's Memorandum of Comments dated December 15, 1975 in response to Release No. 34–11,616.

**Proposed Rule 13f–1 provides that an institutional investment manager may rely on the most recent list of "Section 13(f) securities" published by the Commission. Congress added the statutory requirement that the Commission furnish such a list after institutional investors explained that compliance would be seriously complicated in its absence.

least, a person qualified to file a short form notice under Rule 13f–5, i.e., a person assumed not to have the purpose of acquiring control, should be exempt from the requirement under Rule 13d–3(d)(1) to deem securities to be outstanding which are subject to conversion or option rights.

The start-up costs required to establish a computerized reporting system would be substantially increased if the system is required to cover (i) a decentralized trust operation involving a bank with a large branch system, (ii) pledged securities or (iii) securities held by foreign branches and affiliates. The costs associated with the last two items are discussed below.

In addition to these start-up costs, there will be significant ongoing operations costs required to comply with the Regulation 13D reporting requirements. A bank's holdings in each of thousands of securities must be continuously reviewed and each report filed with the Commission must be updated on a quarterly basis.

(b) Pledged Securities Should Not Be Classified as "Beneficially Owned" until Such Time as the Pledgee Exercises Its Right to Vote Such Securities. It would be inordinately expensive, as well as misleading, for banks and their non-banking subsidiaries to create a reporting system that automatically includes all securities pledged to secure loans as to which there exists an uncured default of more than thirty days. Banks generally do not have any centralized information system with respect to aggregate holdings of pledged securities, and it would be a major undertaking to create either a computer or manual listing of all such securities. Even if a bank developed a computer program for aggregate holdings, it could not determine the existence of defaults under loan agreements or whether such defaults are uncured for more than thirty days. A manual input system as to such facts, extending throughout the entire commercial department of each bank, will also have to be created, which will require very substantial time of bank officers and counsel to implement and maintain. The expense of creating a manual mechanism for reporting all pledged securities has been estimated by one bank to cost $500,000. The operations of a number of major banks are so extensive that estimates of the cost of reporting pledged securities are not feasible. For example, one major bank makes secured loans through 267 domestic branches, 209 foreign branches (in over 100 countries) and 374 offices of foreign banking subsidiaries, and, in addition, a domestic finance company affiliate makes secured loans through approximately 200 offices.

Banks and their non-banking subsidiaries frequently take no action to accelerate loans or foreclose on pledged securities in cases in which defaults exist for periods in excess of 30 days. Inasmuch as the pledgee may never vote the pledged securities, there is no justification for the substantial expense required to report such securities as beneficially owned prior to the exercise of voting authority.

(c) Application of Regulation 13D to Securities Held in Investment Accounts at Foreign Branches and Subsidiaries of Commercial Banks Would Not Provide Meaningful Additional Disclosure but Would Substantially Increase the Cost of Creating a Compliance System. Securities held in investment accounts at foreign branches and subsidiaries of commercial banks are insignificant in comparison to the banks' domestic investment account holdings. The reporting of such foreign holdings, however, would substantially increase the expense of creating a computerized compliance system. Estimates by one major bank, with only a small number of foreign offices, of the expenditures to create the necessary computerized reporting system would exceed $1,000,000.

The potential costs involved are extremely high because (i) the securities held in investment accounts at foreign branches and affiliates are only infrequently included in any computer system and (ii) even where a system has been established, it is frequently not compatible with the bank's main computer operations. The cost of creating the integrated computer system will greatly increase for commercial banks having investment accounts at a much larger number of branches and affiliates.

Banks with branches or affiliates in certain countries could not comply with Regulation 13D without violating the laws of their host countries. The laws of a number of countries would prohibit the disclosure of any individual's holding, whether or not it exceeded 5 percent of the outstanding shares, and Swiss law may prohibit the disclosure of the aggregate holdings of a Swiss affiliate of a United States bank.

(d) Regulation 13D Will Require Computer Runs on Every Business Day to Determine if at Any Point a Bank's Aggregate Holdings Exceed 5 percent. Although the revised Regulation permits banks and certain other institutional investors to file the short form notice (Form 13D–5) on a quarterly basis, a bank will be required to determine whether its aggregate holdings of each security exceed 5 percent as of each business day during the quarter. A daily computer run will be required to make this determination. It has been estimated that such daily computer runs would involve several hours of operation on a major computer, which on an annual basis would cost in the area of $100,000 for many banks.

(e) Retroactive Application of Regulation 13D Amendments Would Greatly Increase Costs of Compliance and Disregards Clear Legislative Intent and Judicial Decisions. The amendemnts to Regulation 13D require the aggregation of the holdings of unrelated trust accounts (although they frequently have conflicting investment strategies) and expand the definition of beneficial ownership. As a result, retroactive application of these amendments would require major banks to make reports on numerous securities in which their "beneficial ownership", as that phrase is now defined, exceeded 5 percent prior to the effectiveness of the amendments. The Commission may not have intended, however, to apply the amendments on a retroactive basis because such an application would be contrary to Congress' intention in enacting the Williams Act and to judicial precedent.

Reporting on these pre-existing holdings alone would involve aggregate filing fees for some banks in excess of $15,000. More significantly, it would require substantial time of bank personnel and legal counsel to prepare the short form notices. In preparing reports on pre-existing holdings, it would also be necessary to examine each account in which the reveiant securities are held to determine if the bank "acquired such securities in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect * * *." This substantial effort must be made merely to determine qualification for use of the short form.

A bank could acquire securities "in connection with" a transaction having the effect of changing control, even though the bank's role in such charge is non-existent or totally passive. For example, a bank could be appointed the trustee of a trust containing only a few shares of a company in connection with the disposition of control by the founder, or a bank could receive shares of a company in fiduciary accounts in connection with the spin-off of that company's shares by its former parent.

(f) A Long Form Schedule 13D Is Not Feasible for Reporting by Banks, but the Regulation as Adopted Would Make the Short Form 13D–5 Unavailable in Numerous Situations. It is virtually impossible for a commercial bank to file a full Schedule 13D in connection with securities held in numerous trust accounts. A full Schedule 13D requires substantial information concerning every person "on whose behalf the acquisition has been effected" and other persons who are known to have an "economic interest" in the securities. When a bank holds securities in numerous separate trust accounts, there will frequently be thousands of persons with respect to whom information would be required. The cost and effort involved in any meaningful attempt by a bank to supply this information would be enormous, and, irrespective of the effort and cost, the information could frequently not be obtained.

Notwithstanding the practical impossibility of a full Schedule 13D filing by banks and their parent holding companies, certain provisions of the Regulation make the alternative short form 13D–5 unavailable in a number of situations. A parent bank holding company would be required to use a full Schedule 13D if one share of a security for which a report was required were beneficially owned by a foreign bank subsidiary (which is not a bank under Section 3(a)(6) of the 1934 Act) or many non-banking subsidiaries, domestic or foreign. The full Schedule 13D would also be required if one share had been pledged to secure a 30-day defaulted loan made by a foreign bank subsidiary or a domestic non-banking subsidiary, such as a finance company. Finally, the full Schedule would be required unless each share could meet the highly subjective test of being acquired without "the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection (there) with * * *."

Impossibility of Meeting August 31, 1977 Effective Date Even if Necessary Changes Are Made. Even if the Commission were to agree to make the changes discussed above, it is impossible for the commercial banking industry, despite its best efforts, to meet the August 31, 1977 effective date for the amendments to Regulation 13D. Furthermore, in view of the great expense that will result from efforts to comply with such amendments even at a much later date, it is requested that the effective date be suspended for banks and other institutional investors until a study by the Commission can be completed as to what, if any, significant information would not be reported under Rule 13f–1. In order to complete such study effectively, the Commission should have the benefit of a full cycle of reporting under Rule 13f–1.

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federal register

WEDNESDAY, SEPTEMBER 7, 1977
PART VI



SECURITIES AND EXCHANGE COMMISSION

■

ENERGY POLICY AND CONSERVATION

Oil and Gas Producers—Financial Accounting Standards

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 210]

[Release Nos. 33-5861, 34-13910, 35-20158]

ACCOUNTING PRACTICES—OIL AND GAS PRODUCERS—FINANCIAL ACCOUNTING STANDARDS

Proposed Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: This release is a rulemaking proposal which would amend the Commission's regulations to incorporate certain financial accounting and reporting standards required by the Energy Policy and Conservation Act, Pub. L. 94-163 (the "EPCA"), to be developed by December 22, 1977. The Commission is proposing these rules pursuant to authority granted it by the EPCA and the accounting practices required to be developed will be applicable to persons engaged in the production of oil and gas who will be required under the EPCA to file reports with the Department of Energy, including those who are not subject to the filing requirements of the Federal securities laws. The amendments are proposed to place the Commission in a position to adopt by December 22, 1977, financial accounting and reporting standards for oil and gas producing activities. The proposed amendments are the same as the standards contained in the proposed Statement of Financial Accounting Standards, "Financial Accounting and Reporting by Oil and Gas Producing Companies," issued on July 15, 1977, by the Financial Accounting Standards Board.

DATE: Comments should be submitted on or before October 14, 1977.[1]

ADDRESS: Comments should refer to File S7-715 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549. All comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Richard C. Adkerson, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-1671).

SUPPLEMENTARY INFORMATION: For purposes of developing a reliable energy data base related to the production of crude oil and natural gas, the EPCA requires the Commission to assure the development by December 22, 1977, and observance of accounting practices to be followed by persons engaged in the production of crude oil or natural gas in the United States. The Act authorizes the Commission to prescribe rules with respect to the accounting practices to be developed pursuant to the Act or to make effective by recognition, or by other appropriate means indicating a determination to rely on, accounting practices developed by the Financial Accounting Standards Board if the Commission is assured that such practices will be observed to the same extent as would result if the Commission had prescribed such practices by rule. The FASB, the private sector body responsible for establishing financial accounting and reporting standards, has recently published an exposure draft of a proposed Statement of Financial Accounting Standards (the "FASB Exposure Draft") entitled "Financial Accounting and Reporting by Oil and Gas Producing Companies." The FASB Exposure Draft would require oil and gas producing companies to follow a form of the successful efforts method of accounting. This release proposes amendments to Regulation S-X (17 CFR Part 210) to incorporate the FASB's proposed standards as rules of the Commission.

The Commission's proposal of these amendments is not indicative of any change in its policy regarding its relationship with the FASB. The timing of this action is necessitated solely because of the need for the Commission to ensure that it can comply with the deadline imposed by the EPCA in the unlikely event the FASB does not adopt final standards by December 22, 1977.

BACKGROUND

In Accounting Series Release No. 150 (39 FR 1260), the Commission issued a statement of its policy on the establishment and improvement of accounting principles and practices. The policy provides that the Commission will continue to look "* * * to the private sector for leadership in establishing and improving accounting principles and standards through the FASB with the expectation that the body's conclusions will promote the interest of investors * * *"

The EPCA requires the Commission to assure the development of accounting practices to be followed in the preparation of accounts by persons engaged in the production of crude oil or natural gas in the United States. A deadline of December 22, 1977, was established for the development of these accounting practices.

The EPCA explicitly recognizes the Commission's policy with respect to the FASB. The Act provides that the Commission is authorized " * * * to prescribe rules applicable to persons engaged in the production of crude oil or natural gas, or make effective by recognition, or by other appropriate means indicating a determination to rely on, accounting practices developed by the Financial Accounting Standards Board, if the Securities and Exchange Commission is assured that such practice will be observed by persons engaged in the production of crude oil or natural gas to the same extent as would result if the Securities and Exchange Commission had prescribed such practices by rule * * *." The EPCA further provides that the Commission shall afford interested persons an opportunity to submit written comment with respect to whether the Commission should exercise its discretion to recognize or otherwise rely on such accounting practices developed by the FASB.

In anticipation of the enactment of the EPCA, the FASB added to its technical agenda in October, 1975, a project entitled "Financial Accounting and Reporting in the Extractive Industries." In connection with that project the FASB appointed a task force of 18 persons to advise it in preparing a Discussion Memorandum analyzing issues related to this project. The staff of the Commission prepared part of one of the chapters in the Discussion Memorandum to discuss certain issues relating to the SEC's repsonsibilities under the EPCA. The Discussion Memorandum was issued on December 23, 1976.

The Commission in Securities Act Release No. 5801 (42 FR 8237) called attention to the publication of the FASB Discussion Memorandum and encouraged interested parties to comment on the issues presented therein and to participate in the FASB's public hearing on this project. In that release the Commission indicated that "* * * consistent with its policy most recently expressed in Accounting Series Release No. 150, (the Commission) contemplates that the Financial Accounting Standards Board will be providing the leadership in establishing financial accounting principles and standards for producers of oil and gas." The FASB received 140 position papers, letters of comments, and outlines in response to this Discussion Memorandum and held a public hearing on this project on March 30 and 31 and April 1 and 4, 1977. Thirty-nine presentations were made at the hearing.[2]

The Commission has followed closely the deliberations of the FASB in connection with this project. A member of the Commission's staff served as an observer of the FASB's task force. The Commission's staff received and reviewed all written responses to the FASB Discussion Memorandum, and a member of the staff of the Commission attended the FASB public hearing. Since the public hearing, an active liaison between the FASB and the Commission has been maintained to exchange views on different issues involved in the project.

PURPOSE OF THE RELEASE

This release is issued for two purposes: (1) To propose amendments pursuant to the EPCA which would be applicable to persons filing reports with the Federal

[1] However, comments on the FASB Exposure Draft are due September 22, 1977. See the discussion below at "Comments to FASB."

[2] Transcripts of the public hearing and copies of the response to the FASB Discussion Memorandum are available for inspection or purchase from the Financial Accounting Standards Board, High Ridge Park, Stamford, Conn. 06905.

Energy Administration[1] and (2) to propose concurrently amendments pursuant to the Federal securities laws. These proposed rules would incorporate the provisions of the FASB Exposure Draft.

The Commission does not generally adopt statements of the FASB as its rules. It is proposing rules in this case to ensure that it can comply with its responsibilities under the EPCA. The EPCA provides that the Commission can extend the December 22, 1977, deadline for the development of the accounting practices to allow for a meaningful comment period with respect to whether it should determine to rely on the accounting practices promulgated by the FASB. The FASB has informed the Commission that it expects to issue a final standard prior to December 22, 1977. However, in the event that the FASB does not adopt a final standard prior to December 22, 1977, the Commission will be in a position to adopt the proposed standards, revised as it considers appropriate on the basis of comments submitted in response to this release and to the FASB Exposure Draft.

In this release, it is the intention of the Commission to propose rules which are the same as the provisions of the FASB Exposure Draft. The provisions of the Exposure Draft have been rearranged to facilitate adoption as rules of the Commission. Comments are specifically requested on any matters where these rearrangements resulted in possible deviations from the provisions of the FASB Exposure Draft.

Disclosure Matters

The proposed rules do not include the provisions of the FASB Exposure Draft (paragraphs 42–55) pertaining to disclosure of financial and operating data. The EPCA requires that oil and gas producers report to the Federal Energy Administrator (the reporting responsibilities under the EPCA have been since assigned to the Department of Energy) certain financial and operating data, some of which are similar in many respects to those proposed for disclosure in financial statements by the FASB. The Commission in Securities Act Release No. 5837 (42 FR 33135) requested comments from interested parties relating to the reporting of these financial and operating data. In that release, the Commission also indicated that it is considering revising its disclosure requirements related to these types of data in filings under the Federal securities laws. Comments on that release were due August 12 1977.

The Commission intends to propose rules relating to reporting these supplemental financial and operating data after reviewing the responses to its request for comments in Securities Act Release No. 5837. In connection with the development of these reporting requirements, the Commission will consider and coordinate its proposed requirements with those set forth in the FASB Exposure Draft.

Comments to FASB

The Commission encourages all interested parties to submit comments directly to the FASB in response to the Exposure Draft. Copies of the Exposure Draft may be obtained from the FASB's Publications Division at the address below. Comments should be submitted in writing, received by September 22, 1977, and addressed to:

Financial Accounting Standards Board, File Reference 1015, High Ridge Park, Stamford, Conn. 06905.

In accordance with its usual procedures, the Commission will receive and review copies of all such submissions to the FASB, and it will not be necessary for those responding to the FASB to provide copies of their responses to the Commission. Interested parties may, of course, submit comments or additional comments directly to the Commission. Copies of the comment letters in response to the FASB Exposure Draft provided to the Commission will become part of the Commission's public record for this rulemaking proposal.

Impact on Competition

Section 23(a)(2) of the Securities Exchange Act, amended, requires that "[t]he Commission, in making rules and regulations pursuant to any provisions of this title, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this title."

Many of those who provided written submissions in response to the FASB Discussion Memorandum and who made oral presentations at the FASB public hearing stated that adoption of the successful-efforts method of accounting could have an impact on competition in the oil and gas producing industry. Many proponents of the full-cost method of accounting indicated one effect of mandating the successful-efforts method would be that the less established oil and gas producing companies would have difficulties in obtaining capital to finance their operations, because these companies would generally report lower earnings (and perhaps losses) and lower stockholders' equity (and perhaps deficits) than if the full-cost method were followed. The full-cost proponents generally believe that the exploration activities of the smaller companies would be limited and that the lower level of exploration by these companies, which may be offset somewhat by exploration activities of the larger companies, would not be in accord with the current national energy policy of encouraging domestic production of oil and gas.

Others in their submissions to the FASB stated that the adoption of any method of accounting would have little, if any, effect on the ability of oil and gas producing companies to raise capital to finance their exploration activities. The FASB has indicated that it has considered both of these positions. The following was included in the "Bases for Conclusions" section of the FASB Exposure Draft:

> In the Board's judgment, the evidence in support of either position is inconclusive. Some empirical studies of capital market behavior seem to show that securities prices are affected little, if at all, by changes in accounting methods. Those studies conclude that the market takes into account the differences in accounting methods used by different companies. Those studies seem to suggest that companies' ability to raise capital would not be affected by a proscription of the full cost method (or, for that matter, of the successful efforts method). Other studies, however, reach exactly the opposite conclusion. They seem to show that securities prices are affected by the method of accounting used.
>
> The contradictory conclusions of those studies and their possible implications are discussed in considerable depth in "Tentative Conclusions on Objectives of Financial Statements of Business Enterprises," which was issued by the Board in December 1976. A number of specific studies are cited in Chapter 2, "Investors and Creditors," of "Tentative Conclusions"; additional studies are identified in the bibliography of the extractive industries Discussion Memorandum. Chapter 2 of "Tentative Conclusions" discusses both the traditional view of investors' and creditors' information needs (which concentrates on analysis of individual securities and enterprises that issue them) and the more recent capital market theory (which concentrates on portfolios and the extent to which individual securities increase or decrease the level of risk of a portfolio). An appendix to "Tentative Conclusions" provides an even more technical discussion of recent capital market theory.
>
> In regard to the question of companies' ability to raise capital, the Board has considered the studies discussed in "Tentative Conclusions" and in the Discussion Memorandum, the evidence put forth by advocates of both full costing and successful efforts costing, the written submissions and oral testimony in response to the Discussion Memorandum, and the interviews referred to in paragraph 85(a) (of the FASB Exposure Draft). In the Board's judgment, the claims that full costing enhances a company's ability to obtain capital and that successful efforts costing inhibits that ability have been neither demonstrated nor refuted conclusively.
>
> Moreover, in the Board's view an accounting method should not be mandated by the Board with the intention of influencing investors' decisions, regardless of how socially acceptable or economically desirable the expected results might be perceived by some. Financial accounting should be evenhanded and attempt to report the results of business decisions as nearly as those results can be determined. The Board does not believe that it is feasible to design (and continuously redesign) accounting standards in an attempt to foster changing perceptions of national economic goals. To do so would, all too often, lessen the effectiveness of financial statements in reporting on the financial affairs of an enterprise and would, in the Board's opinion, not be in the public interest.

[1] Section 505(a) of EPCA amends the Energy Supply and Environmental Coordination Act of 1974 by adding a provision that the Federal Energy Administrator (in the future the Department of Energy) require by rule" * * * that persons engaged, in whole or in part, in the production of crude oil or natural gas—(A) Keep energy information in accordance with the accounting practices developed pursuant to Section 503 of the Energy Policy and Conservation Act, and (B) Submit reports with respect to energy information kept in accordance with such practices."

The Commission has reviewed the submissions to the FASB concerning the potential impact on competition resulting from the proposed selection of a method of accounting. Those wishing to provide additional comments on the impact that the proposed rules would have on competition are requested to submit such comments to the Commission.

COMMISSION ACTION

The Commission hereby proposes to amend 17 CFR Part 210 by the addition of new § 210.3–18 as presented below:

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

§ 210.3–18 Financial accounting and reporting for oil and gas producing activities.

This section prescribes financial accounting and reporting standards for registrants of the Commission, which are engaged in oil and gas producing activities, in filing registration statements and reports under the Federal securities laws and for all persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States in filing reports with the Department of Energy pursuant to section 11(c) of The Energy Supply and Environment Coordination Act of 1974, as amended by section 505 of The Energy Policy and Conservation Act of 1975, except for such activities of a regulated oil and gas producing company that are subject to individual-company-cost-of-service ratemaking.

(a) *Definitions.* The following definitions apply to the terms listed below as they are used in this rule:

(1) *Oil and gas producing activities.* Such activities include:

(i) The search for oil and gas in their natural states and original locations.

(ii) The acquisition of property rights or properties for the purpose of further exploration and/or for the purpose of removing the oil and gas from existing reservoirs on those properties.

(iii) The construction, drilling and production activities necessary to retrieve oil and gas from its natural reservoirs.

(iv) The acquisition, construction, installation, and maintenance of field gathering and storage systems.

These standards are not being applied to:

(i) The transporting, refining, and marketing of oil and gas, except for the transportation within the original production field for gathering or storage purposes.

(ii) The extraction of hydrocarbons from shale, tar sands or coal.

(2) *Proved reserves.* Those quantities of crude oil, natural gas, and natural gas liquids which, upon analysis of geologic and engineering data, appear with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under existing economic and operating conditions. Proved reserves are limited to those quantities of oil and gas which can be expected, with little doubt, to be recoverable commercially at current prices and costs, under existing regulatory practices and with existing conventional equipment and operating methods. Current prices include consideration of changes in existing prices provided by contractual arrangements, by law, or by regulatory agencies, where applicable; and for changes in prices for gas to be produced subsequent to termination or expiration of existing contracts, which latter prices should be based on current prices plus escalation for similar production subject to the entities' recent contracts. Depending upon their status of development, such proved reserves are subdivided into "proved developed reserves" and "proved undeveloped reserves."

(3) *Proved developed reserves.* Reserves which can be expected to be recovered through existing wells with existing equipment and operating methods. Additional oil and gas expected to be obtained through the application of fluid injection or other improved recovery techniques for supplementing the natural forces and mechanisms for primary recovery should be included as "proved developed reserves" only after testing by a pilot project or after the operation of an installed program has confirmed through production response that increased recovery will be achieved.

(4) *Proved undeveloped reserves.* Reserves which are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage shall be limited to those drilling units offsetting productive units, which are virtually certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation. Under no circumstances should estimates for proved undeveloped reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir.

(5) *Proved properties.* Properties with proved reserves.

(6) *Unproved properties.* Properties with no proved reserves.

(7) *Field.* An area consisting of a single reservoir or multiple reservoirs all grouped on or related to the same individual geological structural feature and/or stratigraphic conditions. There may be two or more reservoirs in a field which are separated vertically by intervening impervious strata, or laterally by local geologic barriers, or by both. Reservoirs that are associated by being in overlapping or adjacent fields may be treated as a single or common operational field. The geological terms "structural feature" and "stratigraphic condition" are intended to identify localized geological features as opposed to the broader terms of basins, trends, provinces, plays, areas-of-interest, etc.

(8) *Reservoir.* A porous and permeable underground formation containing a natural accumulation of producible oil or gas that is confined by impermeable rock or water barriers and is individual and separate from other reservoirs.

(9) *Exploratory well.* A well drilled outside a proved area, or within a proved area but to a previously untested horizon, so that its purpose is to determine whether oil or gas reserves exist rather than to develop proved oil or gas reserves discovered by previous drilling. Exploratory wells include (i) A well located on a structural feature or other type of trap that previously has not produced oil or gas (a "new field wildcat"); (ii) a well located to explore for a new pool on a structural feature or other type of trap already producing oil or gas but outside the known limits of the producing area (a "new pool wildcat"); (iii) a well located within the productive area of a pool or pools already partly or wholly developed but drilled below the deepest productive pool to explore for deeper unknown prospects (a "deeper pool test") or drilled above a productive pool to explore for shallower unknown prospects (a "shallower pool test"); and (iv) a well located and drilled with the expectation of extending for a considerable distance the productive area of a partly developed pool (an "outpost or extension test").

(10) *Development well.* A well drilled within the proved area of an oil or gas reservoir to the depth of a stratigraphic horizon known to be productive for the purpose of extracting proved oil or gas reserves.

(b) *Costs to be capitalized.* Assets involved in oil and gas producing activities, the costs of which are to be capitalized when incurred, are broadly defined as follows:

(1) *Mineral interests in properties.* Including (i) fee ownership or a lease, concession or other contractual interest representing the right to extract oil or gas subject to such terms as may be imposed by the conveyance of that interest; (ii) royalty interests, production payments payable in oil or gas, and other nonoperating interests in properties operated by others; and (iii) agreements with foreign governments or authorities under which an enterprise participates in the operation of the related properties or otherwise serves as "producer" of the underlying reserves (as opposed to being an independent purchaser, broker, dealer, or importer). Properties do not include supply agreements or contracts that represent the right to purchase, rather than extract, oil and gas.

(2) *Wells and related equipment and facilities.* The costs of which include those incurred to (i) Drill and equip those exploratory wells that have found proved reserves (other than costs of stratigraphic or test wells, which are charged to expense when incurred) and (ii) obtain access to proved reserves and

provide facilities for extracting, treating, gathering, and storing the oil and gas, including the drilling of development wells, whether successful or unsuccessful.

(3) *Support equipment and facilities used in oil and gas producing.* Items such as seismic equipment, drilling equipment, construction and grading equipment, vehicles, repair shops, warehouses, supply points, camps, and division, district, or field offices.

(4) *Uncompleted wells, equipment, and facilities.* The costs of which include those incurred to (i) drill and equip wells that are not yet completed (other than the costs of stratigraphic or test wells, which are charged to expense when incurred) and (ii) acquire or construct equipment and facilities that are not yet completed and installed.

(c) *Assessment of unproved properties.* Unproved properties shall be assessed periodically (but at least once a year) to determine whether they have been impaired. If the results of the assessment indicate an impairment, a loss shall be recognized by providing a valuation allowance. Impairment of individual unproved properties whose acquisition costs are relatively significant shall be assessed on a property-by-property basis, and an indicated loss shall be recognized by providing a valuation allowance. When an enterprise has a relatively large number of unproved properties whose acquisition costs are individually insignificant, the amount of loss to be recognized and the amount of the valuation allowance needed to provide for impairment of those properties may be determined either in the aggregate or for groups of properties on the basis of the experience of the enterprise and other information.

(d) *Surrender or abandonment of properties.* When an unproved property is surrendered, abandoned, or otherwise deemed worthless, capitalized acquisition costs relating thereto shall be charged against the related allowance for impairment to the extent an allowance has been provided; if the allowance previously provided is inadequate, a loss shall be recognized. Normally, no gain or loss shall be recognized if only an individual well or individual item of equipment is abandoned or retired or if only a single lease or other part of a group of proved properties constituting the amortization base is abandoned or retired as long as the remainder of the property or group of properties continues to produce oil or gas. Instead, the asset being abandoned or retired shall be deemed to be fully amortized, and its costs shall be charged to accumulated depreciation, depletion, or amortization. When the last well on an individual property (if that is the amortization base) or group of properties (if amortization is determined on the basis of an aggregation of properties with a common geological structure) ceases to produce and the entire property or property group is abandoned, gain or loss shall be recognized. Occasionally, the partial abandonment or retirement of a proved property or group of proved properties or the abandonment or retirement of wells or related equipment or facilities may result from a catastrophic event or other major abnormality. In those cases, a loss shall be recognized at the time of abandonment or retirement.

(e) *Amortization of capitalized costs.* (1) Capitalized acquisition costs of proved properties shall be amortized using the unit-of-production method on the basis of total estimated units of proved oil and gas reserves. (2) Capitalized costs of exploratory wells that have found proved reserves and capitalized development costs shall be amortized using the unit-of-production method on the basis of total estimated units of proved developed reserves. However, costs of equipment or facilities whose useful life is shorter than the productive life of the related oil and gas reserves shall be depreciated by an appropriate method over the estimated useful life of the equipment or facility. Amortization, using the unit-of-production method as required by subparagraphs (1) and (2) of this paragraph, may be computed either on property-by-property basis or on the basis of some reasonable aggregation of properties with a common geological structural feature or stratigraphic condition, such as a reservoir or field. For those properties or groups of properties containing both oil reserves and gas reserves, the units of oil and gas used to compute amortization shall be converted to a common unit of measure on the basis of their approximate relative energy content. Unit-of-production amortization rates shall be revised periodically (but at least once a year) to reflect changes in estimates of reserves and changes in capitalized costs; those revisions shall be accounted prospectively as changes in accounting estimates. Estimated dismantlement and abandonment costs and estimated residual salvage values shall be taken into account in determining amortization and depreciation rates.

(f) *Costs to be charged to expense as incurred.* Some costs incurred in oil and gas producing activities do not result in acquisition or betterment of an asset and, therefore, shall be charged to expense. Examples include geological and geophysical costs, the costs of carrying and retaining undeveloped properties, and the costs of drilling nonproducing exploratory wells. The costs of drilling an exploratory well that is drilled solely to obtain geological information and that is not intended to be completed as a producing well (sometimes called a stratigraphic or test well) shall be charged to expense when incurred. The costs of drilling all other exploratory wells shall be capitalized pending determination of whether proved reserves are found. If proved reserves are found, the capitalized drilling costs relating thereto become part of the cost of the enterprise's wells and related equipment and facilities. If proved reserves are not found, the capitalized drilling costs relating thereto, net of any salvage value, shall be charged to expense. The determination of whether proved reserves are found in usually made on or shortly after completion of drilling the well, and the capitalized costs shall either be charged to expense or reclassified as part of the cost of the enterprise's wells and related equipment and facilities at that time. Occasionally, however, determination of whether the well has found proved reserves cannot be made at the time drilling is completed. Costs associated with such an exploratory well on which drilling has been completed shall not normally be carried as an asset for more than one year following completion of drilling; after that year has passed, the costs of that well and the related property shall be presumed to be impaired and, therefore, a loss shall be recognized. In unusual circumstances, however, even though determination of whether proved reserves have been found cannot be made after one year has passed, evidence of the existence of commercially recoverable quantities of oil and gas may be so persuasive that the presumption of impairment is overcome. In those circumstances, the exploratory drilling costs and related property acquisition costs shall continue to be carried as assets. Thereafter, the need to recognize a loss shall be assessed periodically (but at least once a year), and the costs shall continue to be carried as assets. Thereafter, the need to recognize a loss shall be assessed periodically (but at least once a year), and the costs shall continue to be carried as assets, only if the presumption of impairment is refuted.

(g) *Mineral property conveyances and related transactions.* (1) Certain transactions, sometimes referred to as conveyances, are in substance borrowings repayable in cash or its equivalent and shall be accounted for as borrowings. The following are examples of such transactions:

(i) Enterprises seeking supplies of oil or gas sometimes make cash advances to operators to finance exploration in return for the right to purchase oil or gas discovered. Funds advanced for exploration that are repayable by offset against purchases of oil or gas discovered, or in cash if insufficient oil or gas is produced by a specified date, shall be accounted for as a receivable by the lender and as a payable by the operator.

(ii) Funds advanced to an operator that are repayable in cash out of the proceeds from a specified share of future production of a producing property, until repaid in full, free and clear of all expenses associated with operation of the property, plus interest at a specified or determinable rate, shall be accounted for as a borrowing. The advance is a payable for the recipient of the cash and a receivable for the party making the advance. Such transactions, as well as those described in subparagraph (3) (i) of this paragraph, are commonly referred to as production payments. The two types differ in substance, however, as explained in subparagraph (3) (i) of this paragraph. (2) In the following types of conveyances, gain or loss shall not be recognized at the time of the conveyance:

(i) A transfer of productive assets in exchange for similar productive assets.

(ii) A pooling of assets in a joint undertaking intended to find, develop, or produce oil or gas from a particular property or group of properties.

(iii) A sale of part of an interest owned, and there is a substantial uncertainty about the recovery of costs applicable to the retained interest.

(iv) A sale of part of an interest owned, and the seller has a substantial obligation for future performance.

(3) If a conveyance is not one of the types described in subparagraph (2) of this paragraph, gain or loss shall be recognized unless there are other aspects of the transaction that would prohibit such recognition under accounting principles applicable to enterprises in general. In accordance with subparagraphs (1) and (2) of this paragraph, the following types of transactions shall be accounted for as indicated in each example. No attempt has been made to include the many variations of those arrangements that occur, but subparagraphs (1) and (2) of this paragraph shall, where applicable, determine the accounting for those other arrangements as well.

(i) Some production payments differ from those described in Subparagraphs (1) (ii) of this paragraph in that the seller's obligation is not expressed in monetary terms but as an obligation to deliver, free and clear of all expenses associated with operation of the property, a specified quantity of oil or gas to the purchaser out of a specified share of future production. Such a transaction is a sale of a mineral interest for which gain or loss shall not be recognized because the seller has a substantial obligation for future performance. The seller shall account for the funds received as unearned revenue to be recognized as the oil or gas is delivered. The purchaser of such a production payment has acquired an interest in a mineral property that shall be recorded at cost and amortized by the unit-of-production method as delivery takes place. The oil or gas reserve estimates and production data shall be reported as those of the purchaser of the production payment and not of the seller.

(ii) An assignment of the operating interest in an unproved property with retention of a nonoperating interest in return for drilling, development and operation by the assignee is a pooling of assets in a joint undertaking for which the assignor shall not recognize gain or loss. The assignor's cost of the original interest shall become the cost of the interest retained. The assignee shall account for all costs incurred as specified by paragraphs (b) through (f) of this section and shall allocate none of those costs to the mineral interest acquired. If oil or gas is discovered, each party shall report its share of reserves and production.

(iii) An assignment of a fractional operating interest in an unproved property in exchange for a "free well" with provision for joint ownership and operation is a pooling of assets in a joint undertaking by the parties. The assignor shall record no cost for the obligatory well; the assignee shall record no cost for the mineral interest acquired. All drilling, development, and operating costs incurred by either party shall be accounted for as provided in paragraphs (b) through (f) of this section. If the conveyance agreement requires the assignee to incur geological or geophysical expenditures instead of, or in addition to, a drilling obligation, those costs shall likewise be accounted for by the assignee as provided in paragraphs (b) through (f) of this section. If reserves are discovered, each party shall report its share of reserves and production.

(iv) A fractional part of an operating interest may be assigned to effect an arrangement called a "carried interest" whereby the assignee (the carrying party) agrees to defray all costs of drilling, developing, and operating the property and is entitled to all of the revenue from production from the property, excluding any third party interest, until all of the assignee's costs have been recovered, after which the assignor will share in both costs and production. Such an arrangement represents a pooling of assets in a joint undertaking by the assignor and assignee. The carried party shall make no accounting for any costs and revenue until after recoupment (payout) of the carried costs by the carrying party. Subsequent to payment the carried party shall account for its share of revenue, operating expenses, and (if the agreement provides for subsequent sharing of costs rather than a carried interest) subsequent development costs. During the payout period the carrying party shall record all costs, including those carried, as provided in paragraphs (b) through (f) of this section, and shall record all revenue from the property including that applicable to the recovery of costs carried. The carried party shall report as oil or gas reserves only its share of proved reserves estimated to remain after payout, and unit-of-production amortization of the carried party's property cost shall not commence prior to payout. Prior to payout the carrying party's reserve estimates and production data shall include the quantities applicable to recoupment of the carried costs.

(v) A fractional interest in a property may be exchanged for a fractional interest in a property of another party. The purpose of such an arrangement, commonly called a joint venture in the oil and gas industry, often is to avoid duplication of facilities, diversify risks, and achieve operating efficiencies. Such reciprocal conveyances represents exchanges of similar productive assets, and no gain or loss shall be recognized by either party at the time of the transaction.

(vi) In a unitization all the operating and nonoperating participants pool their assets in a producing area (normally a field) to form a single unit and in return receive an undivided interest (of the same type as previously held) in that unit. Unitizations generally are undertaken to obtain operating efficiencies and to enhance recovery of reserves, often through secondary recovery operations. Participation in the unit is generally proportionate to the oil and gas reserves contributed by each. Because the properties may be in different stages of development at the time of unitization, some participants may pay cash and others may receive cash to equalize contributions of wells and related equipment and facilities with the ownership interests in reserves. In those circumstances, cash paid by a participant shall be recorded as an additional investment in wells and related equipment and facilites, and cash received by a participant shall be recorded as a recovery of cost. The cost of the assets contributed plus or minus cash paid or received is the cost of the participant's undivided interest in the assets of the unit. Each participant shall include its interest in reporting estimated reserves and production data.

(vii) When a fractional interest in an unproved property is sold, even though for cash or cash equivalent, substantial uncertainty usually exists as to recovery of cost applicable to the interest retained. Consequently, the amount received shall be treated as a recovery of cost. However, if the sales price exceeds the capitalized cost of the property, gain shall be recognized to the extent of the excess.

(viii) The sale of an entire interest in a proved property that constitutes a separate amortization base is not one of the types of conveyances described in paragraph (g) (2) of this section. The difference between the amount of sales proceeds and the unamortized cost shall be recognized as a gain or loss.

(ix) The sale of a part of a proved property, or of an entire proved property constituting a part of an amortization base, shall be accounted for as the sale of an asset, and a gain or loss shall be recognized, since it is not one of the conveyances described in paragraph (g) (2) of this section. The unamortized cost of the property a part of which was sold shall be apportioned to the interest sold and the interest retained. However, the sale may be accounted for as a normal retirement under the provisions of paragraph (d) of this section with no gain or loss recognized if doing so does not significantly affect the unit-of-production amortization rate.

(x) The sale of the operating interest in a proved property for cash with retention of a nonoperating interest is not one of the types of conveyances described in paragraph (g) (2) of this section. Accordingly, it shall be accounted for as the sale of an asset, and any gain or loss shall be recognized. The seller shall allocate the cost of the proved property to the operating interest sold and the nonoperating interest retained on the basis of the fair values of those interests.

(h) *Income taxes.* Comprehensive interperiod income tax allocation by the deferred method shall be followed for intangible drilling and development costs and other costs incurred that enter

into the determination of taxable income and pretax accounting income in different periods. The excess of statutory depletion over cost depletion for tax purposes shall be accounted for as a permanent difference in the period in which the excess is deducted for income tax purposes.

These amendments shall be effective for financial statements for fiscal years beginning after June 15, 1978, and for interim periods within those fiscal years, although earlier application is encouraged. Accounting changes adopted to conform to the provisions of these amendments shall be made retroactively by restating the financial statements of prior periods. Financial statements for the fiscal year in which these amendments are first applied, and for interim periods of that year, shall disclose the nature of those accounting changes and their effect on income before extraordinary items, net income, and related per share amounts for each period restated.

These amendments are proposed to be adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; sections 12, 13, 15(d), and 23(a) (15 U.S.C. 78*l*, 78*m*, 78*o*(d), 78*w*) of the Securities Exchange Act of 1934; sections 5(b), 14, and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935 and section 503 (b)(2) (Pub. L. 94–163) of the Energy Policy and Conservation Act of 1975.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 31, 1977.

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